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

VERONA COMMUNITY CENTER
880 BLOOMFIELD AVENUE
VERONA, NEW JERSEY 07044
973-857-4773

APPLICATION DATE: 1 Sept 26 CASE #_____

PROPERTY ADDRESS 176-200 Bloomfield Ave, Verona, NJ 07044

BLOCK 202 LOT 1 & 23 ZONE 176-200 Bloomfield Ave Redevelopment Plan

APPLICANT'S NAME DMH2, LLC

PHONE # (201) 230-1332 CELL PHONE#_____

EMAIL michael.h@mhcollections.com

PROPERTY OWNER'S NAME DMH2, LLC

PROPERTY OWNER'S ADDRESS 3155 Route 10 East - Suite 214, Denville, NJ 07384

PROPERTY OWNER'S PHONE # (201) 230-1332 CELL #_____

PROPERTY OWNER'S EMAIL michael.h@mhcollections.com

RELATIONSHIP OF APPLICANT TO OWNER Owner

REQUEST IS HEREBY MADE FOR PERMISSION TO DO THE FOLLOWING:
The improvements to this site involve the construction of a new 3-story residential building that will include 28 residential units, and 36 parking spaces.

CONTRARY TO THE FOLLOWING (IF VARIANCES ARE SOUGHT):
§ 4.7 (2) Trash enclosure in between the street and the front of the building

APPLICATION INCLUDES A MINOR SUBDIVISION: MINOR SUBDIVISION APPLICATION FORM

LOT SIZE: EXISTING 71,364 SF PROPOSED No Change TOTAL 71,364 SF

HEIGHT: EXISTING N/A PROPOSED 34 FT (3 Stories)

PERCENTAGE OF BUILDING COVERAGE: EXISTING N/A PROPOSED 16.6% (11,825 SF)

PERCENTAGE OF IMPROVED LOT COVERAGE: EXISTING 4.0% (2,825 SF) PROPOSED 47.2% (33,685 SF)

PRESENT USE Vacant PROPOSED USE Multi-family Inclusionary Apartments

SET-BACKS OF BUILDING:	REQUIRED	EXISTING	PROPOSED
FRONT YARD	N/S	N/A	61.6 FT
REAR YARD	40 FT	N/A	80.2 FT
SIDE YARD (1)	10FT	N/A	18.7 FT
SIDE YARD (2)	10FT	N/A	18.7 FT

DATE PROPERTY WAS ACQUIRED_____

TYPE OF CONSTRUCTION PROPOSED:
Residential Apartments

SIGN INFORMATION (if applicable): supply details on location, dimensions, height and illumination

AREA PER FLOOR (square feet):	EXISTING	PROPOSED	TOTAL
BASEMENT	0 SF	0 SF	0 SF
FIRST FLOOR	0 SF	13,046 SF	11,783 SF
SECOND FLOOR	0 SF	13,046 SF	11,641 SF
ATTIC		(see accompanying arch. plans)	

NUMBER OF DWELLING UNITS: EXISTING 0 PROPOSED 28
NUMBER OF PARKING SPACES: EXISTING 0 PROPOSED 36

Note - An additional 14 spaces to be provided in an agreement with the township

History of any previous appeals to the Board of Adjustments and the Planning Board

If applicable, what are the exceptional conditions that warrant relief from compliance with the Zoning Ordinance?
Trash enclosure - Steep slopes, walls, lot shape, loading/unloading

Supply a statement of facts showing how relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and the Zoning Ordinance
The requested relief is due to the site's unique topography and lot shape. The proposed site plans represent the minimum relief necessary and can be granted without substantial detriment to the public good or the Zone Plan.

History of any deed restrictions:

PROPOSAL INCLUDES REMOVAL OF THREE OR MORE TREES:
YES X NO ___
IF YES, DOWNLOAD AND FILE: LAND USE TREE REMOVAL APPLICATION FORM

PROPOSED DEVELOPMENT:

ADDS BETWEEN 400 AND 5,000 FT² OF IMPERVIOUS SURFACE OR DISTURBS ≥2,500 FT² (MINOR DEVELOPMENT) YES ____ NO X

ADDS > 5,000 FT² OF IMPERVIOUS SURFACE OR DISTURBS ≥ ½ ACRE (MAJOR DEVELOPMENT)

YES X NO ____

IF YES, DOWNLOAD AND FILE: STORMWATER APPLICATION

A legible plot plan or survey to scale (not less than 1"=100') of the property indicating the existing and/or proposed structure and scale drawings of the existing and/or proposed structure must be provided.

A copy of any conditional contract relating to this application must be filed with this application.

If the applicant is a corporation or partnership, the names, addresses and phone numbers of those owning a 10% or greater interest in the corporation shall be provided. **(Accompanying Disclosure Incl.)**

Name_____ Address_____ Phone #_____
Name_____ Address_____ Phone #_____
Name_____ Address_____ Phone #_____
Name_____ Address_____ Phone #_____

Expert witness(es) that will present evidence on behalf of this application:

Attorney:
Name Cameron W. MacLeod - FBT Gibbons
Address: 50 W State St, Trenton, NJ 08608
Phone # 609-858-2445
Fax #
Email CMacLeod@fbtgibbons.com

Engineer:
Name Richard Prokanik, P.E. - Pennoni Associates
Address 1085 Raymond Blvd, Suite 2102, Newark, NJ 07102
Phone # 973-265-9741
Fax #
Email RProkanik@pennoni.com

Architect:
Name Erik Yepez, RA - Emineg LLC.
Address 75 Lake Street, Belleville, NJ 07029
Phone # 786-262-6844
Fax #
Email erik.yepez@emineg.com

Planner:
Name
Address
Phone #
Fax #

EXHIBIT A

Corporate Ownership Disclosure for
DMH2, LLC

This Disclosure is Provided in Accordance with N.J.S.A. 40:55D-48.1 and -48.2
to the Planning Board of the Township of Verona

DMH2, LLC ("Applicant") is a New Jersey limited liability company having an address at 3115 Route 10 East, Suite 214, Denville, New Jersey 07384. The following entities or individuals have at least a 10% interest in the Applicant:

Michael Harrison
c/o DMH2, LLC
3115 Route 10 East, Suite 214
Denville, New Jersey 07384

George Bender
c/o DMH2, LLC
3115 Route 10 East, Suite 214
Denville, New Jersey 07384

Brad Moss
c/o DMH2, LLC
3115 Route 10 East, Suite 214
Denville, New Jersey 07384

There are no other owners holding more than a 10% interest in the Applicant.

EXHIBIT B

TOWNSHIP OF VERONA

SITE PLAN REVIEW
SECTION 118

CHECK LIST FOR SITE PLAN APPLICATION

APPLICANT : DMH2, LLC **TELEPHONE NO.** (201) 230-1332
OWNER: DMH2, LLC **TELEPHONE NO.** (201) 230-1332
ADDRESS: 3155 Route 10 East - Suite 214, Denville, NJ 07384 **TAX MAP BL.** 202 **LOT** 1 & 23

A)	Type of Site Plan	
1.	Repairs (interior)	
2.	Renovation or Alteration (exterior)	
3.	Change of Use	
4.	Excavation Removal of Soil, Clear of Site	
5.	Additions	
6.	Percent (%) or Size of Addition	
7.	New Structure	Yes
8.	New Accessory Structures	
9.	Other	
B)	Waiver Request	Yes
C)	15 Copies of Application and Site Plan	Yes
D)	Application Fee Paid (amount)	Yes
E)	Verification of Taxes Paid	Yes
F)	Date Received Application	
G)	Date Certified as Completed	

H) All plans submitted shall be drawn at a scale not smaller than one (1") inch equals twenty (20') feet, signed and sealed by a professional engineer, architect or professional planner and shall bear the signature and seal of the licensed land surveyor as to topography and boundary survey data and shall contain the following:

Circle One:

C = Complies
D = Deficient
WS = Waiver Sought

1.	Name and title of applicant, owner and person preparing map.	(C)	D	WS
2.	Date, scale and north point and date of any revision	(C)	D	WS
3.	Place for signature of Chairman and Secretary of approving Board.	(C)	D	WS
4.	Tax map lot and block numbers and address of property	(C)	D	WS
5.	Bearing of all property lines with reference to North and South and length of these lines. Area of subject property.	(C)	D	WS
6.	Zone district and zone district of adjoining properties within 200 feet.	(C)	D	WS
7.	Zoning schedule.	(C)	D	WS
8.	All entrances and exits to public streets on site and within 200 feet thereof.	(C)	D	WS
9.	All property lines, streets, roads, buildings, retaining walls, rock outcrops, marsh areas, ponds, and streams within 200 feet.	(C)	D	WS
10.	The location of principal and accessory structures with dimensions of the structures and distances to lot lines.	(C)	D	WS
11.	All set-back dimensions, landscaped areas, fencing and trees over 6" caliper.	(C)	D	WS
12.	Location of all signs and exterior lighting with size and height of signs and light fixtures and strength in lumens and direction of illumination.	(C)	D	WS

13.	Storm water system, including calculations and design data supporting adequacy of the system to handle storm run-off as required by the Township Engineer	(C)	D	WS
14.	Sanitary sewerage disposal system by existing and proposed and calculation.	(C)	D	WS
15.	Water supply system and all other utilities both existing and proposed.	(C)	D	WS
16.	All curbs, sidewalks, driveways, parking space layout, and off-street loading areas with dimension.	(C)	D	WS
17.	Right-of-way, easements and all lands dedicated to the Township, County, and State.	(C)	D	WS
18.	Names of owners and use of property of all lands within 200 feet to the property and block and lot numbers.	(C)	D	WS
19.	Site Plan drawn on sheet size: (Circle One)	(C)	D	WS
	8.5 x 14 inches			
	15 x 21 inches			
	(24 x 36 inches)			
20.	The entire property shall be shown, on the required sheet size a key map.	(C)	D	WS
21.	Existing and proposed contours, with contour interval not more than two feet (2') slopes less that 10% and interval of five feet (5') for slopes greater than 10%. Existing contours by dashed lines, proposed by solid lines.	(C)	D	WS
22.	Proposed finished grade spot elevations at all corners of existing and proposed buildings.	(C)	D	WS
23.	The proposed use of building.	(C)	D	WS
24.	The proposed use of outdoor area.	(C)	D	WS
25.	The floor space of each building and total number of parking spaces.	(C)	D	WS

26.	Distances along right-of-way lines of existing streets abutting property to nearest intersection.	(C)	D	WS
27.	All existing easements, deed restrictions, other covenants and previous variances granted for the property.	(C)	D	WS
28.	Floor plan of proposed structures with accompanying front, rear and side elevations drawn to scale.	(C)	D	WS
29.	Landscaping plan, buffer plan, landscaping schedule showing number, size and species of plantings.	(C)	D	WS
30.	Soil erosion and sediment control plan.	(C)	D	WS
31.	Application filed with Essex County Planning Board	C	D	(WS)
32.	Notice to all neighbors within 200 feet.	C	D	(WS)
33.	Notification to Fire, Police, Health Department, Township Manager, and Shade Tree.	(C)	D	WS
34.	Refuse, disposal (storage), dumpster screening	(C)	D	WS
35.	Storage height (gross sq. footage)	(C)	D	WS
36.	Drainage arrows.	(C)	D	WS
37.	Site Lighting Plan with isolux patterns to indicate intensity of site lighting.	(C)	D	WS
38.	Location HVAC Equipment and screening.	(C)	D	WS
39.	NJDEP Freshwater Wetlands Approval.	C	D	(WS)
40.	Complies with escrow ordinance.	(C)	D	WS

Applicant's Remarks:

_____

_____

_____

_____

_____

_____

Applicant's Signature

EXHIBIT C

EXHIBIT D

RESOLUTION NO. 5-2015

VERONA PLANNING BOARD
BLOCK 8, LOTS 1 and 23; 176 and 200 BLOOMFIELD AVENUE

Introduction

DMH2, LLC (the "Applicant") made Application to the Verona Planning Board (the Board") for site plan approval for the properties designated as Block 8, Lots 1 and 23, commonly known as 176 and 200 Bloomfield Avenue (the "Property"). within the Township of Verona's Extended Town Center Zone to construct a three story building permitted as a Conditional Use under the Verona Zoning Ordinances. After deeming the Application to be complete and confirming that the Applicant had met the statutory notice criteria by review of the Affidavit of Service submitted by the Applicant and the Affidavit of Publication produced by the secretary to the Planning Board, the Planning Board entertained the Application at the regular meeting held on October 2, 2104. (2014) The Planning Board began to hear the substance of the Application at a meeting held on October 23, 2014, and continued to hear the Application at meetings held on December 4, 2014, January 7, 2015, January 22, 2015, February 19, 2015, February 26, 2015, March 10, 2015, March 26, 2105, April 23, 2015 and May 28, 2015. The Planning Board voted to approve the Application by affirmative votes of five members as opposed to negative votes from four members on June 17, 2015.

The Property is approximately one and one half acres consisting of two parcels, Lot 1 and Lot 23 in Block 8 as depicted on the Tax Map of the Township of Verona. The Applicant intended to merge Lot 1 with Lot 23 upon approval of the Application.

The Property generally is undeveloped but for an unoccupied house and a garage. Street access to the house is by a driveway off of Westview Road which is to the West of the Property. The rear of the property to the North abuts, in part, on the dead end section of Montclair Avenue. A retaining wall runs along the Southerly front of the Property along Bloomfield Avenue.

The Application sought site plan approval to construct a three story mixed use building of approximately 19609.5 square feet which includes 9,304.75 square feet of retail space, 9,304.75 feet of residential space, and 1000 square feet of common space. The Application provides for retail space on the first floor and on part of the second floor, and residential apartments on part of the second floor and on the third floor. The site plan called for 67 parking spaces. Paul Jemas, Esq. and Alan Trembulak, Esq represented the Applicant. Board member Thomas Freeman recused himself from the hearings on the Application because his business office is adjacent to the Property and therefore within 200 feet of the Property.

By way of history, the Applicant had appeared before the Township of Verona Zoning Board of Adjustment seeking approval to construct a three story non-conforming building on the Property. The Zoning Board denied that application. The Applicant subsequently made an application to the Planning Board for permission to build a two story mixed use building that required variances from the Verona Zoning Code. The Planning Board denied that application. At various times during the hearings before the Planning Board, attorneys, fact witnesses, and objectors attempted to incorporate testimony by reference from the previous hearings before the Zoning Board and the Planning Board. Planning Board Chairman William Brown refused to allow any statements incorporating such testimony, and when statements were offered, Chairman Brown used his best efforts to advise the Board not to rely on or consider such statements ***unless*** such statements were being used as a means to point out prior inconsistent testimony of expert witnesses..

John McEvoy and Jessica Pearson, residing at 20 Montclair Avenue, Verona, entered their pro-se appearances on the record at the first meeting. As such, Mr. McEvoy and Ms. Pearson participated in the proceedings, being entitled to cross examine all witnesses, interact with Board Members and to state their opinions of the Application on the record.

John Dusinberre, Esq. appeared on behalf of Lars and Kathleen Sternas, owners and residents of 16 Montclair Avenue. Mr. Dusinberre, as counsel to objectors, participated in the proceedings by cross examining witnesses, eliciting testimony from his own witnesses, interacting with Board Members, and by summing up his case to the Board at the conclusion of testimony. The Board allowed Mr. Dusinberre to elicit direct testimony from Peter Steck, a witness offered by Mr. McEvoy and Ms. Pearson as a courtesy so that the matter could proceed without unnecessary delay caused by lack of experience of Mr. McEvoy and Ms. Pearson in such matters.

Gregory Mascera appeared as the attorney for the Board.

During the course of the hearings, the following individuals either asked questions of witnesses or offered their opinions to the Board regarding the Application:

Kim Shafer, 17 Westview Road; Sandra Krass 13 Westview Road; Mary Purcell, 15 Westview Road; Gerard Shimonaski, 33 Kenwood Avenue; Terry Moore, 17 Westview Road; Sara O'Farrell, 27 Westview Road; Mary Wilks, 150 Franklin Street, David Yennior, 6 Essex Street, Belleville; Jim Lucas, 29 Hillcrest Terrace;

Jason Kasler, the Township's and the Planning Board's Licensed Professional Planner, attended most of the meetings and was available to the Board for advice during those meetings.

All Board members who were not present at any meeting certified in writing prior to voting on the Application that the Board members listened to recordings of the missed meetings that occurred over the duration of the is Application.

Preliminary Issues

Question number 27 of the Verona Planning Board's application for site plan approval asks whether there are deed restrictions on the property that is the subject of the Application. The Applicant checked "no" on the Application in response to question 27. Immediately after the proceedings began on October 23, 2014, Mr. McEvoy objected to the Board's determination that the Application was complete because Mr. McEvoy had identified a deed restriction that Mr. McEvoy contended affected the property. Mr. Dusinberre suggested that the Applicant could amend the Application after providing a title search to the Board that would reveal any deed restrictions. Mr. Mascera advised the Board that the deed restriction would have no impact on the Board's ability to hear the Application and that the Board did not have the jurisdiction to determine whether any such restriction would prohibit the Applicant from developing the Property. The Board decided to hear the Application despite Mr. McEvoy's objection and Mr. Dusinberre's comments.

Board member Kevin Ryan raised the deed restriction issue again at the outset of the December 4, 2014 hearing. Mr. Ryan requested that the Applicant confirm that the deed restriction exists. Mr. Trembulak responded by confirming the existence of an historical restriction but dismissing its enforceability. The Board confirmed its earlier decision that the restriction would not prohibit the Applicant from proceeding.

Ms. Pearson had submitted a letter dated September 25, 2014 to the Board in which she contended that the Application was not complete relying on New Jersey case law. Mr. Mascera advised the Board that the facts in the cited case law were dissimilar to the facts before the Board and he advised the Board that it could proceed over Ms. Pearson's objection. The Board therefore decided to proceed.

Mr. Dusinberre made further preliminary objections to the proceedings including that the

controlling ordinances require a 15 feet landscape buffer where the property abuts residential uses and that there exists a residential use (the Arc of Essex County) along the Easterly portion of the Property that will require a buffer. Mr. Dusinberre reminded the Board that the Applicant was seeking a conditional use and suggested to the Board that if a buffer could not be created, the Board did not have jurisdiction over the Application.

Mr. Dusinberre commented that he believed that Lot 23 (200 Bloomfield Avenue) is a corner lot, and therefore the minimum setback should be 30 feet from the house at the bottom of Westview Road and not 20 feet as the Applicant proposed. Mr. Dusinberre stated therefore that he did not agree that the Applicant would not need a variance or variances in order to develop the Property as depicted on the site plan.

Exhibits

The following exhibits were introduced by the Board ("B"), the Applicant ("A"), Mr. and Mrs. Sternis ("S"), Ms. Pearson and Mr. McEvoy ("M"), and resident Terry Moore ("TM"):

B Exhibits

EXHIBIT B-1	Memorandum from Jim Helb, Township Engineer dated 10/15/14
EXHIBIT B-2	Memorandum from Bob Dickinson, Shade Tree Commission dated 9/19/14
EXHIBIT B-3	Memorandum from Connie Pifher, Health Department dated 9/19/14
EXHIBIT B-4	Memorandum from Robert Brenneck, Fire Marshall dated 9/15/14
EXHIBIT B-5	Report from Jason Kasler, Kasler Associates, Land Use Consultant dated 9/23/14
EXHIBIT B-6	Memorandum from Doug Huber, Director of Public Safety dated 9/15/14
EXHIBIT B-7	Report from Gloria Machnowski, Verona Environmental Commission dated 9/26/14
EXHIBIT B-8	Letter from Tom Jacobsen, Construction Official dated 9/29/14
EXHIBIT B-9	Updated Report from Jason Kasler, Land Use Consultant dated 10/20/14

EXHIBIT B-10	Memorandum from Jeff Hayes, Director of Emergency Management dated 11/14/14
EXHIBIT B-11	Memorandum from Glen Houthuysen, Landmarks Preservation Commission dated 11/14/14
EXHIBIT B-12	Memorandum from Tom Jacobsen, Construction Official, dated 12/29/14 with attachment dated 9/29/14
EXHIBIT B-13	Memorandum from Doug Huber, Director of Public Safety dated 12/29/14
EXHIBIT B-14	Memorandum from Robert Brenneck, Fire Marshall dated 12/29/14
EXHIBIT B-15	Letter from Gloria Machnowski, Chairperson of Verona Environmental Commission dated 1/2/15
EXHIBIT B-16	Letter from John Dening of Hatch Mott MacDonald dated 12/1/14
EXHIBIT B-17	Memorandum from Connie Pifher, Health Department dated 1/7/15
EXHIBIT B-18	Memorandum from Jeff Hayes, Director of Emergency Management dated 1/5/15
EXHIBIT B-19	Letter from John Dening from Hatch Mott MacDonald dated 1/6/15
EXHIBIT B-20	Memorandum from Bob Dickinson, Shade Tree Commission dated 1/12/15
EXHIBIT B-21	Letter from Alan Trembulak with Attachments dated 1/20/15
EXHIBIT B-22	Letter from John Dusinberre dated 2/9/15 responding to Alan Trembulak's letter of 1/20/15

A Exhibits

EXHIBIT A-1	Site Plan by Michael Petry of Petry Engineering, LLC dated 10/10/14
EXHIBIT A-2	Architectural (complete set of) Lighting Plan, Turning Movements Plan, Grading and Drainage Plan, Layout Sheet, Landscape Plan and Existing Conditions and Demolition Plan by Michael Petry of Petry Engineering dated 10/10/14
EXHIBIT A-3	Maintenance Manual prepared by Vincent Facchino dated 7/9/14
EXHIBIT A-4	Stormwater Management Maintenance Manual prepared by Petry Engineering, LLC dated 9/12/14

EXHIBIT A-5	Letter from Michael Petry of Petry Engineering, LLC addressed to Noreen Dapuzzo dated 12/23/14
EXHIBIT A-6	Letter from Michael Petry of Petry Engineering, LLC regarding Hatch Mott MacDonald Comment Letter dated 12/23/14
EXHIBIT A-7	Stormwater Management Maintenance Manual prepared by Petry Engineering, LLC received date 12/24/14
EXHIBIT A-8	Stormwater Management Report prepared by Petry Engineering, LLC received date 12/24/14
EXHIBIT A-9	Revised Plans (entire set) SP1 through SP14 dated 12/23/14
EXHIBIT A-10	Layout Sheet (SP2 in set)
EXHIBIT A-11	Grading and Drainage Sheet (SP4 in set)
EXHIBIT A-12	Landscape Plan (SP6 in set)
EXHIBIT A-13	Elevations Drawings prepared by Joseph Donato, Architect dated 4/8/14 with revision date of 9/20/14
EXHIBIT A-13R	Relocation of Revision by Joseph Donato dated 2/19/15
EXHIBIT A-14	First Floor Plan prepared by Joseph Donato, Architect dated 4/8/14
EXHIBIT A-15	Second Floor Plan prepared by Joseph Donato, Architect dated 4/8/14
EXHIBIT A-16	Third Floor Plan prepared by Joseph Donato, Architect dated 4/8/14
EXHIBIT A-17	Letter from Joseph Donato, Architect regarding Heating/Cooling System dated 2/13/15
EXHIBIT A-18	Drawing from Michael Petry, Alternate Refuse Area dated 2/19/15
EXHIBIT A-19	Letter from Alan Trembulak dated 2/25/15 responding to Mr. Dusinberre's Letter dated 2/9/15
EXHIBIT A-20	Letter, Report and Drawings from Michael Petry of Petry Engineering, LLC Dated 2/13/15
EXHIBIT A-21	Site Plan Driveway Standards from Essex County submitted by Michael Petry on 5/28/15

M Exhibits

EXHIBIT M-1	Letter from John McEvoy and Jessica Pearson dated 9/25/14
EXHIBIT M-2	Test Pit Location Plan prepared by Michael Petry of Petry Engineering dated 3/27/14 (and is previous Exhibit A-8 from previous application)
EXHIBIT M-3	Prepared by Peter Steck, consisting of 4 pages labeled P-1 through P-4 dated 3/26/15
EXHIBIT M-4	New Jersey Groundwater Recharge Spreadsheet (NJRS) Article dated April 2004 supplied by Jessica Pearson on 5/28/15

S Exhibits

EXHIBIT S-1	From John Dusinberre which includes Kasler Report dated 10/20/14 (current application), Kasler Report dated August 13, 2013 (prior application), Ord. Section 150-17.15 ETC (Extended Town Center) Zone District, Ord. Section 150-11.1 Buffer Zone Requirements, Ord. Section 150-1.3 Corner Lot Definition and Examples, Ord. Section 150-1.3 Conflict Resolution Between Regulations, Mr. Trembulak's Letter and Report dated 1/20/15, Mr. Dusinberre's Letter and Report dated 2/9/15, Mr. Trembulak's Letter and Report dated 2/25/15
EXHIBIT S-2	Containing Picture #1, 2, 3, 4, 5, (5 pages) Picture #1, Google maps 2013, Picture #2 taken by Jack McEvoy dated 10/2014, Picture #3, taken by Jack McEvoy dated 10/2014, Picture #4 dated 10/20/14 and Picture #5 taken by Jack McEvoy dated 10/2014.

TM Exhibit

EXHIBIT TM-1	Poster List of Pros and Cons of project by Terry Moore, 17 Westview Road, NJ

The October 23, 2014 Hearing

Michael Petry, of Petry Engineering was the first witness to testify on behalf of the Applicant. Mr. Petry is licensed in New Jersey as an Engineer and as a Planner. His testimony on October 23, 2015 related only to the engineering aspects of the Application. The Board accepted Mr. Petry as an expert in his field of engineering.

Mr. Petry testified that he was familiar with the project and thereafter provided the Board with an overview of the Application. Mr. Petry noted that the Property is very steep, especially in the first 100 feet where the Property is closest to Bloomfield Avenue. Mr. Petry stated the existing home that is on the property is located on Lot 1, almost in the center of the entire parcel with a driveway that has access of Westview Road.

Mr. Petry testified that there would need to be a substantial amount of grading to the site in order for the Applicant to construct the proposed building and accessory parking lots. He noted that the plan called for 67 parking spaces, 18 of which would be suited for the residential tenants and 49 for the commercial tenants. Mr. Petry noted that the plan for development called for parking in the front and in the rear of the building and that the residential tenants would use the parking in the rear of the building but not in the front of the building.

Mr. Petry opined that the storm water runoff plan was sufficient for the site and that the system of a catch basin and piping would improve the storm water runoff on the site.

Mr. Petry provided a list of plants and shrubs to be planted on the site to replace the deciduous trees. He noted that new trees will be cherry, field maple, purple osier willow, and William Penn barberry and that all of the species of the replacement plants and trees are included in the list of recommended species contained in the Township's ordinance.

Mr. Petry testified that the site would accommodate the largest fire truck in use by the Verona Fire Department and that he had consulted with Jeff Hayes, Verona's Emergency Management Director, who noted that a fire in the building could be fought by the Fire Department safely and in accordance with fire-fighting standards.

Mr. Petry stated that the outdoor lighting would include 68 watt LED energy efficient shoebox fixtures, mounted on 16 feet high poles with little potential for obtrusive glare.

Finally, Mr. Petry testified that the garbage and recycling would be provided by private hauler, most likely two or three times per week.

Mr. Petry confirmed when asked by Mr. Jemas that he had reviewed Mr. Helb's, Mr. Jacobsen's, and Mr. Kasler's written comments to the Application and believed that he had adequately addressed all of those comments from a professional standpoint. Mr. Petry confirmed to Mr. Jemas that he believed that no other written comments to the Board by other individuals would have to be addressed in order to show site plan compliance with the Verona ordinances.

Mr. Dusinberre began his cross examination of Mr. Petry. He inquired as to the adverse impact of the Application, if approved, on the Sternas' Property and on neighbor Mary Purcell's property located on Westover Road.

The December 4, 2014 Hearing

Prior to continuing his cross examination of Mr. Petry, Mr. Dusinberre acknowledged receipt of a filed addendum to the Application. Mr. Dusinberre also acknowledged receipt of a storm water management report from John Dening of Hatch Mott MacDonald and confirmed that the content of the report would be discussed at a future meeting with Mr. Dening present.

Mr. Dusinberre further noted that the Environmental Commission requested that a landscaping expert provide testimony. The Applicant did not agree to produce such testimony.

Mr. Dusinberre continued with his cross examination of Mr. Petry noting that he had discussed with Mr. Petry the location of the dumpster and possible foul odor emanating therefrom. Mr. Petry opined that the area could be kept clean to prevent odor. He also opined in response to Mr. Dusinberre that that the loading zone was properly located and met all of the criteria for a loading zone as set forth in the ordinance.

After confirmation that the Applicant intended to blast rock at the site, he inquired as to whether the Applicant would have a seismologist on site to which Mr. Petry stated that if a seismologist is required by code or law, one would be present.

Mr. Dusinberre asked if the Applicant would agree to insert slats in the fencing and the Applicant, through Mr. Petry, advised that the Applicant would so agree to insert slats..

Mr. Petry and Mr. Dusinberre had a conversation about the height of proposed fences, the safety of such fences whether the Applicant considered adding a fence on the highest retaining wall. Mr. Petry stated it was neither necessary nor required.

Mr. Dusinberre stated he was concerned about the wall on the east side of the driveway and asked what the distance was. Mr. Petry stated it would be seven feet.

Mr. Dusinberre asked about the buffer proposal at the rear of the site and Mr. Petry described the proposed buffer in great detail while referring to the proposed site plan.

Mr. Dusinberre asked about the rear parking lot and how many spaces would there be and Mr. Petry stated there would be 18 spots for the tenants and 10 for retail in the rear parking lot.

Mr. Dusinberre asked a series of other questions including questions about shrubs, earth work calculations, and the removal of material and soil from the site.

Mr. Ryan asked Mr. Petry about construction access on Bloomfield Avenue and hours of construction to which Mr. Petry replied that during heavy construction work that part of Bloomfield Avenue would have to be blocked off and the construction would stop before rush hour which would be approximately 3:30 – 4:00 PM.

Mr. Helb asked if the sidewalk would be closed off and Mr. Petry stated that would be up to the contractor hired by the Applicant.

Chairman Brown asked if any members of the public had any questions for Mr. Petry regarding his testimony.

Sara O'Farrell asked about snow removal, plantings, soil being left when finished, landscaping along the walkway of Bloomfield Avenue and the idling of trucks.

Mary Purcell, 15 Westview Road asked if the dumpster could be moved if possible so as not to be right under her kitchen window.

Jeff Hurs, 25 Montclair Avenue asked about the time frame of the construction and the impact it would have on Bloomfield Avenue.

Barbara Mijovi stated she has lived through blasting before and asked what if there is a default by the Applicant and what would happen if the blasting caused a water main break.

Jessica Pearson asked Mr. Petry if the Applicant planned to conduct a pre-blast survey because Mr. Helb had mentioned such a survey in his review memo. She inquired about the plan of action to protect the adjoining properties and what dust control procedures the Applicant would implement to control dust.

Mr. Mascera stated that the Planning Board is not charged with the methods of construction or blasting and the Planning Board's responsible for site plan approval or denial, and while the Board recognizes the importance of those issues to the neighbors who had appeared at the meetings, there are other codes and regulations that are designed to be effective in those situations.

Jack McEvoy inquired as to steep slopes on the Property and the slope percentages to which Mr. Petry answered.

Mr. McEvoy asked about the dimensions of the fire truck to which Mr. Jemas stated that Mr. Hayes would have submitted a report if he had any concerns about the size of the fire truck.

Alex Roman, 2 Amy Court inquired about OSHA provisions. Mr. Roman was informed

that the question did not pertain to the role of the Planning Board.

The January 7, 2015 Hearing

The meeting was scheduled as a special meeting by the Board so that the Application could continue in a timely manner. The Verona Environmental Commission submitted a letter marked by the Board as Exhibit B-15 to which Mr. Jemas objected. The objection was noted and the Board accepted the letter from the Commission.

Prior to the meeting, Mr. Petry revised the plans partially in response to Mr. Helb's memorandum and partially as a result of previous testimony. Mr. Petry addressed the following:

1 Clarification of the square footages and supplemental dimensioning per Mr. Helb's report
2 Modifications to the drainage system to reflect the comments in Mr. Helb's report
3 Modifications to the wall elevations to respond to the comments in Mr. Helb's report
4 Incorporation of notes reflecting the conditions recommended in Mr. Helb's report
5 Height calculations per the ordinance and per our interpretation of what is appropriate
6 Incorporation of buffer along the common line of Lot 26, the ARC Property.
7 Modification of the fence type from chain link to board on board
8 Modifications to the walls and fences within the Montclair Avenue required front yard
9 Modification to the curb line along the Westview Road exit drive

In December, 2014, the Planning Board recognized the complexity of the storm water management issues after hearing concerns of objectors, especially Ms. Pearson, and determined that the Board and the public would be best served if the Board hired an independent consultant to review Mr. Petry's storm water management calculations, review the methodology invoked and the legal and regulatory requirements associated therewith. The Board therefore hired John Dening as its own expert and as permitted by NJSA 40:55d- ~~XXXX~~ D-1 et. seq. Mr. Dening submitted written conclusions to the Board on December 23, 2014. Mr. Dening appeared for questioning on January 7, 2015.

Mr. Petry addressed Mr. Dening's comments set forth in his dated to the Board dated December 23, 2014 (Exhibit A-6) and explained to the Board how he arrived at his responses to Mr. Dening.

Mr. Petry concluded that The Application is in full compliance with all Verona ordinances and that the Board should grant site plan approval to the Applicant.

Next, John Dening was sworn and after informing the Board of his credentials, Chairman Brown asked Mr. Dening to opine whether the Applicant had proven compliance with the controlling stormwater laws and regulations. Mr. Dening testified that he believed that the stormwater management plan met all prevailing criteria because, among other things, the Property has been previously developed and because the Property is in an Urban Redevelopment Area as defined in the New Jersey Stormwater Management Regulations.

Mr. Dusinberre questioned Mr. Dening about the terminology "previously developed" that is used in the prevailing regulations and Mr. Dening confirmed that based upon the existence of a lawn, a set of stairs and two sheds, all of which indicate human activity, the Property had been previously developed, and therefore the criteria to be used when calculating the required stormwater management plan was that for previously developed property.

Mr. Mascera noted for the Board's edification that the New Jersey Government State Stormwater Management guidelines include in , in the "frequently asked questions' section, questions that Mr. Dusinberre asked Mr. Dening Mr. Mascera further advised the Board that "previously developed areas" are those portions of a site covered by areas that are paved, graveled with dirt driveways, streets, roads and parking areas, graveled pavement, buildings, impervious surfaces, lawns or structures.

Mr. Mascera also advised the Board stated also that it reads that areas that have been or once been cleared of vegetation are not considered previously developed if wood vegetation has been re-established, only those portions of a site that have been previously developed are exempt from ground water recharge requirements.

Mr. Dusinberre asked Mr. Dening if having heard Mr. Mascera whether he still considered 200 Bloomfield Avenue to be previously developed and, if so, why.

Mr. Dening affirmed his conclusion and further stated that the plan conforms to the Verona Stormwater Ordinance. Mr. Dening opined that the Property is in an Urban Redevelopment Area and as such, by definition, is considered "previously developed."

Thereafter, Mr. Dusinberred engaged Mr. Petry in conversation about the exact location of the wall on the southerly sideline of the Property and Mr. Petry confirmed that the wall is on the Property and reinforced Mr. Petry's opinion that the Property is to be considered "previously developed" under the regulations.

Jessica Pearson questioned Mr. Dening and Mr. Petry about, among other things but most specifically:

The height of the building and measurements
Sheet SP8 and the Hudson/Essex/Passaic permit and when was it issued (Late Oct. or early Nov. 2014)
The date on Mr. Petry's Non-Structural Point Strategies Report with date of 9/11/2014)
w impact development
Slopes and soil inventory
The grade behind Mary Purcell's home being affected by rain and erosion and survival of her home
Trees in existing area
Overflow system
Pit Excavations
Water table
Jellyfish system
5 Year storm table

Mr. Petry and Mr. Denig answered all of Ms. Pearson's questions. It was clear to the Board after Ms. Pearson concluded, that Ms. Pearson was not satisfied with Mr. Dening's explanation of whether ground water recharge was required and if required, whether the Plan met the necessary recharge criteria. In partial response to Ms. Pearson's questions, Chairman Brown marked into the record Exhibit M-2, "Test Pit Location Plan" prepared by Michael Petry dated March 27,

2014.

Mr. McEvoy questioned Mr. Petry about the existing sanitary sewer line, the impact the plan would have on the preserved trees, the proposed changes to the driveway and the curb cut, and other general questions about the sidewalk on Bloomfield Avenue and the location of the proposed building on the site.

After hearing the testimony, Mr. Dusinberre asked the Board whether the Board would determine whether the Property is to be considered "previously developed". Mr. Mascera advised the Board members that they would ultimately determine if the Property was to be considered previously developed for stormwater management purposes.

The January 22, 2015 Hearing

Mr. Mascera advised the Board that he had received a letter from Mr. Trembulak on January 20, 2015 regarding whether the Applicant would need variances due to the proposed side yard dimensions and due to the issues raised by Mr. Dusinberre about the required buffer. The parties agreed to allow Mr. Dusinberre sufficient time to review the content of the letter so that discussion about the topics contained in the letter would be tabled until the February 19, 2015 special meeting.

Mr. Jemas next called Joseph Donato, AIA to testify on the Applicant's behalf. Mr. Donato reviewed his elevations and drawings with the Board. (Exhibits A-13 through A-16) He advised the Board that there would be two means of ingress and egress (rear and front) and that the plan called for 9,304.75 feet of retail space and an equal amount of residential space, with the third floor having 6,536.5 feet of residential space and the balance of the residential space to be comprised of three second floor apartments on the easterly side of the proposed

building. The average building height would be 45.5 feet with a pitched roof (at Mr Helb's suggestion).

Mr. Dusinberre cross examined Mr. Donato and focused on the safety of the proposed layout given that the Applicant intended to have retail and residential uses mixed on the second floor, and on the layout of the parking lots and the overall size of the building.

Mr. McEvoy asked Mr. Donato questions about the HVAC, the location of the second floor stairwell, the exit lights and the lot lines.

Terry Moore asked about construction materials and inquired as to who would oversee construction. He was advised that the Planning Board does not control those issues and that Thomas Jacobsen, the Verona Construction Code Official would oversee the construction.

Jessica Pearson asked Mr. Donato about the slope of the Property and the existing trees. Mr. Donato testified that he took all external factors into his design.

The February 19, 2015 Hearing

The Applicant began the meeting by having Mr. Donato discuss revisions that he made to his plans as a result of concerns expressed to him during the January 22, 2015 meeting. Mr. Donato relocated the utility room and that he would obtain revised mechanical plans drawn by a mechanical engineer that would satisfactorily address concerns about noise and ventilation that might have adversely impacted neighbors.

The Applicant next called traffic engineer Joseph Staigar who was accepted by the Board as an expert in traffic. Mr. Staigar testified that he had visited the site on numerous occasions to observe traffic flow and that he had reviewed reports prepared by others. He stated that he had completed a traffic impact assessment broken down into three parts which are i) existing conditions,

ii) future built conditions, and iii) assessment of the potential impact of the proposed development and evaluation of the site plan.

Mr. Staigar reviewed traffic counts taken at peak hours which are accepted in the industry as Monday to Friday 7:00 AM to 9:00 AM and 4:00 PM to 6:00 PM, and Saturday at midday..

Mr. Staigar stated that the intersection of Bloomfield Avenue and Westview Road has a level of service of B using the Institute of Transportation Engineers methodology which is a good level along Bloomfield Avenue.

Mr. Staigar stated that the development projects to generate 128 trips in the weekday peak hours, and 192 trips on a Saturday.

Mr. Staigar stated the driveway level of service is A, and the driveway exit level of service is C so there is no negative impact on Bloomfield Avenue.

Mr. Staigar stated that 78% of traffic would be drive-by traffic.

Mr. Staigar further stated he worked with Mr. Petry on safe access to the site and site circulation and agrees with Mr. Petry's testimony that the site could operate safely and efficiently and that there is adequate parking provided.

Mr. Dusinberre asked Mr. Staigar if he prepared a written report for this evening and Mr. Staigar advised that he had not but that he had copious notes from which he had referred to many times during his testimony.

Mr. Dusinberre asked Mr. Staigar when the counts were done and Mr Staigar stated that the counts were taken on Tuesday, October 14, 2014, 7:00 to 9:00 AM, Wednesday, October 15, 2014, 4:00 PM to 6:00 PM, and Saturday, October 18, 2014, 12:00 PM to 3:00 PM. Mr. SDtaigar testified that he was present during the latter two counts and that he had visited the site on about about 12 occasions from October 2014 to the date of his testimony.

Mr. Staigar answered additional questions from Jack McEvoy, who asked Mr. Stiagar about parking on Bloomfield Avenue in front of the site and the site triangle Mr. Staigar informed Mr. McEvoy that Mr. Staigar believed that Mr. Petry has provided for excess than what is required or needed and the Mr. Petry drew a very conservative plan..

Mr. Staigar informed Sandra Krause, 13 Westview Road, that he believed the intersection of Bloomfield Avenue and Westview Road would be much safer once the large wall was removed from the front of the site at Bloomfield Avenue..

Sarah O'Farrell, 27 Westview Road asked if vehicles are permitted to park along Bloomfield Avenue frontage to which Mr. Staigar replied that vehicles can park now so the project is not creating new parking and will be left in its existing condition.

David Yenyew, Essex Street, Belleville, New Jersey asked if traffic was considered during construction and Mr. Staigar answered in the negative

The February 26, 2015 Hearing

Mr. Jemas asked to mark Exhibit -19, the aforementioned letter written by Alan Trembulak regarding variance issues, into the record. Mr. Trembulak's letter was marked along with Exhibit B-22, a letter with attachments from Mr. Dusinberre dated February 9, 2015.

Mr. Jemas requested the Board to consider the content of the letters and to determine whether the Board believed that variances were necessary so that if the Board so determined that variances were necessary, Mr. Jemas could present testimony in support of the Board granting those variances.

Mr. Trembulak advised the Board that there were three letters addressing the alleged variances, the first being his letter dated January 20, 2015, the second letter from Mr. Dusinberre responding dated February 9, 2015 and the third letter being Mr. Trembulak's reply letter dated February 25, 2015.

Mr. Trembulak stated the Applicant believes that the Application is fully conforming and that the Applicant relied in part on a previous determination of the Planning Board regarding numerous variances that were debated, discussed and decided at the beginning of the prior application. Mr. Trembulak stated Mr. Dusinberre contends that the Applicant requires two variances and Mr. Trembulak requested the Board to make a determination with regard to whether variances are necessary.

Mr. Trembulak informed that Board that he believed that the facts to be considered by the Board in determining whether variances are required are exactly the same as the prior application and there is no difference at all in the current site plan to justify the Board rendering a different interpretation of these ordinances that control the issues. Mr. Trembulak stated it is certainly the Board's right to revisit or reconsider these issues but they were discussed at length in the previous application and the property is the same with no material differences between this site plan and the prior plan.

Mr. Dusinberre responded by introducing Exhibit S-1, which includes Kasler Report dated 10/20/14 (current application), Kasler Report dated August 13, 2013 (prior application), Ord. Section 150-17.15 ETC (Extended Town Center) Zone District, Ord. Section 150-11.1 Buffer Zone Requirements, Ord. Section 150-1.3 Corner Lot Definition and Examples, Ord. Section 150-1.3 Conflict Resolution Between Regulations, Mr. Trembulak's Letter and Report dated 1/20/15, Mr. Dusinberre's Letter and Report dated 2/9/15 and, Mr. Trembulak's Letter and Report dated 2/25/15.

After Mr. Mascera reviewed the exhibit and determined that it was a compilation of previously submitted documents and exhibits, the submission would be accepted by the Board for review.

Mr. Jemas referred to Mr. Kasler's report of 10/20/14, page 5 included in the Sternas Exhibit S-1 report and asked Mr. Dusinberre if the hand written notation was his.

(Mr. Dusinberre stated all of the hand written notations in Mr. Kasler's first report were Mr. Dusinberre's made for his own reference where Mr. Kasler had updated his report.. The board members were instructed to disregard the notations.).

Mr. Ryan asked Mr. Mascera what could and could not be considered and referred to from the prior application and Mr. Mascera advised Mr. Ryan that case specific determinations should be disregarded but that policy determinations and the interpretations of ordinance definitions could be considered.

Mr. Mascera advised the Board of the distinction between the Board determining whether a buffer can be created from the Board deciding whether a yard is a side yard. The first is based upon language in the ordinances with regard to a specific piece of property while the latter deals with a specific piece of property that is the subject of a particular application. Mr. Dusinberre contended to the Board that it was not bound by its previous decision regarding the buffer.

Mr. Dusinberre also contended that the Property falls within the definition of a corner lot in the ordinance and therefore that the applicable bulk requirements should obtain. Mr. Dusinbeere reviewed the ordinance definitions with the Board, illustrated to the Board why he believed that the Property is a corner lot and reviewed the lot lines as depicted on the drawings to contend that the Applicant needed a 30 foot setback at the Westerly line of the Property.

Mr. Trembulak argued that the ordinance speaks of typical or traditional lot of four sides as a corner and that it would be absurd to consider the entire merged parcel as a corner lot. Therefore, he contended, the corner lot setback requirements should not extend along entire lot 23.

Mr. Mascera advised the Board that it has spent a considerable amount of time on these issues, and that the Board should determine if it is satisfied with his recommendations and with the Board's previous decisions.

Chairman Brown decided to put the matters to a vote. Mr. Kirby moved to accept the prior decision of the Board that an applicant can create a buffer and therefore that the Board did not have to reconsider the issue. The Board voted as follow:

Yes	No	Abstain
Mr. Helb		Mr. Ryan
Mr. Lonergan		
Mr. Kirby		
Mr. Mathewson		
Chairman Brown		
Mr. Lugo		

Chairman Brown asked for a motion, not to accept the Board's prior decision in the prior application, but to vote anew to treat the lot line as an interior lot as opposed to a corner lot so that the setback would remain 20 feet as opposed to 30 feet as previously determined by the Board. .Mr. Lugo so moved and the Board voted as follows:

Yes	No	Abstain
Mr. Helb		
Mr. Lonergan		
Mr. Kirby		
Mr. Mathewson		
Councilman Ryan		
Chairman Brown		
Mr. Lugo		

Next, Mr. Jemas recalled Mr. Petry to re-visit the recharge issue and to discuss a re-location of the refuse area. After much discussion, it was determined that the refuse area could not be relocated because relocation would cause the loss of a parking space which would result in the Application being non-compliant for failure to provide an adequate number of parking spaces. Non-compliance would result in a change in venue from the Planning Board to the Zoning Board.

With regard to the recharge, Mr. Petry stated that he recognized that there had been a great

deal of discussion whether or not recharge is required and, to be safe, he prepared an analysis of the recharge as if it were required to meet the standard in the event that the Board determined that is was required. Mr. Petry testified that if the Board decided that recharge is required, the Applicant would be prepared to implement the plan that Mr. Petry had presented. Mr. Petry explained recharge to the Board. At the conclusion of his testimony, Mr. Petry answered several questions from Mr. Dusinberre and from Ms. Pearson and from Mr. McEvoy. Ms. Pearson asked about:

1. If the company that performed the test was the same as the people who dug
2. Getting soil at 200 Bloomfield Avenue half below the rock
3. If they use backhoe to take soil samples
4. Were test samples consistent
5. Run-off potential
6. If they use native soil for recharge
7. Pre-post condition
8. Impervious numbers
9. Basin location
10. Run-off from neighbors
11. Sub-surface and entire length
12. Slope on westerly side
13. Infiltration
14. Planting and what types of trees
15. Maintenance

Mr. McEvoy raised questions about:

1. County soil surveys
2. 1.8 classification B and results
3. Basin elevation
4. Scale
5. Pre-treating

Mr. Helb suggested that although the Applicant could provide recharge, the question for the Board is whether recharge is required based upon he site characteristics under the prevailing regulations. Mr. Petry had opined that recharge did not apply to the Application.

Mr. Jemas added that three engineers, Mr. Helb, Mr. Dening and Mr. Petry have concluded that

recharge does not apply to the Application. He informed the Board that if in fact the Board decided otherwise, the Applicant would provide recharge. Chairman Brown asked for a motion in favor of the Applicant being exempt from recharge. Mr. Lonergan moved and the Board voted as follows:

Yes	No	Abstain
Mr. Helb		
Mr. Lonergan		
Mr. Kirby		
Mr. Mathewson		
Mr. Ryan		
Chairman Brown		
Mr. Lugo		

The March 10, 2015, Hearing

Mr. Petry returned to testify on behalf of the Applicant as a Professional Planner. Mr. Petry was accepted as an expert in the field with no objection.

Mr. Petry testified that in 2009 the Township of Verona adopted a comprehensive Master Plan. The Master Plan recommended the drafting of a new Zoning Ordinance for the municipality and that in August of 2011 the Mayor and Council adopted the current Ordinance,

Mr. Petry stated the Zoning Ordinance provides the rules by which property owners have to adhere when they work toward building or developing a piece of property and that the plans submitted by the Applicant have in his opinion been developed in strict accordance with those regulations. He noted that both the Zoning Officer and Mr. Kasler agree with his conclusion.

Mr. Petry further stated that the Applicant has presented a variance free Application and that his opinion was reinforced by the votes of the Board during the previous meeting.

On cross examination, Mr. Dusinberre asked Mr. Petry general questions about the inner workings of the site. Mr. Petry opined based upon his past experiences about traffic flow, pedestrian flow and the overall use of the property.

Mr. Dusinberre asked Mr. Petry about a free-standing sign and Mr. Petry testified that he would support a free-standing sign but that the Applicant has not requested a sign because a variance would be required for permission to erect such a sign..

Mr. Dusinberre asked Mr. Petry if there was anything that prevents someone from the public going into the central corridor and breaking and entering into an apartment. Mr. Jemas objected and stated that Mr. Dusinberre is getting into a series of questions that are not relevant to a planning perspective and should keep his questions to whether or not they conform to the ordinance. Mr. Mascera stated respectfully that Mr. Dusinberre is talking about something that could happen in any building in Verona asked him to please keep the questions relevant.

Mr. Dusinberre asked about the rental space and whether it is realistic to expect that second floor retail space will be rented. Mr. Petry answered Mr. Dusinberre by stating that Verona's zoning ordinance is controlling and that the Application conforms to the ordinance and that he could offer no opinion as to the success of a yet to be named retail venture

Mr. McEvoy questioned Mr. Petry about the safety and the efficiency of the site and whether the absence of a sign would create a dangerous condition for drivers on Bloomfield Avenue.

The March 26, 2015 Hearing

Mr. Dusinberre called Sarah O'Farrell who has lived at 27 Westview Road in Verona for 18 years as a fact witness. Ms. O'Farrell confirmed for the Board that Mr. Dusinberre was not representing her in the matter before the Board. Ms. O'Farrell testified that she had been attending

the meetings regarding the Application and that she was familiar with the prior testimony including the testimony of Joseph Staigar.

Ms. O'Farrell stated that she has observed over the years that the Everett Field property is very busy with activities seven days a week from April through November causing heavy traffic and parking issues from 4:30 PM until 10:00 PM. Ms. O'Farrell stated that the field is busy with children and parents and the Verona Baseball/Softball League requests that the parents use Westview Road for a drop off and pick up because Elmwood Road (the Road directly to the West of Everett Field) is not a safe option. Ms. O'Farrell stated that Westview Road gets fully loaded with cars parked along Westview and that often her driveway is blocked by cars.

Terry Moore, 17 Westview Road, asked Ms. O'Farrell if the road shrinks considerably when cars are parked on Westview Road and Ms. O'Farrell responded affirmatively.

Mr. Dusinberre next called John McEvoy as a fact witness. Mr. Jemas requested the Board to seek assurance from Mr. Dusinberre that he did not represent Mr. McEvoy. Mr. Dusinberre represented to the Board that he represented only Lars and Kathleen Sternas and that Mr. Dusinberre had received no money from anyone other than them to his knowledge. Mr. Mascera asked Mr. Dusinberre if to his knowledge anyone had contributed money to Mr. and Mrs. Sternas and Mr. Dusinberre advised that he had no such knowledge.

After considering whether it was procedurally appropriate to allow Mr. Dusinberre to question Mr. McEvoy because Mr. McEvoy was a party to the proceedings, the Board allowed Mr. Dusinberre to proceed for the purpose of allowing Mr. McEvoy to introduce photograph into the record in an orderly and otherwise customary fashion. Mr. Duinberre confirmed that there was no attorney client relationship created. Mr. McEvoy thereafter reviewed with the Board pictures of the property taken by him and obtained through Google Maps.

Upon questioning from Mr. Jemas, Mr. McEvoy confirmed that he had not contributed to pay for the cost of any professionals except for Peter Steck. Mr. McEvoy confirmed having had conversations with Mr. Dusinberre about the Application, about conversations with professionals, and other matters regarding the Application.

Mr. Dusinberre next called Peter Steck to testify. Discussion took place again regarding the party who had retained Mr. Steck and who should conduct Mr. Steck's direct examination. The Board allowed Mr. Dusinberre to conduct the direct examination over Mr. Jemas' objection.

Mr. Steck testified that he had reviewed the Verona Zoning Ordinance and Master Plan and looked at the subject property and surrounding area and had listened to the recording of the last meeting where Mr. Petry testified as a Planner. Mr. Steck prepared a handout which he dictributed to the Board (Exhibit M-3) Mr. Steck questioned the functionality of having retail space on the second floor and stated that second floor retail space is quite uncommon and that he is not aware of any other location in Verona that has such space. Mr. Steck commented about the overall "unusual" setup of the proposed building. Mr. Jemas objected to Mr. Steck testifying from a planning perspective but the Board allowed Mr. Steck to proceed.

Mr. Steck testified as to the visibility of the proposed building from Bloomfield Avenue and opined that the Applicant would in the future apply for a variance to allow the second floor to be converted entirely to residential use. Mr. Jemas objected and Mr. Mascera asked Mr. Dusinberre and Mr. Steck to continue with Mr. Steck's examination.

Mr. Steck opined that he believed that the proposed retail uses would be identified by a free standing sign to which Mr. Mr. Jemas objected because the Application did not include a variance for a free standing sign. Mr. Steck testified regarding the parking in front of the site to which Mr.

Jemas objected contending that Mr. Steck was presenting traffic testimony as opposed to planning testimony. The objection was denied.

Mr. Steck testified as to the appropriateness of the proposed parallel parking stalls, the dumpster location, the movement of fire equipment and the general vehicular and pedestrian circulation. He concluded that the proposal offered insufficient design and that the Applicant required two variances form the Planning Board, one relating to the buffer requirement and the other relating to the side yard where the board had determined that a 15 foot side yard was required and not a 30 feet side yard as the objectors had contended.

Next Mr. Dusinberre questioned Mr. Helb about Mr. Helb's interaction with the Applicant and with Mr. Dening during the course of the Application. Mr. Helb confirmed that he had been in touch with Mr. Denign and with the Applicant during the pendency of the Application; Mr. Helb could not recollect whether he had spoken with Mr. Petry about the Application however.

The meeting closed with John McEvoy asking if the Applicant would submit a proof of ownership of the Property prior to the next meeting. Instead, Mr. Jemas represented that ownership had not changed since the date the Application was submitted to the Board.

The April 23, 2015 Hearing

The meeting began with Mr. Dusinberre calling Lee D. Klein, Kleing Traffic Consulting, a traffic engineer, to testify as a traffic expert. Because Mr. Klein had never testified in Verona, Mr. Dusineberre qualified Mr. Klein and the Board accepted his qualifications as a traffic expert.

Mr. Klein testified that after reviewing the Application, he had seven concerns:

1. The adequacy of the proposed parking
2. Configuration of the loading zone
3. Steep Slopes of the Site – driveways coming in at an 8% slope coming in off of Bloomfield Avenue and about a 4% slope up as you get up to the portion that takes you to about a 15% slope up over about a 100 feet or so to the upper portion of the parking area
4. Site Distance from Bloomfield Avenue as well as the site distance existing the site onto

Westview Avenue
5. Pedestrian Circulation being adequate for walking around
6. Loading Zone configuration
7. Refuse lay-out

Mr. Klein noted to the Board that the Institute of Transportation Engineers' Traffic Engineering Handbook recommends parking dimensions for parallel spaces of 22 to 26 feet in length and that the proposed parallel spaces in the Application are 20.74 feet.

Mr. Klein opined that the parallel parking spaces adversely reduce the side of the drive isle. Mr. Klein made reference during his testimony to guidelines published by the Urban Land Institute and based upon those guidelines Mr. Klein opined that the project included insufficient parallel parking, projection and angles, the interior drive would be too steep and the and turning radii too tight.

Mr. Klein opined that based upon information that he obtained from the National Cooperative Highway Research Program Report #659, given the design and geometry of the driveway, if people are driving at 35 miles per hour on Bloomfield Avenue, they would need to slow down to approximately 11 miles per hour to effectuate a turn into the proposed driveway.

Mr. Klein made reference to tables presented by the Genesee Transportation Council that show the correlation between speeds of turning traffic and through traffic. The Report suggests, according to Mr. Klein, a 25 percent radius.

Mr. Klein opined that the combination of the 12 percent turning radius into the site and the eight percent could result in cars bottoming out or scraping as they turn into the site.

Mr. Klein did not submit a written report. The Board questioned Mr. Klein's reference to the Genesee Report because it is not a known professional resource that has been cited by traffic experts in the past. Mr. Lonergan stated that it would be difficult for him to rely on testimony based upon unknown technical resources.

Finally, Mr. Klein expressed concern about the interior traffic flow, and the practical use of the loading zone, opining that the loading zone would adversely impact up to three parking spaces.

Mr. Klein, when asked, admitted that he had not listened to tapes of any preceding meeting or read any transcripts of those meetings. He also advised the Board that he did not perform a site inspection nor observe any vehicles attempting to turn into a building that is located directly to the East of the Property, nor perform any traffic counts on Bloomfield Avenue or on Westview Road.

Upon cross examination, Mr. Klein informed Mr. Jemas that he had met with Mr. and Mrs. Sternas, Mr. McEvoy and Ms. Pearson, Mr. Steck and Mr. Dusinberre at the McEvoy/Pearson residence.

Mr. Klein confirmed to Mr. Jemas that he had not reviewed Mr. Helb's report, Mr Huber's (the Director of Public Safety) report, or any part of Mr. Staigar's or Mr. Petry's testimony, and that he was not familiar with Essex County's dimensional requirements for curb cuts..

The May 28, 2015 Hearing

Mr. Jemas presented Mr. Staigar to rebut Mr. Klein's testimony. Mr. Staigar prepared a report as part of his rebuttal. Mr. Dusinberre objected to submission of the report in writing prior to the meeting and stated his objection on the record prior to Mr. Staigar's testimony. .Mr. Dusinberre's primary expressed concern was that Mr. Staigar's testimony would not be limited to rebuttal of Mr. Klein's testimony from the previous meeting and that preparation of a report for submission to the Board was indicative of new testimony forthcoming as opposed to rebuttal testimony.

The Board decided not to review the report and Mr. Mascera requested Mr. Jemas to examine Mr. Staigar without introducing the report as an exhibit to the proceedings. Mr. Jemas thereafter examined Mr. Staigar without introducing the report. Mr. Staigar testified that he had listened to

recordings of his testimony and of Mr. Klein's testimony and that he did not agree with many of Mr. Klein's conclusions.

Mr. Staigar noted that first that the parallel parking spaces are in compliance with the Verona ordinances and that two of the spaces had adjacent overhangs which created more room for cars to maneuver.

Mr. Staigar opined that there is no design flaw regarding the three parking spaces that Mr. Klein believed would be adversely impacted because of their location.

Mr. Staigar testified that he had spoken to the Essex Count Engineer and that the County would not permit a 25 feet turn radius into the site as suggested by Mr. Klein. Mr. Staigar informed the Board that the suggested radius and necessary 24 foot opening would cause 70 feet of curb cut along Bloomfield Avenue and that the County allows a 42 foot maximum curbcut at this location.

Mr. Staigar opined that the proposed driveway design and grade transitions were acceptable to him, and met the County standards for grade transition..

Mr. Staigar further testified that the site distance on Bloomfield Avenue meets the minimum requirement of ASHTO (The American Association of State and Highway Transportation Officials) and that the proposed sidewalks met all ADA standards.

Mr. Staigar opined that the loading and refuse area exceeds the ordinance standards and that the plan provided adequate room for a delivery truck to load and unload.

When asked by Mr. Jemas to opine as to the safety and efficiency of the Westview Avenue driveway, Mr. Staigar stated that there is always a balance between parking spaces and site distance at driveways and that Mr. Petry's plan shows that a site line that would go through parking spaces along Westview Avenue. Mr. Staigar testified that such is a common occurrence and that there is a balance that the Township must strike by providing parking for property owners and by maintaining

safe site distances.

Mr. Staigar stated it would be an enhancement to the site lines to remove parking spaces on Westover Road, but detrimental to the members of the public who prefer to keep those parking spaces along Westview Avenue. Mr. Stagar testified that he would not be adverse to the Township designating a no parking area on Westview Avenue near the proposed driveway. Mr. Staigar opined that the proposed configuration does not create an unsafe condition.

Mr. Dusinberre asked Mr. Staigar about the benefit of the overhang at the parallel parking spaces, the parking spaces on Westview Avenue as it related to site distance, ingress and egress to the site onto Bloomfield Avenue, the location of the stop sign that would control cars leaving the site and travelling on to Bloomfield Avenue, the width of the sidewalk in front of the proposed retail stores, his observation of traffic near Everett Field, and the sufficiency of the loading area. Mr. Staigar reiterated his previous testimony and opined that the Applicant had prepared a safe and feasible plan from a parking and traffic perspective.

Mr. Jemas next recalled Mr. Petry to answer questions about parking and traffic. Mr. Petry advises that he was present for Mr. Steck's testimony and that he had listened to the recording of Mr. Klein's testimony. Mr. Petry stated in response to Mr. Steck's and Mr. Klein's previous testimonies that building setbacks along Bloomfield Avenue vary and that any suggestion that existing buildings along Bloomfield Avenue create unsafe conditions is erroneous.

Mr. Petry suggested that a directional sign could be erected near the entrance to the Property to alleviate concern that Mr. Steck and Mr. Klein had expressed about motorist being unable to see the building from Bloomfield Avenue.

Mr. Petry testified as to how he calculated the sight line on Bloomfield Avenue and informed the Board that he used a conservative approach in making his calculation. He discussed how a

motorist would enter onto traffic on Bloomfield Avenue again opined that his calculations were correct. He further informed the Board that he had measured the distance of parallel parking spots along Bloomfield Avenue and that he found many spots shorter in length than the proposed parallel spots on the Property. Mr. Petry summarized his testimony stating that Verona's Municipal Engineer, Fire Official, Police Department and Director of Emergency Management all reviewed the Application and no one has indicated that there is a traffic safety issue to be addressed by the Applicant.

Mr. Dusinberre asked Mr. Petry questions about the parallel parking spaces that Mr. Petry observed on Bloomfield Avenue and Mr. Petry identified those spaces. Mr. Dusinberre asked Mr. Petry if Mr. Petry knew whether any other municipalaties had standards requiring larger parking spaces and Mr. Petry said yes he was aware of such larger standards. Mr. Dusinberre suggested that perhaps the Verona ordinance should be interpreted to mean that distinguish between parallel and adjoining parking spaces but Mr. Petry found no reason to accept that supposition.

Mr. Dusinberre and Mr. Petry then discussed the ADA and whether the Application met all ADA criteria for sidewalks. Mr. Petry stated ADA parking spaces are required to be 8 feet by 18 feet and that the Application met all requirements.

After fielding questions from Board members and from John McEvoy regarding a direction sign, Mr. Petry concluded his testimony.

Thereafter, Ms. Pearson requested permission to present material to the Board. There was uncertainty as to exactly what Ms. Pearson was trying to present, so Mr. Mascera requested time to review the material prior to allowing Ms. Pearson to distribute the information to the Board. Mr. Mascera notified the Board that there were two issues that Ms. Pearson wished to address, first the

question whether the Board had the authority to issue storm water waivers, and second, she wished to attempt to prove that Mr. Petry's storm water runoff calculations were not correct.

Ms. Pearson was permitted to proceed as to the second issue and agreed to allow Mr. Mascera time to formulate an opinion as to whether the Board had the authority to issue waivers. Ms. Perason was sworn and asked that Exhibit M-4 "New Jersey Groundwater Recharge Spreadsheet (NJRS) Article dated April 2004" be introduced into the record. Ms. Pearson indicated that based upon her knowledge taken from the Spreadsheet, Mr. Petry's calculations were not correct. Mr. Kirby reminded Ms. Pearson that the calculations had become moot upon the Board's vote that recharge was not required. Nevertheless, Ms. Pearson was allowed to continue. Ms. Pearson stated in completing the Groundwater Recharge Statement that Mr. Petry utilized for his calculations, Mr. Petry did not represent 100 percent of the property in its pre-developed conditions therefore leading to false results. Ms. Pearson stated that Mr. Petry left off .62 acres from is the pre-developed site demarcation and as such he inadequately defined woods on the property. According to Ms. Pearson, Mr. Petry therefore miscalculated the recharge.

After Mr. Jemas cross examined Ms. Pearson, testimony was closed and the Board scheduled a special meeting for June 17, 2015.

The June 17, 2015 Hearing

Mr. Mascera advised Ms. Pearson that he believed the Board had the authority to issue the storm water management waiver because, as previously discussed by the Board, Verona is within an Urban Redevelopment Area. Mr. Mascera advised the Board that he had had a conversation with Ms. Pearson wherein Ms. Person questioned whether or not the Board has the authority to issue an exemption to the storm water management plan. Ms. Pearson had requested Mr. Mascera to review NJAC 7:8-4 et seq. which Ms. Pearson believed supported her conclusion. Ms. Pearson contended

that a municipality is able to grant an exemption to the storm water recharge requirements *only if* the municipality has an ordinance containing a mitigation plan. Mr. Mascera advised the Board that it was his opinion that the preface to the language mandating a mitigation plan in the regulation controlled and that the preface includes a blanket exception for municipalities that are deemed to be in the Urban Redevelopment Area. Otherwise, according to Mr. Mascera, there would be no difference in the requirements between a municipality within an Urban Redevelopment Area from one without an Area.

The Board accepted comments from the public as follows:

Gerard Shimonaski, 33 Kenwood Avenue stated as a member of the Verona Environmental Commission he sat and listened for 5 years to the Hilltop discussion and the Master Plan and among those discussions was a common goal of keeping the character of Verona. Mr. Shimanowki expressed concern that the proposed building and use would change character of Verona. He asked that the Board members consider the goals and objectives of the Master Plan when they deliberate.

Ethan Barshay, 36 Westview Road urged the Board to look at this project and stated that it will not only be an inconvenience during construction but that construction would but also endanger Verona residents. He believed the project to be ill-conceived for the location, that it will create numerous health concerns, abundant public safety issues, danger to home foundations, water lines, and gas lines to surrounding homes.. Mr. Barshay stated that he believed there would be horrendous traffic issues in the short and long term and that everything about the Application is invasive and intrusive and goes against the character of Verona in enumerable ways.

Kim Shafer, 17 Westview Road stated that she lives less than 100 feet from the Property. She is a respiratory therapist and has a Masters in Environmental Health and is asthmatic and at this point she has also been going through treatment for cancer. Ms. Shafer stated her concern is that the

project has not been well thought out in terms of how much air pollution will be created causing health risks to residents of the area and to children who use Everett Field.

Sara O'Farrell, 27 Westview Road read the definition of a "wooded lot" from a Journal of Agriculture from May of 1986 to the Board. Ms. O'Farrell stated that she believes that this development would not be consistent with the Master Plan.

Mary Purcell, 15 Westview Road stated that she feels this development is a mistake, would be dangerous and unhealthy and that all on her block will suffer if the Board approves the Application.

Ms. Purcell stated her house sits inches away from Property and that a proposed privacy fence will virtually engulf her window. Ms. Purcell expressed her desire that if the project is approved, the dumpster could be located to the far side of the Property Ms. Purcell further stated she called the Board of Health in Essex County and spoke to Dr. Michael Festa who told her that the dumpster should not and could not be under her window. Ms. Purcell expressed concern about the proposed blasting that would occur in such close proximity to her home and feared her home would collapse.

Terry Moore, 17 Westview Road used a poster with "pros and cons" of the Application. He expressed concern about blasting, that he and his neighbors are frightened. He expressed concern about the shutting down of utilities, pollution, noise, traffic safety, and trucks going in and out during construction. Mr. Moore further stated he is concerned about the stormwater management and said presently their basements do not flood but doesn't know what will happen after the project is completed. Mr. Moore expressed concerns as to the commercial viability and liability as some retail space will be on the second floor adjacent to residential space. Mr. Moore stated during the three years the project in its various forms had been pending there has not been one member of the public

or the community that has been in favor of or in support of the project. Mr. Moore stated that the only "pro" of the project are profits for DMH2, LLC.

Sandra Krouse, 13 Westview Road stated her family built her home 100 years ago and she has lived there for the last 38 years, that her home and windows are over 100 years old. Ms. Krouse stated the project is not a good project due to the blasting and health concerns of the residents and the children that play at Everett Field.

Tammy Rawding, 155 Forest Avenue stated that objects to the Application because the extent of the soil and stone removal and because the project will require construction of a 40 foot retaining wall. that it is easy to say that the process of doing it is not going to cause any damage or have any damage Ms. Rawding cite an ancedotal case of a builder constructing an inadequate retaining wall. Ms. Rawding asked the Board to consider damage that might occur after the project is completed.

Jim Lucas, 29 Hillcrest Terrace stated from the beginning of the Application the focus has been on the Applicant's right to develop rather than the ability to complete the project without incident and whether there would be any benefit of the town. Mr. Lucas stated he does not believe the project with the major construction and all that is involved is consistent with protecting the general health and welfare of the community.

Chuck Purcell who lives in Park Ridge, New Jersey stated his mother lives at 15 Westview Road. He asked the Board to consider the location of the garbage dumpster stated that he wanted to put into perspective the size of the walls to be constructed. Mr. Purcell stated he has been in the medical field for over 30 years and what he learned from that is just because you can do something doesn't mean you should do it because bad things can happen.

Gloria Machnowski, 113 South Prospect Street stated this project has the potential to disrupt Brookdale and Lanning Elementary Schools, Everett Field, the homes near the Property, and the

traffic flow on Bloomfield Avenue. Ms. Machnowski stated that if the utilities are affected that would impact the schools and also that the project has the potential to jeopardize the health and well-being of children and the community and she strongly urged the Board to consideri a safer alternative to the plan.

Mary Wilkes, 150 Franklin Street stated she has safety concerns about the traffic delays resulting from the blasting and the starting and stopping of traffic and concerns about cut thru traffic and the response time of emergencies for volunteers during construction. Ms. Wilkes further stated she is concerned for all of the residents who live near the Property because of noise levels, the ground vibrations and the environmental issues that have been expressed to the Board. Ms. Wilkes stated that she does not think it is fair to have the residents have to withstand all that is involved with the blasting or the consequences of the blasting.

Summations

Jack McEvoy, 20 Montclair Avenue thanked everyone for their time and stated throughout the meetings they have all gotten a sense of what this project is about. Everything is packed in and to him that qualifies as over-development.

Mr. McEvoy stated that the Applicant had said that it would try to accommodate the neighbors but that there had been no accommodation. He expressed concern over the location where of the dumpster and that in the 68,000 square feet Property the dumpster is in the worst possible place it could be located as a result of the poor location of the proposed structure Mr. McEvoy stated construction of the putting the building closer to Bloomfield Avenue would help preserve the residential character of the area and make the project and the driveway safer. Mr. McEvoy stated he is concerned about the blasting and possible problems with utilities. He noted that utilities had not yet been marked on the plans

Mr. McEvoy stated that 200 Bloomfield Avenue is currently a single family residential home and that if this plan is approved the Property will then be used for commercial or manufacturing purposes. Mr. McEvoy mentioned the deed restriction which Mr. Trembulak has acknowledged exists. Jessica Pearson, 20 Montclair Avenue stated she first wanted to acknowledge and thank the Board for the many long nights and lengthy discussions spent on this application.

Ms. Pearson stated if this property is being considered a single lot than she believes the Property is a corner lot. Ms. Pearson stated the Property is a little over ne and one half acres and that is had been determined by the Township's hired experts that the Property is predominately wooded. Ms. Pearson stated as you pass the property on Bloomfield Avenue you see an abundant amount of trees coming over the wall many of which are not depicted on the Applicant's picture of where the trees will be removed.

Ms. Pearson stated the nine test pits dug on the Property were dug on the flattest part of the Property near what is or will be the buffer zone and that no pits were dug in the inner portion of the Property.

Ms. Pearson said that the stormwater management report does not represent the true hydrologic soils upon the site and that Mr. Petry therefore presented faulty test results as well as a faulty determination of the true current recharge that the pre-developed property currently performs. She supported her contention by noting that Mr. Petry omitted 62 acres when making his calculations.

Ms. Pearson stated that Mr. Petry left out the actual amount of recharge in his report and that he is mandated to match the recharge on the post developed site.

Ms. Pearson asked rhetorically whether but for the house, driveway and walkways, would anyone determine that this area was previously developed. She cited the Brunner property in Verona which in her opinion directly contrasts with this site as to being developed previously.

Ms. Pearson stated the project will bring extraordinary determent to the residents in the area with the commercial traffic, noise, garbage pick-ups, and odors – that the detriment will be to their everyday lives, their quality of life and the values of their homes.

Mr. Pearson also defended Mr. Steck who, like Mr. Petry, is not a traffic engineers, but unlike Mr. Petry, Mr. Steck was not permitted to discuss the sight lines. She believed that had Mr. Steck had that opportunity to discuss sight lines he might offered insight into solving many of the "woes."

Ms. Pearson stated that Mr. Staiger's line of sight is in the middle of the first traffic lane on Bloomfield Avenue which would cause a driver to roll through the stop signs at the egress driveway to Bloomfield Avenue. She concluded that the Application is poorly conceived.

Mr. Dusinberre stated during the course of the Application there were variance discussions and the Board ruled against the Objectors on those issues. He asked that the Objectors' right be reserved with regard to those issues.

Mr. Dusinberre stated one of the first things the Board is going to have to wrestle with when they hear from Mr. Jemas and Mr. Mascera is what is the Boards' standard of review.

Mr. Dusinberre stated that Mr. Mascera will most likely inform the Board that once it makes a determination that the ordinance has been compiled with it is a pretty drastic thing to deny the application and this makes his job harder more difficult. However, Mr. Dusinberre noted that issues of health and safety had been raised and that the Board could consider those issues under the law.

Mr. Dusinberre stated that it was the Applicant who made the choices to make the proposed building the way it is which limits the ability to function the way it should and would like the Board to envision the way it will look if the Application is approved.

Mr. Dusinberre noted the following points to be problematic:

1. The location of the dumpster having a close proximity to a neighbor, odors and the noise of the dumpster opening and closing at all hours
2. The loading zone location which might interfere with the dumpster location.
3. The four parallel parking spaces and the safety issues associated therewith
4. The sidewalk width
5. The sight line distance at the Westview Road exit
6. The ability of Westbound traffic on Bloomfield Avenue to locate and turn into the building e

Mr. Dusinberre stated that any one of the noted issues would be reason to deny the application.

Finally, Mr. Dusinberre questioned if it was appropriate for the Municipal Engineer to wear "many hats" and to be a voting member of the Board. Mr. Dusinberre suggested to the Board that the Engineer's critical involvement should disqualify him from voting on the Application.

Mr. Jemas stated that the issue comes down to Mr. Dusinberre, Mr. McEvoy and Ms. Pearson trying to create items to divert and create conflict where there is none, create issues and differences where there are none. Mr. Jemas stated there is the Master Plan, Verona ordinances and laws that the Applicant must follow and that the Applicant submitted a project that conforms to the Master Plan, the Verona Ordinances and the controlling laws.

Mr. Jemas noted to the Board that the Applicant had presented expert testimony including that of an independent Engineer to support the Application.

Mr. Jemas stated regarding the comments about Mr. Helb that all land use professionals are accustomed to Township Engineers serving on Planning Boards in a capacity in dual roles and often interacts with applicants and objectors during the course of an Application. Mr. Jemas informed the Board that the attention on Mr. Helb's role was an attempt to divert attention from the merits of the Application.

Standard of Review

Mr. Mascera informed the Board that Mr. Dusinberre and Mr. Jemas both had been accurate and

truthful in their closing statements. He told the Board that despite that the Board had decided that the Applicant did not require any variances in order for the site plan to be approved, no Board Member had to vote in favor of the Application. Mr. Mascera advised the Board that there is no "by right" application, that even an application with no variance required the Board's scrutiny and judgment as to whether an application should be approved.

Mr. Mascera stated that Mr. Trembulak had written a letter to him setting forth Mr. Trembulak's contention that Pizzo Mantin Group v. Randolph, 137. NJ 216, (1994) was controlling and that according to that case if the Application conformed to the controlling ordinances and laws, the Board could not deny the Application. Mr. Mascera discussed the findings of the court in Sartoga v. West Paterson, 346 NJ Super 569 (App Div 2002) and Shime v. Washington Township, 98 NJ Super 395 (App Div 1997) with the Board.

Mr. Mascera advised the Board members that the members could in fact take a "drastic action" and vote to deny the Application despite that the pertinent ordinance standards had been met regarding the bulk requirements and other standards relating to the physical characteristics of the Application. Mr. Mascera advised that each member should consider all of Verona's ordinances including section 118-17 which sets forth the standard of review of a site plan application. Mr. Mascera read the ordinance aloud to the members and informed them that if they believed that the Applicant had not met any of the standards set forth in that ordinance section, they could vote to deny the Application (Section 118-17 is attached hereto and incorporated by reference herein).

Findings of Fact

The Applicant's proposed mixed retail/residential use is permitted as a conditional use in the Extended Town Center Zone subject to area, yard and bulk regulations, and any other controls identified in the conditional use regulations of the Code.

The Property is approximately 1.5 acres, which satisfies the zoning regulation which provides that property shall not be developed unless such property is at least 12,000 square feet.

The Application was subject to the following additional criteria of the Extended Town Center Zone District:

Minimum Front Yard Setback	50 Feet
Minimum Side Yard Setback	20 Feet
Minimum Rear Yard Setback	30 Feet
Maximum Height (Stories/Feet)	3/50
Maximum Lot Coverage	40%
Maximum Improved Lot Coverage	80%

The Board found that the Application met all of the above mentioned criteria.

Section 150-17.5C.13 of the Verona Zoning Code requires a 15 foot landscaped buffer where the Property abuts a residential zone as a conditional use requirement. Code Section 150-11.1 provides additional requirements including that a buffer is to be five percent of the lot depth, with a required minimum of five feet and a required maximum of 30 feet.

Section 150-12.6 of the Code provides that off street parking shall be regulated as per the standards set forth in the New Jersey Residential Site Improvements Standards regulations and as further set forth in the ordinance. The Application called for 64 parking spaces which would be in compliance with the Code.

The Planning Board determined that the Applicant did not require variances. Prior to making that determination, the Planning Board heard testimony regarding whether variances were required, discussed the issues, sought the advice of counsel and of the Township Planner, and referred to the controlling ordinances.

Mr. Dusinenberre questioned whether the Applicant could *create* a buffer as part of the ordinance requirements (Section 150-11.1) or whether the Code required that part of the Property be left in its natural state. The Board reviewed Code sections 150-11.1A and 150-11.1D and determined that when the sections were read in conjunction with each other, the Code intended that an Applicant could create a buffer as part of the development after an application is approved. The Board considered, among other things, that if no buffer exists between a proposed commercial use and a residential use, a buffer undoubtedly would have to be created in order to meet the ordinance criteria, and that a developer could not argue that the term "natural state" (150-11.1D) could be interpreted to mean that the developer could leave the area untouched with perhaps only low lying grass or small vegetation. The Board further noted that Section150-11.7 of the Code recommended certain types of plantings for buffer zones, and therefore if planting are contemplated, the Applicant could create the required buffer. The Board decided in favor of the Applicant's position that the Applicant could create a buffer as part of the development, that there did not exist a buffer, and that Code Sections 150-11.1 and 150-17.15 did not require the Applicant to maintain the Property in its existing condition or prohibit the Applicant from removing trees on the Property. The Board decided that the decision that it had made during the prior application regarding a developer's ability to create a buffer was sound, and, for the reasons set forth herein, rejected Mr. Dusinberre's contention that the Applicant was required to leave the perimeter of the Property in its natural state in order to comply with the controlling ordinance provisions.

Deliberations

Prior to the final vote on the Application, the Board considered what conditions, if any, would be imposed on the Applicant if the Board voted to approve the Application. The Board

decided on the following conditions which were arrived at through discussion and testimony throughout the application process:

1. The lots would be merged
2. No access to the site from Montclair Avenue
3. There be a deed restriction so as to prevent access to Montclair Avenue
4. That a guardrail to be constructed at the end of Montclair Avenue
5. An easement be granted by the Applicant to the Township for the sanitary sewer from Montclair Avenue
6. The wall design calculations to be submitted by a professional engineer
7. The applicant must post sufficient escrow monies to cover inspection of the wall
8. There must be an annual report including the preventive and corrective maintenance for the stormwater management plan
9. The Applicant must provide shields on all perimeter lighting so there is no spillover to the residential properties
10. The Applicant must enter into a developer's agreement with the Township.
11. The Applicant must post a performance bond
12. The applicant must submit an insurance certificate
13. Solid waste and recycling shall be done by private contract
14. The HVAC equipment must be properly screened from the residential properties
15. The Applicant must grant Title 39 jurisdiction to the Township
16. The Applicant must comply with the requirements of the affordable housing development fee ordinance
17. The Applicant must comply with the Verona soil removal ordinance
18. The Applicant must provide additional landscaping and screening across the southwest property line along the rear yards of the Westview Road properties
19. The Applicant will replace sidewalks in disrepair along the property frontage on Bloomfield Avenue.
20. The Applicant must file a treatment works application for sewer extension and water extension, if required by regulation.
21. The Applicant shall provide a construction and maintenance bond
22. The Applicant shall be responsible for water and sewer tie-in fees
23. Approval if granted would be subject to the Hudson/Essex/Passaic Soil Conservation District approval
24. Approval if granted would be subject to the Essex County Planning Board approval.
25. The Applicant must maintain a sidewalk width to accommodate ADA requirements of 4 feet
26. The Applicant shall have a seismologist on during blasting and the Applicant shall perform a pre-blast inspection and post blast surveys
27. The Applicant will install a directional sign
28. The Applicant will reduce the height of the 6 foot fence that will block Mary Purcell's window if the reduction does not create a variance

NOW THEREFORE BE IT RESOLVED

After considering all of the testimony and all of the comments of parties, neighbors and other attendees of the hearings, in support of its decision, the Board makes the following Findings of Fact:

1. The Verona Planning Board has proper jurisdiction to hear the within matter.

2. The subject property consists of two lots is located at 176 and 200 Bloomfield Avenue, Verona, New Jersey. The lots will be merged by the Applicant.

3. The Property is within the Township's Extended Town Center Zone.

4. The Property fronts on Bloomfield Avenue and on Westview Road. A portion of the rear of the Property abuts Montclair Avenue.

5. The Property is vacant but for an unoccupied home and garage. The home is in a general state of disrepair.

6. The Applicant proposed to construct a mixed commercial/residential use, the mix being in equal proportion between the commercial and the residential.

7. The proposed use is permitted in the Extended Town Center Zone as a conditional use.

8. The Applicant submitted the Application for Approval to construct 9304.75 square foot of retail space, 6536.50 on the first floor, 2768.25 square feet of retail space on the second floor, and eight residential apartments, three on the second floor totaling 2768.25 square feet and five on the third floor totaling 6536.50 square feet.

9. The Applicant did not seek variances.

10. Although, many neighboring property owners and other individuals who do not live in proximity to the Property are concerned about the possible development and believe that the development will cause hardship by increasing traffic, adversely effecting drainage,

encroaching on neighbors and otherwise adversely impacting the public good, those factors did not override the fact that the Applicant had met all of the Conditional Use and site plan criteria in the controlling ordinances.

11 Construction, including blasting, will at times interfere with neighbors' quiet enjoyment of their property but the Board is not empowered to decide an Applicant based upon whether blasting will be required during construction.

12. Disturbance to neighbors is not a consideration for the Board in determining whether or not to approve the Application.

13. The Application is exempt from ground water recharge requirements by virtue of NJAC 7:8-4 *et seq.*

14. The Applicant's stormwater management plan complies with the Township's stormwater management ordinance.

15. The Applicant provided adequate parking an adequate loading zone and an adequate traffic and pedestrian control plan.

14. The proposed retail use on the second floor is unusual, but permited under the Verona Code.

NOW THEREFORE BE IT FURHER RESOLVED

1. The Mayor and Council of the Township of Verona passed the controlling zoning ordinances in 2011. The governing body gave thought and consideration to the ordinances prior to passage. The Board must give deference to the zoning ordinances.

2. The Applicant proved through testimony that the Application met all of the provisions of the controlling ordinances.

BE IT FURTHER RESOLVED

The Board members deliberated the merits of the Application. All of the members, including Mr. Foley who as an alternate member was not eligible to vote, noted an appreciation of the concerns of the residents who had appeared at the hearings and who had voiced concerns about the Application. After much deliberation, and after considering the standard of review, the Board voted by a 5 to 4 margin to approve the Application for the Conditional Use and for the site plan.

THEREFORE BE IT RESOLVED , that the Application of DCH2 is approved based on the following votes:

Chairman Brown asked for a motion to **approve.**

Mr. Helb	Yes
Councilman Ryan	No
Chairman Brown	Yes
Ms. Critchley	No
Mr. Lugo	Yes
Mr. Matthewson	No
Mr. Kirby	No
Ms. Collins	Yes
Mr. Lonergan	Yes

Application Approved on June 17, 2015

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

Memorialized: **August 27, 2015**

Yes: No: Abstain:

ATTEST:

James Kirby, Secretary

Chairman

I, James Kirby, Secretary to the Planning Board of the Township of Verona of the Borough of Verona, County of Essex, do hereby certify that the foregoing is a true and correct copy of the Resolution prepared to reflect the actions taken by the Planning Board of the Township of the Borough of Verona on August 27, 2015

Verona Code Section 118-17 Standards of Review

he following criteria have been set forth as a guide for evaluating the adequacy of proposed development in the Township. The Planning Board shall review the site plan for compliance with all applicable ordinances and the Master Plan; for harmony with surrounding uses and the overall plan for development of the Township; for the promotion of the health, safety, order, efficiency and economy of the Township; and for the maintenance of property values and the general welfare. Based upon its review and the degree to which it can make positive findings, the board may approve, conditionally approve, request modifications or deny approval of the site plan based on evaluation of the site plan details with respect to:

A.

The site plan's compliance with all provisions of the Zoning Ordinance,[1] including but not limited to off-street parking and loading; signs and lighting; open space and the generation of objectional smoke, fumes, noise, odors, dust, glare, vibration or heat.

[1]

*Editor's Note: See Ch. **150**, Zoning.*

B.

The site plan's compliance with all requirements and standards of the Subdivision Ordinance,[2] including but not limited to standards for construction, layout, dimensions, materials, stormwater retention or detention facilities and sewerage facilities.

[2]

*Editor's Note: See Ch. **127**, Subdivision of Land.*

C.

The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.

D.

The relationship of the development to adjacent uses in terms of harmonious use and design, setbacks, maintenance of property values and negative impacts.

E.

The provision of a safe and efficient vehicular and pedestrian circulation system.[3]

[3]

*Editor's Note: See Ch. **140**, Vehicles and Traffic and Ch. **125**, Streets and Sidewalks.*

F.

The design and location of off-street parking and loading facilities to ensure that all such spaces are usable and are safely and conveniently arranged.[4]

[4]

*Editor's Note: See Ch. **150**, Zoning.*

G.

The sufficient width and suitable grade and location of streets designed to accommodate prospective traffic and to provide access for fire-fighting and emergency equipment to buildings.[5]

[5]

*Editor's Note: See Ch. **74**, Fire Prevention and Ch. **125**, Streets and Sidewalks.*

H.

The coordination of streets so as to compose a convenient system consistent with the circulation element of the Master Plan.[6]

[6]

*Editor's Note: See Ch. **140**, Vehicles and Traffic.*

I.

The design and location of buildings in an efficient and aesthetically pleasing manner.[7]

[7]

*Editor's Note: See Ch. **64**, Construction Codes, Uniform, and Ch. **150**, Zoning.*

J.

The use of landscaping and screening to provide adequate buffers to shield lights, noise, movement or activities from adjacent properties when necessary; and to complement the design and location of buildings and be integrated into the overall site design.

K.

Exterior lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection on adjacent properties.[8]

[8]

*Editor's Note: See Ch. **150**, Zoning.*

L.

The location, size and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.

M.

Protection and conservation of soils from erosion by wind or water or from excavation or grading.[9]

[9]

Editor's Note: See Ch. 21, Soil Removal.

N.

Protection and conservation of watercourses and areas subject to flooding.[10]

[10]

*Editor's Note: See Ch. **77**, Flood Control.*

O.

The adequacy of water, drainage, sewerage facilities, garbage disposal and other utilities necessary for essential services to residents and occupants.

P.

The design and location of signs so as to be aesthetically pleasing, harmonious with other signs on the site and located so as to achieve their purpose without constituting hazards to vehicles and pedestrians.[iii]

EXHIBIT E

REDEVELOPMENT AGREEMENT

By and Between

THE TOWNSHIP OF VERONA

As Redevelopment Entity

and

DMH2, LLC

as Redeveloper

Dated: Aug. 24, **2026**

THIS REDEVELOPMENT AGREEMENT (the "**Redevelopment Agreement**") is made this 24 day of August, 2026 (the "**Effective Date**") by and between **THE TOWNSHIP OF VERONA**, a municipal corporation of the State of New Jersey, having its offices at 600 Bloomfield Avenue, Verona, New Jersey 07044, in its capacity as a "redevelopment entity" pursuant to *N.J.S.A.* 40A:12A-4(c) (the "**Township**"); and **DMH2, LLC**, a New Jersey limited liability company, having its offices c/o Michael Harrison 3155 Route 10 East – Suite 214, Denville, New Jersey 07834, together with permitted successors or assigns as hereinafter provided, (the "**Redeveloper**", together with the Township, the "**Parties**" or each a "**Party**").

WITNESSETH

A. The Township is authorized to determine whether certain parcels of land within the Township constitute an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.* (as amended and supplemented the "**Redevelopment Law**").

B. By Resolution 2024-075, adopted by the municipal council of the Township (the "**Township Council**") on May 6, 2024, the Township Council declared the entirety of the Bloomfield Avenue Corridor as an area in need of rehabilitation, which includes the property located at 176-200 Bloomfield Avenue in the Township, as shown on the Township's official tax maps as Block 202, Lots 1 and 23 (the "**Property**").

C. On March 9, 2026, pursuant to Ordinance No. 2026-03, the redevelopment plan entitled "Township of Verona 176-200 Bloomfield Avenue Redevelopment Plan" was adopted by the Township Council for the Property (the "**Redevelopment Plan**").

D. Pursuant to the Redevelopment Law, the Township is acting as the "redevelopment entity" (as such term is defined at *N.J.S.A.* 40A:12A-3 of the Redevelopment Law) for the Property.

E. The Redeveloper is the owner of the Property and has submitted to the Township a proposal to undertake the development of a maximum of twenty-eight (28) residential units, of which four (4) shall be affordable housing units subject to a 40-year deed restriction (the "**Affordable Housing Units**") along with a deed restriction for a portion of the Property, parking, grading and stormwater improvements and other improvements included in the Redevelopment Agreement (the "**Project**").

F. The Township has determined that the Redeveloper possesses the proper qualifications and experience to implement and complete the Project in accordance with the Redevelopment Plan, and all other applicable laws, ordinances and regulations.

G. In order to effectuate the Redevelopment Plan, the Project and the redevelopment of the Property, the Township Council has determined to enter into this Redevelopment Agreement with the Redeveloper, which designates Redeveloper as the "redeveloper" of the Project as that

term is defined in 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:

ARTICLE 1
DEFINITIONS

1.1 Definitions. As used in this Redevelopment Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Redevelopment Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Redevelopment Agreement unless otherwise specified.

(a) The following terms shall have the meanings ascribed to them in the Recitals to this Redevelopment Agreement:

Affordable Housing Units
Effective Date
Parties
Party
Project
Property
Redeveloper
Redevelopment Agreement
Redevelopment Law
Redevelopment Plan
Township
Township Council

(b) The following terms shall have the definitions ascribed to them herein:

"**Affiliate**" means 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.

"**Affordability Controls**" means the restrictions set on rents and tenant income limits on the Affordable Housing Units to be administered by the Redeveloper or its designee, compliance with which will be enforced by the Township.

"**Appeal Period**" shall mean the period specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

"**Applicable Laws**" means all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, 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.

"**Bond**" means performance and maintenance guarantees and review escrows pursuant to the provisions of *N.J.S.A.* 40:55D-53 *et seq.* of the MLUL and all Applicable Laws.

"**Building Permit**" means a building permit issued by or on behalf of the Township for construction of the Project, excluding a demolition permit but including a footings and foundation permit.

"**Business Days**" means all days except Saturdays, Sundays and the days observed as public holidays by the Township.

"**Certificate of Completion**" means written acknowledgement by the Township in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Redevelopment Agreement and the Redevelopment Plan.

"**Certificate of Occupancy**" means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Township and the applicable provisions of the Uniform Construction Code.

"**Commencement**," "**Commence Construction**," "**Commencement of Construction**," or "**Commencement Date**" means the undertaking of any actual physical construction of any portion of the Project, including demolition, site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure.

"**Completion**," "**Completion of Construction**," "**Complete Construction**," or "**Completion Date**" means the completion of construction of the Project, in accordance with the Redevelopment Plan, this Redevelopment Agreement, and Governmental Approvals, sufficient for issuance of a Certificate of Occupancy and subject only to installation of landscaping, if the delay in completion thereof is necessitated by seasonal concerns.

"**Completion Notice**" means written notification to the Township of Completion of Construction of the Project and request by Redeveloper for the issuance by the Township of a Certificate of Completion for the Project.

"**Conservation Area**" is defined in Section 4.2(i).

"**Control**" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

"**County**" means Essex County, New Jersey.

"**Declaration of Covenants and Restrictions**" or "**Declaration**" means a written instrument to be executed by the Redeveloper and recorded in the Essex County Clerk's Office,

substantially in the form annexed hereto as **Exhibit B**, intended to encumber the Property and to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions applicable to the Redeveloper and its successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project.

"Deed-Restriction Period" is defined in Section 4.7(b).

"**Environmental Laws**" means all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Materials, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") (42 U.S.C. §§ 9601- 9675); the Resource Conservation and Recovery Act of 1976 ("**RCRA**") (42 U.S.C. § 6901 *et seq.*); the Clean Water Act (33 U.S.C. § 1251 *et seq.*); the Hazardous Material Transportation Act, as amended, (49 U.S.C. § 180, *et seq.*); the New Jersey Spill Compensation and Control Act (the "**Spill Act**") (*N.J.S.A.* 58:10-23.11 *et seq.*); the Industrial Site Recovery Act, as amended ("**ISRA**") (*N.J.S.A.* 13:lK-6 *et seq.*); the New Jersey Underground Storage of Hazardous Substances Act (*N.J.S.A.* 58:10A-2l *et seq.*), the New Jersey Water Pollution Control Act (*N.J.S.A.* 58:10A-1 *et seq.*); the New Jersey Environmental Rights Act (*N.J.S.A.* 2A:35A-1 *et seq.*); the New Jersey Site Remediation Reform Act (*N.J.S.A.* 58:10C-1 *et seq.*); the New Jersey Solid Waste Management Act, as amended ("**SWMA**") (*N.J.S.A.* 13:1E-1, *et seq.*); the Brownfield and Contaminated Site Remediation Act (*N.J.S.A.* 58:10B-1, *et seq.*); the Administrative Requirements for the Remediation of Contaminated Sites (*N.J.A.C.* 7:26C, *et seq.*); the NJDEP Remediation Standards (*N.J.A.C.* 7:26D, *et seq.*); the Technical Requirements for Site Remediation (*N.J.A.C.* 7:26E, *et seq.*); and any other rules and regulations promulgated under any of the foregoing.

"**Escrow Account**" means an account established by the Township in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Redevelopment Agreement, to hold the Escrow Deposit(s).

"**Escrow Deposit**" means all deposits paid by Redeveloper into the Escrow Account in accordance with this Redevelopment Agreement.

"**Estoppel Certificate**" means a written certificate stating that (i) this Redevelopment Agreement is in full force and effect, and (ii) there is no Event of Default under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of Notice would result in an Event of Default under this Redevelopment Agreement) or stating the nature of the Event of Default or other such event, if any.

"**Event of Default**" is defined in Section 5.1.

"**Exemption Period**" is defined in Section 4.2(h).

"**Existing Members**" means the Persons owning a ten (10%) or greater membership interests in the Redeveloper as of the date of this Agreement, which Persons are set forth in **Exhibit C** annexed hereto.

"**Fair Housing Act**" means the Fair Housing Act of 1985, *N.J.S.A.* 52:27D-301 *et seq*.

"**Force Majeure Event**" means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics and other declared public health emergencies; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials.

"**Foreclosure**" is defined in Section 6.3(b).

"**Governmental Approvals**" means all governmental approvals required for the Commencement of Construction, Completion of Construction, and use and occupancy of the Project, including, without limitation, the Planning Board Approvals; County planning board approvals, if and to the extent required; Building Permits; environmental permits, approvals, consents or authorizations from NJDEP and any other applicable governmental agencies to the extent required; sewerage capacity approvals, utilities-related permits and any and all other necessary governmental permits, licenses, consents and approvals.

"**Hazardous Materials**" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in §101(14) of CERCLA or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the RCRA or regulations promulgated under RCRA; (iii) any substance regulated by ISRA or any regulations promulgated under ISRA, the Spill Act, or any regulations promulgated under the Spill Act, the SWMA, or any regulations promulgated under the SWMA; (iv) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601, *et seq*.); (v) gasoline, diesel fuel, or other petroleum hydrocarbons; (vi) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vii) polychlorinated biphenyls; (viii) radon gas; and (ix) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under any Environmental Law, ordinance, rule or regulation, now or hereinafter enacted, or the common law, or any other Applicable Laws relating to the Property.

"**Institution**" shall mean any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee's welfare, pension or retirement system.

"**Improvements**" shall mean all improvements constructed as part of the Project.

"**MLUL**" means the Municipal Land Use Law, *N.J.S.A.* 40:55D-1 *et seq.*, as amended from time to time.

"**Mortgage**" means any security interest, evidenced by a written instrument, encumbering the Project, the Property, or any portion thereof, or interest therein, that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

"**Mortgagee**" shall mean the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

"**NJDEP**" means the New Jersey Department of Environmental Protection, and any successors in interest.

"**Notice**" means written notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other.

"**Permitted Transfers**" is defined in Section 3.5(b).

"**Person**" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, urban renewal entity, institution, or any other entity.

"**Planning Board Approvals**" means preliminary and final site plan approval to be obtained from the Township Planning Board.

"**Remediate**" or "**Remediation**" means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of Hazardous Materials, known or unknown, on, under, or migrating to or from the Property, in accordance with Applicable Laws, Environmental Law and Governmental Approvals, including but not limited to any "Preliminary Assessment", "Site Investigation", "Remedial Investigation" or "Remedial Action" (as such terms are defined under *N.J.S.A.* 7:26E-1.8).

"**State**" means the State of New Jersey.

"**Transfer**" means, prior to Completion of the Project, (i) a sale or conveyance of all or any portion of the Property or Project, or interest therein, by the Redeveloper to any other Person; (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of the Redeveloper as it exists on the date of this Redevelopment Agreement, or (iii) any assignment of this Redevelopment Agreement to any other Person.

"**Township Costs**" shall mean (i) all reasonable outside professional and consultant fees, out of pocket costs or expenses incurred by the Township arising out of or in connection with the preparation, performance, administration, or enforcement of this Redevelopment Agreement or arising out of or in connection with the Project, except that costs associated with the negotiation, preparation, and adoption of the Redevelopment Plan and any costs associated with the Township's

efforts, including litigation, to obtain substantive certification of its Fourth Round Housing Element and Fair Share Plan including, but not limited to, its lawsuit docketed as ESX-L-594-25; (ii) subject to the Redeveloper's termination rights pursuant to Section 5.7, litigation costs arising out of or in connection with a dispute with a third party with respect to this Redevelopment Agreement or the Project; and (iii) any other out of pocket fee, cost or expense reasonably incurred by the Township, after the date of this Redevelopment Agreement, to satisfy its obligations under this Redevelopment Agreement or in furtherance of the Project, but shall not include any and all costs incurred in connection with the Redeveloper's site plan application to the Planning Board and governed by the escrow deposited by the Redeveloper in connection with such application in accordance with the MLUL.

"**UHAC**" means 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.

1.2 Interpretation and Construction. In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment Agreement.

(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) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment 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 or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

2.1 Designation as Redeveloper. The Township hereby designates and appoints the Redeveloper as redeveloper of the Project on the Property. For so long as this Redevelopment Agreement and the designation hereunder remain in effect, the Redeveloper shall have the exclusive right to redevelop the Property in accordance with the Redevelopment Plan, the Governmental

Approvals, the Redevelopment Law and all other Applicable Laws, and the terms and conditions of this Redevelopment Agreement.

2.2 Representations and Warranties of the Township. The Township hereby makes the following representations and warranties:

(a) The Property has been duly investigated and designated as an area in need of rehabilitation in compliance with the Redevelopment Law and all Applicable Laws and is currently in full force and effect;

(b) The Redevelopment Plan has been duly adopted in compliance with the Redevelopment Law and all Applicable Laws and is currently in full force and effect;

(c) The Township is a municipal corporation, duly organized and existing under the laws of the State, and as such, has the legal power, right and authority pursuant to the Redevelopment Law to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder;

(d) The Township has authorized the execution of this Redevelopment Agreement by resolution, and has duly executed this Redevelopment Agreement;

(e) To the best of the Township's knowledge, there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the Township entering into or performing its obligations under this Redevelopment Agreement;

(f) This Redevelopment Agreement has been duly executed by the Township, and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Township is a party;

(g) The Township represents that, to the best of its knowledge and belief, there is no action, proceeding or investigation now pending, known or believed to exist which questions the validity of the Redevelopment Plan or this Redevelopment Agreement or any action or act taken or to be taken by the Township pursuant to the Redevelopment Plan or Redevelopment Agreement; and

(h) The uses of the Property, as contemplated by this Redevelopment Agreement, are authorized by the Redevelopment Law, Applicable Laws and the Redevelopment Plan.

2.3 Representations and Warranties of Redeveloper. The Redeveloper hereby makes the following representations and warranties:

(a) The Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the Effective Date of this Redevelopment Agreement.

(b) The Redeveloper is a duly organized and validly existing legal entity under the laws of the State and all necessary consents have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the Persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

(c) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date;

(d) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed;

(e) No indictment has been returned against the Redeveloper or any officer or shareholder of the Redeveloper;

(f) The Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of the Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which the Redeveloper is a party;

(g) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project;

(h) To the best of the Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Redevelopment Agreement;

(i) The Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which the Redeveloper is a party;

(j) All information and statements included in any information submitted to the Township and its agents, are true and correct in all respects. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Township to enter into this Redevelopment Agreement; and

(k) To the best of the Redeveloper's knowledge and belief after diligent inquiry, the Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Township for any property situated in the Township.

ARTICLE 3
COVENANTS AND RESTRICTIONS

3.1 Covenants and Restrictions. The Township shall record the Declaration of Covenants and Restrictions with the Essex County Clerk's Office promptly upon the Effective Date, at the cost and expense of the Redeveloper.

3.2 Description of Covenants. The following covenants and restrictions are imposed upon the Redeveloper, its successors and assigns, and are intended to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise provided. They shall be recorded substantially in the form of a Declaration of Covenants and Restrictions annexed hereto as Exhibit B.

(a) The Redeveloper shall construct the Project on the Property in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals;

(b) Except for Permitted Transfers, which shall not require written consent of the Township, and subject to the terms of Section 3.5(a) hereof, prior to the issuance of a Certificate of Completion for the Project, the Redeveloper shall not effect a Transfer without the written consent of the Township, which shall not be unreasonably withheld, conditioned or delayed;

(c) In connection with its use or occupancy of the Project, the Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and the Redeveloper, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status;

(d) Subject to and in accordance with the terms hereof, 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; and the Redeveloper shall use the Property and/or Project only for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan;

(e) Subject to and in accordance with the terms hereof, the 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 hereof, the Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, and this Redevelopment Agreement

including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Redevelopment Agreement;

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

(h) The Redeveloper will promptly pay any and all taxes, assessments, service charges, or similar obligations when owed with respect to the Property and any other property owned by the Redeveloper situated in the Township.

3.3 Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.2 shall be covenants running with the land. All covenants in Section 3.2, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this 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 Township and its successors and assigns, and any successor in interest to the Property, the Project, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. Notwithstanding the foregoing, the agreements and covenants set forth in Section 3.2 shall cease and terminate as to the Project automatically and without further action upon the issuance of a Certificate of Completion for the Project, except for those covenants which survive in accordance with the terms of the Declaration. Upon the request of Redeveloper or any successor owner at any time after the issuance of a Certificate of Completion, the Township shall execute and deliver a discharge of the Declaration of Restriction in recordable form for the Project.

3.4 Enforcement by Township. In amplification, and not in restriction of the provisions of this Article 3, 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 3.2 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 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.

3.5 Prohibition Against Transfers of Interests in Redeveloper.

(a) The Redeveloper recognizes the importance of this redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Township in entering into this Redevelopment Agreement. The Township considers that a change in Control in Redeveloper or a transfer of thirty percent (30%) or more of the ownership interest in the Redeveloper is for practical purposes a Transfer or disposition of the Project. The Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Redevelopment Agreement with the Redeveloper, and, in so doing, the Township is relying on the obligations of the Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder. 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, the Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of the Redeveloper, nor shall there by any transfer of thirty percent (30%) or more of the ownership interest in the Redeveloper.

(b) Consent to Permitted Transfers. The Township hereby consents, without the necessity of further approvals, to the following Transfers (each, a "**Permitted Transfer**"):

(i) a Mortgage or related security granted by the Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Agreement, including any Mortgage or Mortgages, pledge, collateral assignment, security interest, mezzanine financing agreement, preferred requirement financing arrangement, UCC security interest,and other liens and encumbrances granted by the Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that the Redeveloper shall give the Township at least thirty (30) days prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee;

(ii) transfers of easements or dedications of portions of interests in the Property as may be required for utilities for the Project or otherwise as conditions of Governmental Approvals, including but not limited to any sanitary sewer easement required by the Planning Board Approvals;

(iii) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(iv) a lease agreement to a tenant or end user of the Project; and

(v) any conveyance of the Project, and the assignment of this Redevelopment Agreement and the rights and obligations arising hereunder, to an entity Controlled by Redeveloper or its Existing Members, including an urban renewal entity duly formed in accordance with the Tax Exemption Law, provided such assignee expressly assumes in writing all of Redeveloper's obligations hereunder with respect to the Project.

(c) Approval of Transfer. Except for Permitted Transfers, with respect to any Transfer that requires the Township's consent pursuant to the terms of this Section 3.5, the Township shall not unreasonably withhold, condition or delay its consent to such Transfer to a Transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper. The Township shall notify the Redeveloper in writing whether the Township consents to a Transfer within sixty (60) days after Redeveloper's written request to the Township for such consent.

(d) Any other Transfer, including without limitation, any Transfer of a portion of the Project shall be deemed a default hereunder.

3.6 Township Covenants. The Township hereby covenants and agrees that:

(a) The Township shall fully cooperate with the Redeveloper to ensure that all Governmental Approvals are obtained for the Project. Furthermore, the Township agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Agreement, and to execute and deliver any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper (at no cost to the Township) with respect to the Governmental Approvals; provided that nothing contained in this Section 3.6(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any governmental authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Township shall (A) request that all agencies of the Township having jurisdiction over any of the Governmental Approvals expedite the processing of all applications for Governmental Approvals, (B) schedule, convene and conclude all required public hearings in a manner consistent with Applicable Laws, without undue delay, and (C) request that all planners, engineers and other consultants engaged by the Township or any of its agencies review and comment on all submittals by the Redeveloper in an expeditious manner.

(b) The Township shall undertake and complete, with due diligence, all of its obligations under this Redevelopment Agreement.

ARTICLE 4
PROJECT DETAILS

4.1 Timeline and Implementation of the Project.

(a) Project Timeline.

(i) The Redeveloper shall submit its application for Planning Board Approvals within nine (9) months after the adoption of the Redevelopment Agreement;

(ii) The Redeveloper shall use commercially reasonable efforts to obtain all Governmental Approvals required for the commencement of construction of the Project other than Building Permits within twelve (12) months after receiving final and unappealable Planning Board Approvals;

(iii) The Redeveloper shall use commercially reasonable efforts to Commence Construction of the Project within twelve (12) months after obtaining all final and unappealable Governmental Approvals; and

(iv) The Redeveloper shall use commercially reasonable efforts to Complete Construction of the Project on or before twenty-four (24) months after the Commencement of Construction.

(b) If, subject to the provisions of this Agreement, the Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project timeline set forth above, for any reason, the Redeveloper shall promptly provide notice to the

Township stating: (i) the reason for the failure or anticipated failure, (ii) the Redeveloper's proposed method for correcting such failure, (iii) the Redeveloper's proposal for revising the timeline and (iv) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project timeline. Redeveloper's proposed revisions to the Project timeline shall be subject to the Township's approval, which shall not be unreasonably withheld, conditioned or delayed.

(c) In the event that Redeveloper does not obtain all necessary Governmental Approvals for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Township. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval.

(d) If the Redeveloper fails to Commence Construction in its sole discretion, then the Redeveloper shall have the right to terminate this Redevelopment Agreement upon written Notice to the Township. If this Redevelopment Agreement is terminated pursuant to the terms of this Section 4.1(d), then, except as expressly set forth herein to the contrary, this Redevelopment Agreement shall be of no further force and effect, and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

4.2 Construction of the Project.

(a) Construction Hours. Construction practices and hours shall be in accordance with Township Ordinances, which are available at the Township Building Department or through the Township Clerk.

(b) Maintenance. The streets and sidewalks adjacent to the Property will be cleaned on a regular basis by Redeveloper; provided, however, that Redeveloper agrees to clean up the Property within forty-eight (48) hours of a specific, reasonable request by the Township that Redeveloper do so or the close of the following Business Day, whichever is later. Should Redeveloper fail to comply with this obligation, the Township will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project.

(c) Pedestrian Access and Safety. The Township acknowledges that for safety reasons, the sidewalks adjacent to the Property may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, the Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. The Redeveloper shall supply to the Township Building Department plans and specifications providing for pedestrian safety at and across the Property as applicable. The Redeveloper shall keep the sidewalks abutting the Property clean and free of debris, ice and snow during the construction of the Project.

(d) Construction Parking. The Redeveloper shall make arrangements with the Township Construction Official and the Township Police Department for off-street parking for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Project site itself. The Township agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by the Redeveloper to accommodate the Redeveloper's construction activities.

(e) Preconstruction Meeting. There shall be a preconstruction meeting held at least seven (7) days prior to the Commencement of Construction, which meeting shall include the Township Construction Official, the Township Engineer, a representative from the Township Police Department, a representative from the Township Fire Department and representatives from the various utility companies.

(f) Construction Sign. The Redeveloper shall provide and erect a construction sign at the Property prior to the Commencement of Construction and shall maintain the sign until the Completion of Construction. The sign shall comply with the dimensional requirements of the Township's Land Use and Development requirements for "Temporary Signs," in accordance with the design provided by the Township and shall be separate from any sign erected by the Redeveloper to advertise the Project.

(g) Parking for Project.

(1) The Project shall include approximately fifty (50) parking spaces, of which no less than thirty-six (36) shall be provided on site on the Property. One (1) parking space shall be allocated on site on the Property for each of the Affordable Housing Units.

(2) The Township and the Redeveloper have agreed that the Redeveloper shall have the right to purchase fourteen (14) parking licenses, at prevailing municipal rates, for the use of its residents. Redeveloper may request such licenses at any time. The Township shall use all reasonable efforts to allocate such parking licenses in the nearest available municipal lot to the Property.

(h) Exemptions for Project. The Project shall be exempt from the Township's steep slope ordinance permitting requirements contained in Chapter 150, Article 23 of the Township Code. Additionally, for a period of twelve (12) months following the adoption of the Redevelopment Plan (the "**Exemption Period**"), the Project shall also be exempt from any and all changes in the Township's ordinances that negatively affect, impact or interfere with the financial feasibility for the development of the Project, other than general legislation applied uniformly throughout the Township. After the Exemption Period, all Township ordinances shall be applicable and enforceable.

(i) Deed Restriction for Property. As part of the redevelopment of the Property, the Redeveloper has committed to entering into a deed restriction for the northernmost portion of the Property going from the proposed retaining wall to the northernmost property line (the "**Conservation Area**"). The purpose of this deed restriction is to prohibit the development of any structures other than fencing and landscaping improvements within the Conservation Area, following the restoration and reforestation of the Conservation Area at the close of construction. The agreed

form of Deed Restriction is annexed hereto as **Exhibit D**, and will be recorded against title prior to the issuance of any Certificate of Completion.

4.3 Certificates of Occupancy and Certificates of Completion.

(a) Upon Completion of Construction of the Project, the Redeveloper shall diligently apply to the appropriate Township construction code official for a Certificate of Occupancy. For purposes of clarity, the Parties agree that upon the issuance of a Certificate of Occupancy, the Project, shall be eligible to be occupied (in whole or in part) in accordance with the terms thereof.

(b) Following Completion of the Project and receipt of a Completion Notice from Redeveloper, the Township agrees to issue a Certificate of Completion. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project, in this Redevelopment Agreement and the Redevelopment Plan. Within thirty (30) days after receipt of the Completion Notice, the Township shall provide Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project, in accordance with the provisions of this Agreement or is otherwise in default hereunder. Upon issuance of the Certificate of Completion, the Declaration of Covenants and Restrictions for the Project shall be released to the extent set forth herein.

4.4 Project Costs, Financing and Performance and Maintenance Guarantees.

(a) The Redeveloper agrees that the costs and financing for the Project are the sole responsibility of the Redeveloper, not the Township.

(b) Redeveloper shall post Bonds in the following manner:

(i) Prior to the Commencement of Construction, a performance bond or irrevocable letter of credit (or such other form of guarantee allowed in accordance with the MLUL) for those Improvements for which a performance guarantee may be required pursuant to the MLUL and as may be required pursuant to the approved site plan and Planning Board resolution, in an amount to be determined by the Township Engineer pursuant to the MLUL.

(ii) A maintenance guarantee in respect of those Improvements required to be bonded in accordance with the MLUL, in the form of a surety bond (or such other form of guarantee allowed in accordance with the MLUL) for a period not to exceed two (2) years after final acceptance of the Improvement, in an amount determined by the Township Engineer according to the method of calculation set forth in *N.J.S.A.* 40:55D-53 of the MLUL.

(iii) If applicable, the Bond must name the Township as an obligee and Redeveloper shall deliver a copy of the Bond to the Township prior to Commencement of Construction. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event any insurance company, financial institution or other entity issuing a performance guarantee herein, shall be

insolvent or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby state or federal agencies have taken over the management of the entity, within thirty (30) days after notice from the Township, Redeveloper shall replace the Bond.

(iv) In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect as a result of any act or omission by Redeveloper, then until an approved replacement of the lapsed Bond has been deposited with the Township, the Township may require Redeveloper to cease and desist any and all work on the Project, unless the Improvements required to be bonded have been completed and approved by the Township. In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect through no act or omission of Redeveloper, then unless Redeveloper fails to replace the Bond within ten (10) Business Days of notice given to Redeveloper by the Township, the Township may require Redeveloper to cease and desist work on the Project unless the Improvements required to be bonded have been completed and approved by the Township.

4.5 Environmental Obligations and Indemnification. The Parties hereby expressly acknowledge that the Township has made no representation as to the environmental condition of any part of the Property. The Parties hereto further expressly acknowledge and agree that to the extent any portion of the Property requires Remediation, or causes any other property to require Remediation, the Township shall have no responsibility therefor. The Parties hereto 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 Property, and that the Township has no obligation or liability whatsoever with respect to the environmental condition of the Property, or any other parcels which may claim contamination arising from the Property. The Redeveloper shall defend, protect, indemnify and hold harmless the Township and its agents from any claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Property, including, without limitation, claims against the Township and its agents by any third party.

4.6 No Rights in Third-Party Beneficiaries. This Agreement does not and will not confer any rights, remedies or entitlements upon any third person or entity other than the Parties, and their respective successors and assigns. This Agreement is for the exclusive benefit and convenience of the Parties hereto.

4.7 Affordable Housing Units. (a) Redeveloper shall construct the Affordable Housing Units in conformity with all applicable affordable housing regulations and all other Applicable Laws, including but not limited to UHAC and the Fair Housing Act.

(b) The requirement to construct the Affordable Housing Units and the construction thereof will be tracked on an ongoing basis as construction of the Project is implemented. The Redeveloper shall deed restrict the Affordable Housing Units for a period of forty (40) years (the "**Deed-Restriction Period**"). The commencement and termination of the Deed-Restriction Period shall be calculated pursuant to UHAC, the Fair Housing Act, and Applicable Laws. Upon reaching the termination of the Deed-Restriction Period, the Township shall promptly take formal action as may be required for the releasing of the Affordable Housing Units from any and all restrictions.

(c) The Redeveloper shall record a deed restriction for the Affordable Housing Units for the Deed-Restriction Period. The deed restriction for the Affordable Housing Units shall be approved by the Township's Administrative Agent prior to recordation. Redeveloper's obligation regarding the Affordable Housing Units includes, but is not limited to, income split requirements, pricing requirements, bedroom distributions, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements, all as set forth in the affordable housing regulations, UHAC, the Fair Housing Act, and as further described herein. The affordability levels for the Affordable Housing Units (as determined by UHAC, the Fair Housing Act, and Applicable Laws) shall be subject to the Township's verification of the eligibility of the Affordable Housing Units for affordable housing credit and, upon determination and assignment, shall not be modified for the Deed-Restriction Period.

ARTICLE 5
EVENTS OF DEFAULT; TERMINATION

5.1 Events of Default. Any one or more of the following shall constitute an "**Event of Default**" hereunder, subject to Force Majeure Event extension and tolling as provided elsewhere in this Redevelopment Agreement:

(a) If at any time the Redeveloper shall: (i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or (ii) make an assignment for the benefit of creditors; or (iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or State or other statute or law; or (v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of the Redeveloper or of all or any substantial part of its property or of the Project or any interest of the Redeveloper therein; or (vi) take any corporate action in furtherance of any action described in this subsection or (vii) if at any time any proceeding against the Redeveloper seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of the Redeveloper of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of the Redeveloper, or of all or any substantial part of its properties or of the Project or any interest of the Redeveloper therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty-five (45) days after the expiration of any such stay.

(b) The Redeveloper's failure to pay or delinquency in the payment of real property taxes, payments in lieu of taxes, if applicable, or assessments, which failure or delinquency is not cured within ten (10) days after Notice by the Township. No Notice by the Township shall be required. Redeveloper's failure to make any other payment due to the Township hereunder, which is not cured within thirty (30) days after Notice by the Township.

(c) Cancellation or termination by reason of any act or omission of the Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by the Redeveloper for the benefit of the Township, which failure or delinquency is not cured within thirty (30) days after Notice by the Township.

(d) Any Transfer (except for Permitted Transfers), without the written approval of the Township.

(e) If the Redeveloper fails to Commence Construction within the time frame specified in this Redevelopment Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure Events).

(f) Subject to Force Majeure Events, if the Redeveloper abandons the Project or substantially suspends work on the Project after the Commencement of Construction for a period of more than ninety (90) days and fails to recommence work within thirty (30) days after receipt by the Redeveloper of a Notice of such failure, abandonment or suspension; provided, however, that if the failure, abandonment or suspension is one that cannot be completely cured within thirty (30) days after receipt of such notice, Redeveloper shall have up to sixty (60) additional days to cure so long as the Redeveloper promptly undertakes actions to correct the failure, abandonment or suspension upon its receipt of notice and is proceeding with due diligence to remedy same.

(g) Any other default or breach by the Redeveloper or the Township in the observance or performance of any covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified, the continuance of such default or breach for a period of thirty (30) days after Notice from the non-defaulting Party specifying the nature of such default or breach and requesting that such default or breach be remedied; provided, however, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting Party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Redevelopment Agreement specifically provides otherwise.

5.2 Remedies Upon Event of Default by the Redeveloper. Whenever any Event of Default by the Redeveloper occurs and continues beyond any applicable cure or grace period, the Township may, on written notice to the Redeveloper (after applicable Notice and cure periods shall have expired), pursue all remedies at law or equity available to it by reason of the Redeveloper's default, including, but not limited to, the termination of this Redevelopment Agreement and the Redeveloper's designation as redeveloper hereunder. In the event of such termination, except as expressly provided for herein, this Redevelopment Agreement shall be of no further force and effect and neither Party shall have any further rights, liabilities and/or obligations hereunder. Notwithstanding the foregoing, Redeveloper shall be, and shall remain, fully responsible for payment of any outstanding Township Costs, including costs and/or damages (including, but not limited to, reasonable counsel fees) incurred by the Township on account of such Event of Default.

5.3 Remedies Upon Event of Default by the Township. If an Event of Default by the Township occurs and continues beyond any applicable cure or grace period, then the Redeveloper may pursue all remedies at law or equity available to it by reason of the Township's default; provided,

however, that under no circumstances shall the Township be liable for consequential, indirect or special damages or loss of profits or business opportunities of any kind. Notwithstanding the foregoing, failure of the Township Council to authorize or approve this Redevelopment Agreement shall not constitute an Event of Default by the Township.

5.4 Force Majeure Extension. For the purposes of this Redevelopment Agreement, neither the Township nor the Redeveloper shall be considered in breach or in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Township or the Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of a Project, the Redeveloper shall, to the maximum extent feasible, continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence or occurrence of a Force Majeure Event shall not prevent the Township or the Redeveloper from declaring a default or the occurrence of an Event of Default by the other Party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event. To invoke the tolling provisions hereunder, the party invoking the provisions hereof must give written Notice to the other party of the occurrence of a Force Majeure as soon as practicable but in no event more than ten (10) Business Days (or such longer period as is reasonably necessary) after the occurrence thereof.

5.5 No Waiver. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party hereunder in asserting any of its rights or remedies as to any default by the other Party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Township or the Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Redevelopment Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.6 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

5.7 Termination Rights Related to Litigation. If third-party litigation is commenced challenging the validity of (i) the designation of the Property as an area in need of redevelopment, (ii) the Redevelopment Plan, or (iii) execution of this Redevelopment Agreement by the Township, the commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if the Redeveloper invokes the Force Majeure provisions this Redevelopment Agreement; provided, however, that (a) if such litigation is not resolved within twelve (12) months of inception, then the Redeveloper may terminate this Redevelopment Agreement by written Notice to the Township; and (b) if such litigation is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Redevelopment Agreement by written Notice to the other. Upon such termination, except as expressly provided herein, this Agreement shall be of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

ARTICLE 6
FINANCING

6.1 Mortgage Financing.

(a) During the term of this Agreement, the Redeveloper shall not engage in any financing or any other transaction creating any Mortgage on the Project other than with respect to the cost of acquiring the Property and developing the Project (including designing, permitting and constructing the Project).

(b) In the event that the Redeveloper is unable to obtain financing for the Project, on terms and conditions acceptable to the Redeveloper in its sole discretion, or if the Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to the Redeveloper in its sole discretion, the Redeveloper shall have the right to terminate this Redevelopment Agreement upon written Notice to the Township.

(c) If this Redevelopment Agreement is terminated pursuant to the terms of this Section 6.1, then, except as expressly set forth herein to the contrary and upon full payment of all Township Costs accruing until the date of such termination, this Redevelopment Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

(d) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Township shall reasonably cooperate with the Mortgagee and the Redeveloper in reviewing such proposed change(s) or modification(s) and shall consider them in good faith within sixty (60) days of notice of such change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Township, as provided in this Redevelopment Agreement.

(e) To the extent reasonably requested by the Redeveloper, the Township shall execute 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 Mortgagee (or any equity participant of the Redeveloper) within sixty (60) days of notice of such request; provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Township under this Redevelopment Agreement.

6.2 Notice of Default to the Mortgagee and Right to Cure. Whenever the Township shall deliver any Notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to each Mortgagee a copy of such Notice or demand; provided that the Redeveloper has delivered to the Township a written Notice of the name and address of such Mortgagee. Each such Mortgagee (insofar as the rights of the Township are concerned) has the right at its option within sixty (60) 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. The Township shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60-day period but has not completed such cure, then, not later than every sixty (60) days thereafter until such Event of Default is cured, Redeveloper shall inform the Township that the Mortgagee is proceeding diligently to cure the Redevelopment Event of Default, and shall briefly describe the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Township may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after Notice thereof. If possession of the Project is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Project. Notwithstanding anything contained herein to the contrary, the Township shall retain at all times all statutory rights to enforce the payment of property taxes, payments in lieu of taxes, if applicable, sewer charges, and other municipal charges, including but not limited to those rights granted by the Tax Sale Law, *N.J.S.A.* 54:5-1 *et seq.*, and/or the In Rem Tax Foreclosure Act, *N.J.S.A.* 54:5-104.29 *et seq*.

6.3 No Guarantee of Construction or Completion by Mortgagee.

(a) A Mortgagee shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so as to obligate a Mortgagee. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or Completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security, including the Improvements or construction already made) without the Mortgagee or Affiliate of Mortgagee first having expressly assumed the Redeveloper's obligations to the Township with respect to the Project by written agreement reasonably satisfactory to the Township.

(b) If a Mortgagee forecloses its Mortgage secured by the Project, or takes title (in its name or the name of an Affiliate) to the Project by deed-in-lieu of foreclosure or similar transaction (collectively, a "**Foreclosure**"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project to any Person, provided Mortgagee gives the Township Notice of such sale at least thirty (30) days prior to closing and provided such Person assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. Any such Mortgagee or other entity assuming such obligations of the Redeveloper, upon Completing the Project shall be entitled, upon written request made to the Township, to a Certificate of Occupancy in accordance with the terms of this Redevelopment Agreement and under Applicable Laws. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Mortgagee, or such other entity assuming such obligations of the Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Property or Project in accordance herewith.

ARTICLE 7
ESCROW ACCOUNT

7.1 Escrow Account to Cover Township Costs. (a) Prior to the execution of this Redevelopment Agreement, the Redeveloper has established an Escrow Account having an initial balance of Ten Thousand Dollars ($10,000.00) to cover the Township Costs.

7.2 Escrow Deposit. Escrow Deposits to be made are separate from and in addition to all other application fees and escrow deposits that may be required by the Township pursuant to the terms of this Redevelopment Agreement, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additional Escrow Deposits to the Escrow Account may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Redevelopment Agreement.

7.3 Deposit and Administration of Escrow Funds. All Escrow Deposits shall be held by the Township in the Escrow Account.

7.4 Payments from the Escrow Funds.

(a) The Township shall use Escrow Account to pay Township Costs in accordance with the provisions of this Redevelopment Agreement.

(b) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional or consultant, identifying the personnel performing services, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying the services performed. All professionals shall submit the required vouchers or statements to the Township monthly in accordance with the schedule and procedures established by the Township. The professionals or the Township shall simultaneously send an informational copy of each voucher or statement submitted to the Township to the Redeveloper; provided, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

7.5 Accounting and Additional Deposits. Within three (3) business days after a written request by the Redeveloper is received by the Township Attorney, the Township shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account is less than Three Thousand Dollars ($3,000.00) the Township shall provide the Redeveloper with a notice of the insufficient Escrow Account balance. The Redeveloper shall deposit to the Escrow Account additional funds such that the total amount on deposit shall be not less than ten Thousand Dollars ($10,000.00), such deposit to be made within fifteen (15) Business Days after the Township's notice, failing which the Township may unilaterally cease work without liability to the Redeveloper.

7.6 Close Out Procedures. Upon the issuance of a Certificate of Completion or other termination of this Redevelopment Agreement, the Redeveloper shall send written Notice by certified mail to the Township requesting that the remaining balance of the Escrow Account be refunded or otherwise applied in accordance with the provisions of this Redevelopment

Agreement. After receipt of such notice, the professional(s) shall render a final bill to Township within thirty (30) days and shall send an informational copy simultaneously to the Redeveloper. Within thirty (30) days after receipt of the final bill the Township shall pay all outstanding bills and render a written final accounting to the Redeveloper. The Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Township in accordance with this section. This Section 7.6 shall survive issuance of a Certificate of Completion or other termination of this Redevelopment Agreement.

7.7 Disputed Charges.

(a) The Redeveloper may dispute the propriety or reasonableness of Township Costs paid out of the Escrow Account by written Notice to the Township. A copy of such Notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written Notice of a disputed charge shall be given within thirty (30) days after the Redeveloper's receipt of the informational copy of the professional's voucher, invoice, statement or bill, except that if the professional has not supplied the Redeveloper with an informational copy of the voucher, invoice, statement or bill, then the Redeveloper shall send Notice within thirty (30) days after receipt of the first statement of activity against the Escrow Account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Redeveloper's acceptance of the charge and a waiver by the Redeveloper of all objections to the charge and to payment thereof out of the Escrow Account. The terms of this Section shall survive termination of this Redevelopment Agreement.

(b) If the Township and the Redeveloper cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter, with a retired judge mutually agreeable to the parties acting as arbitrator. During the pendency of a dispute, the Township shall not pay the disputed charges out of the escrow account but may continue to pay undisputed charges out of the Escrow Account.

The terms of this Article 7 shall survive termination of this Redevelopment Agreement.

ARTICLE 8
MISCELLANEOUS

8.1 No Consideration for Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Township, any money or other consideration for or in connection with this Redevelopment Agreement.

8.2 Non-Liability of Officials and Employees.

(a) No member, official or employee of the Township shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the

Township, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

(b) No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

8.3 Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Redeveloper and the Township.

8.4 Recitals and Exhibits. The Recitals and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

8.5 Entire Agreement. This Redevelopment 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.

8.6 Severability. The validity of any Article and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

8.7 Indemnification. The Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the Township, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and respective successors and assigns from any third-party claims, liabilities, losses, costs, damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with the acts or omissions of the Redeveloper or of the Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project; provided, however, that no indemnification shall be required pursuant to this Section 8.7 in the event that the indemnification otherwise due pursuant to this Section 8.7 is attributable to the gross negligence or willful misconduct of the Township, its governing body, or any agency of the Township or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section shall survive termination of this Redevelopment Agreement.

8.8 Notices. Notices shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) to the Parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Township:

Township of Verona
600 Bloomfield Avenue
Verona, New Jersey 07044
ATTN: Township Manager Kevin O'Sullivan

With a copy to:

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

As to the Redeveloper:

DMH2, LLC
c/o Michael Harrison 3155 Route 10 East – Suite 214
Denville, New Jersey 07834
ATTN: Michael Harrison

With a copy to:

Cameron W. MacLeod, Esq.
FBT Gibbons
50 West State Street, Suite 1104
Trenton, New Jersey 08608

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. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any Notice delivered by telecopy shall be deemed to have been received by such Party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any Notice given by an attorney for a Party shall be effective for all purposes.

8.9 Further Assurances/Cooperation. The Parties shall cooperate with each other as reasonably necessary to effectuate the Project. From time to time at the request of either the Redeveloper or the Township, the other Party shall execute, acknowledge and deliver such other and further documents as the requesting Party may reasonably request to better effectuate the provisions of this Redevelopment Agreement.

8.10 Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Redevelopment Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Essex County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this

Redevelopment Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Essex County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum. The Parties further agree that any claims relating to or arising out of this Redevelopment Agreement and the transactions contemplated thereby shall be tried before a judge and without a trial by jury.

8.11 Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

8.12 Estoppel Certificates. Within fourteen (14) days following written request therefore by a Party hereto, the other Party shall issue an Estoppel Certificate. No more than three (3) Estoppel Certificates per year may be requested by each Party.

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IN WITNESS WHEREOF, the Parties have executed this Redevelopment Agreement effective as of the latest date of the signatures affixed hereto.

ATTEST:

TOWNSHIP OF VERONA

_____
Name:
Title:

By: _____
Kevin O'Sullivan
Township Manager

SEAL

Dated: _____

WITNESS:

DMH2, LLC

Name: Joan Vecchiarelli
Title: Notary

By: _____
Name: MICHAEL HARRISON
Title: Authorized Signatory

Dated: 8/24/26

EXHIBIT F

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY }

}

COUNTY OF ESSEX }

Michael Harrison, Managing Member of DMH2, LLC of fully age, being duly sworn according to law on oath deposed and says, that DMH2, LLC is the owner in fee of property located in the Township of Verona, County of Essex, State of New Jersey, at 176-200 Bloomfield Avenue, and otherwise known and designated at Block 202, Lots 1 and 23 as shown on the tax maps of the Township of Verona. DMH2, LLC further authorizes this application for development, and has reviewed the foregoing statements contained in the papers and plans submitted herewith, and represents that same are to the best of Mr. Harrison's knowledge, upon reasonable investigation, are true.

DMH2, LLC

s/ M. Harrison

Michael Harrison, Managing Member

Sworn and Subscribed Before Me

On this 1 Day of September, 2026.

Notary Public or Attorney at Law

State of New Jersey