

**TOWNSHIP OF VERONA**  
**COUNTY OF ESSEX, NEW JERSEY**



**TOWNSHIP COUNCIL AGENDA**

SPECIAL MEETING

7:30 P.M.

MAY 15, 2019

Municipal Building, 600 Bloomfield Avenue

**A. CALL TO ORDER**

1. Open Public Meetings Act Compliance Statement

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. PROPOSED RESOLUTIONS**

1. Resolution No. 2019-\_\_\_\_ Authorizing a Settlement Agreement  
Between the Township of Verona and  
Spectrum 360, LLC
2. Resolution No. 2019-\_\_\_\_ Executive Session

**F. PUBLIC COMMENT**

**G. EXECUTIVE SESSION**

**H. ADJOURNMENT**

TOWNSHIP OF VERONA  
COUNTY OF ESSEX, STATE OF NEW JERSEY

RESOLUTION No. 2019-\_\_\_

A motion was made by \_\_\_\_\_; seconded by \_\_\_\_\_ that the following resolution be adopted:

**AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT  
WITH SPECTRUM 360 WITH REGARD TO DOCKET NO. ESX-L-4773-15**

**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 In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 7, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Verona, a municipal corporation of the State of New Jersey, 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 Township 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 develop the Property; and

**WHEREAS**, the Township and Spectrum wish to enter into this Settlement Agreement to memorialize general terms for the development of the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Verona, in the County of Essex, New Jersey hereby authorizes the Township Manager and the Township Clerk to execute the Settlement Agreement with Spectrum 360 attached hereto as Exhibit A.

**ROLL CALL:**

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

**THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT A SPECIAL MEETING HELD ON MAY 15, 2019.**

**JENNIFER KIERNAN  
MUNICIPAL CLERK**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into this \_\_\_\_<sup>th</sup> day of May 2019 by and between:

**THE TOWNSHIP OF VERONA**, a body politic of the County of Essex, State of New Jersey, with offices located at 600 Bloomfield Avenue, Verona, New Jersey 07044 (the “Township” and its governing body, the “Township Council”); and

**SPECTRUM 360, LLC**, an entity formed under the laws of the State of New Jersey with offices located at 1 Sunset Avenue, Verona, New Jersey 07044 (“Spectrum”) (Spectrum and the Township or the Township Council are hereinafter sometimes individually referred to as a “Party” and collectively referred to as the “Parties”).

### WITNESSETH

**WHEREAS 1**, 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 First and Second Round (1987-1999); and

**WHEREAS 2**, since 1999, COAH has failed to adopt constitutionally compliant Third Round Rules that have withstood judicial scrutiny; and

**WHEREAS 3**, 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 4**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July

7, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Verona, a municipal corporation of the State of New Jersey, 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 5**, by Order dated May 12, 2017, Spectrum, 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 303, Lot 4 on the Township’s official Tax Map (the “Property”); and

**WHEREAS 6**, the Property consists of approximately 5.5 acres, with an additional 2.5 acres located in the Township of Montclair; and

**WHEREAS 7**, Spectrum currently utilizes the Property as a campus for its Lower School and has a need to expand the Lower School but lacks adequate space on the Property for the planned expansion; and

**WHEREAS 8**, given Spectrum’s inability to expand its existing Lower School on the Property, it desires to sell the Property to a developer who will construct a market-rate multifamily development and make a substantial contribution to the Township’s Affordable Housing Trust Fund or, in the sole event that the foregoing is not viable for the limited reasons set forth herein and in Spectrum’s sole discretion, construct an inclusionary development with an affordable housing set-aside; and

**WHEREAS 9**, Spectrum submitted concept plans that are representative of the type of proposed project, depicting a maximum four (4) stories including parking, which accommodates 200 market-rate multifamily residential units (all of which shall be either one-bedroom or two-bedroom units), subject to the Parties’ good faith and diligent efforts to effectuate an Area in Need

of Redevelopment, pursuant to the provisions of the Local Redevelopment and Housing law (N.J.S.A. 40A:12A-1 et seq.-“LRHL”) including a Redevelopment Plan indicating the nature of the repurposing of the property in sufficient detail to accommodate the 200 market rate unit project, a Redevelopment Agreement, and a Financial Agreement, specifying an annual service charge to be paid by the designated redeveloper to the Township, also known as a payment in lieu of tax (“PILOT”), and further specifying a payment in lieu of an affordable housing building obligation to construct on-site affordable units, as these terms and conditions are set forth herein (collectively, the “Project”), and has also submitted a concept plan depicting the alternative inclusionary project, generally consisting of a six (6) story building including parking, which would accommodate approximately 300 multifamily residential units, of which fifteen percent (15%) would be affordable to lower-income households (the “Alternative Project”); and

**WHEREAS 10**, Spectrum has entered into a letter of intent and will promptly enter into an agreement with a qualified developer to acquire the Property and construct either the Project or the Alternative Project (the “Developer”); and

**WHEREAS 11**, in the event the Developer receives all final unappealable governmental approvals to construct the Project and as a specific condition thereof, Spectrum shall cause the Developer to pay the Township Six Million Two Hundred Fifty Thousand and 00/100 (\$6,250,000.00) to be deposited into the Township’s Affordable Housing Trust Fund in lieu of constructing on-site affordable units, which payment shall be made upon the sale of the Property and the Developer’s receipt of all final unappealable governmental approvals to construct the Project, whichever is later; and

**WHEREAS 12**, by causing the payment to be made to the Township in lieu of constructing on-site affordable units in connection with the Project or, alternatively, in the event the Project is not viable notwithstanding the Parties’ good faith and diligent efforts to effectuate the same, and the Alternative Project is approved, Spectrum will directly facilitate the construction of affordable

housing within the Township while providing the Township with significant long-term tax benefits, given that the Property is, currently, essentially tax-exempt; and

**WHEREAS 13**, 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 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 in the Township's housing region; and

**WHEREAS 14**, 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 determine whether the subject Property qualifies as an area in need of redevelopment and adopt a redevelopment plan and implementing ordinance (the "**Redevelopment Plan**") and/or other actions, as necessary, to implement the Project, or the Alternative Project as the case may be, as an "as-of-right" development; and

**WHEREAS 15**, pursuant to the Parties' settlement negotiations the Parties request that the Superior Court, Essex County, find that this Agreement is fair to the interests of lower-income households in New Jersey and partially addresses the Township's Third Round obligation in a reasonable fashion appropriate to the site in question inasmuch as the Township will be adopting a spending plan to disburse the funds received under this Agreement to an appropriate affordable housing project; and

**WHEREAS 16**, the Township will, in the future, seek the Court's approval of a Housing Element and Fair Share Plan (the "Plan"), inclusive of the project as proposed by Spectrum, and the Parties intend to be bound by this Agreement; and

**WHEREAS 17**, in order to amicably resolve this matter in a way that the Parties agree complies with the Mt. Laurel doctrine, the Parties have agreed to the terms and conditions set forth herein; and

**NOW THEREFORE**, in consideration of the foregoing recitals, the promises and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties mutually agree as follows:

**1      Incorporation of Recitals.** The Parties incorporate the foregoing recitals as if fully set forth at length herein and made a part hereof.

**2      Purpose of Agreement.** The purpose and intent of this Agreement is to provide Spectrum with a mechanism to meet the needs of its students (constituency) through the sale of the Property and to resolve Spectrum's intervention on terms that are fair to lower-income households in accordance with the requirements of the Mt. Laurel doctrine and Fair Housing Act of 1985, N.J.S.A.52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025). This Agreement does not purport to resolve all of the issues in the Township's DJ Action. In the event the Court approves this Agreement, the Township must discharge its obligations under this Agreement, including but not limited to the adoption of the Redevelopment Plan, the Financial Agreement, and the Redevelopment Agreement, *infra*, and the duty to defend this Agreement.

**3      Resolution of Litigation.** At this time and at this particular point in the process resulting from the Supreme Court's Mt. Laurel IV decision, even though fair share obligations have yet to be definitively determined, it is appropriate for the Parties to resolve Spectrum's intervention.

**4      The Spectrum Site.** Spectrum is the owner of Block 303, Lot 4 on the Township's official Tax Map (the "Property"), with a street address of One Sunset Avenue, Verona, New Jersey. The Property consists of approximately 5.5 acres, with an additional 2.5 acres located in the Township of Montclair. The Parties agree that the Property is "available," "approvable," "developable," and "suitable" for the Project or the Alternative Project, *infra*, as those terms are defined under COAH's Second Round Rules,



N.J.A.C. 5:93-1.3.

**5     The Project.** In satisfaction of the Township's Third Round affordable housing obligation, either in whole or in part, the Township agrees to undertake and complete the redevelopment process outlined herein, subject to the requirements of the LRHL and the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the "LTTEL"), including but not limited to designating the Property as an area in need of redevelopment and adopting the Redevelopment Plan as well as executing the Redevelopment Agreement, and Financial Agreement, to permit the construction of a market-rate multifamily residential development on the Property (the "Project"), as approximately depicted on the concept plan annexed hereto as **Exhibit A**. Upon determination that the Property is an area in need of redevelopment, the Redevelopment Plan for the area in need, subject to the requirements of the LRHL, will provide for 200 units of market-rate multifamily rental housing (all of which shall be either one-bedroom or two-bedroom units), with ancillary uses such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. The Parties agree that the concept plan is illustrative of the Project and subject to further refinement in the Redevelopment Plan. The Project shall not require site plan approval from the Township of Montclair.

**6     The Alternative Project.** In the sole event that the Project is not viable for the reasons set forth in Paragraph 18, *infra*, the Township agrees to adopt a zoning ordinance amendment to permit the construction of an inclusionary multifamily residential project on the Property (the "Alternative Project"). The Alternative Project shall be comprised of six (6) stories including parking and will provide for 300 units of multifamily rental housing, with ancillary uses such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. Fifteen percent (15%) of the units actually constructed in the Alternative Project shall be reserved for, and affordable to, lower-income households. The affordable components of the Alternative Project shall include low-income units (including very-low-income units) and moderate-income units. The very-low-income units, which shall be affordable to and reserved for households at or below thirty percent (30%) of area median income, shall constitute not less than thirteen percent (13%) of the total affordable units in the Alternative Project. The low-income units shall constitute not less than thirty-seven percent (37%) of the total affordable units within

the Alternative Project, while the moderate-income units shall constitute not more than fifty percent (50%) of the total affordable units in the Alternative Project. The affordable units in the Alternative Project shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in accordance with UHAC Regulations or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be at thirty-five percent (35%) or less of area median income by household size, thirteen percent (13%) of the affordable units shall be required to be at thirty percent (30%) of area median income. The construction of the affordable units in the Alternative Project shall comply with the phasing schedule set forth in N.J.A.C. 5:93-5.6(d). Further, all affordable new construction units shall be adaptable in conformance with P.L. 2005, c.350/N.J.S.A. 52:27D-311(a) and -311(b). The Alternative Project shall not require site plan approval from the Township of Montclair, because no construction will take place in Montclair. Spectrum has prepared concept plans that are representative of the Alternative Project, which the Township agrees are acceptable, that are attached hereto and incorporated herein as **Exhibit B**. The provisions of this Agreement concerning the Payment In-Lieu, Financial Agreement, Urban Renewal Entity, and Redevelopment Agreement shall not be applicable if the Property is rezoned to permit the construction of the Alternative Project. The zoning for the Alternative Project shall be adopted by the Township in accordance with the schedule set forth in Paragraph 18, *infra*, but only if the conditions set forth in said paragraph are satisfied in Spectrum's sole discretion.

7. **Assignment of Spectrum's Rights**. The Parties acknowledge that Spectrum is not a developer and desires to sell the Property to the Developer, which shall be designated redeveloper of the Project, subject to the requirements of the LRHL and the LTTEL. The Parties anticipate that the Developer will construct the Project or the Alternative Project as contemplated herein and assume all of Spectrum's rights, privileges, and obligations arising under this Agreement, including but not limited to the Redevelopment Plan, Redevelopment Agreement, and Financial Agreement. Subject to the requirements of the LRHL, the Parties acknowledge and agree in advance that Spectrum may sell the Property and assign all of its rights, privileges, and obligations arising under this Agreement without amending said Agreement, and without the prior approval of any Party. The Township agrees to work cooperatively with the Developer to effectuate this Agreement.

8 **Payment In Lieu of Constructing On-Site Affordable Units for the Project.** In the event the Developer receives all final unappealable approvals for the Project, and as a specific condition thereof, in lieu of constructing on-site affordable units, Spectrum shall cause the Developer shall remit the sum of Six Million Two Hundred Fifty Thousand and 0/100 (\$6,250,000.00) to the Township's Affordable Housing Trust Fund upon the sale of the Property and the Developer's receipt of all final unappealable governmental approvals for the Project, whichever is later. Said payment in-lieu must also be made prior to the issuance of building permits for the Project. The Parties acknowledge that this payment in-lieu fee to the Township's Affordable Housing Trust Fund renders the Project, *infra*, an "inclusionary development," and provides it with all of the rights, benefits, and protections of an inclusionary development, including but not limited to Township's obligation to provide adequate public utilities and services, water, and sewer to the Property, as well as the prohibition on "cost generative" development standards or requirements.

9 **Declaration of the Property as a Non-Condemnation Area in Need of Redevelopment.** Subject to adherence with requisite statutory procedures, the Township will expeditiously undertake the legal actions required to declare the Property a non- condemnation area in need of redevelopment. The steps are as follows:

a. At the May 16, 2019 Council meeting, the Township Council shall approve execution of this Agreement and, at the May 16, 2019 Council meeting, adopt a resolution directing its Planning Board to expeditiously: (i) conduct an investigation of the Property to determine whether said Property, or any portion thereof, constitutes a non-condemnation area in need of redevelopment under the LRHL; develop a map reflecting the boundaries of the Property to be included within the proposed redevelopment area; (iii) conduct a hearing pursuant to N.J.S.A. 40A:12A-6; and (iv) draft a report/resolution to the Township Council containing its findings within 90 days.

b. Once the Township's Planning Board issues the report/resolution to the Township Council, pursuant to Paragraph 9(a) above, and adopts the associated resolution, the Township Council will, at its next meeting, declare by resolution that the Property is in

need of redevelopment on a non-condemnation basis if the investigation report prepared by the Township's professional planning consultant determines that the Property meets one or more of the criteria set forth in N.J.S.A. 40A:12A-5. The

Parties acknowledge that the viability of the Project is contingent upon the Township Council declaring that the Property is need of redevelopment on a non-condemnation basis and approving the Financial Agreement as further described herein.

c. Within thirty (30) days of the Township Council's adoption of a resolution declaring the Property to be in need of redevelopment on a non-condemnation basis, the Township Council shall introduce an ordinance to adopt a redevelopment plan (the "Redevelopment Plan"), which Redevelopment Plan is consistent with the goals and objectives of Spectrum's intended use of its Property, as more particularly described in Paragraph 5, *supra*, and **Exhibit A** annexed hereto, on first reading, and shall refer said Redevelopment Plan to the Planning Board for review consistent with N.J.S.A. 40A:12A-7.

i. In accordance with the concept plan annexed as **Exhibit A**, the Redevelopment Plan shall permit the Developer to construct one or two four-story building(s) containing all 200 residential units (all of which shall be one- bedroom or two-bedroom units), ancillary improvements such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. The Redevelopment Plan shall set forth the zoning standards necessary to obtain development approvals for the Project, as the same is further described in **Exhibit A** hereof, and shall be "as of right" and without the need for any deviations, variances, waivers or exceptions. The Redevelopment Plan must be deemed satisfactory to both the Township and Spectrum/Developer prior to its adoption.

ii. Notwithstanding the foregoing, the Parties agree that the Developer

may seek all reasonable waivers and/or variances from the Township's Planning Board that are necessary to develop the Project as contemplated by this Agreement. Further, in accordance with N.J.A.C. 5:93-10, the Planning Board shall not impose any development standards and/or requirements that are "cost generative."

iii. The Parties also agree that the Developer shall fund the engineering to determine the scope of improvements and costs associated with the installation of a minimum of one additional lane of traffic on Sunset Avenue at the intersection of Bloomfield Avenue. In accordance with applicable law, the Parties shall work cooperatively to allocate the cost of any reasonable intersection improvements required by the County of Essex in the event that such improvements are undertaken.

d. The Township Council shall request that the Planning Board, at its next meeting but not later than 35 days after the Township Council's introduction of the Redevelopment Plan on first reading, meet and determine whether the Redevelopment Plan is consistent with the goals and objectives of the Township's Master Plan and the requirements under N.J.S.A. 40A:12A-7 and transmit said recommendation to the Township Council.

e. Not later than 45 days from the introduction of the Redevelopment Plan, the Township Council shall conduct a public hearing on the Redevelopment Plan and adopt the same on second reading; whereupon the Clerk shall publish the notice of the adoption in accordance with applicable law.

f. Notwithstanding this Paragraph 9, the Parties agree that the processes by which the Property is designated an area in need of redevelopment and by which the Redevelopment Plan is adopted are subject to compliance with the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq.

**10. Spectrum's Payment In Lieu of Taxes.** The Parties acknowledge and agree

that the financial viability of the Project (but not the Alternative Project) is contingent upon the Township's adoption and execution of a Financial Agreement with Spectrum that provides for payments in lieu of taxes ("Financial Agreement") in accordance with the LTTEL. The Parties acknowledge that, without a Financial Agreement in accordance with the terms herein, the Project cannot proceed and the in-lieu payment will not be made. The Financial Agreement shall be for a term of thirty (30) years from the completion of the Project and shall require the Developer to remit an annual service charge equivalent to ten percent (10%) of the annual gross revenues generated by the Project, as defined in N.J.S.A. 40A:20-3(a). The Financial Agreement shall include staged increases as set forth in N.J.S.A. 40A:20-12(b)(2), and the Township reserves the right to exempt the land, in addition to the improvements, as permitted by N.J.S.A. 40A:20-12. A two percent (2%) administrative fee shall be included in the Financial Agreement, as permitted by N.J.S.A. 40A:20-10(d).

**11. The Developer's Formation of Urban Renewal Entity and Township**

**Approval of Financial Agreement.** Concurrent with the steps set forth in Paragraph 7, *supra*, the Developer shall form an Urban Renewal Entity ("URE" but also referred to herein as "Developer") in accordance with N.J.S.A. 40A:20-5 and file all necessary paperwork with the Department of Community Affairs and the Department of State. Following the formation of the URE, the Developer shall file a payment in lieu of tax ("PILOT") application with the Township that is consistent with the financial schedule set forth in Paragraph 9, *supra*. To implement the Financial Agreement in a timely fashion, the Parties agree to adhere to the following schedule:

a. Within thirty (30) days of the Developer's submission of the PILOT application, but not prior to the adoption of the Redevelopment Plan, the Township Council shall approve the Developer's application by resolution and introduce an ordinance for first reading that authorizes execution of the Financial Agreement. Said Financial Agreement must be in a form and content acceptable to the Township and Spectrum/Developer.

b. Not later than thirty (30) days following first reading of the ordinance authorizing execution of the Financial Agreement, the Township Council shall conduct a

public hearing on said ordinance and adopt the same on second reading; whereupon the Clerk shall publish notice of the adoption in accordance with applicable law.

**12. Execution of a Redevelopment Agreement.** At the same Council meeting that the Redevelopment Plan is adopted on second reading, but after such plan adoption, the Township Council shall designate the Developer as the official redeveloper of the Property and adopt a resolution authorizing execution of a redevelopment agreement by and between the Township and the Developer (the “Redevelopment Agreement”), in a form and content acceptable to the Township and the Developer.

**13. Spectrum’s Obligation to Support.** Provided the Township discharges its obligations under this Agreement in good faith, Spectrum shall support this Agreement at the affordable housing fairness hearing to be scheduled by the Court. Spectrum’s support of this Agreement shall include, as necessary, certifications, testimony and all other reasonable means of support as may be requested by the Township.

**14. Mutual Cooperation on All Governmental Approvals.** The Township, including all of its officials, employees, agents, committees, departments, and planning and zoning boards, shall cooperate with Spectrum and the Developer’s efforts, to the extent permitted under any applicable state or federal law, rule or regulations, to secure necessary municipal, county and state permits, approvals, licenses, deviations, waivers, exceptions, variations and variances for the Project of Alternative Project, as the case may be, including the Developer’s site plan application, Treatment Works Approval applications/permits, soil conservation district approvals, NJDEP Freshwater Wetlands and Flood Hazard Area approvals/permits, construction/building permits, and all other necessary governmental approvals. The Developer shall be responsible for payment of all fees associated with the foregoing permits, applications, licenses, etc., as required under law. The Township represents that it has adequate water and sewer to service the Project and/or the Alternative Project. The Township shall expedite the review and approval of all necessary governmental approvals, including scheduling special meetings as may be required to meet the schedules described herein. The Developer shall pay the Township’s standard fees for any special meetings scheduled in order to comply with this Agreement.

**15. Effectuation of Settlement Terms.** Regardless of the ultimate determination of the Township’s Third Round affordable housing obligation for the period 1999-2025 or the Court’s approval of

the Township's Housing Plan, regardless of any challenges thereto, the Parties shall be obligated to discharge all of their respective obligations under this Agreement, including but not limited to the implementation of the Redevelopment Plan for the Project. The Township shall work diligently, in good faith, and shall undertake all reasonable efforts, including expediting reviews of Spectrum or the Developer's submissions and scheduling of special meetings as necessary to effectuate the terms of this Agreement and the construction of the Project or Alternative Project.

**16. Fairness Hearing.** This Agreement must be approved by the Court following a fairness hearing in accordance with Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Spectrum agrees to support said Agreement on the record at any fairness hearing as necessary.

**17. Appeal.** In the event of any legal challenges to the Court's approval of this Agreement or the Redevelopment Plan, the Parties agree to affirmatively and diligently defend any such challenge before the Superior Court, Appellate Division and New Jersey Supreme Court. The Parties shall continue to implement the terms of this Agreement and Redevelopment Plan if they are approved by the trial court unless and until a non-appealable challenge to the Agreement or Redevelopment Plan is successful, at which point the Parties reserve their rights to rescind any actions taken in advance of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

**18. Defense of Area In Need Designation.** In the event that the Township Council finds and determines that the Property is an area in need of redevelopment for non-condemnation purposes (the "Designation") and such finding and determination is challenged by a third party, the Parties shall be obligated to affirmatively and diligently defend the finding and determination in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, during which time period the Parties' obligations with respect to the redevelopment of the Property shall be tolled for a period of eighteen (18) months from the date such a challenge is filed (the "Tolling Period"). This Tolling Period may be extended by the joint agreement of the Parties. However, if the defense of the Designation does not result in a final, unappealable adjudication



upholding the finding and determination prior to the expiration of the Tolling Period, then the Township shall, upon receipt of a written request from Spectrum, adopt a zoning ordinance amendment permitting the “as of right” construction of the Alternative Project within 45 days of the expiration of the Tolling Period.

**19. Conditions for Agreement to Become Final:**

a. The Township Council has considered and approved execution of this Agreement by resolution.

b. If the Court upon review of the Agreement finds that it is fair and consistent with East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), the Parties anticipate that the Court will enter an Order approving this Agreement conditioned upon the Township’s effectuation of all terms and conditions set forth herein.

**20. Enforcement.** This Agreement may be enforced through a motion to enforce litigant’s rights or a separate action filed in Superior Court, Essex County. In the event of a default under this Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees incurred in the enforcement thereof.

**21. Severability.** Unless otherwise specified, it is intended that the provisions of this Agreement are severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

**22. Assignment.** This Agreement and all other agreements, plans, approvals, and rights contemplated herein may be assigned by Spectrum to any individual or entity without the Township’s consent being required. However, the assignment hereto shall be to a qualified redeveloper who shall have a track record to reasonably satisfy the Township that the Project will be built. To this effect, the Township affirmatively acknowledges that BNE Real Estate Group is a qualified redeveloper. In the event of such assignment, the assignee shall be liable for the performance of all of Spectrum’s obligations arising hereunder.

**23. Successors Bound.** The provisions of this Agreement and the obligations and

benefits hereunder shall be binding upon and inure to the benefit of the parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.

**24. Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

**25. No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

**26. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

**27. Voluntary Agreement.** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, and advisers and, further, that each Party is the proper signatory to this Agreement (person) and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

**28. Preparation.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Party that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

**29. Exhibits and Schedules.** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of all Parties.

**30. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the

subject matter hereof except as otherwise provided herein.

**31. Conflict of Interest.** No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

**32. Effective Date.** Notwithstanding anything herein contained to the contrary, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

**33. Notices.** All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notice may also be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery, except if delivered by email, which shall require that the recipient acknowledge receipt. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

**TO THE TOWNSHIP:** Matthew Cavallo, Township Manager  
Township of Verona Municipal Building  
600 Bloomfield Avenue,  
Verona, New Jersey 07044

**WITH A COPY TO:** Brian Giblin, Esq.  
Giblin & Gannaio, LLC  
2 Forest Avenue, Suite 200  
Oradell, New Jersey 07649

**WITH A COPY TO:** Brian J. Aloia, Esq.  
Aloia Law Firm  
2 Broad Street, #407  
Bloomfield, New Jersey 07003

**TO SPECTRUM:** Bruce Ettinger, Ph.D., Executive Director  
Spectrum 360, LLC  
414 Eagle Rock Avenue, Suite 200B  
West Orange, New Jersey 07052

**WITH A COPY TO:** John P. Inglesino, Esq. and Derek W. Orth, Esq.  
Inglesino, Webster, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204

Parsippany, New Jersey 07054

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of the successor.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties have caused this Settlement Agreement to be executed by their duly authorized representatives as of the date first written above.

**TOWNSHIP OF VERONA**

**SPECTRUM 360, LLC**

By: \_\_\_\_\_  
Matthew Cavallo, Township Manager

By: \_\_\_\_\_  
Bruce Ettinger, Ed.D., Executive Director

Witness/Attest:

Witness/Attest:

\_\_\_\_\_  
Clerk, Jennifer Kiernan, RMC

Dated: \_\_\_\_\_, 2019

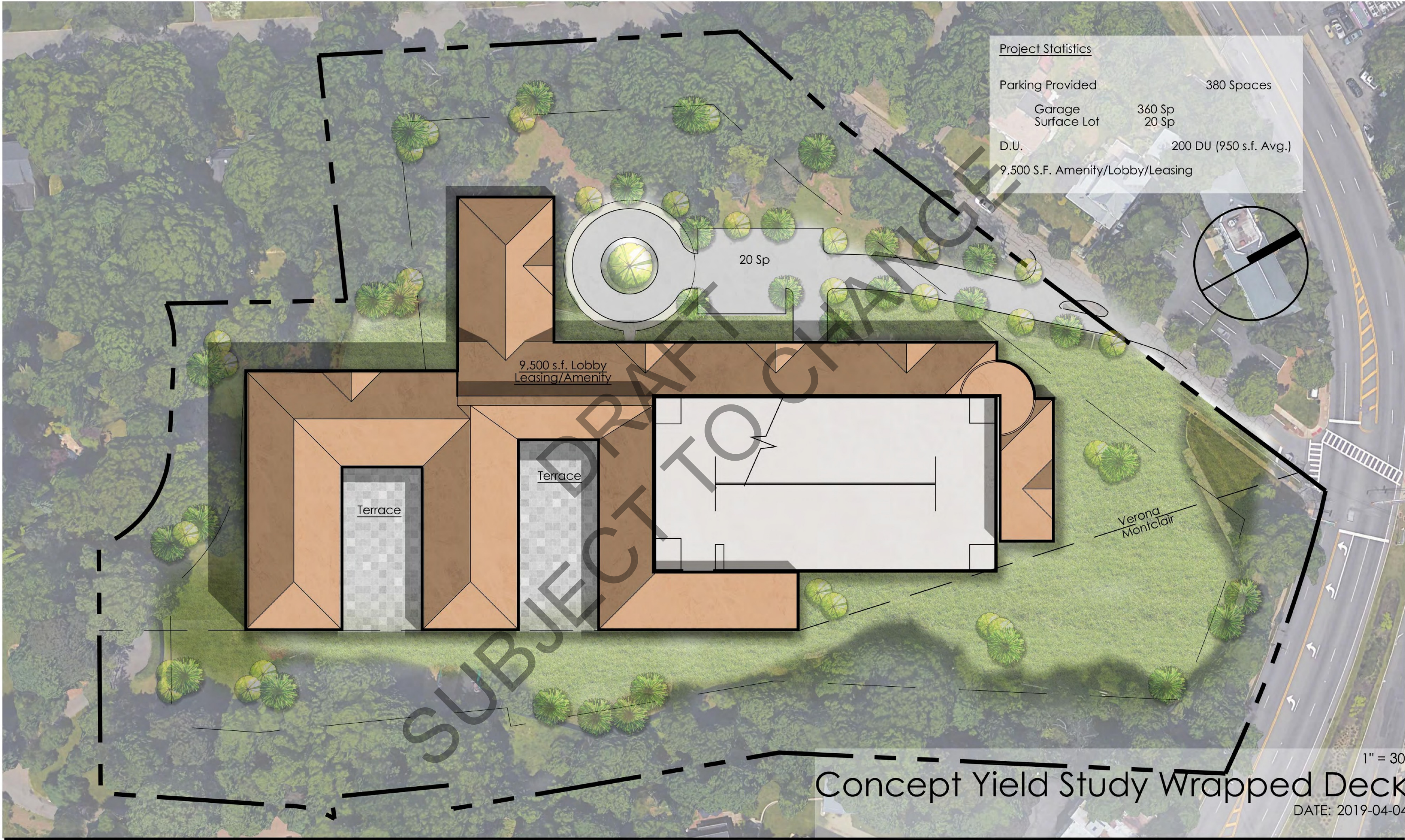
Dated: \_\_\_\_\_, 2019

**EXHIBIT A**

**SPECTRUM'S CONCEPT PLAN FOR THE PROJECT**

DRAFT  
SUBJECT TO CHANGE





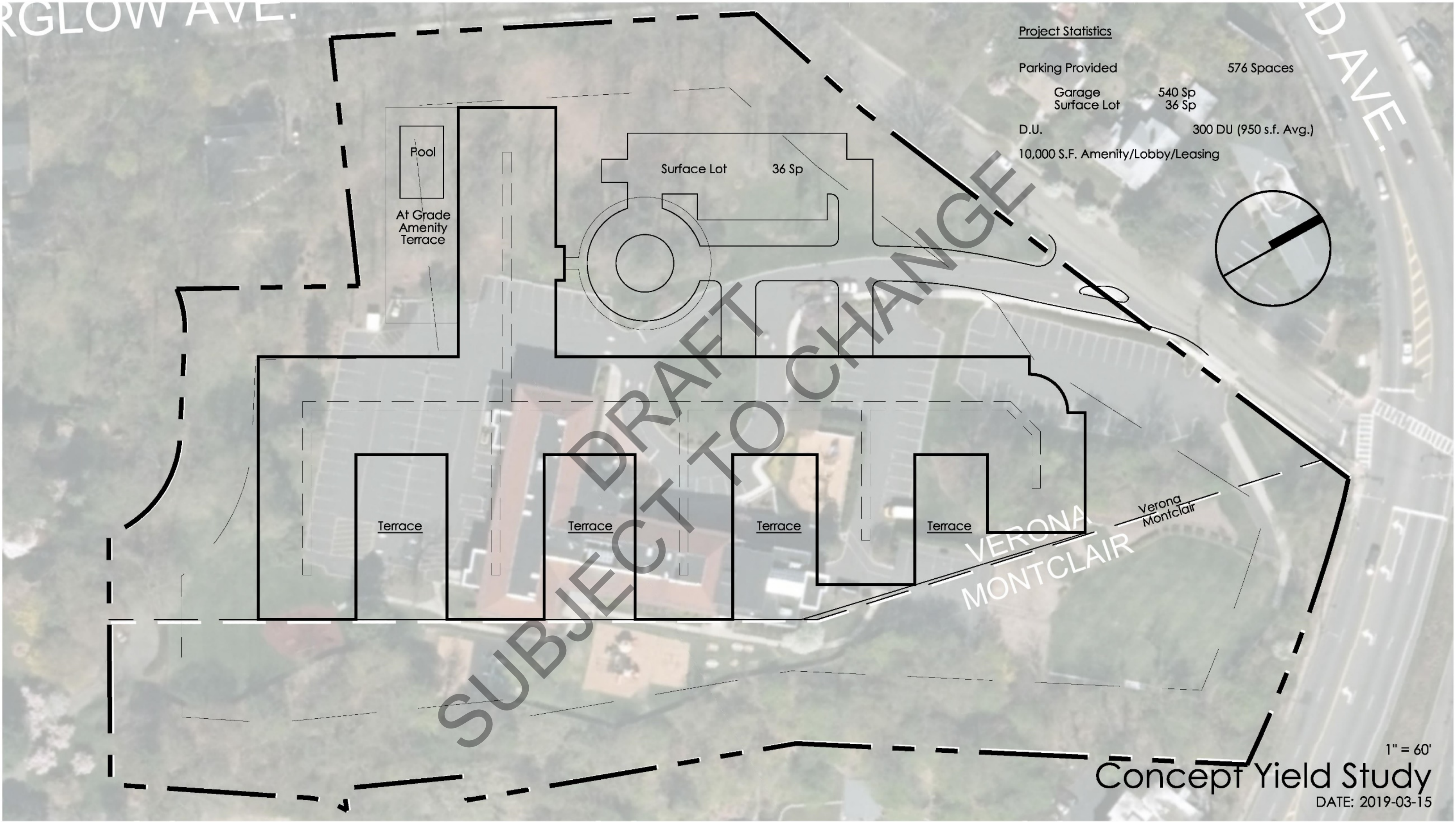


**EXHIBIT B**

**SPECTRUM'S CONCEPT PLAN FOR THE ALTERNATIVE PROJECT**

SUBJECT TO DRAFT TO CHANGE





DRAFT  
SUBJECT TO CHANGE



TOWNSHIP OF VERONA  
COUNTY OF ESSEX, STATE OF NEW JERSEY

RESOLUTION No. 2019-\_\_

A motion was made by ; seconded by that the following resolution be adopted:

PERMITTING ITEMS TO BE DISCUSSED IN EXECUTIVE SESSION

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the Public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exists.

NOW, THEREFORE, BE IT RESOLVED by the Township of the Township of Verona, County of Essex, State of New Jersey, as follows:

1. The public shall be excluded from discussion of an action upon the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:
  - a. Pending, Ongoing, or Anticipated Litigation pursuant to *N.J.S.A. 10:4-12 (7)*
    - Docket No. ESX-L-4773-15  
(In All Declaratory Judgement Actions Filed by Various Municipalities, County of Essex, Pursuant to the Supreme Court’s Decision in In re Adoption of *N.J.A.C. 5:96, 221 N.J. 1 (2015)*)
  - b. Contract Negotiations pursuant to *N.J.S.A. 10:4-12 (7)*
    - Docket No. ESX-L-4773-15  
(In All Declaratory Judgement Actions Filed by Various Municipalities, County of Essex, Pursuant to the Supreme Court’s Decision in In re Adoption of *N.J.A.C. 5:96, 221 N.J. 1 (2015)*)
3. It is anticipated at this time that the above stated subject matter will be made public when said subject has been fully discussed by the Council, and the attorney rules this matter may be brought before the public without jeopardizing any pending litigation.
4. This resolution shall take effect immediately.

ROLL CALL:

AYES:  
NAYS:  
ABSENT:  
ABSTAIN:

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT A SPECIAL MEETING HELD ON MAY 15, 2019.

JENNIFER KIERNAN  
MUNICIPAL CLERK