

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

RESOLUTION No. 2022-163

A motion was made by Councilman Tamburro; seconded by Councilwoman Holland that the following resolution be adopted:

**AUTHORIZING A TOWNSHIP MANAGER TO EXECUTE SETTLEMENT
AGREEMENT WITH 251 1/2 GROVE AVENUE, IN THE TOWNSHIP OF
VERONA, NEW JERSEY, BLOCK 1201, LOT 12**

WHEREAS, Marve currently owns certain real property commonly known as 251 1/2 Grove Avenue, formally identified as Block 1201, Lot 12 on the Tax and Assessment Map of the Township of Verona, Essex County, New Jersey (collectively, the "Site"); and

WHEREAS, the Site is approximately 5.5 acres and contains at least five (5) structures including an office/garage structure, a warehouse and garage structure, and three garages; and

WHEREAS, Marve and/or its predecessors, affiliates, and/or tenants have utilized the Site for industrial and/or commercial purposes including the outdoor parking and storage of trucks, buses and other vehicles, moveable containers and dumpsters, equipment and materials; commercial vehicle and bus repairs; fabrication and welding of vehicles, equipment and materials; and warehousing of equipment and materials; and

WHEREAS, on August 19, 2019, the Township issued twenty-eight (28) zoning violations to Marve alleging expansions of non-conforming uses for outdoor vehicle and equipment parking and storage, vehicle repairs, and storage of moveable containers at the Site (the "Zoning Violations"); and

WHEREAS, on September 20, 2019, Marve contested the Zoning Violations, filed an appeal of the zoning violations to the Township of Verona Board of Adjustment (the "Zoning Board"), and contended, among other things, that the uses subject of the Zoning Violations were pre-existing non-conforming uses and that the Superior Court previously determined that the uses subject of the Zoning Violations were legally protected non-conforming uses; and

WHEREAS, the Township alleges that the violations are non-conforming uses, wrongful expansions of pre-existing non-conforming uses and wrongful continuation of pre-existing non-conforming uses that should be brought into compliance; and

WHEREAS, the Parties seek to resolve the Zoning Violations and the dispute regarding the use of the Site as well as set forth the terms, conditions, responsibilities, and obligations of the Parties regarding the Site.

THEREFORE, BE IT RESOLVED by the Township Council of the Township of Verona, in the County of Essex, New Jersey that the Township Manager is hereby authorized to execute a settlement agreement that does the following:

1. Cause the removal of all self-storage pods from the Property by December 31, 2022
2. Cause any landscapers to vacate the Property by December 31, 2023
3. Cause any fabricators and vehicle repair contractors to vacate the Property by December 31, 2023
4. Not permit any new Tenants to utilize the Property in any manner that are in violation of the current zoning for the Property
5. Cause the Zoning Violations shall cease and any non-conforming uses to be brought into compliance with the current zoning for the Property by December 31, 2023

ROLL CALL:

AYES: Holland, Tamburro, McGrath, Roman

NAYS:

ABSTAIN: McEvoy

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON AUGUST 22, 2022.


JENNIFER KIERNAN
MUNICIPAL CLERK



SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by, between, and among Marve Development Corp. (“Marve”) and the Township of Verona (“Township”) (Marve and Township shall sometimes collectively be referred to as the “Parties”).

RECITALS

WHEREAS, Marve currently owns certain real property commonly known as 251 1/2 Grove Avenue, formally identified as Block 1201, Lot 12 on the Tax and Assessment Map of the Township of Verona, Essex County, New Jersey (collectively, the “Site”); and

WHEREAS, the Site is approximately 5.5 acres and contains at least five (5) structures including an office/garage structure, a warehouse and garage structure, and three garages; and

WHEREAS, Marve and/or its predecessors, affiliates, and/or tenants have utilized the Site for industrial and/or commercial purposes including the outdoor parking and storage of trucks, buses and other vehicles, moveable containers and dumpsters, equipment and materials; commercial vehicle and bus repairs; fabrication and welding of vehicles, equipment and materials; and warehousing of equipment and materials; and

WHEREAS, since at least 1922 through August 15, 2011, the Site was zoned by the Township for manufacturing, industrial and/or light industrial use; and

WHEREAS, on August 15, 2011, the Township rezoned the Site to the “C-2 Professional Office and Business Zone”; and

WHEREAS, on August 19, 2019, the Township issued twenty-eight (28) zoning violations to Marve alleging expansions of non-conforming uses for outdoor vehicle and equipment parking and storage, vehicle repairs, and storage of moveable containers at the Site (the “Zoning Violations”); and

WHEREAS, on September 20, 2019, Marve contested the Zoning Violations, filed an appeal of the zoning violations to the Township of Verona Board of Adjustment (the “Zoning Board”), and contended, among other things, that the uses subject of the Zoning Violations were pre-existing non-conforming uses and that the Superior Court previously determined that the uses subject of the Zoning Violations were legally protected non-conforming uses; and

WHEREAS, the Township alleges that the violations are non-conforming uses, wrongful expansions of pre-existing non-conforming uses and wrongful continuation of pre-existing non-conforming uses that should be brought into compliance; and

WHEREAS, the Parties now seek to resolve the Zoning Violations and the dispute regarding the use of the Site as well as set forth the terms, conditions, responsibilities, and obligations of the Parties regarding the Site.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its tenants, successors and assigns, do hereby covenant and agree, each with the other, as follows:

1. TERMS AND CONDITIONS

a. The purpose of this Agreement is to resolve the dispute between Marve and the Township concerning the Zoning Violations and the present and future use of the site.

b. This Agreement resolves all of the issues between Marve and the Township concerning the Zoning Violations. In the event of any third party legal challenges to this Agreement, the Parties shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this

Agreement, the Parties shall negotiate in good faith on a mutually acceptable amended Agreement.

2. THE OBLIGATIONS OF THE PARTIES

a. Marve will cause any self storage pods to vacate the Property by December 31, 2022; and

b. Marve will cause any landscapers to vacate the Property by December 31, 2023; and

c. Marve will cause any fabricators and vehicle repair contractors to vacate the Property by December 31, 2023; and

d. Marve shall provide the Township with a current list of Tenants and Marve shall not permit any new Tenants to utilize the Property in any manner that are in violation of the current zoning for the Property; and

e. By December 31, 2023, or otherwise set forth in this Agreement, the Zoning Violations shall cease and any non-conforming uses shall and be brought into compliance with the current zoning for the Property, or any new zoning ordinance amendment adopted subsequent to the execution of the Agreement; and

f. The Township shall withdraw the Zoning Violations within ten (10) days of the execution of this Agreement. The Township expressly agrees, whether arising from its own investigation, information provided by adjacent property owners, or otherwise, that it will not issue zoning violations, summonses, complaints, infractions, or institute any other legal action of any kind that relates in any way to the Zoning Violations currently present on the Property; and

g. The Township agrees that Marve can apply to the appropriate Board and request the Board consider any application or presentation made by Marve to amend the zoning for the

Property to include, but not be limited to, a self storage facility; assisted living/skilled nursing/nursing home facility; age restricted adult living residential development; and/or other residential or commercial uses.

3. OTHER OBLIGATIONS OF THE PARTIES

a. **Mutual Good Faith, Cooperation, and Assistance:** The Parties shall exercise good faith, and cooperate and assist each other in fulfilling the intent and purpose of this Agreement. The Township expressly agrees to exercise good faith and cooperate regarding any permits, licenses, or approvals applicable to the performance by Marve of its respective obligations and rights in connection with this Agreement. The Parties further agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement.

b. **Obligation to Comply with Regulations:** The Parties shall comply with any and all Federal, State, County, and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

c. **Cost of Defense of Agreement:** Each Party shall be exclusively responsible for all costs which they may incur as a result of any challenge to this Agreement. The Parties shall diligently defend any such challenge.

4. DEFAULT

a. **Default with Respect to Marve:** Default with respect to Marve shall be defined as any failure to comply with its obligations identified in this Agreement. Marve shall be considered in Default of this Agreement if, after written Notice of Default is delivered to counsel for Marve, Marve has not cured any default within thirty days. In the event Marve is in Default, the Township may apply to the Superior Court of New Jersey, Essex Vicinage, seeking any remedy including but not limited to an Order directing Marve to take whatever action is necessary to comply with the terms of this Agreement.

b. **Default with Respect to the Township:** Default with respect to the Township shall be defined as any failure to comply with its obligations identified in this Agreement. The Township shall be considered in Default of this Agreement if, after written Notice of Default is delivered to counsel for the Township, the Township has not cured any default within thirty days. In the event the Township is in Default, Marve may apply to the Superior Court of New Jersey, Essex Vicinage, seeking any remedy including but not limited to an Order directing the Township to take whatever action is necessary to comply with the terms of this Agreement.

5. NOTICES

a. **Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties (herein "Notices") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. 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 MARVE : **Marve Development Corp.**
251 ½ Grove Avenue
Verona, New Jersey 07044

WITH COPIES TO: **O'Toole Scrivo LLC**
Attention: Thomas P. Scrivo, Esq. & Lawrence S. Cutalo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
tscrivo@oslaw.com
lcutalo@oslaw.com

TO THE TOWNSHIP OF VERONA:

Township Manager
Township of Verona
600 Bloomfield Ave., 2d Floor
Verona, NJ 07044

WITH COPIES TO:

Brian Aloia, Esq.
Aloia Law Firm, LLC
2 Broad Street, Suite 407
Bloomfield, New Jersey 07003
Fax: 973-337-6535
brian@aloialawfirm.com

6. MISCELLANEOUS PROVISIONS

a. **Amendments:** Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties.

b. **Agreement Voluntarily Entered into by Each of The Parties:** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read

and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own respective choosing.

c. **Interpretation:** This Agreement has been reviewed by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, none of the Parties shall be presumptively entitled to have any provisions of the Agreement construed against any of the other Parties in accordance with any rule of law, legal decision, or doctrine.

d. **No Admission of Liability/No Precedential Value:** The Parties agree that this Agreement is the result of a compromise of disputed issues, that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them and that the settlement reflected in this Agreement shall be without precedential value. Nothing in this release shall be construed to represent an admission of wrong doing or a breach of contract.

e. **Attorneys' Fees, Costs, and Expenses:** Subject to the terms and conditions of Paragraph m below, each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement, as well as costs involving Court approval of same.

f. **Entire and Integrated Agreement:** This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understanding, and undertakings between or among the Parties with respect to such subject matters and there are no promises, representations, warranties, agreements,

understandings, or undertakings with respect to such subject matters other than those set forth or referred to herein.

g. **No Third Party Beneficiaries:** Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit and burden of the Parties as well as each of their respective successors and permitted assigns, and for the benefit and burden of no other person or entity.

h. **Severability:** If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.

i. **Headings:** The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

j. **Additional Necessary Documents:** The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

k. **Execution in Counterparts:** This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same

instrument. This Agreement may be executed in facsimile or electronic counterparts. An original signature will be provided if requested by any Party. The “Effective Date” of this Agreement is the date this Agreement has been executed and delivered by and to all Parties hereto.

1. **Enforceability of Agreement:** In the event of any dispute, claim, or action based upon, arising out of, or relating to, the breach, enforcement, or interpretation of any of the provisions of this Agreement or where any provision hereof is validly asserted as a defense, the forum and venue for such dispute shall be the Superior Court of New Jersey, Essex County Vicinage. The Superior Court of New Jersey, Essex Vicinage shall have jurisdiction to enforce any and all terms of this Agreement or adjudicate any other dispute.

m. **Assignability:** The Parties each have the unconditional right, upon written notice to the other Parties, to assign some or all of its rights or its obligations under this Agreement to any individual, entity, or organization without the prior approval of the other Party. The Parties hereto each bind themselves, and their respective tenants, successors and assigns, to the terms, rights, and obligations of this Agreement.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, The parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Dated: _____, 2022

Marve Development Corp.

By:

Name:

Title:

Dated: _____, 2022

Township of Verona

By:

Name:

Title:
