

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

**RESOLUTION No. 2024-089**

A motion was made by Deputy Mayor McEvoy; seconded by Mayor Tamburro that the following resolution be adopted:

**AUTHORIZING THE TOWNSHIP MANAGER OR HIS DESIGNEE TO  
TAKE ALL NECESSARY STEPS TO EFFECTUATE THE TERMS OF THE  
SETTLEMENT AGREEMENT WITH SPECTRUM 360**

**WHEREAS**, on January 31, 2020, an amendment to the settlement agreement with Spectrum 360; and

**WHEREAS**, the Settlement Agreement requires the Parties to take multiple actions and to continue to work together to effective the intent of the Settlement Agreement; and

**WHEREAS**, the Township Manager, or his designee, should take all necessary steps and execute all documents necessary to effectuate the intent of the Settlement Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Verona, in the County of Essex, New Jersey hereby authorizes the Township Manager or his designee take all necessary steps to effectuate the terms set forth in the attached Settlement Agreement.

**ROLL CALL:**

**AYES:** Holland, McGrath, Roman, McEvoy, Tamburro

**NAYS:**

**THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT A REGULAR MEETING HELD ON MAY 20, 2024.**

  
**JENNIFER KIERNAN  
MUNICIPAL CLERK**



## FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT

This First Amended and Restated Settlement Agreement (the “Amended Agreement”) is entered into this 31 day of January 2020 by and between:

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

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

### WITNESSETH

**WHEREAS 1**, the Township has historically participated in the administrative affordable housing compliance process overseen by the New Jersey Council on Affordable Housing (“COAH”), and has received substantive certification for the First and Second Round (1987- 1999); and

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

**WHEREAS 3**, on March 10, 2015, the New Jersey Supreme Court issued a decision in the case entitled In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), whereby the Court terminated COAH’s jurisdiction to administer and approve municipalities’ affordable housing plans, determined that trial courts would reassert primary jurisdiction over the same, and directed interested municipalities to petition the Court for immunity while constitutionally compliant housing plans were prepared;

and

**WHEREAS 4**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 7, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Verona, a municipal corporation of the State of New Jersey, Docket No. ESX-L-4773-15 (the “Township’s DJ Action”), seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs; and

**WHEREAS 5**, by Order dated May 12, 2017, Spectrum, a non-profit entity that operates schools and serves children, adolescents, young adults, and adults on the autism spectrum and with behavioral and related disabilities, was granted leave to intervene in the DJ Action as an interested party owning certain property located in the Township commonly known as One Sunset Avenue and otherwise designated as Block 303, Lot 4 on the Township’s official Tax Map (the “Property”); and

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

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

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

with an increased affordable housing set-aside; and

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

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

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

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

**WHEREAS 13**, Spectrum submitted concept plans that are representative of the type of proposed project, depicting a maximum four (4) stories including parking, which accommodates 185 market-rate multifamily residential units (all of which shall be either one-bedroom or two-bedroom units) and 15 low- and moderate-income multifamily residential units, subject to the Parties’ good faith and diligent efforts to effectuate, pursuant to the provisions of the Local Redevelopment and Housing law (N.J.S.A. 40A:12A-1 et seq.-“LRHL”), a Redevelopment Plan indicating the nature of the repurposing of the property in sufficient detail to accommodate the 200-unit inclusionary project, a Redevelopment Agreement, and a Financial Agreement, specifying an annual service charge to be paid by the designated redeveloper to the Township, also known as a payment in lieu of tax (“PILOT”), and further specifying an Affordable Trust Fund Contribution as defined below (collectively, the “Project”), and has also submitted a

concept plan depicting the alternative inclusionary project, generally consisting of a six (6) story building including parking, which would accommodate approximately 300 multifamily residential units, of which fifteen percent (15%) would be affordable to lower-income households (the “Alternative Project”); and

**WHEREAS 14**, Spectrum has entered into an agreement with a qualified developer to acquire the Property and construct either the Project or the Alternative Project (the “Developer”); and

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

**WHEREAS 16**, in the event the Developer receives all final unappealable governmental approvals to construct the Project and as a specific condition thereof, Spectrum shall cause the Developer to pay the Township Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to be deposited into the Township’s Affordable Housing Trust Fund, which payment shall be made upon the sale of the Property and the Developer’s receipt of all final unappealable governmental approvals to construct the Project, whichever is later (the “Affordable Trust Fund Contribution”); and

**WHEREAS 17**, by submitting the Affordable Trust Fund Contribution or, alternatively, in the event the Project is not viable notwithstanding the Parties’ good faith and diligent efforts to effectuate the same, and the Alternative Project is approved, Spectrum will directly facilitate the construction of affordable housing within the Township while providing the Township with significant long-term tax benefits, given that the Property is, currently, essentially tax-exempt; and

**WHEREAS 18**, the Parties wish to enter into this Amended Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Amended Agreement at a "Fairness Hearing" in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), and that, in order to approve this Amended Agreement, the Court must find that it adequately protects the interests of lower-income persons in the Township's housing region; and

**WHEREAS 19**, pursuant to the Parties' settlement negotiations the Parties request that the Superior Court, Essex County, find that this Amended Agreement is fair to the interests of lower- income households in New Jersey and partially addresses the Township's Third Round obligation in a reasonable fashion appropriate to the site in question inasmuch as the Township will be adopting a spending plan to disburse the Affordable Trust Fund Contribution as allowed under law; and

**WHEREAS 20**, the Township will, in the future, seek the Court's approval of a Housing Element and Fair Share Plan (the "Plan"), inclusive of the Project or Alternative Project as proposed by Spectrum, and the Parties intend to be bound by this Amended Agreement; and

**WHEREAS 21**, in order to amicably resolve this matter in a way that the Parties agree complies with the Mt. Laurel doctrine, the Parties have agreed to the terms and conditions set forth herein; and

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

mutually agree as follows:

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

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

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

4. **The Spectrum Site.** Spectrum is the owner of Block 303, Lot 4 on the Township's official Tax Map (the "Property"), with a street address of One Sunset Avenue, Verona, New Jersey. The Property consists of approximately 5.5 acres, with an additional 2.5 acres located in the Township of Montclair. The Parties agree that the Property is "available," "approvable," "developable," and "suitable" for the Project or the Alternative Project, *infra*, as those terms are defined under COAH's Second Round Rules, N.J.A.C. 5:93-1.3.

5. **The Project.** In satisfaction of the Township's Third Round affordable housing obligation, either in whole or in part, the Township agrees to undertake and complete the redevelopment process outlined herein, subject to the requirements of the LRHL and the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the "LTTEL"), including but not limited to the defense of the Property's designation as a non-condemnation area in need of redevelopment, the adoption of the Redevelopment Plan, the execution of the Redevelopment Agreement, and the execution of the Financial Agreement, to permit the construction of the Project on the Property, as approximately depicted on the concept plan annexed hereto as **Exhibit A** (the Parties recognize this concept plan may be revised with the consent of the Parties to address numerous issues including site conditions). The Redevelopment Plan for the Project shall, subject to the requirements of the LRHL, provide for 185 units of market-rate multifamily rental housing (all of which shall be either one-bedroom or two-bedroom units) and 15 units of low- and moderate-income (including very-low-income units) multifamily rental housing, with ancillary uses such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. The affordable units in the Project shall include the required bedroom distribution, income distribution and be governed by controls on affordability and affirmatively marketed in accordance with UHAC Regulations or any successor regulation,. The Parties agree that the concept plan is illustrative of the Project and subject to further refinement in the Redevelopment Plan. The Project shall not require site plan approval from the Township of Montclair. The Parties acknowledge that low- and moderate-income units contained within the Project, renders the Project, *supra*, an "inclusionary development," and provides it with all of the rights, benefits, and protections of an inclusionary development, including but not limited to Township's obligation to provide adequate public utilities and services, water, and sewer to the



Property, as well as the prohibition on “cost generative” development standards or requirements.

6. **The Alternative Project.** In the sole event that the Project is not viable for the reasons set forth in Paragraph 18, *infra*, the Township agrees to adopt a zoning ordinance amendment to permit the construction of the Alternative Project on the Property. The Alternative Project shall be comprised of six (6) stories including parking and will provide for 300 units of multifamily rental housing, with ancillary uses such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. Fifteen percent (15%) of the units actually constructed in the Alternative Project shall be reserved for, and affordable to, lower-income households. The affordable components of the Alternative Project shall include low-income units (including very-low-income units) and moderate-income units. The very-low-income units, which shall be affordable to and reserved for households at or below thirty percent (30%) of area median income, shall constitute not less than thirteen percent (13%) of the total affordable units in the Alternative Project. The low-income units shall constitute not less than thirty-seven percent (37%) of the total affordable units within the Alternative Project, while the moderate-income units shall constitute not more than fifty percent (50%) of the total affordable units in the Alternative Project. The affordable units in the Alternative Project shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in accordance with UHAC Regulations or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be at thirty-five percent (35%) or less of area median income by household size, thirteen percent (13%) of the affordable units shall be required to be at thirty percent (30%) of area median income. The construction of the affordable units in the Alternative Project shall comply with the phasing schedule set forth in N.J.A.C. 5:93-5.6(d). Further, all

affordable new construction units shall be adaptable in conformance with P.L. 2005, c.350/N.J.S.A. 52:27D-311(a) and -311(b). The Alternative Project shall not require site plan approval from the Township of Montclair, because no construction will take place in Montclair. Spectrum has prepared concept plans that are representative of the Alternative Project, which the Township agrees are acceptable, that are attached hereto and incorporated herein as **Exhibit B**. The provisions of this Agreement concerning the Affordable Trust Fund Contribution, Financial Agreement, Urban Renewal Entity, and Redevelopment Agreement shall not be applicable if the Property is rezoned to permit the construction of the Alternative Project. The zoning for the Alternative Project shall be adopted by the Township in accordance with the schedule set forth in Paragraph 18, *infra*, but only if the conditions set forth in said paragraph are satisfied in Spectrum's sole discretion.

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

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

final unappealable approvals for the Project, and as a specific condition thereof, Spectrum shall cause the Developer to remit the Affordable Trust Fund Contribution to the Township's Affordable Housing Trust Fund upon the sale of the Property and the Developer's receipt of all final unappealable governmental approvals for the Project, whichever is later. Said Affordable Trust Fund Contribution must also be made prior to the issuance of building permits for the Project.

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

a. In January 2020, the Township Council shall introduce an ordinance to adopt a redevelopment plan (the "Redevelopment Plan"), which Redevelopment Plan is consistent with the goals and objectives of Spectrum's intended use of its Property, as more particularly described in Paragraph 5, *supra*, and **Exhibit A** annexed hereto, on first reading, and shall refer said Redevelopment Plan to the Planning Board for review consistent with N.J.S.A. 40A:12A-7.

i. In accordance with the concept plan annexed as **Exhibit A**, the Redevelopment Plan shall permit the Developer to construct one or two four-story building(s) containing all 200 residential units, 185 of which shall be market-rate units (all of which shall be one- bedroom or two-bedroom units) and 15 low- and moderate-income units, ancillary improvements such as leasing and management offices, residential amenities (fitness center, lounge, etc.), and a multi-level parking structure. The Redevelopment Plan shall set forth the zoning standards necessary to obtain development approvals for the Project, as the same

is further described in **Exhibit A** hereof, and shall be “as of right” and without the need for any deviations, variances, waivers or exceptions. The Redevelopment Plan must be deemed satisfactory to both the Township and Spectrum/Developer prior to its adoption.

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

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

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

c. In February 2020, the Township Council shall conduct a public hearing on the Redevelopment Plan and adopt the same on second reading; whereupon the Clerk shall publish the notice of the adoption in accordance with applicable law.

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

**10. Spectrum's PILOT.** The Parties acknowledge and agree that the financial viability of the Project (but not the Alternative Project) is contingent upon the Township's adoption and execution of a Financial Agreement with Spectrum or its designated Developer that provides for payments in lieu of taxes ("Financial Agreement") in accordance with the LTTEL. The Parties acknowledge that, without a Financial Agreement in accordance with the terms herein, the Project cannot proceed. The Financial Agreement shall be for a term of thirty (30) years from the completion of the Project and shall require the Developer to remit an annual service charge equivalent to ten percent (10%) of the annual gross revenues generated by the Project, as defined in N.J.S.A. 40A:20-3(a), for years 1 through 15 following the completion of the Project. The annual service charge shall increase to eleven percent (11%) of the annual gross revenue generated by the Project, as defined in N.J.S.A. 40A:20-3(a), for years 16 through 30 following the completion of the Project. The Financial Agreement shall include staged increases as set forth in N.J.S.A. 40A:20-12(b)(2), and the Township reserves the right to exempt the land, in addition to the improvements, as permitted by N.J.S.A. 40A:20-12. A two percent (2%) administrative fee shall be included in the Financial Agreement, as permitted by N.J.S.A. 40A:20-10(d).

**11. The Developer's Formation of Urban Renewal Entity and Township Approval of Financial Agreement.** Concurrent with the steps set forth in Paragraph 7, *supra*, the Developer shall form an Urban Renewal Entity ("URE" but also referred to herein as

“Developer”) in accordance with N.J.S.A. 40A:20-5 and file all necessary paperwork with the Department of Community Affairs and the Department of State. Following the formation of the URE, the Developer shall file a PILOT application with the Township that is consistent with the financial schedule set forth in Paragraph 9, *supra*. To implement the Financial Agreement in a timely fashion, the Parties agree to adhere to the following schedule:

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

b. Not later than thirty (30) days following first reading of the ordinance authorizing execution of the Financial Agreement, the Township Council shall conduct a public hearing on said ordinance and adopt the same on second reading; whereupon the Clerk shall publish notice of the adoption in accordance with applicable law.

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

**13. Spectrum’s Obligation to Support.** Provided the Township discharges its obligations under this Amended Agreement in good faith, Spectrum shall support this Amended

Agreement at the affordable housing fairness hearing to be scheduled by the Court. Spectrum's support of this Agreement shall include, as necessary, certifications, testimony and all other reasonable means of support as may be requested by the Township.

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

**15. Effectuation of Settlement Terms.** Regardless of the ultimate determination of the Township's Third Round affordable housing obligation for the period 1999-2025 or the Court's approval of the Township's Housing Plan, regardless of any challenges thereto, the Parties shall be obligated to discharge all of their respective obligations under this Amended Agreement, including but not limited to the implementation of the Redevelopment Plan for the

Project. The Township shall work diligently, in good faith, and shall undertake all reasonable efforts, including expediting reviews of Spectrum or the Developer's submissions and scheduling of special meetings as necessary to effectuate the terms of this Agreement and the construction of the Project or Alternative Project.

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

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

18. **Defense of Area In Need Designation.** In accordance with the Original Agreement, the Township Council has found and determined that the Property is an area in need of redevelopment for non-condemnation purposes (the "Designation"). If such finding and determination is challenged by a third party, the Parties shall be obligated to affirmatively and diligently defend the finding and determination in proceedings before the Superior Court,



Appellate Division, and New Jersey Supreme Court, during which time period the Parties' obligations with respect to the redevelopment of the Property shall be tolled, unless the Parties voluntarily opt to proceed as contemplated herein, for a period of eighteen (18) months from the date such a challenge is filed (the "Tolling Period"). This Tolling Period may be extended by the joint agreement of the Parties. However, if the defense of the Designation does not result in a final, unappealable adjudication upholding the finding and determination prior to the expiration of the Tolling Period, then the Township shall, upon receipt of a written request from Spectrum, adopt a zoning ordinance amendment permitting the "as of right" construction of the Alternative Project within 45 days of the expiration of the Tolling Period.

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

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

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

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

**21. Severability.** Unless otherwise specified, it is intended that the provisions of this Amended Agreement are severable. The validity of any article, section, clause or provision

of this Amended Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Amended Agreement shall be adjudged by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

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

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

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

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

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

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

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

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

30. **Entire Agreement.** This Amended Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

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

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

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

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

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

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

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

**WITH A COPY TO:** John P. Inglesino, Esq. and Derek W. Orth, Esq.  
Inglesino, Webster, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

**TOWNSHIP OF VERONA**

By: Matthew Cavallo  
Matthew Cavallo,  
Township Manager

**SPECTRUM 360, LLC**

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

Witness/Attest:

Jennifer Kiernan  
Jennifer Kiernan, RMC  
Township Clerk

Witness/Attest:

Cheryl Belland

Dated: January 10, 2020

Dated: January 31, 2020

**EXHIBIT A**

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

Project Statistics	
Parking	404 Spoces
Garage	5.5 Levels 380 Sp
Surface Spaces	24 Sp
Dwelling Units	200 DU
One Bedroom	98 DU
Two Bedroom	102 DU
6,500 s.f. Amenity Space	
2,400 s.f. Lobby/Leasing	



PARKING GARAGE

SUNSET AVENUE

VERONA  
MONTCLAIR



**EXHIBIT B**

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

