

TOWNSHIP OF VERONA
COUNTY OF ESSEX, NEW JERSEY



PLANNING BOARD AGENDA

REORGANIZATION MEETING

7:30 P.M.

JULY 23, 2020

VIA ZOOM VIDEO CONFERENCE

Via the internet, please click the link below to join the meeting:

<https://zoom.us/j/97814302826>

Via telephone, please dial 1(312)626-6799 or 1(646)558-8656.

Use Zoom Meeting ID: 978-1430-2826, when prompted for a Participant ID, press #

Public Documents for this meeting can be viewed at

www.VeronaNJ.org/planningboarddocuments

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- A. **CALL TO ORDER** – Larry Lonergan (2019-2020 Chairman)
 - B. **PLEDGE OF ALLEGIANCE**
 - C. **STATEMENT re: OPEN PUBLIC MEETINGS ACT**
 - D. **RE-ORGANIZATION OF THE PLANNING BOARD**
 - 1. Oaths of Office (Administered by Greg Mascera)
 - i. Alex Roman- Class III Member Term Expires June 30, 2021
 - ii. James Kirby- Class IV Member Term Expires June 30, 2024
 - 2. Alternate Member
 - i. Tim Camuti – Alternate Member #1 – Term Expires June 30, 2022
 - 3. Roll Call
 - 4. Nomination and Election of the Chairperson
 - 5. Nomination and Election of the Vice Chairperson
 - 6. Appointment of the Planning Board Secretary by Resolution
 - 7. Appointment of the Planning Board Attorney by Resolution
 - 8. Approval of 2020-2021 Meeting Dates by Resolution
 - 9. Designation for Official Newspaper
 - E. **REORGANIZATION OF SUB-COMMITTEES**
 - 1. Architectural Review Board
 - 2. Site Plan & Subdivision Committee (Informal Meetings)
 - 3. Landscape & Environmental Committee
 - 4. Master Plan Implementation Committee
 - F. **PUBLIC PARTICIPATION**
 - G. **APPROVAL OF MINUTES**
 - 1. Approval of Minutes from a Special Meeting held on February 18, 2020
 - 2. Approval of Minutes from a Regular Meeting held on February 27, 2020
 - 3. Approval of Minutes from a Regular Meeting held on June 25, 2020
 - H. **RESOLUTIONS**
 - 1. Resolution XX, “Approving Settlement of Docket No. ESX-L-007108-19 (Bobcar Corporation, Neil Joy Associates and Forson Partners, LLC v. Township of Verona and the Township of Verona Planning Board
 - I. **EXECUTIVE SESSION (if necessary)**
 - J. **ADJOURNMENT**

*The public may speak on any matter during Public Comment, listed on the agenda as item “H” on this agenda. At that time, anyone from the public wishing to speak will be prompted to raise his/her virtual hand. You may do so by pressing the “raise hand” button on your monitor or, if dialing in by phone, press *9. You will be recognized and advised that you are unmuted.*

*** AGENDA SUBJECT TO CHANGE ***

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

RESOLUTION No. 2020-___

**RESOLUTION APPOINTING ASHLEY NEALE
AS SECRETARY TO THE PLANNING BOARD**

WHEREAS, the Planning Board of the Township of Verona has identified a need to appoint a Secretary of the Planning Board for 2020-2021 year, and

WHEREAS, *N.J.S.A. 40:55D-24* permits the Planning Board requires the Planning Board to select a Secretary who may be a municipal employee and permits the Board to fix the compensation of the staff it employs; and

NOW THEREFORE BE IT RESOLVED that the Planning Board of the Township of Verona, hereby appoints Ashley Neale as Secretary to the Planning Board for a term commencing on July 1, 2020 and expiring on June 30, 2021.

BE IT FURTHER RESOLVED that the compensation for the position of Secretary to the Planning Board is hereby fixed at \$2,500 outside the employee's base salary.

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 PLANNING BOARD OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON JULY 23, 2020.

ASHLEY NEALE
PLANNING BOARD SECRETARY

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

RESOLUTION No. 2020-___

**RESOLUTION APPOINTING GREGORY MASCERA, ESQ.
AS PLANNING BOARD ATTORNEY**

WHEREAS, the Planning Board of the Township of Verona has identified a need to retain the services of a Planning Board Attorney to provide legal counsel to the Board for 2020-2021 year; and

WHEREAS, Section 30-5 of the Code of the Township of Verona requires the Planning Board Attorney to be an attorney other than the Municipal Attorney; and

WHEREAS, *N.J.S.A. 40:55D-24* permits the Planning Board to contract for and fix the compensation of the Planning Board Attorney.

NOW, THEREFORE BE IT RESOLVED that the Planning Board of the Township of Verona, hereby authorize a retainer with Gregory Mascera, Esq. in the amount of \$8,000, exclusive of escrow payments for services rendered with regard to applications before the Board, to provide services as a Planning Board Attorney for the period commencing on July 1, 2020 and expiring on June 30, 2021; and

BE IT FURTHER RESOLVED that this contract is being awarded without competitive bidding as a "Professional Service" pursuant to *N.J.S.A. 40A:11-5(1)(a)(i)*; and

BE IT FURTHER RESOLVED that notice of this action shall be published once in the official newspaper of the Township of Verona, the Verona-Cedar Grove Times as required by law.

BE IT FURTHER RESOLVED that the Chairman and Secretary of the Planning Board are hereby authorized to execute an agreement with Gregory Mascera, Esq. in connection with these services, and, upon execution, the contract shall be attached to this resolution and become a part hereof.

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 PLANNING BOARD OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON JULY 23, 2020.

ASHLEY NEALE
PLANNING BOARD SECRETARY

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

RESOLUTION No. 2020-___

**DESIGNATING THE REGULAR, CONFERENCE AND LEGAL MEETING
DATES OF THE PLANNING BOARD FOR 2020-2021**

WHEREAS, the Open Public Meetings Act, Chapter 231 of the Laws of 1975, requires all public bodies covered by said Act, at least once each year, and within seven (7) days following the annual reorganization meeting of such body, to post and maintain posted throughout the year a schedule of the regular meetings of the public body to be held during the succeeding year.

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

1. The schedule of regular meetings of the Planning Board of the Township of Verona will be held in the Ballroom of the Community Center located at 880 Bloomfield Avenue, Verona, New Jersey, or any other place or media that may be determined from time to time and properly noticed on the meeting, as set forth in the schedule herein.
2. The Planning Board Secretary is hereby directed to forward a copy of this resolution to the Municipal Clerk who shall prominently post the schedule on the public bulletin located in the lobby of the Municipal Building.
3. In the event that the approved schedule is hereafter revised, the revised schedule shall be posted and filed by the Planning Board Secretary as required by the Act; and
4. The Municipal Clerk shall publish in full in the Verona-Cedar Grove Times and Star Ledger.

SCHEDULE

Meetings will be held at 7:30 p.m. unless otherwise specified.

- AUGUST 18, 2020**
- AUGUST 27, 2020**
- SEPTEMBER 24, 2020**
- OCTOBER 22, 2020**
- DECEMBER 3, 2020**
- JANUARY 28, 2021**
- FEBRUARY 25, 2021**
- MARCH 25, 2021**
- APRIL 22, 2021**
- MAY 27, 2021**
- JUNE 24, 2021**
- JULY 22, 2021**

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE PLANNING BOARD OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON JULY 23, 2020.

- ROLL CALL:**
- AYES:**
- NAYS**
- ABSENT:**
- ABSTAIN:**

ASHLEY NEALE
PLANNING BOARD SECRETARY

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

RESOLUTION No. 2020-___

**AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT
WITH BOBCAR CORPORATION, NEIL JOY LLC AND FORSONS
PARTNERS, LLC WITH REGARD TO DOCKET NO. ESX-L-4773-15 AND
ESX-L-7108-19**

WHEREAS, Bobcar Corporation, Neil Joy LLC and Forsons Partners, LLC (the "Commerce Court Sellers") own as tenants in common an undeveloped property in Verona located at 25 Commerce Court and known as Block 1201 12.01, Lot 3.01, on the Verona Tax Assessment Map (the "Commerce Court Property"); and

WHEREAS, Wolfbane Associates, Neil Joy LLC and Forsons Partners, LLC (the "Mt. Prospect Sellers") own as tenants in common an undeveloped property in Verona located at 111 Mt. Prospect Avenue and known as Block 501, Lot 83, on the Verona Tax Assessment Map (the "Mt. Prospect Property") (the Commerce Court Property and the Mt. Prospect Property are hereafter collectively known as the "Verona Properties" and the Commerce Court Sellers and the Mt. Prospect Sellers are hereinafter known collectively as the "Sellers"); and

WHEREAS, the Sellers proposed to develop the Verona Properties with multi-family residential housing, including low and moderate income housing;; and

WHEREAS, Spectrum 360, LLC, owns the property designated as Block 303, Lot 4, on the Verona Tax Assessment Map (the "Spectrum Property"); and

WHEREAS, the Sellers filed a Complaint in Lieu of Prerogative Writs on September 27, 2019, challenging certain actions taken by the governing body of the Township of Verona and the Planning Board's determination that the Spectrum property could be designated as an "area in need of redevelopment" pursuant to NJSA 40A:12A-5, which litigation is pending before the Superior Court of New Jersey and bears Docket No. ESX-L-7108-19 (the "Spectrum Litigation"); and

WHEREAS, the Township has offered to purchase the Verona Properties for the combined sum of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), conditioned upon the Sellers withdrawal from the DJ Action and its dismissal of the Spectrum Litigation against the Township of Verona and the Planning Board; and

WHEREAS, the Sellers have agreed to accept the Township's and the Planning Board's settlement offer by withdrawing from the DJ Action, dismissing the Spectrum Litigation against the Township of Verona and the Planning Board, and conveying the Verona Properties to the Township for the combined sum of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), and desire to memorialize the terms and conditions of the settlement in the form of an agreement (the "Settlement Agreement"); and

WHEREAS, The Planning Board considered the merits of the litigation and the proposed Settlement Agreement in a private session of the Planning Board held on June 25, 2020.

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

1. The preamble to this Resolution is hereby incorporated as if more fully set forth herein.
2. The Planning Board approves the terms of the Settlement Agreement, in the form attached hereto as Exhibit A, with such changes, omissions or amendments as the Township Manager deems appropriate in consultation with the Township Attorney, the Township's affordable housing counsel, Planning Board litigation counsel, bond counsel, financial consultant and other professionals and authorizes the Settlement Agreement to be executed on behalf of the Planning Board by the Planning Board's litigation counsel.

3. This resolution shall take effect immediately.

BE IT FURTHER RESOLVED that a copy of this resolution be provided to the Township Manager, Township Council and Township Clerk.

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 PLANNING BOARD OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON JULY 23, 2020.

ASHLEY NEALE
PLANNING BOARD SECRETARY

6/10/20

SETTLEMENT AGREEMENT
BY AND AMONG
TOWNSHIP OF VERONA (hereinafter "Township") and
VERONA PLANNING BOARD (hereinafter "Planning Board")
AND
BOBCAR CORPORATION, NEIL JOY LLC (a/k/a Neil JOY ASSOCIATES),
FORSONS PARTNERS, LLC, and WOLFBANE ASSOCIATES
(collectively hereinafter "Sellers")

WHEREAS, the Township filed a Complaint for Declaratory Judgment on July 2, 2015, in the Superior Court of New Jersey in a Mount Laurel litigation that was consolidated into the matter which became known as "In All Declaratory Judgment 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)," Docket No. ESX-L-4773-15 (the "DJ Action"); and

WHEREAS, in the DJ Action, the Township sought a declaration from the Court that its Zoning Code and Housing Element are constitutionally compliant with the Court's Mount Laurel Doctrine and a judgment of compliance and a judgment of repose that would protect the Township from Builders' Remedy lawsuits; and

WHEREAS, Bobcar Corporation, Neil Joy LLC and Forsons Partners, LLC (the "Commerce Court Sellers") own as tenants in common an undeveloped property in Verona located at 25 Commerce Court and known as Block 1201, Lot 3.01, on the Verona Tax

Assessment Map and as further described by metes and bounds in Exhibit A (the "Commerce Court Property"); and

WHEREAS, Wolfbane Associates, Neil Joy LLC and Forsons Partners, LLC (the "Mt. Prospect Sellers") own as tenants in common an undeveloped property in Verona located at 111 Mt. Prospect Avenue and known as Block 501, Lot 83, on the Verona Tax Assessment Map and as further described by metes and bounds in Exhibit B (the "Mt. Prospect Property") (the Commerce Court Property and the Mt. Prospect Property are hereafter collectively known as the "Verona Properties"); and

WHEREAS, the Sellers proposed to develop the Verona Properties with multi-family residential housing, including low and moderate income housing, and Sellers' Motion to Intervene in the DJ Action was granted by the Court on September 15, 2015; and

WHEREAS, Spectrum 360, LLC, which is the owner of property designated as Block 303, Lot 4, on the Verona Tax Assessment Map (the "Spectrum Property") also intervened in the DJ Action for the purpose of seeking approvals from the Township and the Planning Board to redevelop the Spectrum Property for multi-family residential housing, including low and moderate income housing; and

WHEREAS, on August 13, 2019, the Planning Board voted to recommend that the Spectrum Property be deemed as an area in need of redevelopment by the Township Council; and

WHEREAS, on August 19, 2019, the Township Council adopted a resolution designating the Spectrum Property as an area in need of redevelopment; and

WHEREAS, the Sellers filed a Complaint in Lieu of Prerogative Writs on September 27, 2019, challenging the actions taken by the Township and the Planning Board with respect to the Spectrum Property, which litigation is pending before the Superior Court of New Jersey and bears Docket No. ESX-L-7108-19 (the "Spectrum Litigation"); and

WHEREAS, the Township has offered to purchase the Verona Properties for the combined sum of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), conditioned upon the Sellers withdrawal from the DJ Action and its dismissal of the Spectrum Litigation; and

WHEREAS, the Sellers have agreed to accept the Township's settlement offer by withdrawing from the DJ Action, dismissing the Spectrum Litigation, and conveying the Verona Properties to the Township for the combined sum of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), subject to additional terms and conditions as stated herein.

NOW, THEREFORE, the parties agree as follows:

1. **Sale of Verona Properties.** The Sellers agree to sell to the Township and the Township agrees to purchase from Sellers, upon the terms and conditions herein set forth, and in an "as is" condition, all of the Sellers' right, title and interest in the Verona Properties, and all easements, rights and privileges appurtenant thereto. The Township shall adopt a resolution approving this Settlement Agreement at its meeting scheduled for July 13, 2020 and the Planning Board shall each adopt a resolution approving this Settlement Agreement no later than July 23, 2020, and the Township shall adopt an ordinance authorizing the purchase of the Verona Properties pursuant to N.J.S.A. 40A:12-5 by July 27, 2020. Copies of the resolutions and the ordinance, as well as copies of all notices related to same, shall be provided to Sellers' attorney pursuant to the Notice provisions as set forth in Section 20 hereof within five (5) days of their adoption.

2. **Purchase Price.** The Township and the Sellers agree that the Purchase Price for the Verona Properties shall be Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00). At Closing, the Purchase Price shall be wired to Sellers' attorneys' trust account, i.e., the Price Meese Shulman & D'Arminio, P.C. Attorney Trust Account. Bobcar Corporation, Neil Joy LLC, Forsons Partners, LLC and Wolfbane Associates each acknowledge that Price Meese Shulman & D'Arminio, P.C. ("Price

Meese") shall act as Sellers' Escrow Agent. Sellers shall allocate the Purchase Price in their sole discretion between the Mt. Prospect Property, the Commerce Court Property and their respective ownership entities and shall provide written direction to Price Meese executed by each entity as to the disbursement of the Purchase Price between Sellers' various entities. Price Meese shall have no liability whatsoever arising out of or in connection with its activity as Sellers' Escrow Agent except for its willful misconduct. Sellers agree to indemnify and hold harmless Price Meese from and against any and all loss, cost, claim, cause of action, damage, liability, and expense (including reasonable attorneys' fees and expenses and court costs) which may be incurred by reason of its acting as Sellers' Escrow Agent unless same arises out of Sellers' Escrow Agent's willful misconduct. Price Meese, as Sellers' Escrow Agent, shall be entitled to rely upon any judgment, certification, demand, or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein, the propriety or validity thereof, or the jurisdiction of a court issuing any such judgment. Price Meese may act in reliance upon (i) any instrument or signature believed to be genuine and duly authorized, and (ii) advice of counsel which is not directly employed by Price, Meese, Shulman & D'Arminio, P. C. in

reference to any matter or matters connected herewith. In the event of a dispute over the allocation of the Purchase Price, whereby different entities of Sellers make demands for the funds, Price Meese may hold said funds pending receipt of a written agreement between each of the Sellers' entities, or deposit the funds into a court of competent jurisdiction to await an order directing Price Meese to release the funds.

3. **Withdrawal from DJ Action and Dismissal of Spectrum Litigation.**

Within ten (10) days of the execution of this Settlement Agreement, the parties shall execute the following and transmit same to Brian Giblin, Esq., Giblin and Gannaio, LLC, 2 Forest Avenue, Oradell, New Jersey, who shall be the Closing Escrow Agent:

(a) The Township and Sellers shall execute a Consent Judgement permitting Sellers to withdraw from the DJ Action, with prejudice, but without costs, in a form substantially consistent with Exhibit C hereto; and

(b) The Township, Sellers, and the Planning Board shall execute a Stipulation of Dismissal of the Spectrum Litigation, with prejudice, but without costs, in a form substantially consistent with Exhibit D hereto.

Upon confirmation of receipt by the Sellers of the Purchase Price at Closing of Title, the Closing Escrow Agent shall transmit to the Court each of the documents described above.

4. **No Financing Contingency.** This Settlement Agreement and the purchase and sale of the Verona Properties is not subject to mortgage financing or any other financing arrangement that the Township wishes to undertake. The Township warrants and represents that the purchase of the Verona Properties will not result in the Township exceeding its statutory debt limit set forth in N.J.S.A. 50:2-6.

5. **Closing of Title.**

The Closing of Title shall occur on or about October 27, 2020. The Closing shall occur at the office of the Closing Escrow Agent, or at such other location as shall be mutually agreed upon by the parties, or in escrow. No representative of the Sellers shall be required to attend the Closing in person, provided that the Sellers deliver in escrow to the Closing Escrow Agent on or before the Date of Closing all documents required by this Settlement Agreement, in which event the Closing Escrow Agent shall hold all of the closing documents in escrow until Sellers have confirmed receipt of the Purchase Price. The Purchase Price shall be paid by wire transfer as set forth in paragraph 2 above.

6. **Title.** The Sellers shall provide good and marketable title to the Verona Properties as will be insurable at regular rates, free and clear of all claims and rights of others, except for the following "Permitted Encumbrances":

(i) Mt. Prospect Property. The Deed to the Mt. Prospect Property shall contain a restriction, which shall run with the land, prohibiting any development on the Mt. Prospect Property, other than structures utilized for open space, conservation and/or public park enjoyment.

(ii) Commerce Court Property. The Deed to the Commerce Court Property shall contain a restriction, which shall run with the land, allowing for the development of the Commerce Court Property for limited municipal purposes, such as a DPW Yard, dog park, open space, and similar uses, but prohibiting any commercial development, institutional or multi-family residential development.

(iii) Any easements, agreements or restrictions of record.

If the Sellers shall be unable to transfer title, or to deliver possession of the Verona Properties as provided herein, then Sellers shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days.

7. **Allocation of Closing Costs.** Closing costs shall be allocated as follows: The Township shall pay all of its costs and expenses, including but not limited to its attorneys' fees, survey costs, fees for title examination and preparation of title abstract or certificate of title, and the costs, if any, for title insurance in connection with the purchase of the Verona Properties. Sellers shall pay all of their costs and expenses in connection with the sale of the Verona Properties, including but not limited to its attorneys' fees. The Township shall pay the realty transfer fee and mansion tax, if applicable. The parties shall pay their own litigation fees and expense, including attorneys' fees and court costs, related to or arising out of the DJ Action and the Spectrum Litigation.

8. **No Representations or Warranties.** The Verona Properties are being sold "AS IS" and "WHERE IS" with no representation, warranties, guarantees or covenants of any kind being made by Sellers with respect to the Verona Properties, whether express or implied, oral or written, concerning or with respect to the suitability of the Verona Properties for any purpose whatsoever, as to the physical condition of the Verona Properties or regarding the zoning applicable to the Verona Properties, the uses to which the Verona Properties may be put, and the Township's inability or ability to obtain approval for any particular use or particular purpose. In particular, and

without limitation, Sellers make and have made no representation as to the presence or absence of any Hazardous Substances in, on, under or about the Verona Properties. The Township acknowledges and agrees that in determining the suitability of the Verona Properties for any purpose and including without limitation, with respect to the presence or absence of any of Hazardous Substances, the Township will be relying solely on investigations conducted by it, its employees, agents or subcontractors. TOWNSHIP ACKNOWLEDGES THAT IT HAS HAD SUFFICIENT OPPORTUNITY TO INSPECT THE VERONA PROPERTIES AND AGREES TO TAKE THEM IN THEIR "AS IS" CONDITION ON THE DATE OF CLOSING. BY ACCEPTANCE OF THE DEED, TO THE FULLEST EXTENT PERMITTED BY LAW, TOWNSHIP UNCONDITIONALLY RELEASES THE SELLERS FROM ALL CLAIMS AND LOSSES, NOW OR IN THE FUTURE, KNOWN OR UNKNOWN, ARISING FROM EITHER OF THE VERONA PROPERTIES OR SELLERS' USE THEREOF, WHETHER BASED ON EXISTING OR FUTURE LAWS INCLUDING BUT NOT LIMITED TO THOSE CLAIMS AND LOSSES THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY BE CONNECTED WITH HAZARDOUS SUBSTANCES AND/OR ENVIRONMENTAL LAWS. THE TOWNSHIP FURTHER AGREES TO INDEMNIFY AND HOLD SELLERS HARMLESS FROM ALL CLAIMS OR LOSSES FOR PERSONAL INJURIES, PROPERTY DAMAGE OR OTHER ECONOMIC DAMAGE, INCLUDING SELLERS' REASONABLE ATTORNEY'S FEES INCURRED IN CONNECTION WITH ANY ACTION SEEKING THE RECOVERY OF SAME BY ANY PERSON OR ENTITY, WHETHER PRIVATE OR MUNICIPAL, RELATED TO

OR ARISING OUT OF THE ACTUAL OR CONTENTED ENVIRONMENTAL CONDITION OF THE VERONA PROPERTIES. THIS PROVISION SHALL SURVIVE THE CLOSING. "Hazardous Substances" shall mean any substances, materials or wastes, whether liquid, gaseous or solid, or any pollutant or contaminant, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, including without limitation, petroleum products and petroleum based derivatives, polychlorinated biphenyls, asbestos and asbestos containing materials and urea formaldehyde, that is regulated under, defined, listed or included in any federal or state law, statute, decisional law, rule, regulation, or codes relating to public and worker health or safety, pollution, damage to or protection of the environment, or the use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Materials, as the same are in effect on the Closing Date, together with any revisions or amendments to the same and any new enactments adopted, promulgated or enacted after the Closing Date. Without making any warranties or representations with respect to the same, and having no liability with respect thereto, Sellers shall within seven (7) days of the date that this Settlement Agreement is fully executed, provide the Township with copies of any and all surveys, engineering and environmental reports that have been prepared for Sellers in the last five (5) years

regarding the Verona Properties. Sellers shall also provide the Township and its professionals with access to the properties upon reasonable notice. Such access shall be at the Township's and its professionals' sole risk and the Township shall indemnify, defend, and hold Sellers harmless from and against any and all claims, liability, damages (including, but not limited to damage to property and personal injuries), costs and expense (including reasonable attorney's fees) arising from their access to the Verona Properties. The obligations of the Township with respect to its indemnity, defense and agreement to hold Sellers harmless shall survive the closing of title.

9. **Insurance.** Sellers agree to maintain the insurance presently in effect with respect to the Verona Properties until the Date of Closing. The risk of loss or damage to the Verona Properties by fire or other casualty, prior to the Date of Closing, except for the Township's and its professionals' access as set forth in paragraph 8 above, shall remain with Sellers.

10. **Real Estate Taxes.** Real estate taxes shall be adjusted on the Verona Properties as of the date the Township adopts a resolution approving this Settlement Agreement. Sellers shall pay all taxes as they come due up to the closing date with the Township providing a credit to Seller at closing for taxes paid by Seller from the date of the resolution approving the Settlement Agreement to and including the date of closing.

11. **Acceptance of Deeds.** The acceptance of the Deeds to the Verona Properties by the Township shall be deemed to be full performance and discharge of every agreement and obligation of Sellers contained herein, except those which expressly survive the delivery of the Deeds.

12. **No Broker or Commission.** The Township and Sellers agree that neither party has had negotiations with or dealt with any broker in connection with the sale of the Verona Properties. The parties agree to indemnify each other against, and hold each other harmless from, any loss, damage, cost or expense, including without limitation, attorneys' fees and disbursements, incurred as a result of any misrepresentation hereunder made by the indemnifying party. The provisions of this paragraph shall survive delivery of the Deeds.

13. **Limited Assignment.** The Township shall not have the right to assign or otherwise transfer its rights under this Settlement Agreement. The Township hereby acknowledges that one or more Sellers may attempt to complete an IRC Section 1031 tax-deferred exchange with respect to all or a portion of its share of the Purchase Price, and consistent with that, such Seller's rights and obligations under this Agreement may be assigned to a Section 1031 qualified intermediary to be identified by such Seller, solely for the purpose of facilitating such a Section 1031 exchange. The Township agrees to cooperate with such

Seller(s) to permit such Seller(s) to qualify for tax-deferred Section 1031 treatment, at no additional cost, obligation or liability to the Township. Such Seller(s) agree that any such assignment or Section 1031 exchange shall not be allowed to delay the Closing nor cause the Township any additional expense.

14. **Obligations of Sellers at Closing.** At the Date of Closing, the Sellers, as provided as follows, shall deliver to the Township the following:

- (i) The Mt. Prospect Sellers shall deliver the Deed to the Mt. Prospect Property and (Sellers) Affidavits of Title with respect to the Mt. Prospect Property;
- (ii) The Commerce Court Sellers shall deliver the Deed to the Commerce Court Property and (Sellers) Affidavits of Title with respect to the Commerce Court Property;
- (iii) Documentation confirming that Sellers (and their individual owners) are not foreign persons;
- (iv) Affidavits, certificates and forms as may be reasonably required by Township's title insurer;
- (v) The Mt. Prospect Sellers shall deliver resolution(s) authorizing the sale of the Mt. Prospect Property;
- (vi) The Commerce Court Sellers shall deliver resolution(s) authorizing the sale of the Commerce Court Property;
- (vii) Stipulation of Dismissal with Prejudice, but Without Costs, of the Spectrum Litigation;

(viii) Consent Judgement confirming Sellers's Withdrawal from the DJ Action, with Prejudice, but Without Costs; and
(ix) Such documentation as may be reasonably required by the terms of this Settlement Agreement or may be reasonably necessary or incidental to consummating the transaction contemplated hereby.

15. **Obligations of Township at Closing.** At the Date of Closing, the Township shall deliver to the Sellers the following:

(i) The Purchase Price;

(ii) Stipulation of Dismissal, With Prejudice, but Without Costs executed by both the Township and the Planning Board with respect to the Spectrum Litigation;

(iii) Consent Judgement confirming the Township's consent to Sellers' withdrawal from the DJ Action, with Prejudice, but Without Costs; and

(ii) Such documentation as may be reasonably required by the terms of this Settlement Agreement or may be reasonably necessary or incidental to consummating the transaction completed hereby.

16. **Counterpart and Facsimile Execution.** This Settlement Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original for all purposes. Upon the execution and delivery of a

counterpart by each party to this Settlement Agreement, even if such counterparts are different copies, the same shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

17. **Limitation of Liability.** No officer, director, member, elected official, employee or agent of either the Sellers, the Township or the Planning Board shall have any personal liability in connection with the parties' obligations under this Settlement Agreement.

18. **Entire Agreement; Amendments.** This Settlement Agreement sets forth the entire understanding and agreement of the parties hereto with respect to the subject matter hereof, and no change or modification shall be valid unless made in writing, signed by all of the parties hereto.

19. **Failure to Close.** Sellers may terminate this Settlement Agreement upon notice to the Township if the Township fails to close title as set forth herein, or if any third party challenges this Settlement Agreement or any action taken by the parties pursuant to, or in furtherance of, this Settlement Agreement. If this Settlement Agreement is terminated, Sellers may continue as a party to either or both the DJ Action or the Spectrum Litigation and the Township and Planning Board shall provide to Sellers any consents as may be required by the Court

for Sellers to so proceed and/or to restore either matter to the trial calendar.

20. **Notice.** The parties agree to provide each other with immediate notice of any lawsuit, action or governmental declaration, threatened or pending, of which they become actually aware and which may affect the provisions of this Settlement Agreement or implementation thereof. All written notices required under this Agreement shall be given by Certified Mail, Return Receipt Requested or by Federal Express as follows:

Sellers:

Gregory D. Meese, Esq.
Price, Meese, Shulman & D'Arminio, P.C.
50 Tice Boulevard
Woodcliff Lake, NJ 07677

Township:

Brian Giblin, Esq.
Giblin and Gannaio, LLC
2 Forest Avenue
Oradell, NJ 07649

Planning Board:

Verona Planning Board
600 Bloomfield Avenue
Verona, NJ 07044

21. **No Presumption.** The parties acknowledge that this Settlement Agreement was prepared jointly by counsel for all parties and, therefore, this Settlement Agreement shall be construed on parity among the parties to effectuate the purpose of the same.

22. **Effective Date and Modification.** This Settlement Agreement shall become effective upon execution and may not be modified except upon a written agreement signed by all parties.

FOR TOWNSHIP

Mayor of the Township of Verona

Dated: _____

FOR PLANNING BOARD

Chairperson of the Planning Board
of the Township of Verona

Dated: _____

FOR SELLERS

Bobcar Corporation

By: _____

Dated: _____

Neil Joy LLC

By: _____

Dated: _____

Forsons Partners, LLC

By: _____

Dated: _____

Wolfbane Associates

By: _____

Dated: _____

EXHIBIT A

**DESCRIPTION
COMMERCE COURT PROPERTY**

DRAFT

EXHIBIT B

**DESCRIPTION
MT. PROSPECT PROPERTY**

DRAFT

EXHIBIT C

**CONSENT ORDER
WITHDRAWAL FROM DJ ACTION**

DRAFT

EXHIBIT D

STIPULATION OF DISMISSAL
SPECTRUM LITIGATION

DRAFT