

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE TOWNSHIP OF VERONA

AND

VERONA SUNSET URBAN RENEWAL LLC

FOR

BLOCK 303, LOT 4

1 SUNSET AVENUE

IN THE

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

DATED AS OF JANUARY 17, 2022

This **REDEVELOPMENT AGREEMENT** (the “**Agreement**”), is made as of the 3rd February day of ~~January~~, 2022, by and between the **TOWNSHIP OF VERONA** with offices located at 600 Bloomfield Avenue, Verona, New Jersey 07044 (the “**Township**”) and **VERONA SUNSET URBAN RENEWAL, LLC**, with offices located at 16 Microlab Road, Suite A, Livingston, New Jersey 07039 (the “**Redeveloper**”); each of the Township and the Redeveloper hereinafter a “**Party**”, and collectively, the “**Parties**”).

SECTION 1. RECITALS

WHEREAS, the Township is a political subdivision of the State of New Jersey (the “**State**”), located in the County of Essex; and

WHEREAS, by Resolution No. 2019-140 adopted on August 19, 2019, the Township Council of the Township (the “**Township Council**”) designated Block 303, Lot 4, commonly known as 1 Sunset Avenue, as a non-condemnation area in need of redevelopment (the “**Redevelopment Area**” or “**Project Site**”) in accordance with the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

WHEREAS, on January 31, 2020, the Township and Spectrum 360 (the owner of the school located on the Project Site) entered into that certain First Amended and Restated Settlement Agreement (the “**Settlement Agreement**”) with respect to Spectrum 360, LLC’s intervention in the matter 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; and

WHEREAS, by the adoption of Ordinance No. 2020-01 on March 8, 2021, the Township Council duly adopted a redevelopment plan for the Redevelopment Area entitled, “The Sunset Avenue Redevelopment Area Redevelopment Plan”, which was thereafter amended by the adoption of Ordinance No. 2021-14 on June 21, 2021 (as the same may be further amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, the Redeveloper is the contract purchaser of the Redevelopment Area; and

WHEREAS, on June 7, 2021, the Township adopted Resolution No. 2021-082 designating the Redeveloper as redeveloper of the Redevelopment Area in accordance with the Redevelopment Law for a period of 6 months during which time the Redeveloper must enter into a redevelopment agreement with the Township; and

WHEREAS, Redeveloper and the Township entered into a financial agreement providing for payments in lieu of taxes in accordance with the Long Term Tax Exemption Law (defined below) in connection with the redevelopment of the Redevelopment Area (the “**Financial Agreement**”); and

WHEREAS, the Redeveloper has proposed to undertake the following actions, in accordance with the terms of this Agreement, the Redevelopment Plan and the Settlement Agreement, design, develop, finance, construct, operate and maintain: (i) a multi-family rental housing development including one, residential building of no more than four stories including parking, containing one hundred eighty-five (185) market-rate multi-family residential units (all of which shall be either one-bedroom or two-bedroom units); (ii) fifteen (15) multifamily residential units affordable to very low, low and moderate income households located within the same building as the market-rate units; (iii) associated parking, including electric vehicle charging stations as required by the Redevelopment Plan; (iv) associated amenities for the residential units; and (v) all necessary infrastructure improvements (items (i) through (v), as more specifically described in Section 4.1 herein, collectively, the “**Project**” or “**Redevelopment Project**”); and

WHEREAS, in order to effectuate the Redevelopment Plan, the Project and the redevelopment of the Redevelopment Area, the Township has determined to enter into this Agreement with the Redeveloper, which Agreement designates Redeveloper as the exclusive

“redeveloper” of the Project in accordance with the Redevelopment Law and which specifies the respective rights and responsibilities of the Parties with respect to the Project.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree, each with the other, as follows:

SECTION 2. DEFINITIONS

2.1 Definitions. When used in this Agreement the following words, phrases or terms shall have the following meanings:

Abandonment shall mean the act of relinquishing all right, title and interest in and to the Redevelopment Project without vesting such right, title and interest in any other person pursuant to the terms of this Agreement or a suspension of construction after obtaining a building permit or Commencement of Construction without the prior knowledge and consent of the Township for more than one hundred eighty (180) days (unless such suspension arises out of an event of Force Majeure).

Administrative Agent shall have the meaning set forth in Section 4.9.

Affiliate shall mean with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Affordable Units shall have the meaning set forth in Section 4.9.

Agreement shall have the meaning set forth in the Recitals.

Applicable Laws shall mean all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, applicable Council on Affordable Housing regulations, UHAC, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

Approvals shall mean all final and unappealable governmental and quasi-governmental approvals, permits, licenses, agreements and capacity reservations from any and all governmental and quasi-governmental authorities having jurisdiction over the Project Site and/or the Redevelopment Project, and/or utility company serving the Project Site that are required as a condition to the Commencement of Construction of the Redevelopment Project, and as may be required to allow the Redevelopment Project to be fully constructed and made fully operational, including, but not limited to, local and county planning approvals, DEP permits and approvals, construction permits, “will-serve” letters from utility providers, any approvals and permits needed from the Township of Montclair, and other various federal, State and local approvals; excluding, however, approvals, permits and the like (i.e. building permits and certificates of occupancy) normally obtained in the ordinary course of construction.

Bond shall have the meaning set forth in Section 4.3.

Certificate of Completion shall have the meaning set forth in Section 4.6.

Certificate of No Default shall have the meaning set forth in Section 12.6.

COAH shall mean the Council on Affordable Housing of the State established by the Fair Housing Act, as the same may be amended from time to time.

Commencement of Construction shall mean the date upon which construction force and machinery are mobilized for the construction of the Project in accordance with the Approvals, including demolition.

Concept Plan shall mean concept plans for the Redevelopment of the Project Site, attached hereto as Exhibit A.

Contamination shall mean the presence of Hazardous Substances in, on, under, over, or emanating from any property in violation of applicable Environmental Laws.

Court shall mean the Superior Court of New Jersey Law Division, Essex County.

Declaration shall have the meaning set forth in Section 15.12.

Deed Restriction Period shall have the meaning set forth in Section 4.9(b).

Default shall have the meaning set forth in Section 12.1.

Default Notice shall mean such notice to a defaulting party as defined in Section 12.3.

DEP shall mean the New Jersey Department of Environmental Protection.

Effective Date shall mean the date first written above.

Environmental Laws shall mean any applicable federal, state, local, municipal or other statutes, laws, ordinances, rules, regulations or other legally enforceable requirement, whether presently existing or hereinafter enacted, promulgated or otherwise created for the protection of the environment or human health from Hazardous Substances, as the same may be amended or supplemented from time to time, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, *N.J.S.A. 58:10-23.11, et seq.*; (b) the New Jersey Industrial Site Recovery Act, as amended, *N.J.S.A. 13:1K-6, et seq.*; (c) the New Jersey Leaking Underground Storage Tank Act, as amended, *N.J.S.A. 58:10-21, et seq.*; (d) The New Jersey Site Remediation Reform Act, *N.J.S.A. 58:10C-1, et seq.*; (e) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 *U.S.C.* Section 9601, *et seq.*; (f) the

Resource Conservation and Recovery Act, as amended, 42 *U.S.C.* Section 6901, *et seq.*; (g) the Hazardous Material Transportation Act, as amended, 49 *U.S.C.* Section 180, *et seq.*; or (h) the Occupational Safety and Health Act, as amended, 29 *U.S.C.* Section 651, *et seq.*

Event of Default shall have the meaning set forth in Section 12.3.

Fair Housing Act shall mean the Fair Housing Act, *N.J.S.A. 52:27D-301 et seq.*

Financial Agreement shall mean an agreement to be entered into by and between the Township and the Redeveloper, pursuant to the Long Term Tax Exemption Law, governing the exemption from taxation of all or a portion of the Redevelopment Project and the payment by Redeveloper to the Township of payments in lieu of taxes.

Force Majeure shall have the meaning set forth in Section 15.1.

Foreclosure shall have the meaning set forth in Section 13.6.

Hazardous Substances shall mean any and all elements, compounds, substances, materials, or wastes, whether solid, liquid or gaseous, which are either defined or referred to as hazardous or toxic or as pollution or a pollutant or contaminant under Environmental Laws.

Holder shall have the meaning set forth in Section 13.1.

Immediate Family Member shall mean a spouse, child or grandchild of Redeveloper.

Infrastructure Improvements shall have the meaning set forth in Section 4.3.

Institutional Financing shall mean the loans from banks, insurance companies, pension funds and other institutional lenders obtained by Redeveloper to fund Redevelopment Project costs.

Long Term Tax Exemption Law shall mean the New Jersey Long Term Tax Exemption Law, codified at *N.J.S.A. 40A:20-1 et seq.*

MLUL shall mean the Municipal Land Use Law, codified at *N.J.S.A. 40:55D-1 et seq.*

Parties shall mean both the Township and Redeveloper together and shall not refer to any other person or entity. Any one of the Parties may be referred to as a “**Party**”.

Permitted Transfers shall have the meaning set forth in Section 9.1(c).

Person shall mean an individual, corporation, limited liability company or other legal entity legally empowered to hold and convey title to real property in its own name under the laws of the State.

Planning Board shall mean the Township of Verona Planning Board.

Project shall have the meaning set forth in Section 4.1.

Project Documents shall have the meaning set forth in Section 12.7.

Project Improvements shall mean those buildings, Infrastructure Improvements, amenities or utilities necessitated by, associated with, desired or required by the implementation of the Project in accordance with Applicable Laws, including but not limited to all facilities, amenities, on and off-street parking, streetscape improvements, landscaping, fencing, enhancements or improvements required to be made to roadways to permit or control the flow of traffic, electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities.

Project Schedule shall mean Exhibit B attached hereto.

Project Site shall have the meaning set forth in the Recitals.

Redeveloper shall have the meaning set forth in the Recitals, together with any permitted successors and assigns.

Redevelopment shall mean the design and construction of the Redevelopment Project.

Redevelopment Area shall have the meaning set forth in the Recitals.

Redevelopment Law shall have the meaning set forth in the Recitals.

Redevelopment Plan shall have the meaning set forth in the Recitals.

Redevelopment Project shall have the meaning set forth in Section 4.1.

Remediation when used in this Agreement shall mean all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action.

Settlement Agreement shall have the meaning set forth in the Recitals, which is attached hereto as Exhibit C.

State shall have the meaning set forth in the Recitals.

Substantial Portion shall have the meaning set forth in Section 15.7.

Third Party means a Person or entity, including but not limited to a governmental entity, other than (a) the Township; (b) any agent, employee, agency, board, elected official or representative of the Township; (c) Redeveloper; (d) any member, shareholder, partner, officer, representative, employee or agent of Redeveloper; or (e) any entity owned or controlled by, under common control with, or that owns or controls, Redeveloper or any member, shareholder or partner of Redeveloper.

Township shall have the meaning set forth in the Recitals.

Township Council shall have the meaning set forth in the Recitals.

Township Default shall have the meaning set forth in Section 12.2.

Township Indemnified Parties shall mean the Township, its Township Manager, Township Councilmembers, officers, agents, employees, contractors, boards, departments, officials and consultants.

Transfer shall have the meaning set forth in Section 9.1(b).

UHAC shall mean the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.1 et seq.*, as same may be amended, or any successor laws or regulations.

2.2 Interpretation and Construction. In this Agreement, unless the context otherwise requires: (a) the terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the Effective Date; (b) words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa; (c) all references to Recitals, Articles, or Sections shall, unless otherwise indicated, mean the Recitals, Articles or Sections hereto; (d) any headings preceding the texts of the several Articles and Sections of this Agreement, any table of contents or marginal notes appended to copies hereof, and the Recitals hereto shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect; (e) unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person hereunder shall be in writing and shall not be unreasonably withheld, conditioned, or delayed; (f) all notices to be given hereunder and responses thereto shall also be in writing and shall be given, unless a certain number of days is specified, within a reasonable time; (g) unless otherwise indicated, any “fees and expenses” shall be required to be customary and reasonable; and (h) “knowledge” shall mean actual knowledge of an officer of the applicable Party after due investigation and inquiry.

SECTION 3. OVERVIEW

3.1 Purpose and Background. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Township and Redeveloper in connection with the Redevelopment of the Project Site. Redeveloper is hereby designated the

exclusive “redeveloper” of the Project Site for the purpose of undertaking the Redevelopment Project.

SECTION 4. THE REDEVELOPMENT PROJECT

4.1 Redevelopment Project. The “Redevelopment Project” shall consist of: (i) a multi-family rental housing development including one, residential building of no more than four stories including parking, containing one hundred eighty-five (185) market-rate multi-family residential units (all of which shall be either one-bedroom or two-bedroom units); (ii) fifteen (15) multifamily residential units affordable to very low, low and moderate income households located within the same building as the market-rate units; (iii) associated parking, including electric vehicle charging stations as required by the Redevelopment Plan; (iv) 10,000 square feet of associated amenities for the residential units, including but not limited to a pool and landscaped courtyards; and (v) all necessary Infrastructure Improvements, all in accordance with the Redevelopment Plan, and the Concept Plan.

The Redeveloper agrees to undertake the Redevelopment Project. The Redeveloper further agrees that, notwithstanding the Redevelopment Law, it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of existing utilities, easements and parking spaces therefor, in order to complete the Redevelopment Project as provided by this Agreement. Redeveloper shall exercise reasonable efforts to ensure the effective coordination between the Project Improvements and shall cooperate with the Township to insure that the implementation of the Redevelopment Project does not interfere with the operation of existing utilities. Redeveloper agrees to provide or cause to be provided all performance and maintenance bonds as required by a separate developer’s agreement to be entered into between the Township and the Redeveloper.

4.2 Designation of Redeveloper. Redeveloper has been and hereby is designated as Redeveloper for the Redevelopment Project and Redeveloper shall have the exclusive right to redevelop and implement the Redevelopment Project on the Project Site in accordance with the terms and conditions of this Agreement.

4.3 Infrastructure Improvements. (a) Improvements Defined. Redeveloper acknowledges that certain infrastructure improvements (all items listed in this Section 4.3(a) collectively, the “**Infrastructure Improvements**”) may be necessary in connection with the implementation of the Project. In accordance with the Settlement Agreement and the Redevelopment Plan, Redeveloper, at Redeveloper’s sole cost and expense, shall provide all necessary engineering studies for, and construct and install all municipal infrastructure and capacity enhancements or upgrades required in connection with the provision of water, sanitary sewer, and stormwater sewer service to the Project, in addition to all required tie-in or connection fees, that may be required in connection with the Project, but only as may be required in accordance with Applicable Law and the Redevelopment Plan.

(b) Time for Completion. All Infrastructure Improvements shall be completed: (i) prior to the issuance of the first Certificate of Occupancy or Temporary Certificate of Occupancy for the Project; or (ii) at such later time as may be approved by the Township Engineer, in his reasonable discretion.

4.4 Project Schedule. Redeveloper will diligently implement and complete the Redevelopment Project in accordance with the Project Schedule, subject to the terms of this Agreement and subject only to relief resulting from events of Force Majeure. The Parties agree and acknowledge that adherence to the Project Schedule is of the essence in this Agreement. Notwithstanding the Project Schedule, Redeveloper may attempt to implement each task whenever possible earlier than the dates set forth for such tasks in the Project Schedule. If

Redeveloper fails to meet a completion date set forth on the Project Schedule or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the Township stating: (a) the reason for the failure to complete the applicable task, (b) Redeveloper's schedule for completing such task and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant extended completion dates. The Redeveloper may request the Township's consent for extensions of the Project Schedule, which may be granted via the adoption of a resolution and consent for such extensions shall not be unreasonably withheld by the Township.

4.5 Commencement of Redevelopment Project. Redeveloper agrees that Commencement of Construction shall occur in accordance with the Project Schedule and shall progress in accordance with the time frames set forth in the Project Schedule. After Commencement of Construction, Redeveloper will thereafter diligently and continuously prosecute construction of the Redevelopment Project to completion in accordance with the Project Schedule.

4.6 Certificate of Completion. The completion of the Project Improvements shall be evidenced by a certificate issued by the Township in the recordable form substantially attached hereto and made a part hereof as Exhibit E (the "**Certificate of Completion**") stating that: (a) all the Project Improvements have been completed in accordance with the approved final site plan and (b) a final Certificate of Occupancy, if required, has been issued for the Project Improvements. If the Township determines that Redeveloper is not entitled to a Certificate of Completion, the Township shall, within ten (10) days of receipt of Redeveloper's certification, provide Redeveloper with a written statement, specifying in reasonable detail the reasons the Township refused or failed to furnish a Certificate of Completion, and describing the measures or acts reasonably necessary, in the opinion of the Township, that the Redeveloper must take or

perform in order to obtain such Certificate of Completion, which reasons shall be consistent with the requirements of this Agreement, the Approval and/or the Redevelopment Plan. Upon Redeveloper's completion of the actions deemed reasonably necessary by the Township consistent with the requirements of this Agreement, the Approval and/or the Redevelopment Plan, it shall forthwith issue the Certificate of Completion.

The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to Redeveloper's obligation to construct the Project Improvements within the dates for the commencement and completion of same. Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment shall be deemed to no longer exist, and the Declaration shall be released.

4.7 Certificates of Occupancy. The Township, in accordance with Applicable Laws then in effect, upon application of Redeveloper, shall issue certificates of occupancy or temporary certificates of occupancy from time to time, as applicable, for individual residential units, as may be necessary to enable Redeveloper to lease same to third parties.

4.8 Approval of Project Concept; Pre-Approval of Site Plan. Subject to review and approval of site plans, the Township approves of the Concept Plan. Any material modifications to the Concept Plan will require approval of the Township and Redeveloper.

Furthermore, Redeveloper acknowledges that it will be required to submit proposed site plan applications to the Township Council (or, at the Township's option, to a subcommittee organized by the Township Council) prior to submission to the Planning Board. Confirmation by the Township Council (or a subcommittee organized thereby) stating that the application is consistent with the Redevelopment Plan and this Agreement shall be a required element of any

application for site plan approval, and the Planning Board shall deem any application for site plan approval lacking such confirmation to be incomplete. The Township Council shall make a determination as to whether the Redeveloper's proposed site plan application is consistent with the Redevelopment Plan within forty-five (45) days of submission.

4.9 Affordable Housing Obligation. Pursuant to the Settlement Agreement, the Redevelopment Project is an inclusionary development and shall include fifteen (15) rental units affordable to very low, low and moderate income households (the "**Affordable Units**"), which the Township agrees to apply towards satisfaction of the Township's obligations under the Fair Housing Act, applicable COAH regulations and the Settlement Agreement. As further described in the Settlement Agreement:

(a) The Affordable Units shall comply with UHAC, applicable COAH affordable housing regulations, the Settlement Agreement, any applicable order of the Court and other Applicable Laws.

(b) The Redeveloper shall have an obligation to deed restrict the Affordable Units as very low, low or moderate income affordable units in accordance with subsections (c) and (d) hereof for a period of thirty (30) years (the "**Deed-Restriction Period**") so that the Township may count the Affordable Units against its obligation to provide family rental affordable housing. The deed restriction shall be provided to the Township for its review for compliance with the terms of the Redevelopment Plan, the Settlement Agreement and this Agreement prior to recordation and filed by the Redeveloper prior to the Township issuing the Certificate of Completion for the Project Improvements. The Parties agree that the affordability controls shall expire at the end of thirty (30) years after the date of the initial occupancy of the respective Affordable Unit. At the end of the Deed Restriction Period, the Township shall cooperate with the Redeveloper, at no cost to the Township, to facilitate the Redeveloper's ability to exercise its

right to have the deed restriction last for only thirty (30) years subject to the requirements of *N.J.A.C. 5:80-26.1 1(b)* of UHAC.

(c) Redeveloper's obligation includes, but is not limited to, the Redeveloper's obligation to comply with bedroom distribution requirements, income distribution requirements, pricing requirements, integration of Affordable Units, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements under UHAC.

(d) Redeveloper shall contract with an experienced and qualified administrative agent ("**Administrative Agent**") of the Township's choosing for the administration of the Affordable Units and shall have the obligation to pay all costs associated with properly deed restricting the Affordable Units in accordance with UHAC and other applicable laws for the Deed-Restriction Period. Redeveloper and the Administrative Agent shall work with the Township regarding any affordable housing monitoring requirements imposed by COAH or the Court. Redeveloper shall provide, within sixty (60) days of written notice, detailed information requested by the Township or the Administrative Agent concerning Redeveloper's compliance with UHAC and other applicable laws.

(e) The Parties agree that the Affordable Units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action (as defined in the Settlement Agreement), and that the credits will be applied against any Round 3 obligation assigned to the Township.

(f) In the event the Redeveloper receives all Approvals to construct the Project and as a specific condition thereof, the Redeveloper shall pay to the Township Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), which the Township shall immediately deposit into the Township's Affordable Housing Trust Fund for use in accordance with applicable law,

which payment shall be made upon the later of the purchase of the Property by Redeveloper or the Redeveloper's receipt of all Approvals.

4.10 Township of Montclair. A portion of the Project Site is located within the Township of Montclair. The Redeveloper shall be responsible, at its sole cost and expense, for obtaining any and all approvals or permits required by the Township of Montclair for construction of the Project.

**SECTION 5. EASEMENTS/NO RELIANCE
ON OTHER INVESTIGATIONS**

5.1 Existing Easements. The Project Site, as well as many of the surrounding contiguous properties, may contain numerous easements, rights-of-way and developer's agreements which will play a significant and vital role in the redevelopment of the Redevelopment Area. The Redeveloper shall be responsible for preparing a survey illustrating all covenants, restrictions, easements, rights-of-ways and agreements of record on the Project Site and surrounding contiguous properties which may impact the redevelopment of the Project Site. The Redeveloper shall be responsible for amending these covenants, restrictions, easements, rights-of-ways and agreements in order to comply with the requirements of this Agreement and the Redevelopment Plan.

5.2 No Reliance On Other Investigations. Redeveloper further agrees, acknowledges and represents that, subject to the terms hereof, Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction contemplated by this Agreement solely in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk, understanding that any such investigations, examinations and inspections may not reveal any or all adverse or existing conditions, aspects or attributes of any such property.

SECTION 6. ENVIRONMENTAL

6.1 Environmental Obligations and Indemnification. The Parties expressly agree and acknowledge that it shall be the sole responsibility of the Redeveloper to undertake and pay the cost of any and all Remediation, compliance, environmental testing, and/or other analyses for the Project Site, and that the Township has no obligation or liability whatsoever with respect to the environmental condition of the Project Site, or any other parcels which may claim

Contamination arising from the Project Site.

SECTION 7. REDEVELOPMENT PROJECT OVERSIGHT

7.1 Progress Meetings. Redeveloper agrees to attend and participate in progress meetings every six (6) months with representatives of the Township to report on the status of the Redevelopment Project and to review the progress under the Project Schedule. The meetings shall be held virtually, or in person at the Township's Municipal Building or other convenient location in the Township. Prior to the meeting, subject to the terms of Section 7.3 below, the Township engineer may visit the Project Site to inspect the progress of the work on the Redevelopment Project. Redeveloper shall prepare the agenda for the progress meeting in advance of the meeting (which shall include, *inter alia*, any agenda items reasonably requested by the Township) and shall provide information to the Township at the meetings regarding the Redevelopment Project progress including but not limited to property acquisition, Approval submissions, financial commitments, construction of Project Improvements, compliance with the Redevelopment Plan and activities concerning marketing and leasing, if applicable. At the meeting, this information will be evaluated by the Township to determine compliance with the terms and conditions of this Agreement and the Project Schedule, and shall promptly thereafter advise the Redeveloper of the result of such evaluation.

7.2 Progress Reports. Commencing on the first day of the second month after the Effective Date of this Agreement, Redeveloper shall submit to the Township a quarterly written progress report which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly progress report, the status of all Approvals, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and

completion dates in the Project Schedule and an explanation of corrective action taken or proposed.

7.3 Access to Project Site. Upon reasonable advance written notice, but in no event less than 72 hours advanced written notice (except for Township construction code officials, fire officials, public safety personnel and the like performing their duties in the ordinary course, who shall not be obligated to provide advance written notice) the Township and its authorized representatives shall have the right to enter the Project Site to inspect the site and any and all work in progress for the purpose of furthering its interest in this Agreement. Such entrance shall be for informational purposes and shall not relieve Redeveloper of its obligation to implement the Redevelopment Project in accordance with this Agreement. In no event shall the Township's inspection of the Redevelopment Project be deemed acceptance of the work or be deemed to waive any right the Township has under this Agreement. Any such entry shall be subject to reasonable restrictions by Redeveloper typical of an active construction site and any persons present at the Project Site shall comply with all applicable health and safety rules established by the Redeveloper or the general contractor for personnel present on the Project Site. Such measures may include a need to be accompanied by Project personnel when visiting the Project Site.

SECTION 8. REPRESENTATIONS AND WARRANTIES

8.1 The Redeveloper. Redeveloper represents and warrants as follows:

(a) it is a limited liability company duly created under the laws of the State and is duly organized and existing in good standing;

(b) it has full power and authority to enter into this Agreement, to consummate the transactions contemplated herein and to perform all of its obligations hereunder;

(c) the execution, delivery and performance by Redeveloper of this Agreement has been duly authorized and the person executing this Agreement on its behalf is authorized to do so and that this Agreement constitutes a valid and legally binding obligation of Redeveloper, enforceable in accordance with its terms;

(d) subject to obtaining Institutional Financing or other private or equity financing, it is financially capable to undertake and fulfill the obligations of Redeveloper hereunder;

(e) Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill the obligations hereunder;

(f) except for litigation entitled First Ridge Alliance, Inc. v. Township of Verona, and Mayor and Council of the Township of Verona, Docket No. ESX-L-3739-19 and First Ridge Alliance, Inc. v. Township of Verona, and Mayor and Council of the Township of Verona, Docket No. ESX-L-3530-21, there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in its property, assets, liabilities or condition or which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(g) the execution, delivery, or performance of this Agreement will not constitute a violation of any of Redeveloper's organizational documents, or of any mortgage, indenture, instrument, judgment or other agreement to which it is a party or by which it is bound;

(h) that Redeveloper is majority owned and controlled by Howard Schwartz, Larry Pantirer, Alan Pines, Jonathan Schwartz, Marshall Tycher, and Carl Goldberg; and

(i) that Redeveloper is the contract purchaser of the Project Site.

8.2 The Township. The Township represents and warrants as follows:

(a) the designation of the Redevelopment Area, the adoption of the Redevelopment Plan and the designation of Redeveloper were done (and any amendment thereto will be done) in conformance with the Redevelopment Law, the adoption of the Redevelopment Plan was duly authorized in accordance with Redevelopment Law and the Township Council is duly and properly acting as the redevelopment entity for the Township pursuant to the Redevelopment Law;

(b) it is executing this Agreement in its capacity as a political subdivision of the State located in the County of Essex, as the designated redevelopment entity; the execution, delivery and performance by the Township of this Agreement has been duly authorized and the person executing this Agreement on its behalf is authorized to do so; and this Agreement constitutes a valid and legally binding obligation of the Township, enforceable in accordance with its terms;

(c) except for litigation entitled First Ridge Alliance, Inc. v. Township of Verona, and Mayor and Council of the Township of Verona, Docket No. ESX-L-3739-19 and First Ridge Alliance, Inc. v. Township of Verona, and Mayor and Council of the Township of Verona, Docket No. ESX-L-3530-21, there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist, which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or

(ii) is likely to result in a material adverse change in its agency, property, assets, liabilities or condition or which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement; and

(d) it has full power and authority to enter into this Agreement, to consummate the transactions contemplated herein and to perform all of its obligations hereunder.

SECTION 9. REDEVELOPER COVENANTS

9.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

(a) Redeveloper shall not use the Project Site or any part thereof in a manner that is not in all material respects consistent with the Redevelopment Plan, the Approvals and this Agreement. Redeveloper will construct only those uses established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, by the Township from time to time in accordance with the Redevelopment Law.

(b) Except as permitted in Section 9.1(c) below, prior to the issuance of a Certificate of Completion for the Redevelopment Project or any part thereof, pursuant to *N.J.S.A. 40A:12A-9(a)*, Redeveloper shall not, without the prior written consent of the Township in its reasonable discretion: (i) effect or permit any change, directly or indirectly, in the majority ownership of more than fifty percent (50%) or control of Redeveloper (whether in one transaction or by virtue of the combined effect of more than one transaction), provided, however, that the Township will not unreasonably withhold consent to a transfer of a majority or greater interest in Redeveloper (or in an Affiliate of Redeveloper) to a reputable financial institution for *bona fide* financing purposes, provided that the current members of Redeveloper remain in control of the entity, (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Site, (iii) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Site or the Redevelopment Project; or (iv) pledge, or transfer all or substantially all of its assets (collectively, a “**Transfer**”). If Redeveloper proposes a Transfer, other than as set forth above, Redeveloper will promptly provide to the Township for its consideration information concerning the proposed transferee, including, but not limited to, current audited financial statements for the proposed transferee and any other documentation reasonably requested by the Township pertaining to the transferee’s identity, principals, qualifications, reputation and

financial condition. If a Transfer is approved by the Township, the transferee, by written document acceptable in form and substance to the Township, for itself and its successors and assigns, and for the benefit of the Township, shall expressly assume all of the obligations of Redeveloper under this Agreement applicable to the property interest conveyed with such sale, assignment or transfer and shall agree to be subject to all the conditions and restrictions to which Redeveloper is subject hereunder, including the restrictions regarding the right to subsequent transfers. All relevant instruments and other legal documents proposed to effect any such transfer shall be submitted to the Township, and if the transferee is approved by the Township, such approval shall be indicated to Redeveloper in writing.

(c) Redeveloper, without violating the provisions of Section 9.1(b), may, subject to the requirements of *N.J.S.A. 40A:12A-9(a)* effect the following Transfers, to which the Township hereby consents upon receipt of notice thereof, without the necessity of further action by the Township (the “**Permitted Transfers**”): (i) Transfers to an Affiliate of Redeveloper; (ii) leases to residential tenants; (iii) mortgages to secure Institutional Financing for acquisition of the Project Site and/or the construction of the Redevelopment Project; (iv) environmental covenants and restrictions imposed by DEP as a condition of any permit or Approval; (v) any direct or indirect transfer of any interest in Redeveloper to a Person not presently holding an interest in Redeveloper, provided that the transfer is for less than fifty percent (50%) of the ownership interest of Redeveloper and otherwise does not change the control of Redeveloper; (vi) granting of easements, deed restrictions and licenses required for utilities or in connection with development approvals; (vii) transfers by means of inheritance, devise or bequest or by operation of law upon an Immediate Family Member, or a trust established for the benefit of such Immediate Family Member; and (viii) any contract or agreement which effectuates any of the foregoing exceptions. With respect to any of the Permitted Transfers listed in this Section

9.1(c), Redeveloper shall provide to Township written notice within thirty (30) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee parties, individuals and/or entities involved.

(d) Upon issuance of a Certificate of Completion for the Redevelopment Project, Redeveloper shall have the unfettered right to sell its interest in the Redevelopment Area.

(e) Redeveloper shall design, implement, complete and operate the Redevelopment Project in compliance with this Agreement and all other Applicable Laws, ordinances, Approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution, health, environmental and safety ordinances, laws and such rules and regulations thereunder as shall be binding upon Redeveloper under Applicable Laws. Without limiting the foregoing, Redeveloper shall comply at its own expense with all stormwater regulations, including but not limited to, those pertaining to detention, recharge and water quality.

(f) Redeveloper shall not unlawfully discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, disability, age, marital status, gender, gender identity or expression, sex, affectional or sexual orientation or any other characteristic protected by law in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall Redeveloper itself, or any person claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees on the Project Site.

(g) Redeveloper shall not use the Project Site, or any part thereof, as security or collateral for an unrelated transaction.

9.2 Compliance with Redevelopment Plan. Redeveloper shall take all necessary steps so that the development of the Project Site and the construction, use, operation, and maintenance of the Redevelopment Project thereon shall be in accordance with the provisions of this Agreement and Redevelopment Plan.

9.3 Redevelopment Project Completion. Redeveloper agrees to diligently undertake and implement the Redevelopment Project throughout the term of this Agreement and shall complete the Redevelopment Project within the time frames set forth in the Project Schedule.

9.4 Execution of Documents. Redeveloper shall, in order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any commercially reasonable contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the acquisition, construction and development of the Redevelopment Project in accordance with the terms of this Agreement and all necessary Approvals.

9.5 Fees. Redeveloper shall be subject to normal and customary application fees for Township approvals and review processes for the Approvals for the Redevelopment Project, as well as normal and customary building and construction permit fees and utility connection fees.

9.6 Construction Assurances. Redeveloper shall, upon Commencement of Construction, proceed diligently to complete construction.

SECTION 10. REDEVELOPER'S FINANCIAL OBLIGATIONS

10.1 Redeveloper's Equity. Redeveloper represents that it will use commercially reasonable efforts to obtain and commit the requisite equity and debt financing in order to finance the Redevelopment Project.

10.2 Payment to Township. Redeveloper agrees that simultaneously with the execution of this Agreement it will make payment to the Township, in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The Township shall use such funds to pay for: (a) all out of pocket costs it has incurred or will incur in connection with the Redevelopment Project, including, but not limited to, the professional, legal, technical and other consultant fees incurred in connection with the designation of the Redevelopment Area as an area in need of redevelopment, the adoption of the Redevelopment Plan, the review, preparation and negotiation of this Agreement and the Financial Agreement, and the implementation and oversight of the Redevelopment Project; and (b) any other such costs as the Township shall determine, in its discretion, are necessary and proper. If at any time the balance of the funds deposited with the Township falls below Seven Thousand Five Hundred Dollars (\$7,500.00) or is insufficient to fund work to be performed, the Township shall provide the Redeveloper with a notice of the insufficient deposit balance. The Redeveloper shall replenish the account with additional funds such that the amount on deposit therein is Twenty-Five Thousand Dollars (\$25,000.00) and such deposit shall be made within ten (10) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to the Redeveloper. The escrow shall be deposited in an account bearing interest at the minimum rate currently paid by the institution or depository in which the escrow is deposited on time or savings deposits. The Township shall notify the Redeveloper in writing of the name and address of the institution or depository in which the deposit is made. The chargeable expenses shall not include any Township clerical or administrative functions, overhead expenses, meeting room charges, or other Township costs and expenses except as provided herein. Each payment charged to the escrow shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service, and for each date the services performed, the hours spent in at least one-quarter hour

increments, the hourly rate, and the expenses incurred. The Township shall send a courtesy copy of the voucher to the Redeveloper on a monthly basis, which shall include an accounting of escrow funds expended. Any unexpended escrow funds shall be returned to the Redeveloper within thirty (30) days of the issuance of a Certificate of Completion.

Except for any fee due in connection with any Approval (for example, Planning Board escrow), any fee required to be paid by statute, rule or ordinance (for example, Township Engineering escrow for building permits, certificates of occupancy or utility connection), or any tax, assessment, payment-in-lieu-of-tax or similar payment, Redeveloper shall not be required to make any other payment to the Township in connection with the Redevelopment Agreement or Financial Agreement.

SECTION 11. INDEMNIFICATION

11.1 Indemnification. (a) Redeveloper agrees to indemnify and hold harmless and defend the Township and hold harmless and defend the Township Indemnified Parties, and Redeveloper shall pay any and all liability, actual loss, costs, damages, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, including but not limited to, claims for personal injury, death and property damage, which the Township and/or the Township Indemnified Parties may sustain, be subject to or be caused to incur relating to, based upon or arising from (i) Redeveloper's activities in connection with the Project, or any portion thereof, (ii) contracts entered into by the Redeveloper which relate to such activities, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper, its contractor and subcontractors and unrelated third parties, (iii) the maintenance and functioning of the Project Improvements, or any other activities of Redeveloper within the Redevelopment Area, (iv) the current or former environmental condition of the Redevelopment Area and

including but not limited to any third-party claim with respect to other properties alleging harm emanating from such environmental condition of the Redevelopment Area, (v) a material breach of this Agreement by Redeveloper, or (vi) any violation of applicable law by Redeveloper, unless any such loss, liability claim or suit arises from the negligent or intentional wrongful acts of the Township, its employees, agents and contractors. Notwithstanding the foregoing, any third-party actions or claims challenging the Settlement Agreement, this Agreement, the Redevelopment Plan, or land use approval by the Planning Board are specifically excluded from the indemnification requirements of this Section 11, and the Township or the Township Indemnified Parties shall bear their own costs in connection with the same.

(b) Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Township, and/or the Township Indemnified Parties; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Redeveloper, the Township and any other insured named or named as an additional insured in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable fees in situations where it is required that the Township engage its own attorneys, experts' testimony costs and all actual costs to defend the Township or any Township Indemnified Party, agents, servants, or employees shall be reimbursed to it by Redeveloper in connection with such defense and indemnification claim.

(c) In any situation in which the Township Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, the Township Indemnified Parties shall give prompt notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify the Township Indemnified Parties. Upon receipt of such notice, Redeveloper shall resist and defend any action

or proceeding on behalf of the Township Indemnified Parties, including the employment of counsel reasonably acceptable to the Township Indemnified Parties, the payment of all reasonable expenses and the right to negotiate and consent to settlement. The Township shall have the right to retain counsel of its choosing, the cost of which shall be borne by Redeveloper. All of the other Township Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof at their own expense. Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Redeveloper or if there is a final judgment against Redeveloper or the Township Indemnified Parties in any such action, Redeveloper shall indemnify and hold harmless the Township Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Further, Redeveloper shall have the right to settle any such action on behalf of itself and all Township Indemnified Parties, provided that such settlement (i) is solely a monetary payment, (ii) does not involve the entry of a judgment against Township or any Township Indemnified Parties and (iii) does not expose the Township Indemnified Parties to any liability, contingent or otherwise. Redeveloper shall indemnify and hold harmless the Township Indemnified Parties from and against any loss or liability by reason of such settlement.

11.2 Survival of Indemnity. The provisions of Section 11 shall survive the termination of this Agreement for a period of five (5) years following the termination of this Agreement.

SECTION 12. DEFAULT PROVISIONS

12.1 Redeveloper Default. Subject to the terms of this Agreement, the Township shall have the right to declare Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, a “**Default**”):

(a) Redeveloper's failure to substantially perform any of its obligations under the terms of this Agreement or under the Financial Agreement, including the failure to cure such default during any applicable cure periods; or

(b) A final and unappealable determination by a court of competent jurisdiction that Redeveloper is insolvent; or

(c) (i) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; (iii) Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against Redeveloper and shall not have been dismissed for a period of sixty (60) consecutive days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of sixty (60) consecutive days; or (ix) Redeveloper shall have abandoned the transaction of its usual business; or

(d) A notice to the Township by Redeveloper that it has determined not to proceed with the Redevelopment Project, unless Redeveloper has the right not to proceed, under the terms of this Agreement; or

(e) Failure by Redeveloper to make any payments owed to the Township when due;

or

(f) Abandonment of the Redevelopment Project by Redeveloper; or

(g) Failure by Redeveloper to comply with the Project Schedule and any extensions granted hereunder, subject to delays caused by the Township's failure to timely perform its obligations under this Agreement and further subject to any delays caused by a Third Party(s) related to the Remediation of the Project Site, including but not limited to, delays caused by other party(s) obligated pursuant to Environmental Laws for Remediation of all or a part of the Project Site; or

(h) Redeveloper or its successor in interest shall fail to pay, when due, any real estate taxes, payments in lieu of taxes or other assessments on the Project Site; or

(i) Redeveloper shall implement a Transfer in violation of this Agreement; or

(j) Failure by Redeveloper to comply with its obligations, or default by Redeveloper in any of its representations, warranties or covenants under this Agreement.

12.2 Township Default. Redeveloper shall have the right to declare the Township in default of this Agreement in the event of the failure by the Township to substantially perform any covenant, condition or obligation under this Agreement when performance is due, and if no time is specified then within a reasonable time (the "**Township Default**").

12.3 Default Notice. Upon the occurrence of a Default, the non-defaulting party shall notify the defaulting party in writing that it has declared that party in Default (the "**Default Notice**"). Absent such Default Notice, no declaration of Default shall be deemed binding against the defaulting party. The Default Notice shall state the basis for the determination that a Default has occurred. Upon receipt of the Default Notice, the defaulting party shall have, in the case of a financial obligation, fifteen (15) days to cure such Default; or in the case of any failure to

perform any other obligation set forth in this Agreement, forty-five (45) days to commence to cure said Default. With respect to a failure to perform any obligation other than a financial obligation, provided the defaulting party shall thereafter diligently and continuously proceed to correct same, the defaulting party shall have an additional one hundred eighty (180) days to complete the cure. In the event that the defaulting party does not cure a Default as set forth herein, the non-defaulting party shall have the right to exercise the remedies set forth below. The Parties may agree in writing, notwithstanding the provisions of this paragraph, to extend the period of time by which the defaulting party must respond to the Default Notice or the period of time in which the defaulting party must cure the Default. Any Default by either Party hereto that remains uncured following any notice and applicable cure period shall be an “**Event of Default**”.

12.4 Default Rights and Remedies. Except as may otherwise be provided in this Agreement, upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement and/or take whatever action, at law or in equity, it may deem desirable, including the seeking of damages, or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, proceedings to compel specific performance by the party in Default or breach of its obligations. In the event that the Township terminates this Agreement following an Event of Default by Redeveloper, Redeveloper’s designation as the redeveloper of the Project Site shall immediately terminate, together with Redeveloper’s rights as Redeveloper. In that event, any tax exemption and Financial Agreement applicable to the Redevelopment Project, or any portion thereof, shall also immediately terminate.

12.5 Rights and Remedies Cumulative; No Waiver by Delay. The rights and remedies of the Parties whether provided by this Agreement or by law or in equity, shall be cumulative, and except as otherwise specifically provided by this Agreement, the exercise by

either Party of any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other such rights or remedies for the same Default, or for the same failure in respect to any of the terms, covenants, conditions or provisions of this Agreement or any of its remedies for any other default or breach. No delay by either Party in asserting any rights or exercising any remedy shall operate as a waiver of such rights or remedy or otherwise deprive it of, or limit such rights and remedies in any way (it being the intent of this provision that such Party shall not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver by either Party with respect to any specific Default be considered or treated as a waiver of the rights of either Party with respect to any other defaults except to the extent specifically waived in writing.

12.6. Certificate of No Default. Either Party hereto shall deliver to the other, upon written request, a certificate signed by a duly authorized officer to the effect that the certifying Party is not aware of any condition, event or act which constitutes a violation of this Agreement or which would constitute a Default hereunder and no condition, event or act exists which, with notice or lapse of time, or both, would constitute such a violation, or Default, or if any such condition, event or act exists, specifying the same (“**Certificate of No Default**”).

12.7 Effect of Termination of Redeveloper. Upon termination, the designation of Redeveloper as redeveloper shall automatically cease, and neither party shall have any further rights or obligations under this Agreement, except as expressly provided otherwise herein.

12.8 Termination for Failure to Obtain Approvals. Notwithstanding anything herein to the contrary, Redeveloper shall have the right to terminate this Agreement at any time upon written notice to the Township in the event any Approval is denied or the obtaining of any

one or more Approvals appears without reasonable likelihood for success, in Redeveloper's good faith and reasonable judgment.

SECTION 13. FINANCING PROVISIONS

13.1 Rights of Institutional Mortgagee. Except to the extent that the Project Site may be subject to a mortgage or other encumbrance or lien on the Effective Date, Redeveloper shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project Site, except as may be reasonably required for the construction of the Redevelopment Project or the continued operation of the Redevelopment Project or portion thereof after the completion of construction, provided, however, that upon the issuance of a Certificate of Completion, such prohibition shall no longer apply with respect to the corresponding portion of the Redevelopment Project. Redeveloper shall notify the Township in writing no less than ten (10) days in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Redevelopment Project or any part thereof (the mortgagee thereunder or its affiliate, a “**Holder**”). The provisions of this Agreement shall not be deemed to grant to the Township the right to approve or review the terms of any such proposed financing.

13.2 No Termination for Mortgage Default. This Agreement, as an arrangement made by a governmental body or agency of the State pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the Redevelopment Project, as though such default or foreclosure had not occurred, except as specifically provided herein.

13.3 Cooperation. To the extent reasonably requested by Redeveloper or any Holder, the Township shall execute an estoppel certificate, recognition agreement, attornment agreement

and or such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Township) as may be requested or required by any Holder; provided, however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Redeveloper or the Township under this Agreement.

13.4 Notice of Default to Holder and Right to Cure.

(a) Whenever the Township shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, the Township shall at the same time deliver to each Holder a copy of such notice or demand, provided that Redeveloper has delivered to the Township a written notice of the name and address of such Holder. Each such Holder shall have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds.

(b) To the extent that any Holder is required to foreclose against any lien it has with respect to the Redevelopment Project (as a result of a Redeveloper Event of Default or a default by Redeveloper under any agreements executed by Redeveloper and its project lenders), the Township agrees to forbear from the enforcement of any remedies provided under this Agreement that it may have against Redeveloper in order to permit such Holder to foreclose and assume or cause a Third Party to assume the obligations of Redeveloper under this Agreement; provided, however, that the Township shall not be obligated to forbear from the exercise of any remedies available to it hereunder if such forbearance will result (or may result, in the reasonable judgment of the Township) in a waiver of the Township's rights under this Agreement.

13.5 No Guarantee of Development, Construction or Completion of the Redevelopment Project. A Holder shall in no manner be obligated by the provisions of this

Agreement to develop, construct or complete the Redevelopment Project (or portion to which its mortgage relates), or to guarantee such development, construction or completion; nor shall any covenant or any other provisions be construed to so obligate a Holder. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or completion of the Redevelopment Project, or portion to which its mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to the Township going forward from and after the date of such assumption with respect to the Redevelopment Project (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the Township and the Holder.

13.6 Foreclosure. If a Holder forecloses its mortgage secured by the Project Site (or portion to which its mortgage relates), or takes title to the Project Site (or portion to which its mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a “**Foreclosure**”), the Holder shall have the option to either (a) sell the Project Site and the Redevelopment Project to a responsible Person reasonably acceptable to the Township, which Person shall assume the obligations of Redeveloper under this Agreement in accordance with applicable law, and/or (b) assume the obligations of Redeveloper under this Agreement in accordance with applicable law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement, the Township shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Township pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or the Person assuming the obligations of Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Redevelopment Project in the

manner provided in this Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Township that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder or Person assuming such obligations of Redeveloper, properly completing the Redevelopment Project, or any portion thereof, shall be entitled to Certificates of Completion in accordance herewith. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Project Site, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements consistent with the Concept Plan or other provided for or authorized by this Agreement.

13.7 Lender Changes. If Redeveloper's lender requires a change in the terms of this Agreement, the Township shall reasonably cooperate with Redeveloper in approving and implementing such change, so long as such change does not increase the Township's obligations or decrease the Township's rights as set forth in the Agreement, or materially change the Concept Plan. In addition, the Township agrees to enter into such agreement as Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not increase the Township's obligations or decrease the Township's rights in connection with this Agreement, or materially change the Concept Plan.

SECTION 14. ADDITIONAL PROVISIONS

14.1 Township Cooperation. The Township shall cooperate with and assist Redeveloper so as to enable Redeveloper to implement, develop and complete the Redevelopment Project in accordance with the Concept Plan and to otherwise perform Redeveloper's obligations and responsibilities under this Agreement. This cooperation shall

include, but not be limited to, (a) causing all construction and building permits over which the Township or any of its agencies or offices has jurisdiction to be granted to Redeveloper provided the applications for same comply with applicable law, (b) assisting Redeveloper in obtaining Approvals, in expediting required action by the Planning Board in connection with site plan and subdivision applications filed by Redeveloper in connection with this Agreement, and (c) the exercise of such other actions pursuant to Redevelopment Law as may be reasonably necessary to carry out the purpose and intent of this Agreement.

14.2 Maintenance and Landscaping. Redeveloper shall keep the Project Site free from any substantial accumulation of debris or waste materials and shall maintain in good condition any landscaping and amenities required under any applicable approved final site plan. The exterior of the Project Site and premise shall be maintained in a clean, safe and sanitary condition and comply with the Property Maintenance Code of the Township.

14.3 Speculative Development. Redeveloper represents its undertakings pursuant to this Agreement are for the purpose of Redevelopment of the Project Site and not for speculation in land holding. Redeveloper shall not use the Project Site, or any part thereof, as collateral for an unrelated transaction.

14.4 Compliance with Agreement. Redeveloper shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, and contractors engaged by Redeveloper or any of Redeveloper's subcontractors shall have the skill and judgment necessary to implement the Redevelopment Project in compliance with the terms and conditions of this Agreement.

SECTION 15. MISCELLANEOUS

15.1 Force Majeure. For the purposes of any of the provisions of this Agreement, neither the Township nor Redeveloper, as the case may be, nor any successor in interest, shall be

considered in breach of, or in Default with respect to its obligations hereunder because of any delay in the performance of such obligations, including commencement or completion of construction, arising from causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of public enemy, acts or omissions of other parties (including litigation by Third Parties), unavailability of materials, fires, floods, earthquakes, epidemics, pandemics, pestilence, quarantine restrictions, pandemics, moratoriums, strikes, freight shortages, energy shortages, embargoes, unusual or severe weather including but not limited to blizzards, hurricanes, super storms, or tornados, or delays of subcontractors due to any of the forgoing such causes, actions or inactions by any federal, state or local governmental or quasi-governmental entity, including the Township, with respect to the Approvals or the development of the Redevelopment Project (including, without limitation, a failure of the Township to perform in accordance with the terms of this Agreement), legal action or lawsuits filed in challenge of the issuance, grant or denial of any Approval and a change in laws, if such actions or inactions are not caused by Redeveloper (collectively “**Force Majeure**”). It is the purpose and intent of this provision that in the event of the occurrence of any such delay due to Force Majeure, the time or times for performance of the obligations of the Township or Redeveloper shall be extended for such period(s) as may be reasonable in the circumstances but in no event less than the period of the delay.

15.2 Section Headings. The headings and numbering of paragraphs and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

15.3 Governing Law. This Agreement shall be governed by and construed under the laws of the State and any litigation relating to this Agreement shall be brought in Court.

15.4 Amendments to Agreement. This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project Site and the construction of the Redevelopment Project. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Township and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in the amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

15.5 Severability. Should any provision, term, section or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable so that such determination, unless it prohibits or otherwise prevents the performance of this Agreement or materially alters the rights or obligations of the Parties (in such event this Agreement is to be reformed to reflect as nearly as possible the original stated terms), shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with Section 15.4.

15.6 Incorporation of Recitals and Exhibits. The recitals set forth in Section 1 and the Exhibits attached hereto are hereby incorporated by reference and are considered part of this Agreement.

15.7 Condemnation/Casualty. In the event that all or any substantial portion of the Project Site is condemned or taken by eminent domain by any condemning authority or is

damaged or destroyed by casualty prior to Commencement of Construction, Redeveloper may, at its option, terminate this Agreement by written notice to the Township within thirty (30) days after Redeveloper is notified of the condemnation, taking, damage or casualty. For purposes of this provision “**Substantial Portion**” shall be defined as any portion which is equal to or in excess of ten percent (10%) of the total acreage of the Project Site or that portion which, in the reasonable opinion of Redeveloper, would prevent the successful completion of construction or operation of the Redevelopment Project as envisioned by this Agreement. The Township acknowledges that it has no right to the proceeds resulting from a condemnation of the fee simple interest in the Project Site.

15.8 Litigation. Redeveloper shall have the right, but not the obligation, to undertake litigation in order to obtain Approvals with conditions reasonably satisfactory to Redeveloper including, without limitation, the right to litigate to the ultimate decision maker. Any litigation filed by Redeveloper to obtain Approvals, or any litigation filed by the Township or a third-party challenging Redeveloper’s Approvals, shall toll the relevant time periods set forth in the Project Schedule until such time that the litigation is resolved in Redeveloper’s favor and the applicable time periods for an appeal have expired without any further appeals being filed.

15.9 Waivers. Any right or remedy which any party may have under this Agreement may be waived in writing by the relevant party without the execution of a new or supplemental agreement. Except as otherwise provided in this Agreement, said right of waiver shall include the right to waive a default. No waiver made by any party with respect to the performance, or manner or time thereof, of any obligation of any other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition of its own

obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver.

15.10 Commissions. The Parties agree that no commissions to any broker, agent, or any other intermediary are due hereunder, and further agree to indemnify and save harmless the other party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary by virtue of the acts or agreements of the indemnifying party.

15.11 No Significance of Party Drafting. The Parties agree that in the construction or interpretation of this Agreement no significance shall be attributed in presumption or otherwise to the identity of the party drafting the provision or provisions in question.

15.12 Recordation. In accordance with the Redevelopment Law, a short form memorandum of this Agreement, in the form attached hereto as Exhibit D (the “**Declaration**”), shall be duly recorded by Redeveloper in the land records of Essex County and the cost of such recordation shall be paid by Redeveloper. The Redeveloper shall submit the Declaration to be recorded simultaneously with the closing on the Project Site.

15.13 Notices. Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) (a) by hand delivering a copy thereof to the party being served in person or by commercial courier, (b) by registered or certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available, to the person or persons set forth below for each party to this Agreement. Minor communications between the Parties that are other than formal notices of action may be sent by regular mail, facsimile or e-mail. Notifications are deemed to be given (a) on the date of delivery if hand delivered, (b) on the third business day following their deposit in the United

States Mail, postage prepaid, return receipt requested, or (c) on the next business day following their deposit with a commercial overnight delivery service.

As to the Township:

Township Manager of Township of Verona
Municipal Building
600 Bloomfield Avenue
Verona, New Jersey 07044

With copies to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

As to Redeveloper:

BNE Acquisitions, LLC
16 Microlab Road, Suite A
Livingston, New Jersey 07039
Attention: Jonathan Schwartz

With a copy to:

John P. Inglesino, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054

From time to time either party may designate a different person or address for all the purposes of this notice provision by giving the other party no less than ten (10) days notice in advance of such change of address in accordance with the provisions hereof.

15.14 Further Assurances. Each party shall execute such further documents, papers and instruments and shall use good faith efforts to take such further actions as are contemplated by and reasonably necessary to carry out the expressed intent of this Agreement as may be reasonably requested by the other Party.

15.15 Counting of Days. Unless otherwise specifically set forth, all references to counting of days shall be calendar days.

15.16 Successors Bound. The Agreement shall be binding upon the respective Parties hereto, and, subject to the limitations on transfer set forth in Section 9.1(b), their successors and assigns.

15.17 No Obligation. The Parties agree that the submission of this Agreement (or any draft, re-draft, or other copy) by one party to another is not intended by either party to be an offer to enter into a legally binding contract. Notwithstanding any discussions, memorandum or exchange of correspondence or emails, the Parties shall be legally bound pursuant to the terms of this Agreement only if and when the Parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the Parties in their respective sole discretion, including, without limitation, all of the exhibits hereto, and each of the Township and Redeveloper have fully executed and delivered to the other (or its attorney) an executed counterpart of this Agreement. Unless and until each of the Township and Redeveloper have fully executed and delivered a counterpart of this Agreement to the other, neither shall have any obligation whatsoever to the other.

15.18 Time of the Essence. Time is of the essence with regard to all dates set forth in this Agreement.

15.19 No Restriction on Police Powers. Nothing in this Agreement will in any way limit or affect the right of the Township or any municipal board, department, agency, authority, commission, official, or representative to enforce any generally applicable municipal ordinance, regulation, rule, procedure or other requirement, including, but not limited to, with respect to the Redevelopment Project, the Project Site or Redeveloper.

15.20 Prior Agreements Superseded. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof, except for the terms and conditions of the Settlement Agreement, which continue to be in full force and effect.

Signatures on next page

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

Attest:

THE TOWNSHIP OF VERONA



Jennifer Kiernan
Jennifer Kiernan, Township
Clerk

By: Matthew Cavallo
Name: Matthew Cavallo
Title: Township Manager

Attest:

VERONA SUNSET URBAN RENEWAL, LLC

Janie Hunter

By: [Signature]
Name: Jonathan Schwartz
Title: Authorized Signatory

EXHIBIT A
CONCEPT PLAN

BUILDING SUMMARY

200 TOTAL UNITS

185 MARKET RATE UNITS
15 AFFORDABLE UNITS

380 PARKING SPACES (1.9 SP/DU)

371 GARAGE SPACES
9 SURFACE SPACES



TYPICAL FLOOR PLAN
SCALE: 1:60

CONCEPTUAL PLANS
DATE: 10/13/2021

MINNO WASKO
ARCHITECTS AND PLANNERS
80 LAMBERT LANE, SUITE 105, LAMBERTVILLE, NEW JERSEY 08530
TWO GATEWAY CENTER, SUITE 1700, NEWARK, NEW JERSEY 07102
MINNOWASKO.COM

BNE REAL ESTATE

SPECTRUM 360
VERONA, NEW JERSEY

00-0217-118
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EXHIBIT B

PROJECT SCHEDULE

| | |
|---|--------------------|
| Submission of site plan application: | By January 1, 2022 |
| Receipt of all approvals for project: | By January 1, 2023 |
| Commencement of construction if school vacates immediately: | By March 1, 2023 |
| Commencement of construction if school stays for 2 years: | By March 1, 2025 |
| Completion of construction: | |
| If school vacates immediately: | By June 1, 2025 |
| Or, if school stays for 2 years: | By June 1, 2027 |

EXHIBIT C
SETTLEMENT AGREEMENT

FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT

This First Amended and Restated Settlement Agreement (the “Amended Agreement”) is entered into this ___ day of January 2020 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 multifamily development, including affordable housing units and make a 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 increased affordable housing set-aside; and

WHEREAS 9, in order to amicably resolve this matter in a way that the Parties agree complies with the Mount Laurel doctrine, the Parties have agreed to the terms and conditions set forth herein; and

WHEREAS 10, Spectrum and the Township are parties to that certain Settlement Agreement, dated as of May 31, 2019 (the “Original Agreement”); and

WHEREAS 11, subsequent to the execution of the Original Agreement, the parties agreed to modify the terms and conditions thereof in accordance with Paragraph 25 of the Original Agreement; and

WHEREAS 12, each Party to the Original Agreement agrees to the terms and provisions of this Amended Agreement and further acknowledges that this Amended Agreement supersedes the Original Agreement; and

WHEREAS 13, Spectrum submitted concept plans that are representative of the type of proposed project, depicting a maximum four (4) stories including parking, which accommodates 185 market-rate multifamily residential units (all of which shall be either one-bedroom or two-bedroom units) and 15 low- and moderate-income multifamily residential units, subject to the Parties’ good faith and diligent efforts to effectuate, pursuant to the provisions of the Local Redevelopment and Housing law (N.J.S.A. 40A:12A-1 et seq.-“LRHL”), a Redevelopment Plan indicating the nature of the repurposing of the property in sufficient detail to accommodate the 200-unit inclusionary 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 an Affordable Trust Fund Contribution as defined below (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 14, Spectrum has entered into an agreement with a qualified developer to acquire the Property and construct either the Project or the Alternative Project (the “Developer”); and

WHEREAS 15, on or about August 20, 2019, the Township adopted a resolution declaring the Property as a non-condemnation area in need of redevelopment pursuant to the LRHL, and plans to adopt a redevelopment plan in January 2020; and

WHEREAS 16, 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 Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to be deposited into the Township’s Affordable Housing Trust Fund, 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 (the “Affordable Trust Fund Contribution”); and

WHEREAS 17, by submitting the Affordable Trust Fund Contribution 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 18, the Parties wish to enter into this Amended Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Amended 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 Amended Agreement, the Court must find that it adequately protects the interests of lower-income persons in the Township's housing region; and

WHEREAS 19, pursuant to the Parties' settlement negotiations the Parties request that the Superior Court, Essex County, find that this Amended 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 Affordable Trust Fund Contribution as allowed under law; and

WHEREAS 20, 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 or Alternative Project as proposed by Spectrum, and the Parties intend to be bound by this Amended Agreement; and

WHEREAS 21, 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 Amended 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 Amended Agreement does not purport to resolve all of the issues in the Township's DJ Action. In the event the Court approves this Amended Agreement, the Township must discharge its obligations under this Amended 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 Amended 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 the defense of the Property's designation as a non-condemnation area in need of redevelopment, the adoption of the Redevelopment Plan, the execution of the Redevelopment Agreement, and the execution of the Financial Agreement, to permit the construction of the Project on the Property, as approximately depicted on the concept plan annexed hereto as **Exhibit A** (the Parties recognize this concept plan may be revised with the consent of the Parties to address numerous issues including site conditions). The Redevelopment Plan for the Project shall, subject to the requirements of the LRHL, provide for 185 units of market-rate multifamily rental housing (all of which shall be either one-bedroom or two-bedroom units) and 15 units of low- and moderate-income (including very-low-income units) multifamily rental housing, with ancillary uses such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. The affordable units in the Project shall include the required bedroom distribution, income distribution and be governed by controls on affordability and affirmatively marketed in accordance with UHAC Regulations or any successor regulation,. 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. The Parties acknowledge that low- and moderate-income units contained within the Project, renders the Project, *supra*, 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.

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 the Alternative Project on the Property. 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 Affordable Trust Fund Contribution, 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 Amended 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 Amended Agreement, and without the prior approval of any Party. The Township agrees to work cooperatively with the Developer to effectuate this Amended Agreement.

8. **Affordable Trust Fund Contribution.** In the event the Developer receives all

final unappealable approvals for the Project, and as a specific condition thereof, Spectrum shall cause the Developer to remit the Affordable Trust Fund Contribution 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 Affordable Trust Fund Contribution must also be made prior to the issuance of building permits for the Project.

9. **Adoption of a Redevelopment Plan for the Project.** Subject to adherence with requisite statutory procedures, the Township will expeditiously undertake the legal actions required to adopt the Redevelopment Plan for the Project. The steps are as follows:

a. In January 2020, 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, 185 of which shall be market-rate units (all of which shall be one- bedroom or two-bedroom units) and 15 low- and moderate-income 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.

b. 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.

c. In February 2020, 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.

d. Notwithstanding this Paragraph 9, the Parties agree that the processes by which the Redevelopment Plan is adopted are subject to compliance with the LRHL.

10. Spectrum's PILOT. 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 or its designated Developer 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. 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), for years 1 through 15 following the completion of the Project. The annual service charge shall increase to eleven percent (11%) of the annual gross revenue generated by the Project, as defined in N.J.S.A. 40A:20-3(a), for years 16 through 30 following the completion of the Project. 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 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 Amended Agreement in good faith, Spectrum shall support this Amended

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 Amended 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 Amended 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 this Amended 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 Amended 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 Amended Agreement and Redevelopment Plan if they are approved by the trial court unless and until a non-appealable challenge to the Amended 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 Amended Agreement.

18. **Defense of Area In Need Designation.** In accordance with the Original Agreement, the Township Council has found and determined that the Property is an area in need of redevelopment for non-condemnation purposes (the "Designation"). If 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, unless the Parties voluntarily opt to proceed as contemplated herein, 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 Amended Agreement by resolution.

b. If the Court upon review of the Amended 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 Amended Agreement conditioned upon the Township's effectuation of all terms and conditions set forth herein.

20. Enforcement. This Amended 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 Amended 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 Amended Agreement are severable. The validity of any article, section, clause or provision

of this Amended Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Amended 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 Amended 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 and Canoe Brook are qualified redevelopers. 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 Amended 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 Amended Agreement shall be governed by and construed by the laws of the State of New Jersey.

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

26. Counterparts. This Amended 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 Amended Agreement.

27. **Voluntary Agreement.** The Parties acknowledge that each has entered into this Amended 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 Amended Agreement (person) and possesses the authority to sign the Amended Agreement, that this Amended 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 Amended 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 Amended Agreement and (ii) it has conferred due authority for execution of this Amended Agreement upon the persons executing it.

29. **Exhibits and Schedules.** Any and all Exhibits and Schedules annexed to this Amended Agreement are hereby made a part of this Amended 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 Amended Agreement with prior written approval of all Parties.

30. **Entire Agreement.** This Amended 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 Amended Agreement, nor participate in any decision relating to the Amended 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 Amended Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Amended Agreement.

33. **Notices.** All notices required under this Amended 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 Amended Agreement to be executed by their duly authorized representatives as of the date first written above.

TOWNSHIP OF VERONA

By: Matthew Cavallo
Matthew Cavallo,
Township Manager

Witness/Attest:
Jennifer Kiernan
Jennifer Kiernan, RMC
Township Clerk

Dated: January 10, 2020

SPECTRUM 360, LLC

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

Witness/Attest:
Cheryl Pelland

Dated: January 31, 2020

EXHIBIT A

SPECTRUM'S CONCEPT PLAN FOR THE PROJECT

EXHIBIT D
DECLARATION

RECORD AND RETURN TO:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland and Baumann, LLC
75 Livingston Ave, Second Floor
Roseland, New Jersey 07068

DECLARATION OF COVENANTS AND RESTRICTIONS

with respect to

Block 303, Lot 4 on the official tax map of the Township of Verona, New Jersey (the “Project Area”) as depicted on the map and more specifically delineated in the metes and bounds description both attached hereto as Exhibit A.

This Declaration of Covenants and Restrictions is made this ____ day of _____, 2022 by and between the **TOWNSHIP OF VERONA** (the “**Township**”), a municipal corporation of the State of New Jersey having its offices at 600 Bloomfield Avenue, Verona, New Jersey 07044, in its capacity as redevelopment entity pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-4(c) (the “**Redevelopment Law**”),

and

VERONA SUNSET URBAN RENEWAL, LLC, a New Jersey limited liability company with an address of 16 Microlab Road, Suite A, Livingston, New Jersey 07039 (together with permitted successors or assigns as hereinafter provided, the “**Redeveloper**”).

WITNESSETH

WHEREAS, on August 19, 2019, the Municipal Council (the “**Township Council**”) of the Township, pursuant to and in accordance with the requirements of the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), designated as an area in need of redevelopment certain property identified on the tax maps of the Township as Block 303, Lot 4, commonly known as 1 Sunset Avenue (the “**Redevelopment Area**”); and

WHEREAS, on March 8, 2021, the Township Council adopted Ordinance No. 2020-01 enacting a redevelopment plan for the Redevelopment Area entitled the “*The Sunset Avenue Redevelopment Area Redevelopment Plan*”, which was thereafter amended by the adoption of Ordinance No. 2021-14 on June 21, 2021 (as the same may be further amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, pursuant to *N.J.S.A.* 40A:12-4, the Township elected to act as the “redevelopment entity” (as such term is defined at *N.J.S.A.* 40A:12A-3 of the Redevelopment Law) for the Redevelopment Area; and

WHEREAS, the Redeveloper is the owner of the Redevelopment Area (the “**Project Area**”); and

WHEREAS, the Redeveloper agreed to develop, construct and implement that certain Project defined in the Redevelopment Agreement executed by and between the Township and the Redeveloper (as amended from time to time, the “**Redevelopment Agreement**”) in accordance with *N.J.S.A.* 40A:12A-8(f) of the Redevelopment Law; and

WHEREAS, *N.J.S.A.* 40A:12A-9(a) of the Redevelopment Law requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that “. . . the owner shall construct only the uses established in the current redevelopment plan . . .”; and

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as a perpetual covenant by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any building or structures erected thereon; and

WHEREAS, the Redevelopment Agreement also provides that the Project Area, the Redevelopment Agreement, and Redeveloper’s interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to the City for violations of the covenants and defaults under the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Restrictions and said declaration be recorded in the Essex County Clerk’s Office; and

WHEREAS, the Redevelopment Agreement also establishes certain obligations of the Redeveloper in Section 11 thereof with respect to indemnities required by Redeveloper, its successors or assigns, which obligations survive the expiration of the Agreement,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that, subject to the terms of the Redevelopment Agreement:

(a) Redeveloper shall construct the Project on the Project Area in accordance with, and subject to the terms of, the Redevelopment Plan, the Redevelopment Agreement, and all Applicable Laws and Governmental Approvals. Redeveloper shall not use the Project Site or any part thereof in a manner that is not in all material respects consistent with the Redevelopment Plan, the Approvals and this Agreement. Redeveloper will construct only those uses established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, by the Township from time to time in accordance with the Redevelopment Law

(b) Except for Permitted Transfers, and subject to the terms of the Redevelopment Agreement, prior to the issuance of a Certificate of Completion, the Redeveloper shall not effect a Transfer without the written consent of the Township, which shall not be unreasonably withheld, conditioned or delayed.

(c) The Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Area is restricted upon the basis of race, color, religion, creed, national origin, ancestry, physical handicap, disability, age, marital status, gender, gender identity or expression, sex, affectional or sexual orientation or any other characteristic protected by law in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall Redeveloper itself, or any person claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees on the Project Area.

(d) Subject to and in accordance with the terms of the Redevelopment Agreement, upon Completion of Construction, Redeveloper shall obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and uses of the Project Area, and the Project shall only be used for the purposes contemplated by the Redevelopment Agreement and the Redevelopment Plan.

(e) Subject to and in accordance with the terms of the Redevelopment Agreement, Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

(f) Subject to and in accordance with the terms of the Redevelopment Agreement, Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, and the Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in the Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, the Redeveloper shall not encumber, hypothecate or otherwise use the Project Area, or any part thereof as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay any and all taxes, service charges, SID special assessments or similar obligations when owed with respect to the Project Area and any other

property owned by Redeveloper situated in the City.

(i) Redeveloper recognizes the importance of the redevelopment project to the general welfare of the community and that the identity of the Redeveloper and its qualifications were critical to the Township in entering into the Redevelopment Agreement. The Township considers that a change of Control in Redeveloper, or the transfer of more than fifty percent (50%) or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township entered into the Redevelopment Agreement with Redeveloper, and, in so doing, the Township relied on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper under the Redevelopment Agreement. As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Township, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of more than 50% of the ownership interest in Redeveloper to any Person other than an Institution.

(j) Redeveloper will comply with all obligations of Redeveloper under Section 11 of the Redevelopment Agreement.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 shall be covenants running with the Project Area. All covenants in Section 2, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the City and its successors and assigns, against Redeveloper, its successors and assigns, and any successor in interest to the Project Area, or any part thereof, and any party in possession or occupancy of the Project Area or any part thereof. Notwithstanding the foregoing, the agreements and covenants set forth in Section 2 shall cease and terminate upon the issuance of a Certificate of Completion for such improvements, provided however, that the covenants in 2(c) shall remain in effect without limitation as to time and the covenants in 2(j) shall remain in effect in accordance with the terms of Sections 11 of the Redevelopment Agreement, as the case may be.

Section 4. It is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 2 and Section 3 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard as to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Covenants and Restrictions to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

ATTEST:

Township of Verona

Jennifer Kiernan, Township Clerk

By: _____
Matthew Cavallo, Township Manager

[SEAL]

ACKNOWLEDGEMENT

STATE OF NEW JERSEY :

: ss.:

COUNTY OF UNION :

The foregoing instrument was acknowledged before me this _____, 2021, by the Township of Verona (the "**Township**"), a municipal corporation of the State of New Jersey, by Matthew Cavallo, in his capacity as Township Manager, on behalf of the Township, and was authorized to and did execute this instrument as the act of the Township.

Notary or Attorney At Law
The State of New Jersey

Exhibit A to Declaration

Map and Metes and Bounds Description

EXHIBIT E

CERTIFICATE OF COMPLETION

Record and Return to:

Joseph P. Baumann Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

CERTIFICATE OF COMPLETION

Pursuant to Section 4.6 of the Redevelopment Agreement by and between the **TOWNSHIP OF VERONA** (the “Township”) and **VERONA SUNSET URBAN RENEWAL, LLC** (the “Redeveloper”), dated as of _____ (the “Redevelopment Agreement”), the undersigned, as of the date hereof, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

- (i) that the Project Improvements have been Completed in accordance with the Approvals and the Redevelopment Agreement;
- (ii) other facilities as required by any Approvals to achieve substantial completion and commence occupancy of the Project Improvements have been acquired, constructed or improved in accordance with the Approvals and the Redevelopment Agreement and all costs and expenses incurred in connection therewith have been paid or adequate security posted;
- (iii) a Certificate of Occupancy and any other permissions required, if any, of governmental authorities or agencies for the occupancy or use of the Project Improvements have been obtained and Redeveloper has fulfilled all of its responsibilities and obligations under the Redevelopment Agreement;
- (iv) in accordance with N.J.S.A. 40A:12A-9(a), the conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Redevelopment Area upon which the Project Improvements are located and completed. The land and improvements within the Redevelopment Area upon which the Project Improvements are located are no longer be subject to the covenants, provisions and continuing controls running with the Redevelopment Area and set forth in the Redevelopment Agreement.

Except as set forth in the Redevelopment Agreement, this certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

