



Mayor and Common Council Borough of Flemington

December 12, 2022

Council Meeting Room and Online

I. Call to Order

1. Statement regarding OPMA

This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting of December 12, 2022 was included in a list-of-meetings notice sent to the Hunterdon County Democrat and Courier-News on Jan. 5, 2022, posted on the bulletin board at Borough Hall on that date, and has remained continuously posted as required. In addition, a copy of this notice is and has been available to the public and is on file in the office of the Borough Clerk.

II. Executive Session (6:00 PM) - Located at Flemington Borough Hall

1. RESOLUTION 2022-251: EXECUTIVE SESSION TO DISCUSS POTENTIAL RDA FOR CAPTIVA, CARDINAL, LIBERTY VILLAGE, & FCUR

Meeting Began at 6:00 PM

Executive Session was held at Flemington Borough Hall, 38 Park Avenue, Flemington, NJ 08822

Roll Call: In attendance: Mayor Driver; Council Members Hand, Johnston, Long, Parker, Rosetti, and Tilly; Attorney St. Angelo, Attorney Brewer; Clerk/Administrator Humphrey.

Vote to begin Executive Session: Unanimous

Vote to end Executive Session: Unanimous.

Session concluded at 7:16 PM

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

III. Regular Meeting (7:30 PM) - Located at the Historic Hunterdon County Courthouse

Regular Council Meeting held at the Historic Hunterdon County Courthouse, 71 Main Street, Flemington, NJ 08822

Meeting Called to Order at 7:32 PM

Flag Salute

Attendee Name	Title	Status	Arrived
Jessica Hand	Council Vice President	Present	
Malik Johnston	Council Member	Present	
Jeremy Long	Council President	Present	
Tony Parker	Council Member	Present	
Elizabeth Rosetti	Council Member	Present	
Kimberly Tilly	Council Member	Present	
Betsy Driver	Mayor	Present	

1. Mayor's Report

Mayor Driver thanked Congressman Malinowski for helping to secure funding for the Borough's infrastructure needs. She discussed her accomplishments in her term as Mayor, including the groundbreaking of the Union Hotel Project, the purchase and future renovation of 144 Main Street filling station, the finishing of the Main Street Streetscape project, the infrastructure improvements at Elwood Avenue, Highland Avenue, Dewey Avenue were completed. Hopewell Avenue infrastructure project in progress. Several redevelopment agreements will presumably be approved at this meeting. The relocation of the Police Station is underway. Stangl Road is only getting better.

Mayor Driver shared the success of one of the first ordinances of her administration, which change the process of water allocations, no longer making them part of political favors and increasing the water usage revenue for the water department.

She described the four years of revitalization work to areas in town that have been vacant and an eyesore for decades, returning to the appropriate tax levels. Those on the north end of town do not pay enough to even cover the cost one police officer, so when those properties are developed, that will add to the tax base and that would be good for the residents and property owners. The first cannabis dispensary should be opening soon, receiving site plan approval from Planning Board for recreational retail sales, and are now waiting for the Cannabis Regulatory Commission to give their final approval.

The Mayor thanked the members of Council who she has served with. She gave a special thank you to the Borough employees of this small borough who do incredible work. Many of the employees have multiple job titles, and the fact that they pull it off every week is quite amazing. She gave an important thank you to the volunteers who

make this borough work. The community is successful due to the labor of volunteers who give their time and service to the Borough.

Susan Engelhardt has resigned effective Wednesday, December 14th from Planning Board and Trent Levitt was appointed to finish up Susan's Class IV seat that expires at the end of 2023, beginning on Wednesday, December 14th. Trent Levitt resigned from the Alternate #2 Planning Board seat and Done Eckel is appointed as Alternate #2 and Dennis Schoeb is appointed as Alternate #4. For the Environmental Commission, Trent Levitt is appointed to the three-year term that expires at the end of 2024, Jessica Hand and Freddy Mejia are appointed to the two-year terms that expire at the end of 2023, and Jae Hoff is appointed to the Alternate #2 seat to a two-year term that expires at the end of 2023.

Mayor Driver again said thank you for the honor of serving Borough for the past for years.

2. Council Members' Reports

Council Vice President Hand

Council Vice President Jessica Hand announced that on Friday, January 13th from 10:00 am to 1:00pm, Lowe's and Home Depot will help build garden beds at the Community Garden at Tuccamirgan Park. Volunteers are needed for that day. She announced that this was her last council meeting and that she truly enjoyed working with everyone. Ms. Hand is most proud of the great conversations with people who dedicate their free time and helping with citizen engagement.

Council Member Johnston

No Report

Council President Long

Council President Long shared that from in 2022 from January to November, the Police Department responded to 36,558 calls of service, 357 motor vehicle crashes, 376 investigations, 121 arrests, and 2,511 Motor Vehicles summons.

The FCP has many activities bringing customers to Flemington for the holidays. Each event is designed to emphasize shopping locally and visiting our stores and restaurants in all three business districts, including Historic Main Street, the Stangl Arts & Cultural District, and the shopping plazas. The Main Street and Stangl Road Thursday night trolley events have more than 1,000 reservations for December. The window decorating contest has more than 300 online votes and expect nearly 1,000 by the end of the year. FCP has 5000 Holiday passports that show all the Borough's retail businesses and where they are located, and almost all of them have been handed out this year. If a passport holder collects 10 receipts from our businesses they can win a \$500 gift package from

the local businesses. These activities are helping to bring attention to our many businesses and help us refresh our customer list. Several new and current business owners on Main Street are featured on a Channel 69 TV segment. The Borough was also probably featured on the cover of *New Jersey Municipalities* magazine. With a headline and story this Thursday night the municipality will be awarded with the best downtown award at the New Jersey Chapter of the American Planners Association. Mayor Driver and the FCP were also invited as panelists at the Downtown New Jersey conference in December.

Mr. Long also extended his goodbye and thank you to Mayor Driver and to Council Vice president Jessica Hand.

Council Member Parker

Council member Parker attended the ribbon-cutting for the Dunkin' Donuts, where they donated \$1,000 reward to the YMCA. The YMCA is trying to restart the Flemington Community Pool, and Mr. Parker suggested people step up with fundraising efforts and ideas for this effort. A community pool will provide the kids in the Boorugh a place for the summer months.

Council Member Rosetti

Council Member Rosetti expressed a thank you to Mayor Dirver and Council Vice president Hand their dedication and hard work. She also thanked the Council and looks forward to continuing with a good working relationship. She thanked the Borough's Code Enforcement Official David Giuliani, who was a pleasure to work with this year. She shared her delight with the holiday decorations and events by the FCP.

Council Member Tilly

Council Member Tilly thanked Council Vie President Hand for her hard work navigating all the government bureaucracy to get the Borough's community garden approved, and for her friendship. She thanked Mayor Driver for her hard work to move Flemington in the direction of a prosperous future. She wished both of them best of everything in the future.

3. Public Comments - Session I (up to 3 minutes each, for a maximum of 30 minutes)

Mayor Driver announced that the Council held and Executive Session at Borough Hall from at 6:00 PM to receive legal advice regarding impending litigation for the Water Standpipe and on the PBA contract negotiations. The Council also received legal advice for the negotiations for redevelopment agreements for three, including Captiva, Cardinal/Nilkanth, and Union Hotel. The Liberty Village item will be tabled. All of these items are on the agenda.

Caitlin Giles-McCormick, of Flemington Borough, thanked all of the Council for their service and support. She shared a special thank you to Council Vice President Hand for her work for the community gardens and environmental efforts, and Mayor Driver for her unparalleled passion, drive, and dedication to Flemington, which is now a better place because of the Mayor's work, research, fight for residents and business owners. The Borough has a higher quality services and development projects, and is better positioned to address future challenges, like the impacts of climate change stormwater management and recycling costs. The development and redevelopment projects marry the charm and history Flemington while addressing the local economic needs such as the massive changes in the retail environment, and the high cost and low availability of housing.

A Resident of Raritan Township thanked the Borough for its support in tourism, police, EMS, and DPW, and wished the best for everyone in the New year.

Marsha Karrow, of Flemington Borough, had a question about Resolutions 2022- 246 and 2022-247, which both reference an attachment that is not a part of the resolution package and is not being transparent. The Council will be voting items that the public has not seen. She shared the experience from five years ago that prior administration did that Ms. Driver had railed against.

Mayor Driver responded to Ms. Karrow that attorney advice provided that drafts of agreements do not need to be attached to legislative items.

Robert Shore, of Flemington Borough, provided support for the upcoming FCP budget resolution, expressing the huge set back caused by the defunding of the FCP a decade ago, and the importance of the FCP's current work.

4. Approval of Minutes

1. Motion To: **Approval of Regular Council Meeting Minutes of November 28, 2022**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

2. Motion To: **Approval of Executive Session Council Meeting Minutes of November 28, 2022**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

5. Consent Agenda

Resolution 2022-239 was moved from the Consent Agenda to the Regular Agenda

1. RESOLUTION 2022-242: REDEMPTION OF TAX SALE CERTIFICATE, BLOCK 5 LOT 12
2. RESOLUTION 2022-243: REDEMPTION OF TAX SALE CERTIFICATE, BLOCK 17 LOT 16
3. RESOLUTION 2022-244: REDEMPTION OF TAX SALE CERTIFICATE, BLOCK 2 LOT 7

Regular Agenda (Start)

This meeting is being held in conformance with the Open Public Meetings Act.

1. RESOLUTION 2022-245: APPRECIATION TO LOWES AND HABITAT FOR HUMANITY

Council Member Hand expressed her thanks to Lowes and Habitat for Humanity for their support of Tuccamirgan Park.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jessica Hand, Council Vice President
SECONDER:	Kimberly Tilly, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

2. ORDINANCE 2022-30: 2ND READING AND PUBLIC HEARING: AMENDING A PORTION OF THE "GLOBAL AGWAY REDEVELOPMENT PLAN"

Motion to Open Public Hearing by Tilly. Seconded by Long. Vote was unanimous to open Public Hearing.

Several members of the public expressed concern about the Train depot building on the property. A request was made to table this ordinance for 30 days to provide railroad preservationists to organize a funding effort to move the depot. Comments were also shared about the historic nature of the depot building. Three redevelopment plan inconsistencies were also mentioned: the plans for the depot, the 60 foot height of the building facing Park Avenue, and that the retail space has no assigned parking. A resident shared satisfaction that this abandoned property is being developed after many years.

Motion to Close Public Hearing by Tilly. Seconded by Long. Vote was unanimous to close the Public Hearing.

During Council discussion, Borough Planner Elizabeth McManus explained the inconsistencies to the council and answered Council questions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

3. RESOLUTION 2022-231: 2ND READING AND PUBLIC HEARING: FLEMINGTON SPECIAL IMPROVEMENT DISTRICT BUDGET

Motion to Open Public Hearing by Long. Seconded by Parker. Vote was unanimous to open Public Hearing.

Flemington Community Partnership Director Robin Lapidus walked the Council thru the budget amounts. Members of the public asked questions regarding the tax rate and revenue projections.

Motion to Close Public Hearing by Long. Seconded by Johnston. Vote was unanimous to close the Public Hearing.

During Council discussion, Council Member Tilly expressed concerns regarding the expenditure projections and accounting for public events.

RESULT:	ADOPTED [5 TO 1]
MOVER:	Jeremy Long, Council President
SECONDER:	Tony Parker, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti
NAYS:	Kimberly Tilly

4. RESOLUTION 2022-239: APPROVING THE PBA CONTRACT, 2023-2025

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeremy Long, Council President
SECONDER:	Kimberly Tilly, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

5. RESOLUTION 2022-246: AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN FLEMINGTON AND CAPTIVA MAIN STREET URBAN RENEWAL LLC

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Kimberly Tilly, Council Member
SECONDER: Jeremy Long, Council President
AYES: Hand, Johnston, Long, Parker, Rosetti, Tilly

6. RESOLUTION 2022-247: AUTHORIZING A REDEVELOPMENT AGREEMENT BETWEEN THE FLEMINGTON AND CARDINAL CAPITAL MANAGEMENT, INC.

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Kimberly Tilly, Council Member
SECONDER: Jeremy Long, Council President
AYES: Hand, Johnston, Long, Parker, Rosetti, Tilly

7. RESOLUTION 2022-248: AUTHORIZING THE AMENDING OF THE REDEVELOPMENT AGREEMENT BETWEEN FLEMINGTON AND FCUR

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Kimberly Tilly, Council Member
SECONDER: Jeremy Long, Council President
AYES: Hand, Johnston, Long, Parker, Rosetti, Tilly

8. RESOLUTION 2022-249: AUTHORIZING THE AMENDING OF THE REDEVELOPMENT AGREEMENT BETWEEN FLEMINGTON AND HBC LIBERTY, LLC

Resolution Tabled due to unresolved items within the RDA.

RESULT: **TABLED [UNANIMOUS]** **Next: 1/3/2023 5:00 PM**
MOVER: Jeremy Long, Council President
SECONDER: Kimberly Tilly, Council Member
AYES: Hand, Johnston, Long, Parker, Rosetti, Tilly

9. RESOLUTION 2022-250: AUTHORIZING THE CFO TO PAY BILLS FOR THE LAST 2022 BILLS LIST

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

7. Public Comments - Session II (up to 3 minutes each, for a maximum of 30 minutes)

Frank Emanuele, of Raritan Township, and a Borough employee, thanked the Council for approving the PBA contract and how much it means to the police officers. He gave special thanks to Administrator Humphrey, Council President Long and Council Member Tilly.

8. Attorney's Report

Attorney St. Angelo shared that the Wertsville property's management is looking to build townhomes down on Parker Avenue, but there was an issue where their properties actually extend slightly into Raritan Township. Raritan Township has no record of those portions of the properties and do not tax them. Attorney St. Angelo been in discussion with the Raritan Township Attorney, who has spoken to their governing body. They are amenable to working out an arrangement to essentially adjust the boundary line between the two municipalities. Expect in 2023 an escrow agreement with the developers so that the costs of this get borne by the developer to strike an agreement and prepare ordinances to adjust the property lines.

9. Payment of the Bills

Motion To: **Pay the Bills in the Amount of \$448,549.70**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Malik Johnston, Council Member
SECONDER:	Kimberly Tilly, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Executive Session for Any Other Applicable Matter Identified During the Regular Meeting (Action May Be Taken)

No Executive Session

Adjournment

Motion To: **Adjourn**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jessica Hand, Council Vice President
SECONDER:	Malik Johnston, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-251**

DOC ID: 3973

Executive Session to Discuss Potential RDA for Captiva, Cardinal, and RDA Amendments for Liberty Village, & FCUR

WHEREAS, the Common Council of the Borough of Flemington desires to discuss and obtain attorney advice regarding negotiation of potential RDAs for Captiva and Cardinal/Nilkanth, and potential amendment of RDA for Liberty Village and FCUR; and

WHEREAS, an executive session for this discussion is justified under N.J.S.A. 10:4-12 (7), which cites:

pending or anticipated litigation or contract negotiation other than in subsection B. (4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise her ethical duties as a lawyer; and

WHEREAS, a date cannot yet be given for when the minutes from the executive session may be made public;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the Borough of Flemington go into executive session for the above-started purpose.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Meeting Began at 6:00 PM

Executive Session was held at Flemington Borough Hall, 38 Park Avenue, Flemington, NJ 08822

Roll Call: In attendance: Mayor Driver; Council Members Hand, Johnston, Long, Parker, Rosetti, and Tilly; Attorney St. Angelo, Attorney Brewer; Clerk/Administrator Humphrey.

Vote to begin Executive Session: Unanimous

Vote to end Executive Session: Unanimous.

Session concluded at 7:16 PM

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-242**

DOC ID: 3965

Authorizing the Redemption of Tax Sale Certificate 2021-003 Held on Block 5 Lot 12, 54 E Main Street

BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON

WHEREAS, funds were received in the amount of \$16,766.35 for the redemption of tax sale certificate # 2021-003 held on Block 5 Lot 12 , known as 54 East Main Street, property owner 54 East Main Street TIC I LLC, certificate owner, Tax Lien Fund LP;

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that the Tax Sale certificate #2021-003 held on Block 5 Lot 12 is redeemed in the amount of \$16,766.35 plus a premium in the amount of \$5,000.00 and the CFO is instructed to cut a check to the lien holder.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be provided to the Tax Collector.

Adopted: December 12, 2022

Betsy Driver, Mayor

Attest:

Michael Humphrey
Acting Borough Clerk

RESULT:	ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-243**

DOC ID: 3964

Authorizing the Redemption of Tax Sale Certificate 2019-001 Held on Block 17 Lot 16, 10 Capner Street

BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON

WHEREAS, On October 22, 2019, the Tax Collector held a tax lien sale pursuant to State Statutes; and

WHEREAS, US Bank Cust for Pro Cap 8 was the successful bidder on block 17 lot 16; and

WHEREAS, the lien was not satisfied and the lien holder foreclosed on the property on October 17, 2022; and

WHEREAS, the property owner Ralph Iaione obtained a lawyer and obtained a motion to vacate the foreclosure with the stipulation he makes a payment of \$87,842.26 by December 2, 2022; and

WHEREAS, those funds were received by the tax collector on 11/30/2022 at 1:00 PM.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that the Tax Sale certificate #2019-001 held on Block 17 Lot 16 is redeemed in the amount of \$87,842.26 and the CFO is instructed to cut a check to the lien holder.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be provided to the Tax Collector.

Adopted: December 12, 2022

Betsy Driver, Mayor

Attest:

Michael Humphrey
Acting Borough Clerk

RESULT:	ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-244**

DOC ID: 3963

Authorizing the Redemption of Tax Sale Certificate 2020-001 Held on Block 8 Lot 9, 11 East Main Street

BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON

WHEREAS, funds were received in the amount of \$49,590.29 for the redemption of tax sale certificate # 2020-001 held on Block 8 Lot 9 , known as 11 East Main Street, property owner Rosalie Efthim, Et Al, certificate owner, US Bank Cust/PC8 Pro Capital MGT II;

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that the Tax Sale certificate #2020-001 held on Block 8 Lot 9 is redeemed in the amount of \$49,590.29 and the CFO is instructed to cut a check to the lien holder.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be provided to the Tax Collector.

Adopted: December 12, 2022

Betsy Driver, Mayor

Attest:

Michael Humphrey
Acting Borough Clerk

RESULT:	ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-245**

DOC ID: 3972

Appreciation to Lowes and Habitat for Humanity

WHEREAS the management and employees of the Lowes store in Flemington and Habitat for Humanity in Hunterdon County have contributed significant time and materials to projects in Tuccamirgan Park, and

WHEREAS these projects would not be possible without the community-minded spirit of the Lowes store chain and Habitat for Humanity, and

WHEREAS the mayor and council of the Borough of Flemington wish to express their appreciation for these contributions to the Borough,

THEREFORE BE IT RESOLVED that the mayor and council of the Borough of Flemington hereby wishes to acknowledge and thank Lowes Stores and Habitat for Humanity for their sponsorship and efforts on community projects that create more enjoyment for the Borough of Flemington.

Adopted: December 12, 2022

Betsy Driver, Mayor

Attest:

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Council Member Hand expressed her thanks to Lowes and Habitat for Humanity for their support of Tuccamirgan Park.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jessica Hand, Council Vice President
SECONDER:	Kimberly Tilly, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Council Ordinance
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**ORDINANCE 2022-30**

DOC ID: 3958

Amending a Portion of the “Global Agway Redevelopment Plan” as Adopted by Ordinance 2017-1 of the Borough of Flemington

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “Act”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, pursuant to Borough Council Resolution 2014-73, adopted April 16, 2014, the Borough Council designated property designated as Block 5 Lots 1 & 2; and Block 14, Lot 1 on the Borough of Flemington Tax Map (the “**Redevelopment Area**”), as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the “**Redevelopment Law**”); and

WHEREAS, pursuant to Ordinance 2017-1, adopted on February 13, 2017, the Borough Council adopted the Global Agway Redevelopment Plan which covered the Redevelopment Area; and

WHEREAS, the Borough Council has determined that the effective Redevelopment of the Redevelopment Area would be stimulated by amending the Global Agway Redevelopment Plan as it applies to Block 14, Lot 1 as set forth in the attachment to this Ordinance entitled “Global Agway Redevelopment Plan Amendment”; and

WHEREAS, the Borough Council desires to amend the Global Agway Redevelopment Plan and to provide notice thereof in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Flemington, in the County of Hunterdon and the State of New Jersey, as follows:

Section 1. The Global Agway Redevelopment Plan be and hereby is amended with the Attachment to this Ordinance entitled “The Global Agway Redevelopment Plan Amendment”.

Section 2. In the event that any section, part or provision of the Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

Section 3. This ordinance shall take effect upon final passage, publication, and filing with the Office of the Clerk of Hunterdon County, all as required by law.

Introduced: November 28, 2022

Adopted:

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

HISTORY:

11/28/22

Governing Body

INTRODUCED

Next: 12/12/22

COMMENTS - Current Meeting:

Motion to Open Public Hearing by Tilly. Seconded by Long. Vote was unanimous to open Public Hearing.

Several members of the public expressed concern about the Train depot building on the property. A request was made to table this ordinance for 30 days to provide railroad preservationists to organize a funding effort to move the depot. Comments were also shared about the historic nature of the depot building. Three redevelopment plan inconsistencies were also mentioned: the plans for the depot, the 60 foot height of the building facing Park Avenue, and that the retail space has no assigned parking. A resident shared satisfaction that this abandoned property is being developed after many years.

Motion to Close Public Hearing by Tilly. Seconded by Long. Vote was unanimous to close the Public Hearing.

During Council discussion, Borough Planner Elizabeth McManus explained the inconsistencies to the council and answered Council questions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

THE GLOBAL AGWAY REDEVELOPMENT PLAN AMENDMENT



BLOCK 14 LOT 1

FLEMINGTON BOROUGH NJ



Draft: November 23, 2022

GLOBAL AGWAY REDEVELOPMENT PLAN

AMENDMENT – BLOCK 14, LOT 1

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY

Adopted _____

BOROUGH OF FLEMINGTON MAYOR AND COUNCIL

Betsy Driver, Mayor
 Jeremy Long, Council President
 Jessica Hand, Council Vice President
 Tony Parker, Councilman

Malik Johnston, Councilman
 Elizabeth Rosetti, Councilwoman
 Kimberly A. Tilly, Councilwoman

Tara St. Angelo, Esq., Borough Attorney
 Jerome Harris, Borough Engineer
 Elizabeth McManus, PP AICP LEED AP, Borough Planner

BOROUGH OF FLEMINGTON PLANNING BOARD

Jeffrey Doshna - Chairperson
 Susan Engelhardt, Vice-Chairperson
 Mayor Betsy Driver
 Michael Campion
 Councilman Tony Parker
 Brian Budney

Todd Cook
 Karen Giffen
 Hannah Weitzman
 James Hill, Alternate 1
 Trent Levitt, Alternate 3

Eileen Parks, Secretary to the Planning Board
 Kara Kaczynski, Esq, Planning Board Attorney
 Robert J. Clerico, PE, Planning Board Engineer
 Elizabeth McManus, PP AICP LEED AP, Planning Board Planner

Prepared for the Borough of Flemington by:



Elizabeth K. McManus, PP, AICP, LEED AP
 New Jersey Licensed Planner #5915



Brett L. Harris, PP, AICP
 New Jersey Licensed Planner #650100

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Exhibit A – Concept Plan

Exhibit B – Concept Building Renderings

INTRODUCTION

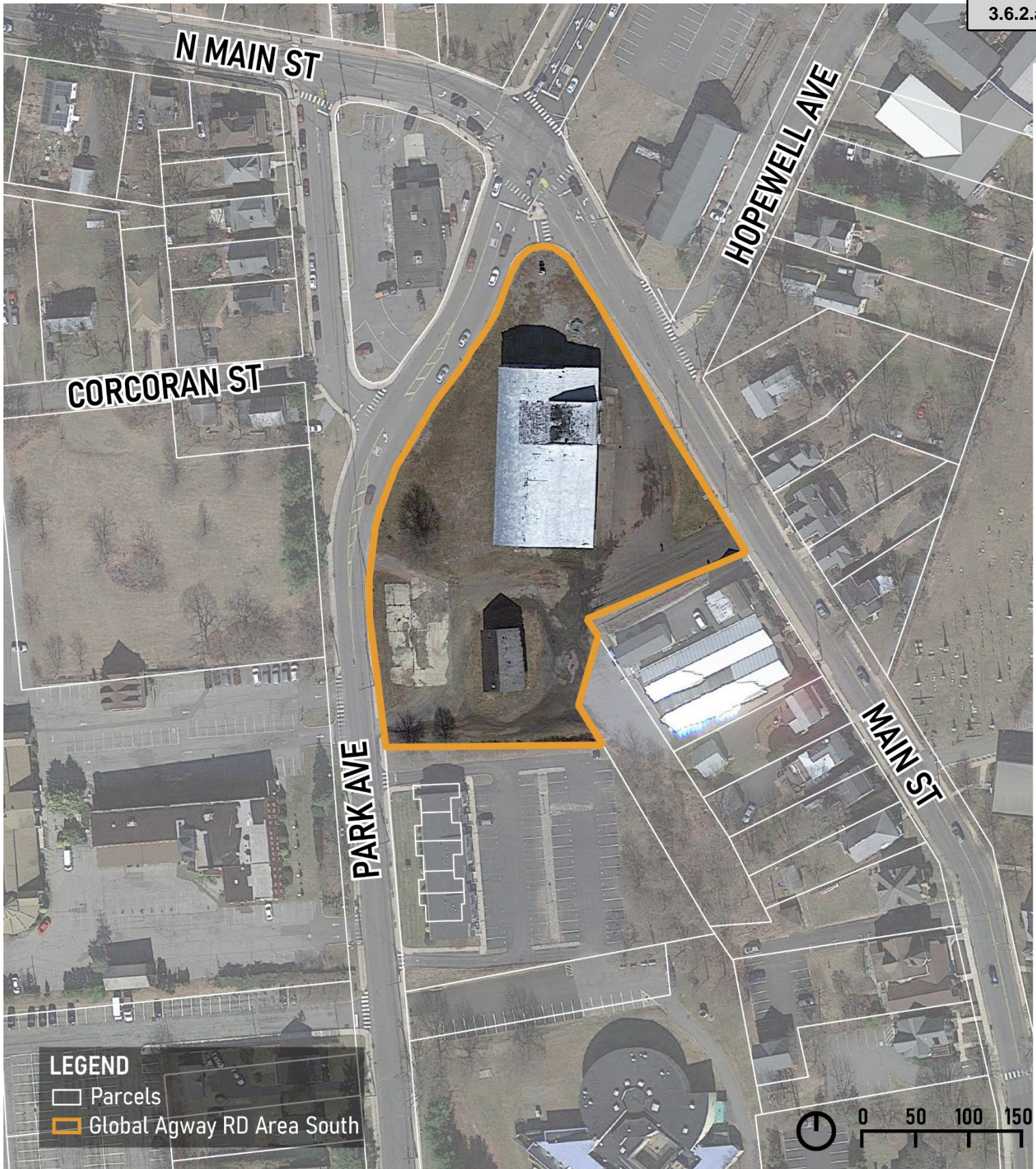
The Global Agway Redevelopment Area was designated as a “Non-Condemnation” Redevelopment Area, on April 16, 2014, through Resolution 2014-73 by the Borough Council. The following Redevelopment Plan is an amendment to, and supersedes, the Global Agway Redevelopment Plan, which was prepared and adopted in January 2017. This Amended Redevelopment Plan address only Block 14, Lot 1.

The Redevelopment Plan provides the policy and regulation for revitalization of Block 14, Lot 1 of the Global Agway Redevelopment Area. The Redevelopment Area is envisioned as an extension of the Borough’s downtown consisting of new residential and commercial uses that complement the Borough’s existing scale and character. The Area will serve as a gateway to the Borough while creating a sense of place that promotes a high quality of life, as well as providing economic support to the Borough’s downtown.

The Redevelopment Area consists of 1 lot, a little over 2-acres, located at the intersection of Park Avenue and Main Street. Two buildings, a warehouse building of approximately 16,400 sf and a late 19th century freight train depot of approximately 2,300 sf, currently occupy the Redevelopment Area. The buildings have been unoccupied for over 20 years. The southern portion of the Redevelopment Area is within the Borough’s Historic District. The freight train depot is identified as a historically significant structure in the Borough’s Historic District map.

The Redevelopment Area serves as an important gateway and acts as transition point to the Borough’s historic downtown found along Main Street. The area surrounding the subject property is characterized by a mix of residential and commercial uses.

Directly adjacent to the north of the subject property is a convenience store. Residential uses, including single and multi-family units are located to the northwest of the Redevelopment Area. Immediately north, within the Global Agway Redevelopment Area and at the intersection of Main Street, Hopewell Avenue and Walter Foran Boulevard, is an approved but not yet constructed 100-unit multi-family development. Adjacent to the Redevelopment Area, to the south are commercial uses along Main Street. Further south are properties owned and used by Hunterdon County, including the County Courthouse. To the east and west is a mix of commercial and residential uses.



POLICY
PLANNING
DESIGN

GLOBAL AGWAY REDEVELOPMENT AREA SOUTH

BLOCK 14 LOT 1

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY, NJ

DATA SOURCE: Aerial Imagery, Google Earth; NJGIN Hunterdon County Parcels 2021; NJDEP 2012 Wetlands; FEMA 2012 Flood Hazard Data. This map was developed using NJDEP, NJGIN, & FEMA Data, but this secondary product has not been NJDEP, NJGIN, & FEMA verified and is not State authorized.

STATUTORY AUTHORITY AND PROCESS

Under New Jersey's LRHL, municipalities are empowered to determine whether an area is in need of redevelopment, to adopt a redevelopment plan, and to implement redevelopment projects. The statute requires a multi-step process that must be adhered to in order for the municipal governing body and planning board to exercise these powers lawfully. This process is summarized below:

1. The governing body must authorize the planning board, by resolution, to undertake an investigation of the delineated area to determine whether it meets the criteria set forth in section 5 of the LRHL.
2. The planning board must then prepare a map showing the boundaries of the Redevelopment Area and the location of the various parcels therein.
3. The planning board must conduct a preliminary investigation and hold a duly noticed public hearing in order to discuss the findings of the investigation and to hear persons who are interested in or would be affected by the contemplated action. The results and recommendations of the hearing are then referred to the governing body in the form of a planning board resolution.
4. Upon receipt of the recommendation from the planning board, the governing body may act to adopt a resolution designating the area in question, or any part thereof, as an area in need of redevelopment.
5. Upon designation, the planning board or governing body then authorizes preparation of a redevelopment plan, which establishes the land development goals and objectives of the municipality and outlines the actions to be taken to accomplish these goals and objectives.
6. The redevelopment plan is adopted by the Governing Body by ordinance after introduction, referral to the Planning Board, and a public hearing. The adopted redevelopment plan may supersede the municipality's zoning district map and zoning ordinance or may be treated as an overlay to existing zoning.

This report meets the requirement listed under step 5, above, for a Redevelopment Plan and provides the Planning Board and Township Council the framework for the land development of the area.

Only after completion of this public process is a municipality able to exercise the powers granted under the LRHL for areas in need of redevelopment. These powers include but are not limited to:

- Acquire land or building identified for redevelopment acquisition in the redevelopment plan through lease, purchase, or eminent domain.
- Offer long-term tax abatements and exemptions for a period of up to 30 years from the completion of the project, or not more than 35 years from the execution of the financial agreement between the municipality and the urban renewal entity. This includes
 - Offer Redevelopment Area Bonds to help fill a project financing gap.
 - Clearing an area, install, construct, or reconstruct streets, facilities, utilities, and site improvements.
 - Negotiating and entering into contracts with private redevelopers or public agencies for the undertaking of any project or redevelopment work.
 - Making loans to redevelopers to finance any project or redevelopment work.
 - Entering buildings or property to conduct investigations or make surveys; contracting with public agencies for relocation of residents, industry, or commerce.
 - Enforcing laws, codes and regulations relating to use and occupancy; repairing, rehabilitating, demolishing, or removing buildings.
 - Exercising other powers, including the power to do all things necessary or convenient to carry out its plans.

REDEVELOPMENT PLAN OBJECTIVES

The Global Agway Redevelopment Plan Amendment is intended to provide a framework for the redevelopment of the area. This Redevelopment Plan is guided by the following objectives:

1. Redevelop the area consistent with the Borough's overall economic goals and regional market forces to ensure any proposed redevelopment is economically feasible.
2. Promote economic development and growth for the Borough through the promotion of mixed-use development, with an emphasis on residential uses that will lead to more residents within walking and biking distance of the shops, services and activities of the downtown.

3. Create diverse housing opportunities in the form of multi-family residential and townhouse units that accommodate a mix of incomes and household sizes. This includes, but is not limited to, an affordable housing set aside.
4. Maintain the overall character and quality of life for existing Borough residents by permitting uses that are sensitive to the surrounding area (particularly residences in the TR and SF Zoning Districts) and limiting impacts from the Redevelopment Area, such as lighting and noise.
5. Enhance the built environment of the area by creating a cohesive mixed-use land use and integrated circulation pattern that is walkable, with buildings that enclose the street and include architectural components that are sensitive to the size and proportion of humans.
6. Permit increased building density where the development advances other goals, such as providing parking which serves the surrounding area, providing affordable housing, and/or providing recreation or entertainment space.
7. Create a pedestrian connection between Park Avenue and North Main Street.
8. Incorporate gateway features, such as a visual terminus at North Main Street and Park Avenue, to emphasize Flemington's unique charm and character and to reinforce to people that they have entered the Borough.
9. Ensure a unique sense of place is established that complements the historical character and scale of the Borough.
10. Encourage sustainable practices including the use of green infrastructure and green building techniques to reduce the Redevelopment Area's environmental footprint, while responding to climate change and flooding in the area.

APPLICABILITY & RELATIONSHIP TO THE LAND USE ORDINANCE

The Redevelopment Plan envisions the creation of a revitalized area on Block 14 Lot 1 of the Global Agway site. The Redevelopment Area is envisioned as a vibrant extension of the Borough's downtown, creating a cohesive built environment, while providing a variety of housing types and attracting a mix of incomes. An integrated residential development creates the opportunity for economic growth and development for the Borough while supporting existing businesses. Additionally, the vision of the area is to encourage development that addresses climate change and flooding in the Borough.

The standards of this Redevelopment Plan shall supersede the zoning provisions of the Borough of Flemington Land Development Ordinance. However, where the regulations and standards of the Redevelopment Plan are silent, the standards of the Land Development Ordinance shall apply to the redevelopment areas as permitted by N.J.S.A. 40A:12A-7.a(2). Additionally, the standards of this Redevelopment Plan shall supersede the provisions of the Global Agway Redevelopment Plan as it relates to Block 14, Lot 1.

The zoning map of the Borough of Flemington shall be amended upon the adoption of this Plan in accordance with N.J.S.A. 40A:12A-7.c to reflect this new classification.

GENERAL PROVISIONS

REDEVELOPMENT AUTHORITY

The Borough Mayor and Council shall act as the “Redevelopment Entity” pursuant to *N.J.S.A. 40A:12A-4.c* for purposes of implementing this Redevelopment Plan and carrying out redevelopment projects. In doing so, the Borough Council shall have the powers set forth in *N.J.S.A. 40A:12A-8* to effectuate all its duties and responsibilities in the execution and implementation of this Redevelopment Plan. Acquisition of any land or building which is necessary for the redevelopment project, pursuant to the provisions of the “Eminent Domain Act of 1971,” P.L. 1971, c.361 (C.20:3-1 et seq.), is not permitted for the area as these properties were declared a “non-condemnation” area in need of redevelopment.

EFFECT OF REDEVELOPMENT AGREEMENT

The execution of the Redevelopment Agreement shall convey the right to prepare a site plan or subdivision application for development to the Flemington Planning Board in accordance with the terms of a Redevelopment Agreement and Redevelopment Plan, among other rights that may be granted by the Borough Council. Nothing herein shall prevent the Borough Council from amending the Redevelopment Plan as it sees fit.

ACQUISITION OF PROPERTY

No property is proposed to be acquired by public entities in the Global Agway Redevelopment Area as part of this Redevelopment Plan.

RELOCATION PROVISIONS

The Redevelopment Area does not include any housing units. Any relocation obligation will be borne by the Designated Redeveloper through the terms of the Redevelopment Agreement.

APPLICATION FOR DEVELOPMENT

The application for development shall include a major site plan that includes the entirety of Block 14, Lot 1. An applicant shall seek preliminary site plan approval for the entirety of the Redevelopment Area; however, final site plan approval may be granted, at the approving authority's discretion, for individual phases of the project. The application shall be submitted in such form, and accompanied by such maps, documents, and materials as are prescribed in the Borough Land Development Ordinance. The order in which final site plan approval is sought and redevelopment occurs shall not be limited by this Plan. Notwithstanding, no building shall be demolished prior to the lot upon which it sits being subject to a preliminary site plan approval, unless required for public safety, as determined by the Borough of Flemington.

Only a party designated by the Borough of Flemington as the designated redeveloper shall be permitted to develop and/or redevelop the Property, which designation shall be accomplished with a Redevelopment Agreement between the Borough and the redeveloper. No party may seek or obtain site plan or subdivision approval related to any portion of the Redevelopment Area without first having been designated as the designated redeveloper by the Borough. The Planning Board may not consider an application for site plan or subdivision approval nor grant site plan or subdivision approval for the Redevelopment Area unless the Applicant is the designated redeveloper as designated by the Borough.

DEVIATION REQUESTS

Any application for a deviation from the requirements of this Redevelopment Plan shall provide public notice of such application in accordance with the requirements of public notice as set forth in the Local Redevelopment and Housing Law (*N.J.S.A. 40:55D-12a* and *b.*) and the Municipal Land Use Law (*N.J.S.A. 40:55D.*) The Flemington Borough Planning Board may grant deviations from the regulations contained within this Redevelopment Plan that are "c" variances pursuant to the Municipal Land Use Law (*N.J.S.A. 40:55D-70c*). Any deviation that constitutes a "d" variance pursuant to the Municipal Land Use Law (*N.J.S.A. 40:55D-70d*) from the Redevelopment Plan shall be permitted only by means of an amendment of the Redevelopment Plan by the Borough Mayor and Council.

REDEVELOPMENT REGULATIONS

The Redevelopment Plan provides the policy framework and regulation for the revitalization of the Global Agway Site. The Redevelopment Area aims to ameliorate the vacant, substandard, dilapidated, and obsolete conditions that currently exist. Global Agway South is envisioned as a new diverse residential neighborhood that provides economic support to the Borough's downtown, while complementing the scale and character of the Borough, creating an integrated and cohesive built environment.

A. DEFINITIONS

The following definitions apply to the words as applied herein:

1. Publicly accessible area: A public or private area consisting of a street, sidewalk, pedestrian path, or open space or plaza used as passive or active recreation.
2. Retail: The business of selling or renting goods or merchandise to consumers, excluding wholesaling transactions.

B. PERMITTED PRINCIPAL USES

1. Multi-family dwellings.
2. Townhouse dwellings.
3. Open space and recreation.
4. Supportive housing.
5. Municipal uses.

C. ACCESSORY USES

1. Signs.
2. Fences and walls.
3. Roof-top solar facilities.
4. Electric vehicle charging stations and make-ready infrastructure.
5. Community gardening.
6. Loading, delivery, service and pick-up zones.

7. Gyms, community rooms and multi-purpose rooms.
8. Open space and recreation, including but not limited to playgrounds, community gathering spaces, and sitting areas
9. Open air pavilion
10. Off-street parking, including surface, and structured parking.
11. Other uses which are customary and incidental to a principal permitted use.

D. CONDITIONAL USES

1. Any use permitted in the DB Downtown Business District.
2. Retail.
3. Restaurant.
4. Brewery.
5. The following conditions shall apply to the above listed conditional uses:
 - a. The use shall be located on the ground floor.
 - b. The use shall have frontage on North Main Street and/or Park Avenue.

E. RESIDENTIAL DENSITY

1. Gross residential density shall not exceed 115 dwelling units.

F. AFFORDABLE HOUSING

1. The affordable housing set-aside shall be not less than 15 percent. Affordable housing units shall be developed in compliance with the Borough's affordable housing ordinance and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-21), including 13% of the affordable units being restricted to very low income housing units.
2. Exterior finishes of affordable units shall be indistinguishable from market rate units.
3. All affordable housing units shall be "family" units, defined as not being limited to any particular population (i.e., senior or special needs), with the exception of the following:
 - a. Up to two (2) supportive housing units containing four (4) bedrooms each shall be permitted in the development. Each bedroom in a supportive housing unit shall be equivalent to one affordable housing unit, for a total of up eight (8) supportive housing units.

- b. Each supportive housing unit shall be eligible for affordable housing credit pursuant to N.J.A.C. 5:93.

G. SITE DESIGN & BULK REGULATION

1. Site layout and design shall be substantially consistent with the Concept Plan provided in Exhibit A.
2. Reverse frontage building and site design is prohibited. The primary entrance of all buildings shall be oriented toward the public street to which the building has frontage upon or a publicly accessible area where no street frontage exists.
3. Minimum setbacks:
 - a. Park Avenue frontage: 15 feet.
 - b. North Main Street frontage: 10 feet.
 - c. Permitted intrusions and exceptions:
 - i. Steps and porches associated with building entrance, except that no walls shall be located within 2 feet of a sidewalk along the Park Avenue or Main Street frontage.
 - ii. Fences and walls, except that no walls shall be located within 2 feet of a sidewalk along the Park Avenue or Main Street frontage.
4. Maximum impervious coverage: 90%. Lawn and other pervious materials located over subsurface parking structures shall not contribute toward pervious areas.
5. Minimum townhouse unit width: 22 feet.
6. Maximum townhouse units per building: 8
7. Minimum distance between buildings: 24 feet.
8. The development shall provide not less than 50 square feet per residential unit of public or private amenity space. The amenity space may be located within a building or outside, provided not less than 50% of the required area is located outside and available for public use. Permitted amenity space uses include but are not limited to fitness areas, community rooms, playgrounds, sitting areas, community rooms, and/or pavilions.
9. Each townhouse unit shall have private outdoor amenity space, which may consist of a balcony, above-grade terrace, below-grade terrace, or roof-top deck. This private space shall not contribute to the amenity space required in item 10 above.
10. Trash and recycling disposal and pick-up facilities shall not be visible from a publicly accessible area.

11. Multi-Family Building Height

- a. Maximum building height: 5 stories / 60 feet, except that tower elements, whether habitable or not, shall not exceed 12' feet or 10% percent of the roof area of the building. An elevator bulkhead and associated stairs are not part of the height restriction.

12. Townhouse unit Height

- a. Maximum building height: 3.5 stories / 40 feet, except that protruding elements, whether habitable or not, shall not exceed 9' feet or 10% percent of the roof area of the building.

13. One or more site features shall reflect the railroad and industrial history of the Borough. The feature shall be visible to a publicly accessible area and may be an architectural feature, or other site amenity.

14. Stormwater detention basins shall not be located between a building and a publicly accessible area.

H. PARKING & CIRCULATION

1. The parking and circulation shall be substantially similar to the Concept Plan provided in Exhibit A to this Redevelopment Plan.

2. Parking shall be provided as follows:

- a. One and a half (1.5) parking spaces per multi-family unit
- b. Two (2) parking spaces per townhouse unit.
- c. No parking is required for nonresidential uses.

3. Bicycle parking shall be provided, consistent with § 1634.

4. Loading space(s) are not required.

5. One delivery / passenger drop-off area shall be identified. Said area shall be located convenient for residential deliveries and passenger drop-offs and may be located within the site interior, along an access drive or along a public street. The location of the feature shall not prevent the flow of pedestrian, bicycle or vehicular movement.

6. Parking structures facing a publicly accessible area should be architecturally integrated into the principal building using techniques such as screening, and/or grilles.

7. Curb cuts shall be substantially consistent with those shown on the Concept Plan provided in Exhibit A.

8. Townhouses shall provide on-site parking by an enclosed garage located in the rear yard, which shall not include the primary building entrance, with access from a lane,

alley or surface parking lot. Parking may occur within the driveway leading to the garage, in which case the garage shall be set back no less than 18 feet from the lot line to accommodate a car without projecting into the right-of-way.

9. Vehicle access drives shall not be located less than 5 feet from a building façade with a pedestrian access. Facades with emergency access only are exempt.

I. ARCHITECTURAL DESIGN

1. The architectural design shall be substantially similar to the Concept Building Renderings in Exhibit B to this Redevelopment Plan.
2. Building facades shall present a cohesive design and shall utilize regular patterns to create architectural interest. Such architectural interest may be created through use of vertical recesses/projections, material changes, or a tripartite structure (three distinct vertical components - a "base," a "middle," and a "top" distinguished with building materials, projections, or other architectural features). Blank walls are prohibited.
3. Facades shall be expressed as building modules that do not exceed 80 feet in width.
4. Building entrances shall be articulated to make them easily identifiable by visitors and to provide architectural interest. Examples of special features of entrances include, but are not limited to, awning, architectural treatments, recesses, projections, etc. Service doors shall be integrated with the building design and need not be articulated.
5. Building entrance shall face the street to which the building is oriented.
6. Upper floor windows shall be divided into individual units, rather than a continuous "ribbon." In addition, upper story windows shall be oriented vertically.
7. Windows shall be recessed, or project as bays from the main wall, a minimum of four inches from the façade so as to create texture and shadows on the façade for visual interest. Windows shall not be flush with the surrounding wall surface.
8. Awnings should have a matte finish and be constructed of colored natural or synthetic canvas, or other materials such as metal or glass. Awnings should not be internally illuminated and should not be made of vinyl or other plastic material.
9. The maximum length of any visible continuous roofline shall not exceed 100 feet. Visible roofline segments should vary in height by at least 4 feet.
10. Building roofs should be flat, gabled, or mansard. Hipped roofs are discouraged.
11. Ground level mechanical equipment is discouraged. Where provided, it shall not be located between building and a publicly accessible area and shall be screened with plantings or a solid fence.

12. Redevelopment is encouraged to utilize green or sustainable building and site design standards. Some examples are: United States Green Building Council LEED; National Green Building Standard; EnergyStar; Green Globes; and the Sustainable Sites Initiative.

J. SIGNS

1. Signs, including those for a residential development, shall be consistent with the standards for businesses for the DB district in the Flemington Borough Land Development Ordinance, with the following exceptions:
 - a. Freestanding signs are prohibited.
 - b. With the exception of a wayfinding sign at the corner of Main Street and Park Avenue stating, "Flemington," which shall have letters that do not exceed 2 feet in height, any wall sign shall be limited to not more than 50 square feet.

K. STREETSCAPE DESIGN

1. Street trees shall be provided along all public streets, consistent with § 1632.A.2.
2. Sidewalks shall be provided along all public streets, consistent with § 1634.
3. Streetscape furnishings, light fixtures, garbage disposal, etc., shall be required for the Main Street and Park Avenue frontages of the site and shall be the same or substantially similar to those specified in the Main Street Streetscape Improvements.
4. Subject to approval by the relevant utility provider, all utilities shall be installed underground.

L. PLANTING AND LIGHTING DESIGN

1. Buffer plantings shall not be required.
2. All lighting shall meet the requirements in the Flemington Borough Land Development Ordinance. All outdoor lighting should be coordinated as to style, material and color. All exterior lighting shall be designed, located, installed and directed in such a manner as to prevent objectionable light at, and across, the property lines to prevent glare at any location on or off of the property. The use of light-emitting diode (LED) fixtures is required for energy efficiency and uniform illumination.

RELATIONSHIP TO PLANNING & OBJECTIVES

The 2010 Master Plan, as supplemented by the 2015 Master Plan Reexamination Report, outlines the vision for the future of Flemington Borough. The Master Plan outlines several goals and objectives related to residential and commercial development within the Borough. The goals and objectives that are relevant to the Redevelopment Area are as follows:

“Employ strategies to encourage community and economic development within the Borough.”

“Integrate residential and commercial segments of Flemington Borough to benefit the entire community.”

“Strengthen and enhance the commercial sector of the Borough, with an emphasis on attracting specialty retail and restaurants, and encouraging the redevelopment of underutilized properties particularly those within the Downtown Business District.”

“Concentrate retail, service, and entertainment uses which best contribute to creating a vibrant downtown and that will draw residents and visitors alike to the retail portion of Main Street (Downtown Business I and II) and nearby surrounding properties, and the Liberty Village and Turntable Junction Area.”

“Provide opportunities for appropriately scaled and located residential development to encourage redevelopment/revitalization of underutilized properties and to provide opportunity for additional market support for the retail, service, and entertainment portions of Main Street (Downtown Business I and II) and nearby surrounding properties, and the Liberty Village and Turntable Junction Area.”

The Master Plan highlights the importance of strengthening, integrating, and encouraging residential and commercial development within the Borough. Although the Master Plan goals emphasize commercial redevelopment in the Downtown Business District and southern portions of the Borough, it also recognizes the importance of providing varying scales of residential and commercial development. The Redevelopment Plan is consistent with goals and objectives outlined in the Master Plan.

The Historic Preservation Element of the 2010 Master Plan, and associated 2020 Amendment, outline goals and recommendations specifically tailored to the historic preservation in the Borough. The goals and objectives that are relevant to the Redevelopment Area are as follows:

1) Locate, designate, protect and maintain Flemington's most important historic sites and district(s).

2) Maintain the historic character of Flemington's historic commercial and institutional resources while encouraging their development as commercial and cultural assets.

- *Encourage preservation and adaptive reuse.*

4) Contribute to the improvement of the economy of Flemington by encouraging expenditures for the restoration and/or adaptive reuse of historic buildings for local purposes and to encourage and promote tourism."

"Work to prevent deterioration and demolition of historic structures."

"Encourage preservation and rehabilitation of all historic structures in the Historic District to preserve and enhance Flemington's historic character and ambiance, thus encouraging heritage tourism."

The Redevelopment Area is located in the Transition Commercial (TC) Zoning District. The purpose of the TC District is to provide areas for more intensive commercial uses commonly with a wholesale component or outdoor which were developed in proximity to rail lines or highways. The full list of permitted principal and accessory uses can be found in §2618 of the Borough's Land Development Ordinance. Examples of permitted principal uses include grocery stores, breweries, lawn and garden centers, and other retail commercial uses.

The Redevelopment Area is also located in the Redevelopment Office/Senior Housing (ROSH) Overlay District. The purpose of the ROSH Overlay Zone is to provide alternative uses for the area generally bounded by portions of the following roads: Walter Foran Boulevard, Hopewell Avenue, and Park Avenue. Additionally, the purpose of the overlay zone includes the following:

1. Promote development of compact, pedestrian-oriented mixed uses including assisted living senior citizen residential with retail, office and open space;
2. Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage, and town center businesses;

3. Promote the health and well-being of residents by encouraging physical activities and greater social interaction.

The Redevelopment Area is located in the northern portion of the Borough, close to the municipal boundary with Raritan Township. In between the redevelopment area and the municipal boundary are multifamily residential uses. The adjacent properties in Raritan Township are located in the R-6 Residential, R-6LM Low- and Moderate-Income Housing, and B-2 Commercial Zoning Districts. The R-6 and R-6LM permit residential uses. The B-2 district permits commercial uses including retail service, banks, and professional offices.

The New Jersey State Development and Redevelopment Plan (SDRP) is a statewide policy document that is meant to act as a guide for public and private sector investments throughout the state. The Plan outlines and designates areas as various Planning Areas. The Redevelopment Area is within the Fringe Planning Area (PA-3). The Fringe Planning Area is meant to:

“Accommodate growth in Centers; protect the Environs primarily as open lands; revitalize cities and towns; protect the character of existing stable communities; protect natural resources; provide a buffer between more developed Metropolitan and Suburban Planning Areas and less developed Rural and Environmentally Sensitive Planning Areas; and confine - programmed sewers and public water services to Centers.”

Additionally, the Borough of Flemington, including the Redevelopment Area, is a State Plan Designated Center. Designated Centers are areas that contain compact forms of development. In the Fringe Planning Area, it is the intent of the State Plan, that centers accommodate future growth since they are already served by municipal infrastructure. Redevelopment of the site with a residential use is consistent the State Plan and Center designation.

Exhibit A. Concept Plan

Attachment: 221123 Cardinal Capital RD Plan (2022-30 : Amending a Portion of the “Global Agway Redevelopment Plan”)

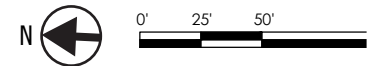


LEGEND

- ▲ PEDESTRIAN ACCESS TO PARK
- △ ADA PEDESTRIAN ACCESS TO PARK
- ↕ VEHICULAR ACCESS TO PARKING
- TERRACES/BALCONIES

PROJECT STATISTICS

- 11 TOWNHOUSES
- 100 APARTMENT UNITS INCLUDING REQ. AFFORDABLE UNITS IN NORTH AND SOUTH BUILDING
- 200 TOTAL PARKING SPACES



SITE PLAN

STUDIO 1200 ARCHITECTURE + DESIGN | 511 MILLBURN AVE. STE 1, SHORT HILLS, NJ 07078 | STUDIO1200.COM

FLEMINGTON REDEVELOPMENT
11/15/2022

Exhibit B.

Concept Building Renderings

Attachment: 221123 Cardinal Capital RD Plan (2022-30 : Amending a Portion of the “Global Agway Redevelopment Plan”)



VIEW 1: GATEWAY

STUDIO 1200 ARCHITECTURE + DESIGN | 511 MILLBURN AVE. STE 1, SHORT HILLS, NJ 07078 | STUDIO1200.COM

FLEMINGTON REDEVELOPMENT
11/15/2022

Attachment: 221123 Cardinal Capital RD Plan (2022-30 : Amending a Portion of the “Global Agway Redevelopment Plan”)



VIEW 2: TOWNHOUSE AERIAL



VIEW 3: PARK AVE.

STUDIO 1200 ARCHITECTURE + DESIGN | 511 MILLBURN AVE. STE 1, SHORT HILLS, NJ 07078 | STUDIO1200.COM

FLEMINGTON REDEVELOPMENT
11/15/2022

Attachment: 221123 Cardinal Capital RD Plan (2022-30 : Amending a Portion of the “Global Agway Redevelopment Plan”)

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Financial Approval
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-231**

DOC ID: 3946

Approving 2022 Flemington Special Improvement District Budget

WHEREAS, at its regular meeting of November 14, 2021, the governing body of the Borough of Flemington introduced and approved the Flemington Borough Special Improvement District budget for the period January 1, 2023 - December 31, 2023, which budget is annexed hereto; and

WHEREAS, after notice of advertisement in a newspaper of general circulation, the governing body of Flemington Borough conducted a public hearing during its regular meeting on December 12, 2022, at 7:30 P.M.; and

WHEREAS, at least one (1) week prior to the public hearing hearing a complete copy of the proposed budget was (a) advertised; (b) posted in the Borough Clerk's office; and (c) made available to each person requesting the same before and during the public hearing; and

WHEREAS, during the public hearing, all persons having interest in the budget were given the opportunity to present objections; and

WHEREAS, the governing body of Borough of Flemington, having considered the comments at the public hearing, is of the opinion that it is appropriate and desirable to ratify and adopt the budget without amendment as advertised; and

WHEREAS, pursuant to N.J.S.A. 40:56-80 and N.J.S.A. 40:56-84, the governing body of Borough of Flemington is required to adopt the budget by resolution after closing the hearing;

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Borough of Flemington that:

(1) The Flemington Borough Special Improvement District 2022 budget is approved by the governing body of the Borough of Flemington and it is approved for the period of January 1, 2023 - December 31, 2023 in the amount of \$572,000.00, to be collected via the Special Improvement Tax.

(2) The municipal assessor shall prepare an assessment roll setting forth separately the amounts to be specially assessed against the benefited and

assessed properties in the District, as listed in the Ordinance establishing the District, which assessment roll shall include a description of the property and the name of the record owner of each such property;

(3) This special assessment shall be collected with either the regular tax payment (or payment in lieu of taxes), or otherwise, on properties located within the Borough of Flemington as set forth within the Ordinance and the assessment as follows: Schedule A (Downtown) shall be assessed at 66%; and, Schedule B (Highway) shall be assessed at 34%;

(4) Payments the District received by the Borough of Flemington shall be transferred to the Flemington Borough Business Improvement District Management Corporation to be expended in accordance with the approved budget; and

(5) The Borough Clerk is hereby authorized to forward a certified copy of this resolution to Flemington Borough Business Improvement District Management Corporation, the Hunterdon County Board of Taxation, and the Director of the Division of Local Government Services in the State of New Jersey Department of Community Affairs.

(6) BUDGET

2022 BUDGET (See Attachment for Detail)

Introduced: November 14, 2022

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

HISTORY:

11/14/22

Governing Body

INTRODUCED

Next: 12/12/22

COMMENTS - Current Meeting:

Motion to Open Public Hearing by Long. Seconded by Parker. Vote was unanimous to open Public Hearing.

Flemington Community Partnership Director Robin Lapidus walked the Council thru the budget amounts. Members of the public asked questions regarding the tax rate and revenue projections.

Motion to Close Public Hearing by Long. Seconded by Johnston. Vote was unanimous to close the Public Hearing.

During Council discussion, Council Member Tilly expressed concerns regarding the expenditure projections and accounting for public events.

RESULT:	ADOPTED [5 TO 1]
MOVER:	Jeremy Long, Council President
SECONDER:	Tony Parker, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti
NAYS:	Kimberly Tilly

FCP Budget	22		22 Notes	23 DRAFT	Breakdown
EOY Bank Account Carryover	100,000		Note: We carryover funds		120,000
REVENUE:					
BID Assessment	362,000		Annual Tax Assessment		362,000
Additional Sponsorships & Grants	30,000		In 22 sponsorship is not		45,000
Earned Revenue: Tickets, Event	27,000		Earned Revenue event		45,000
TOTAL	519,000			572,000	
EXPENSES					
Economic Development	124,150			136,000	
Event Grants to Biz		30,000	Grants to local businesses		32,000
Temporary Performance/ Event		14,000	Tent, Talent, Permits &		16,000
Biz-focused Annual & Seasonal		67,000	Seasonal Events & Promo		72,000
Stakeholder Relations		7,650	Board & Stakeholder		8,000
Econ Dev Planning & Events		5,000	Meetings, Maps, Prof		8,000
Streetscape Improvements	70,000			72,000	
Visual Arts		6,000	Holiday Décor and		6,000
Storefront Improvement & Sign		20,000	Grants to businesses for		26,000
Banners & Signs		17,000	Printed Banners and Sign		17,000
Beautification Projects/Season		27,000	Landscaping circle &		23,000
Marketing	40,000			43,000	
General Advertising		23,000	All print ads and event		25,000
Facebook & Online Ads		4,000	Boosted FB, Insta, Social		3,000
FCP Promotional Materials		5,000	Merch, Contests, bags, t-		8,000
Film/ Photo/ Video		2,000	Photography & Video		4,000
Brochures		6,000	Print and on-line		3,000

Total Advertising	55,000			64,000	
Graphic Design		12,000	All Graphic Design Work		12,000
Market Research		2,000	Surveying and testing		500
Web /Hosting/Domain/CC		4,000	All Web Fees		4,500
Marketing/PR		25,000	prof services, newsletters, pr		35,000
Social Media / Business Writing		6,000	Social Media Support and Business Content		6,000
Print Materials/Business Promotion		6,000	Seasonal Print and Biz Promo Materials printing		6,000
Administration	152,500			181,500	
Executive Director		100,000	Salary		110,000
Operations/ Project & Event		25,000	(PLUS Additional 25k		25,000
Admin/ Event/Project Support		6,000			25,000
Payroll Taxes		21,500			21,500
Overall FCP Operations	51,360		Rent, storage, office equip	55,000	
Professional Services	14,000		Fee's for Bookkeeping, Acc	15,000	
TOTAL Expense	507,010			566,500	
TOTAL REVENUES	519,000			572,000	
TOTAL EXPENSES	507,010			566,500	
NET INCOME	11,990			5,500	

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Financial Approval
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-239**

DOC ID: 3957

Authorizing the Mayor and Clerk to Sign a 2023-2025 Collective Bargaining Agreement with PBA Local 188 Representing Flemington Police Department

WHEREAS, the Borough of Flemington (the "Borough") entered into negotiations with PBA Local regarding conditions of employment relating to police officers employed by the Flemington Borough Police Department; and

WHEREAS, as a result of these negotiations, the Borough and the PBA Local 188 have reached a mutual agreement regarding such terms and conditions of employment, a copy of which is attached hereto; and

WHEREAS, the Borough Labor Attorney has reviewed the attached agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey as follows:

1. The agreement for the years 2023-2025 between the Borough of Flemington and Hunterdon County P.B.A. Local 188, a copy of which is annexed hereto and is made a part thereof, is hereby accepted by the Borough.
2. The Mayor and Clerk are authorized to sign the agreement between the Borough of Flemington and Hunterdon County P.B.A. Local 188 in substantially the same form as attached hereto, allowing for the correction of typos or grammatical errors.
3. This agreement is approved and ratified by the Borough of Flemington subject to ratification by P.B.A. Local 188.
4. Copies of this resolution will be provided to P.B.A. Local 188, the Borough Clerk / Administrator, Chief of Police, Chief Finance Officer, and any other interested parties.
5. A certified copy of this resolution and the Agreement are to be forwarded to the Public Employment Relations Commission.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

HISTORY:

11/28/22

Governing Body

TABLED

Next: 12/12/22

Tabled based on questions raised during Executive Session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeremy Long, Council President
SECONDER:	Kimberly Tilly, Council Member
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-246**

DOC ID: 3967

Authorizing a Redevelopment Agreement by and Between the Borough of Flemington and Captiva Main Street Urban Renewal LLC

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the "**Act**"), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Resolution 2014-73 adopted on April 16, 2014, the Flemington Borough Council designated Block 5 Lots 1 & 2 and Block 14, Lot 1 as a non-Condensation redevelopment Area ("Global Agway Redevelopment Area"); and

WHEREAS, by Ordinance No. 2017-1 on February 13, 2017, the Borough of Flemington adopted a plan for the redevelopment of those parcels within the Redevelopment Area, which plan is known as the Global Agway Redevelopment Plan ("Redevelopment Plan"); and

WHEREAS, the Borough desires that certain property located within the Redevelopment Area be redeveloped in accordance with the Redevelopment Plan, as may be amended from time to time, a complete copy of which is on file at Borough Hall:

- Block 5, Lots 1 & 2 - property known as Global Agway, consisting of approximately 3.34 acres ("**Project Site**"); and

WHEREAS, by Resolution adopted in December 2019, the Borough authorized the execution of a Conditional Designation Agreement with Captiva Main Street, LLC, and thereafter engaged in negotiations for a comprehensive Redevelopment Agreement with Captiva Main Street Urban Renewal, LLC for the redevelopment of the Redevelopment Area; and

WHEREAS, the Borough has negotiated the terms of a Redevelopment Agreement with

Captiva Main Street Urban Renewal, LLC for the comprehensive redevelopment of the Redevelopment Area, a copy of which is attached to this Resolution.

WHEREAS, the Borough and Redeveloper desire to enter into this Agreement, which supersedes any and all previous Agreements for the Redevelopment of the Redevelopment Area;

NOW, THEREFORE BE IT RESOLVED by the Borough of Flemington Council, County of Hunterdon, State of New Jersey, as follows:

1. The Mayor is hereby authorized and directed to execute a Redevelopment Agreement between the Borough of Flemington and Captiva Main Street Urban Renewal, LLC in substantially the form attached hereto as Attachment A.
2. The Clerk and Staff of the Borough of Flemington are hereby authorized and directed to take all actions as shall be deemed necessary or desirable to implement this Resolution.
3. This Resolution shall be effective immediately.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

REDEVELOPMENT AGREEMENT BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND CAPTIVA MAIN STREET LLC

THIS REDEVELOPMENT AGREEMENT (“**Agreement**”), made as of the ____ day of _____ 2022 (the “**Effective Date**”), by and between the BOROUGH OF FLEMINGTON, with offices at 38 Park Avenue, Flemington, New Jersey 08822, (the “**BOROUGH**” or “**FLEMINGTON**”), acting pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 and CAPTIVA MAIN STREET URBAN RENEWAL LLC with offices located at 39 Route 46 East, Unit 801, Pine Brook, NJ 07058 (“**Redeveloper**” or “**Captiva**”).

RECITALS

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “**Act**”), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Ordinance No. 2017-1 on February 13, 2017, the Borough of Flemington adopted a plan for the redevelopment of those parcels within the Borough that had previously been designated as areas in need of redevelopment comprising approximately 5.6 acres (collectively, the “**Redevelopment Area**”), which plan is known as the Global Agway Redevelopment Plan (“**Redevelopment Plan**”); and

WHEREAS, the Borough desires that certain property located within the Redevelopment Area be redeveloped in accordance with the Redevelopment Plan, as may be amended from time to time, a complete copy of which is on file at Borough Hall:

- Block 5, Lots 1 and 2 – property known as Global Agway, consisting of 3.34 acres and fronting on Main Street (“**Project Site**”)

WHEREAS, the Borough and Redeveloper desire to enter into this Agreement, which

supersedes any and all previous Agreements for the Redevelopment of the Project Site;

NOW THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the Parties hereto, each binding itself, its successors and assigns, do mutually promise covenant and agree as follows::

Article 1 **DEFINITIONS**

Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and Exhibits hereto shall have the following meanings:

“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. For purposes of this definition, the term “control,” including the correlative meanings of the terms “controlled by” and “under common control with,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person; provided that the right of another entity or entities to consent to “major decisions” shall not be deemed to negate the existence of control (however, for the avoidance of doubt, the foregoing shall not be deemed to excuse Redeveloper or any Affiliate from the performance of any of its obligations under this Agreement).

“Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Applicable Laws” means any laws, statutes, codes, ordinances, orders, regulations or other such legal requirements of any governmental body, now or hereafter in effect, and, in each case, as may be amended.

“Certificate of Completion” means a recordable, conclusive determination issued by the Borough evidencing the satisfaction and termination of the agreements and covenants in this Agreement, as applicable, and compliance with this Agreement and the Redevelopment Plan with respect to the Redeveloper's obligation to implement the Project, as follows: (i) based upon its review of a written certification of a duly authorized officer of Redeveloper stating that: (a) the Project has been completed and all labor, services, materials and supplies used in connection thereto have been paid for (or, if disputed, bonded for as may be set forth herein) and (b) the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project; and (ii) a written determination by the Borough that the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project, based upon: (a) the Borough Engineer Certification and (b) any other physical inspection of the Project and/or review of such other documentation or information that the Borough shall reasonably deem relevant and appropriate (the “**Written Determination**”). A Certificate of Completion for the Project shall be formally approved by Resolution of the Borough and such Resolution in and of itself may constitute the Written Determination defined in this paragraph.

“Certificate of Occupancy” means the certificate provided for at N.J.S.A. 52:27D-133, whether temporary or permanent, indicating that the construction has been completed in accordance with the applicable construction permit, the applicable Ordinances of the

Borough of Flemington, the State of New Jersey Uniform Construction Code, and any other ordinance or regulation implementing the State of New Jersey Uniform Construction Code.

“Effective Date” means the date this Agreement is last executed by the authorized representative of the Borough.

“Financial Agreement” means a separate agreement between the Borough of Flemington and Redeveloper regarding certain Payments in Lieu of Taxes (PILOTs).

“Governmental Application(s)” means any and all submissions, supporting documents, reports or other proofs transmitted to any state, federal or local governmental office, agency, authority, department, officer or agent for the purpose of obtaining authorization or approval of any aspect of the Project.

“Governmental Approval(s)” means all necessary reviews, consents, opinions, permits or other approvals of any kind legally required by any federal, state, county or local Governmental Body or quasi-governmental entity having jurisdiction over any aspect of the implementation or construction of the Project or any portion thereof, including, but not limited to, preliminary and final site plan and subdivision approval and construction permits.

“Governmental Body” means any federal, state, county, legislative or executive office or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Borough, the County of Hunterdon, the State of New Jersey or the United States of America.

“Interim Cost Agreement” or “Interim Cost and Conditional Designation Agreement” means the terms and conditions of the Interim Cost Agreement, as amended, entered into

by and between the Borough and the Redeveloper on or about January 9, 2020, which sets forth the parameters by which Redeveloper may be designated as the exclusive Conditional Redeveloper of the Project Site and which required, *inter alia*, Redeveloper to establish an escrow fund for the payment of the Borough Costs incurred during the interim. Upon the Effective Date of this Agreement, the Interim Cost Agreement, and any amendments thereto, shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms contained herein with respect to same.

“Borough Cost(s)” means all out-of-pocket costs and/or expenses incurred by the Borough that are required by or necessary to implement or defend this Agreement and/or any amendment thereto, including Redeveloper’s designation as the exclusive Redeveloper of the Project Site, the Redevelopment Plan or any amendment thereto in connection with the Project, and/or any Financial Agreement or other such agreement memorializing the terms of any PILOT, which shall include, but not be limited to, the following: fees and costs of any professional, consultant, contractor or vendor retained by the Borough in writing, including attorneys, environmental consultants, engineers, technical consultants, planners, and financial consultants among others.

“Flemington Borough Engineer Certification” means a written certification by the Flemington Borough Engineer that, based upon the Flemington Borough Engineer’s physical inspection and review of the Project, together with any other documentation or information that the Flemington Borough Engineer shall reasonably deem relevant and appropriate, the Project has been constructed and implemented in accordance with the relevant plans approved pursuant to the Governmental Approvals.

“Progress Report” means a written report in substantially the form attached hereto as **Exhibit D** which sets forth a description of activities completed, the activities anticipated to be undertaken prior to the next monthly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed.

“Project” shall be as set forth in the plans submitted as part of the Redeveloper’s site plan approval from the Flemington Planning Board via Resolution dated August 9, 2022 copies of which are attached hereto as **Exhibit A**, and illustrate the Project to be constructed as described in the Project Description, attached hereto as **Exhibit B** and the provisions of Section 2.1 of this Agreement.

“Redevelopment Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Redevelopment Law” means the State of New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as this statute may be amended from time to time.

ARTICLE 2

IMPLEMENTATION OF PROJECT

SECTION 2.1 Implementation of Project. The Redeveloper is hereby designated as the exclusive redeveloper of the parcels referred to herein as the Project Site, and Redeveloper agrees to perform and complete the following tasks, which shall collectively be included in

the **Project**, consistent with all of the Exhibits, referred to herein prepared by Jose Carballo Architectural Group, PC and Bertin Engineering, which depict all of the project details (the “**Project Site Plans**”), a copy of which are attached hereto as **Exhibit A**. The Project shall be a multifamily residential facility consisting of two individual buildings and at least 174 parking spaces (collectively, the “**Project Description**”), in compliance with the terms and conditions of this Agreement, the Redevelopment Plan, all Applicable Laws, and in accordance with the level of skill and care ordinarily exercised by developers of such similar first class residential development:

- a. Site Acquisition: acquisition of ownership of the Property, which shall be completed by the date set forth in the Project Schedule in **Exhibit C**.
- b. Site Preparation: Undertaking all site preparation tasks and activities for all development and/or construction hereunder.
- c. Governmental Approvals: obtaining all applicable Governmental Approvals, as that term is defined herein, for the Project.
- d. Construction and Implementation of the Project: financing, development, construction and maintenance of two residential buildings (one with sixty-two units and the other with thirty-eight), which will include 15% affordable housing units with some surface parking and the remainder interior podium parking for the use of residents, employees and visitors of the Project, all in accordance with the Project Schedule, attached hereto as **Exhibit C**, the Redevelopment Plan, the terms of this Agreement, and all applicable laws, rules and regulations.
- e. Parking: Provision of a total of at least 174 on-site auto parking spaces, as depicted on the Project Site Plans, including a requirement that 29 of the parking space be electric vehicle charging spaces and “make-ready” spaces, with not less than 10 of the 29 charging spaces having electric vehicle supply equipment actually installed by Redeveloper, and the remainder of the spaces being “make ready,” with the Redeveloper installing electric vehicle supply equipment in accordance with the phased timing required by P.L. 2021, c. 171.

- f. Infrastructure Improvements: Construction or extension of any improvement or utility necessitated or required by the implementation of, and to serve, the Project, which is located in whole or in part either on or off the Project Site, including but not limited roadway milling and paving, installation of electric power transmission lines, sewer transmission conduits or pipes, storm sewers, telephone transmission lines, and cable lines, and any other such utilities all of which shall be subject to final utility connection coordination with each relevant utility provider.
- g. Sewer Infrastructure Improvements. The Parties agree that the Project will require the Redeveloper to address sewer surcharges in the vicinity of the Project Site. *The Redeveloper shall evaluate all possible options for connection to the sanitary sewer system including, but not limited to, 1) construct a pump station on the Property to pump sewage downstream and provide additional storage capacity in a wet well on the Project Site; and 2) connection by gravity to the Borough sewer line further downstream. The options set forth in this Paragraph and others that may arise shall be referred to as the Sewer Infrastructure Improvements. Redeveloper shall design such Sewer Improvements in conformance with the review and approval of the Borough. Should an on-site pumping station be the selected option, the facility is to be owned, maintained, and operated by the Redeveloper or their successor.*
- h. Sewer Pipe Replacement. The parties agree that the efficient transport of sewage will require the replacement of approximately 450 feet of sewer pipe from the rear of 28 Hopewell Avenue to East Main Street, which work shall be undertaken by the Borough and/or its contractor, with all costs associated with such replacement to be included in the definition of Borough Costs. Redeveloper shall provide the Borough with \$250,000.00 (the "Sewer Contribution") upon 90-day advance written notice from the Borough to the Redeveloper, but in no case shall the Sewer Contribution be required to be made until all Governmental Approvals, including all requisite approvals from the New Jersey Department of

Environmental Protection, have been obtained by the Redeveloper.

- i. Culvert Re-alignment. The culvert which currently exists on the Project Site is located underneath the area proposed for one of the buildings to be constructed as part of the Project. The Redeveloper shall be responsible for the relocation of the existing culvert to a location which is not obstructed by any improvements.
- j. Improvement Contribution: Prior to building permits being issued for the construction of the Project, the Redeveloper shall contribute One Hundred and Twenty-Five Thousand Dollars (\$125,000) to the Borough's Department of Parks and Recreation for the construction and/or improvement of a park located within the Borough.
- k. Sustainability Component: The project shall meet the requirements for LEED Certified Low-rise or Mid-rise multi-family buildings; however, the project shall not be required to achieve LEED Certification. Applicant shall submit the rating system's LEED Project Checklist (a.k.a. Scorecard) and supporting narrative and documentation to the satisfaction of the Board Planner and Board Engineer.
- l. The Project shall include the following:
 - Bicycle Facilities (both short and long term)
 - Low flow fixtures and dual flush toilets
 - Electric Vehicle Charging stations
 - On site recycling collection facilities
 - Waste Management plan for disposing and recycling construction and demolition waste
 - No smoking in common areas, including tobacco smoke, smoke produced from the combustion of cannabis and controlled substances and the emissions produced by electronic smoking devices.
 - Provide compartmentalization by limiting occupants' exposure to indoor air pollutants by minimizing the transfer of air between units.
 - Low E glass.
 - A minimum of 75% of each of items (i) – (iv) must be Low VOC / No added

formaldehyde:

- (i) Interior paint, gypsum and plaster-based wall board and ceiling panels (excluding panels exposed to the exterior)
- (ii) Interior adhesives and sealants, thermal and acoustic insulation (excluding HVAC insulation)
- (iii) Wood based interior products, including but not limited to cabinets and wood panels
- (iv) Flooring and wall coverings

SECTION 2.3 Design Approval. Redeveloper has obtained informal approval from the Borough which includes review and approval of the layout, density, parking and architectural design of the Project. The Redeveloper shall diligently work to obtain all approvals required for the Project from the Borough's Planning Board and all boards and agencies having jurisdiction over the Project.

SECTION 2.4 Construction of the Project. The Redeveloper agrees, at its sole cost and expense, to construct, implement and complete the Project in accordance with the Project Schedule attached hereto as **Exhibit C**, the Redevelopment Plan, and the terms and conditions of this Agreement. Additionally, the Redeveloper shall design and construct the Project in a good and workmanlike manner and in accordance with all applicable laws, rules and regulations. The Redeveloper shall make all reasonable efforts to minimize any negative impacts, including with regard to noise, vibration, pests and odors, and any other temporary inconveniences caused by or related to the Project and shall make all reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods. It shall be the obligation of the Redeveloper to enter into agreement(s) with owners of property to be utilized for the staging of material and/or equipment to be utilized during and for construction of the Project.

SECTION 2.5 Project Schedule. It is acknowledged by the Parties that the

construction of the Project is time sensitive. The Project Schedule attached hereto as **Exhibit C** shall control the progress and completion of the Project. The Redeveloper agrees to commence construction of the Project as set forth in the Project Schedule. The Redeveloper further agrees to diligently implement and complete the Project by the Completion Date set forth in the Project Schedule, subject to Force Majeure Delays.

SECTION 2.6 Contingencies. The Parties acknowledge that the ability of the Redeveloper to proceed with the Redevelopment is specifically contingent upon the following:

(a) Redeveloper obtaining all required Governmental Approvals.

(b) Approval and execution of a Financial Agreement between the Redeveloper and Borough of Flemington pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq.

(c) The Redeveloper obtaining financing for the construction of the Project upon satisfactory terms, in the Redeveloper's reasonable discretion, from a third-party lending institution. The Redeveloper agrees that it shall (i) diligently pursue a construction loan to finance the construction of the Project, (ii) agree to reasonable prevailing market rate terms proposed by a third-party lender offering to provide a construction loan so the Project can be constructed and (iii) that it shall not arbitrarily and capriciously use this contingency to terminate this Agreement or avoid its obligations set forth in this Agreement. This contingency will be deemed waived fifteen (15) business days after the date that Redeveloper receives all necessary NJDEP approvals.

(d) The Redeveloper closing title on its purchase contract for the Property, which shall occur on or before the date set forth in the Project Schedule.

SECTION 2.7 Financial Agreement. The terms, conditions and obligations contained in the Financial Agreement shall be incorporated herein. The Borough shall make good faith effort to adopt an Ordinance allowing for the execution of a Financial Agreement providing for a long-term tax exemption for the Project for a term of 30 years from the date the

Project receives a Certificate of Occupancy. Furthermore, the Financial Agreement to be considered by the Borough shall provide that an Annual Service Charge shall be paid by the Redeveloper in accordance with and equal to the percentages of Annual Gross Revenue and the Stages as set forth in the schedule set forth herein as **Exhibit E**. For the avoidance of doubt, the Financial Agreement to be considered by the Borough shall contain the following terms.

- (A) Annual Service Charge. In consideration of the tax exemption, the Entity shall make payment to the Borough of an amount equal to the greater of (i) the Minimum Annual Service Charge or (ii) 10% of the Annual Gross Revenues in year one; increasing to 10.5% of the Annual Gross Revenues in year two; increasing to 11% in years three (3) through ten (10); increasing to 12% of Annual Gross Revenues in years eleven (11) and (12); and increasing to 13% in years thirteen (13) through nineteen (19); increasing to 14% of Annual Gross Revenues in years eleven (20) through (23); increasing to 20.5% in years twenty-four (24) through twenty-six (26); and increasing to 27.5% of Annual Gross Revenues in years eleven (27) through (30). Thereafter, the percentage of Annual Gross Revenues and Annual Service Charge shall be adjusted in accordance with this Agreement.
- (B) Staged Adjustments. The Annual Service Charge shall be adjusted in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:
 - a. Stage One: From the 1st day of the month following issuance of the first Certificate of Occupancy until the last day of the twelfth (12th) year, the Annual Service Charge shall be the greater of (a) the Minimum Annual Service Charge or (b) an amount equal to 11% of Annual Gross Revenues.
 - b. Stage Two: Beginning on the 1st day of the thirteenth (13th) year following issuance of the first Certificate of Occupancy until the last day of the tenth (19th) year, the Annual Service Charge shall be the greater of (a) the Minimum Annual Service Charge, (b) an amount equal to 13% of Annual Gross Revenues, or (c) an amount equal to 20% of the Normal Property Taxes.
 - c. Stage Three: Beginning on the 1st day of the twentieth (20th) year following

issuance of the first Certificate of Occupancy until the last day of the twenty-third (23rd) year, the Annual Service Charge shall be the greater of (a) the Minimum Annual Service Charge, (b) an amount equal to 14% of Annual Gross Revenues, or (c) an amount equal to 40% of the Normal Property Taxes;

- d. Stage Four: Beginning on the 1st day of the twenty-fourth (24th) year following issuance of the first Certificate of Occupancy until the last day of the twenty-sixth (26th) year, the Annual Service Charge shall be the greater of (a) the Minimum Annual Service Charge, (b) an amount equal to 20.5% of Annual Gross Revenues, or (c) an amount equal to 60% of the amount of the Normal Property Taxes;
- e. Final Stage: Beginning on the 1st day of the twenty-seventh (27th) year following issuance of the first Certificate of Occupancy until the last day of the thirtieth (30th) year, the Annual Service Charge shall be the greater of (a) the Minimum Annual Service Charge, (b) an amount equal to 27.5% of Annual Gross Revenues, or (c) an amount equal to 80% of the amount of the Normal Property Taxes.

An estimate of the Entity's income and expense statement is depicted on **Exhibit E**.

SECTION 2.8 Borough Assistance. To the extent reasonably requested by the Redeveloper and, to the extent permitted by applicable law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Borough shall provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Borough board, body or department, including the Planning Board, as applicable and appropriate, the costs of which shall be included within Borough Costs. The Redeveloper acknowledges it may not commence construction of the Project until such time as the Redeveloper has satisfied all pre-construction requirements prescribed by all applicable legal requirements.

SECTION 2.9 Waste Disposal and Recycling. Redeveloper shall be responsible for all

waste disposal and recycling generated from the Project. The Redeveloper agrees that the obligations contained in this Section shall be a condition of Site Plan Approval from the Planning Board for the Project. Written confirmation of this obligation shall be a condition of the receipt of a Certificate of Completion.

Section 2.10

ARTICLE 3 PROJECT APPROVALS

SECTION 3.1 Governmental Approvals. In accordance with the Project Schedule, Redeveloper shall promptly and diligently, at its sole cost and expense, seek all Governmental Approvals required in connection with (i) the construction and implementation of the Project and (ii) Redeveloper's intended use of the Project Site. After the submission of each application for any Governmental Approval, Redeveloper shall promptly notify the Borough of such application submission and shall provide the Borough with copies of same. Redeveloper shall provide the Borough with copies of all Governmental Approvals obtained. The Borough shall cooperate with Redeveloper in connection with the Governmental Approvals and all costs incurred by the Borough of Flemington in connection with Redeveloper's Governmental Approvals shall be paid by the Redeveloper in accordance with Section 5.1 regarding Borough Costs.

SECTION 3.2 Certificate of Completion. (a) Upon issuance of a certificate of occupancy for the Project as such term is defined in N.J.A.C. 5:23-1.1, Redeveloper may apply for, and the Borough shall determine in its reasonable discretion whether the Redeveloper has satisfied all the obligations set forth in the Redevelopment Agreement. If the Borough determines that all such obligations have been satisfied, it shall issue a Certificate of Completion in proper form reasonably acceptable to the parties for recording in the County Clerk's Office for the County of Hunterdon, New Jersey, with respect to the Project. The

Borough shall respond to the request for an issuance of a Certificate of Completion within thirty (30) days of Redeveloper's request, upon a determination as to whether that the Project has been completed in accordance with the approved final site plan. If the Borough determines the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within fifteen (15) days of such determination, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion.

(b) The issuance of a Certificate of Completion shall constitute a conclusive determination that the Project has been completed in accordance with the provisions of this Agreement, that Redeveloper has performed all of its duties and obligations under this Agreement and that the agreements and covenants in this Agreement and the Redevelopment Plan have been satisfied and are thus terminated, except as contained in Section 2.7. Furthermore, upon issuance of a Certificate of Completion, the conditions determined to exist on the portion of the Property improved by the Project for which a Certificate of Completion has been requested, and which were the cause of its being determined to be in need of redevelopment, shall be deemed to no longer exist. The Property shall no longer be subject to the Act and any restrictions on transfers and encumbrances set forth herein shall terminate.

ARTICLE 4

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties by the Redeveloper. The Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company of the State of New Jersey, and is qualified to do business and is in good standing under the laws of the State of New Jersey,

and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, in order to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

SECTION 4.2 Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, in order to consummate the transactions contemplated hereby, and to perform their obligations hereunder.

ARTICLE 5

REDEVELOPER COVENANTS

SECTION 5.1 Redeveloper Covenants. The Redeveloper covenants and agrees that:

(a) The Redeveloper shall not use the Project Site or any part thereof in a manner that is not consistent with the Redevelopment Plan or this Agreement. The Redeveloper will implement only those uses as set forth in the Project Description and established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, from time to time in accordance with the Act. The Borough acknowledges that the Project as described herein is consistent with the requirements of the Redevelopment Plan. In the event Redeveloper subsequently desires or is required to materially alter anything set forth in the Project Description, Redeveloper shall provide the Borough with a copy of an

amended plan or other such development application thirty (30) days prior to submission of such application to the Planning Board, for Borough's approval, which approval shall be by formal Resolution of the Borough.

(b) Completion of the Project in Accordance with the Project Schedule. The Redeveloper shall commence construction of the Project by or on the dates set forth in the Project Schedule and shall implement and complete the Project in accordance with conditions and requirements of this Agreement, the Redevelopment Plan and all applicable laws, rules and regulations, including, but not limited to, Ordinances of the Borough of Flemington, Environmental Laws, and the Local Redevelopment and Housing Law.

(c) Transfers Prohibited without Prior Consent of the Borough. Except for Permitted Transfers, the Redeveloper shall not, without the prior written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed:

- (i) effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper;
- (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Premises; or
- (iii) make any total or partial sale, lease transfer or conveyance of the whole or any part of its interest in the Project Premises or the Project (collectively a "**Transfer**").

With respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 5.1(c), the Borough shall notify the Redeveloper in writing whether the Borough consents to a Transfer request within thirty (30) days after the Redeveloper's written request to the Borough for such consent, along with whatever additional information is requested by the Borough in consideration of such request. If the Borough does not deliver a written response to the Redeveloper's request within said thirty (30) day period, then the Redeveloper may deliver a second written request to the Borough for consent to the Transfer. If the Borough does not deliver a response to the second written request within

thirty (30) days, the Redeveloper may deem the request to be consented to by the Borough.

(d) Permitted Transfers. The following transfers are exceptions to the prohibitions of this Section 4.1(c) and the Borough's consent is deemed given hereby (the "**Permitted Transfers**"), provided that notice of same is given to the Borough: (1) a mortgage or related security interest (including conditional assignments to mortgagees required as a condition to the closing of the financing so secured) granted by Redeveloper to a lender (2) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development, construction and/or utilization of the Project; (3) utility and other development easements, including, but not limited to, a declaration of covenants, conditions and restrictions and/or cross-easements for access, parking and/or utilities; and (4) leases to residential tenants or tenants occupying premises in the Project for the purpose of operating a permitted business of that tenant as a part of the intended use of the Project, and/or sales of completed residential or commercial units in the Project.

SECTION 5.2 Prohibition on Discrimination. The Redeveloper shall not discriminate against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, gender, gender expression, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sub lessees, or vendees on the Project Premises.

SECTION 5.3 Effect and Duration of Covenants. The covenants in this Article shall run with the land and be referenced in any deeds, leases or other documents of conveyance for any parcel within in the Project Site. Except as provided in Section 2.7 pertaining to the Financial Agreement (which shall continue pursuant to the Term as set forth therein) the

covenants shall cease and terminate when a Certificate of Completion has been issued by the Borough, which Certificate of Completion shall be in recordable form and recorded in the land records of Hunterdon County, and the deeds, leases or other documents of conveyance shall so state.

ARTICLE 6

REDEVELOPER OBLIGATIONS

SECTION 6.1 Borough Costs. The Redeveloper shall provide funding to the Borough for all the Borough Costs. The Borough Costs shall include, but not be limited to costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, technical consultants, planners and financial consultants, among others, and all other reasonable out-of-pocket costs and expenses of the Borough related to the Project and this Agreement, including the cost to defend litigation challenging this Agreement or any action taken by the Borough in furtherance or support of this Agreement or the Project, By this Agreement, Redeveloper accepts and approves of all consultants and their rates, utilized by the Borough in the drafting, analysis and consideration of this Agreement.

SECTION 6.2 Payment of Borough Costs. The Redeveloper shall be responsible for the payment of all reasonable Borough Costs that have been authorized by Resolution, as follows: Within ten (10) days from the Effective Date, Redeveloper shall pay Twenty-Five Thousand Dollars (\$25,000.00) (“**Project Funds**”) to the Borough to be drawn down upon by the Borough to cover Borough Costs that Borough may continue to incur during the course of the implementation of the Project, but any amounts being held by the Borough pursuant to the Interim Cost and Conditional Designation Agreement shall be applied to the Project Funds so the Redeveloper shall owe the balance between the amount being held by the Borough and Twenty-Five Thousand Dollars (\$25,000.00) . Within fifteen (15) days of the receipt by Redeveloper of written notice from the Borough that the amount of Project Funds has decreased to Five Thousand Dollars (\$5,000.00), Redeveloper shall replenish the Project Funds to the amount of Twenty-Five Thousand Dollars (\$25,000.00). If Borough’s

Costs exceed the amount of the Project Funds at any given time, Redeveloper agrees to pay such costs upon fifteen (15) days' written notice from the Borough stating that such costs are due. Upon the Effective Date of this Agreement, the prior Interim Cost and Conditional Designation Agreement shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms and obligations contained herein, but any Escrow Amount held by the Borough pursuant to that Agreement shall be applied towards the Project Funds.

ARTICLE 7

SATISFACTION OF AFFORDABLE HOUSING OBLIGATION

SECTION 7.1. The Parties acknowledge that the construction of the Project will result in the creation of an obligation of the Borough of Flemington to provide low and moderate-income housing. The Redeveloper shall provide 15 affordable housing units and said affordable units shall be integrated throughout the buildings with the market rate units. The affordable units shall meet all applicable affordable housing regulations, set forth in COAH's Substantive rules, the Uniform Housing Affordability Control Rules (UHAC), and the NJ Fair Housing Act, such as but not limited to, income distribution (including 13% for very low income), bedroom distribution, phasing, affirmative marketing, and affordability controls of not less than 30 years. The developer shall submit floor plans that identify each affordable unit, including its bedrooms and income restriction (i.e., a 2-bedroom, low-income unit) to the satisfaction of the Board Planner. The developer shall utilize the Borough's Affordable Housing Administrator for administration of the affordable units, at the sole cost of the developer. No building shall be composed of more than 65% of the required affordable units.

ARTICLE 8

COMPLIANCE WITH LAWS

Redeveloper shall comply with all applicable laws, rules, ordinances, regulations and other requirements of any governmental authority ("**Legal Requirements**") to the extent

such compliance is required as a result of (a) Redeveloper's specific use of the Project Site, (b) Redeveloper's acts and/or (c) its Governmental Approvals.

ARTICLE 9

MAINTENANCE OF PROJECT SITE AND PROJECT OVERSIGHT

SECTION 9.1 Maintenance/Repairs. Redeveloper shall, at its sole cost and expense, take good care of the Project Site and put, keep and maintain same in a neat, good, safe and substantial order and condition, shall not do or suffer any waste with respect thereto and shall promptly, at Redeveloper's sole cost and expense, make all necessary repairs and replacements to the Redeveloper's improvements thereon.

SECTION 9.2 Progress Reports. The Redeveloper shall submit a Progress Report in substantially the form attached hereto as **Exhibit D**, as that term is defined herein, to the Borough on a quarterly basis or as otherwise requested by the Borough but which shall not exceed monthly.

SECTION 9.3 Access to Project Site. The Borough and its authorized representatives, including but not limited to any Engineer or other such professional so designated by the Borough, shall have the right to enter the Project Site upon reasonable prior notice given to the Redeveloper to inspect the Project Site and any and all work in progress for the purpose of furthering its interest in this Agreement. The Borough shall utilize reasonable efforts to minimize any interference with Redeveloper's activities on the Project Site. Such entrance shall be for informational purposes and shall not relieve the Redeveloper of its obligation to implement the Project in accordance with this Agreement. In no event, at any time, shall the Borough's inspection of the Project be deemed acceptance of the work in progress or any completed work or be deemed to waive any right that the Borough has under this Agreement. The Borough and its authorized representatives acknowledge that the Project Site is a construction site and may contain

dangerous conditions, and therefore the Borough and its authorized representatives shall enter the Project Site at its own risk.

ARTICLE 10

DEFAULT AND TERMINATION

SECTION 10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an “**Event of Default**” hereunder:

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or term in this Agreement and (i) continuance of such failure for a period of thirty (30) days after receipt by Redeveloper or the Borough of written notice from the Borough or the Redeveloper, respectively, specifying the nature of such failure and requesting that such failure be remedied (“**Default Notice**”); provided, however, if the breach of any such covenant, condition or term is one which cannot be completely remedied within the thirty (30) days after such Default Notice has been received by the Redeveloper or the Borough, it shall not be an Event of Default as long as the Redeveloper or the Borough is proceeding in a diligent manner to remedy same and the default is fully remedied not later than sixty (60) days after receipt of the Default Notice by the Redeveloper.

(b) The Redeveloper shall fail to satisfy its obligations with respect to the timely construction and implementation of the Project in accordance with this Agreement or shall abandon or substantially suspend construction work, and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) days after receipt of default Notice from the Borough; provided, however, if the failure, abandonment, or suspension cannot be completely cured, ended or remedied within the thirty (30) days after such Default Notice has been received by Redeveloper, it shall not be an Event of Default as long as the defaulting party is proceeding in a diligent manner to remedy the same and the failure, abandonment or suspension is fully cured, ended or remedied not later than sixty (60) days after receipt of the Default Notice by Redeveloper.

(c) The Redeveloper or its successor-in-interest shall fail to pay any real estate taxes or assessments on the Project Site or any part thereof when due.

SECTION 10.2 Remedies Upon Events of Default.

(a) Termination or Institution of Lawsuit. In the event of an Event of Default by any party hereto, the non-defaulting party may terminate this Agreement and/or may institute whatever action, at law or in equity, it may deem desirable, including the seeking of damages.

(b) Additional Remedies in the Event of Default. In the event of an Event of Default, in addition to the right to terminate the Agreement, the Borough may implement any or all of the following remedies:

- (i) Suspension of cooperation with Redeveloper pursuant to the terms of this Agreement; and/or
- (ii) Suspension of the review and/or approval process of any application or submission related to Governmental Approvals.

ARTICLE 11

NOTICES

SECTION 11.1 Notices. All Notices permitted or required to be made by the Redeveloper or the Borough under this Agreement shall be made in writing and shall be deemed duly given (i) upon confirmation of facsimile, (ii) one (1) Business Day (as hereinafter defined) following the date sent, when sent by overnight delivery, and (iii) three (3) Business Days following the date when mailed by registered or certified mail, return receipt requested and postage prepaid at the following addresses:

Borough:

Borough of Flemington
38 Park Avenue
Flemington, NJ 08822
(908) 782-

With a copy to: Andrew M. Brewer, Esq.
Maraziti, Falcon LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
(973) 912-6813

Redeveloper: Captiva Main Street LLC
c/o Protection Technologies, Inc.
Attn: Michael Singer
39 Route 46 East
Unit 801
Pine Brook, NJ 07058

With a copy to: Sean R. McGowan, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
75 Livingston Avenue
Roseland, NJ 07068
Email: smcgowan@greenbaumlaw.com
Phone: 973-577-1852

“Business Day” means any day other than a Saturday, Sunday, or a day on which banks are legally closed for business in the Borough of Flemington, New Jersey.

ARTICLE 12

BINDING EFFECT

SECTION 12.1 This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

ARTICLE 13

MISCELLANEOUS

SECTION 13.1 Captions. The captions appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any provision of this Agreement, nor in any way affect this Agreement.

SECTION 13.2 Severability. If any provision of this Agreement or the application thereof to any person or circumstance described in this Agreement shall to any extent be held void, unenforceable or invalid, then the remainder of this Agreement or the application of such provision to any person or circumstance described in this Agreement, other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 13.3 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

SECTION 13.4 Governing Law. Without regard to principles of conflicts of law, the laws of the State of New Jersey shall govern and control the validity, interpretation, performance and enforcement of this Agreement.

SECTION 13.5 Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Agreement.

SECTION 13.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

Section 13.7 Effective Date. This Agreement shall become effective upon execution by both parties.

Section 13.8 Force Majeure. Performance by the Borough or the Redeveloper (each, a “**Party**”) hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof, or other cause beyond such Party’s reasonable control, that has had a material adverse effect on the ability of the Parties to this Redevelopment Agreement to perform; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Redevelopment Agreement (“**Force Majeure**”):

- (a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage, pandemics or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above (such events being required to physically affect a Party’s ability to fulfill its obligations hereunder);
- (b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either Party;
- (c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than the Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within the Borough, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall

constitute or be construed as a willful, intentional or negligent action or inaction by such party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be an event of Force Majeure;

(e) Default by the Borough or Redeveloper, as to the non-defaulting Party.

[Signature Page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written.

BOROUGH OF FLEMINGTON

By: _____
 Betsy Driver
 Mayor, Borough of Flemington

CAPTIVA MAIN STREET URBAN REWEVAL LLC

By: _____
 Michael Singer, Managing Member

LIST OF EXHIBITS:

- A. Site Plans
- B. Project Description
- C. Project Schedule
- D. Progress Reports
- E. Financial Agreement Schedule of Annual Service Charges and Stages

Exhibit A
Site Plans

Exhibit B
Project Description

The Project shall consist of two multifamily apartment buildings consisting of a total of 100 residential units, including fifteen (15) inclusionary affordable housing units. There shall be 174 parking spaces provided on grade, with a portion of the parking spaces being within the footprint of the building. The Project shall be constructed in accordance with the Redevelopment Plan, the Governmental Approvals, and the Redevelopment Agreement.

EXHIBIT C
Project Schedule

TASK	Milestone Date
Submission of Application for all other Governmental Approvals (other than Building Permits)	Within 3 months after final and non-appealable execution of this Agreement
Redeveloper Acquires Property	Within 1 month of obtaining all Governmental Approvals
Submission of Application for All Building Permits	6 months after all Governmental Approvals have been obtained and are final and non-appealable,
Commencement of construction	3 months after all Governmental Approvals and Building Permits have been obtained and are final and non-appealable.
Substantial Completion of Construction	3 years after commencement of construction

Exhibit D
Progress Report

A written report directed to the Borough which sets forth the following:

- (i) a description of activities completed;
- (ii) the activities anticipated to be undertaken prior to the next monthly Progress Report;
- (iii) the status of all Governmental Approvals;
- (iv) an explanation of each activity, if any, which is showing delay;
- (v) a description of current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule;
and
- (vi) and an explanation of corrective action taken or proposed.

Exhibit E

Financial Agreement Schedule of Annual Service Charge containing the Percentage of Annual Gross Revenue and Stages of Increases to Comply with Transition to Ordinary Taxation

Year	17.5 ASC	Proposed Payment	ASC	Stages			
Year 1	\$ 470,432.90	\$ 268,818.80	10%		AGR	\$ 2,688,188.00	
Year 2	\$ 470,432.90	\$ 282,259.74	10.5%		Ordinary Taxation	\$ 917,753.00	
Year 3	\$ 470,432.90	\$ 295,700.68	11%		Current Taxation	< \$20,000/year	
Year 4	\$ 470,432.90	\$ 295,700.68	11%				
Year 5	\$ 470,432.90	\$ 295,700.68	11%		20% of Taxes	\$ 183,550.60	6.83% ASC
Year 6	\$ 470,432.90	\$ 295,700.68	11%		40% of Taxes	\$ 367,101.20	13.65% ASC
Year 7	\$ 470,432.90	\$ 295,700.68	11%		60% of Taxes	\$ 550,651.80	20.48% ASC
Year 8	\$ 470,432.90	\$ 295,700.68	11%		80% of Taxes	\$ 734,202.40	27.31% ASC
Year 9	\$ 470,432.90	\$ 295,700.68	11%				
Year 10	\$ 470,432.90	\$ 295,700.68	11%				
Year 11	\$ 470,432.90	\$ 322,582.00	12%				
Year 12	\$ 470,432.90	\$ 322,582.00	12%				
Year 13	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 14	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 15	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 16	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 17	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 18	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 19	\$ 470,432.90	\$ 349,464.00	13%	>20%			
Year 20	\$ 470,432.90	\$ 376,346.00	14%	>40%			
Year 21	\$ 470,432.90	\$ 376,346.00	14%	>40%			
Year 22	\$ 470,432.90	\$ 376,346.00	14%	>40%			
Year 23	\$ 470,432.90	\$ 376,346.00	14%	>40%			
Year 24	\$ 470,432.90	\$ 550,651.80	20.48%	60%			
Year 25	\$ 470,432.90	\$ 550,651.80	20.48%	60%			
Year 26	\$ 470,432.90	\$ 550,651.80	20.48%	60%			
Year 27	\$ 470,432.90	\$ 734,202.40	27.31%	80%			
Year 28	\$ 470,432.90	\$ 734,202.40	27.31%	80%			
Year 29	\$ 470,432.90	\$ 734,202.40	27.31%	80%			
Year 30	\$ 470,432.90	\$ 734,202.40	27.31%	80%			
	\$ 14,112,987.00	\$ 12,102,244.98					

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-247**

DOC ID: 3968

Authorizing a Redevelopment Agreement by and Between the Borough of Flemington and Cardinal Capital Management, Inc.

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “**Act**”), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Resolution 2014-73 adopted on April 16, 2014, the Flemington Borough Council designated Block 5 Lots 1 & 2 and Block 14, Lot 1 as a non-Condemnation redevelopment Area (“Global Agway Redevelopment Area”); and

WHEREAS, by Ordinance No. 2017-1 on February 13, 2017, the Borough of Flemington adopted a plan for the redevelopment of those parcels within the Redevelopment Area, which plan is known as the Global Agway Redevelopment Plan (“Redevelopment Plan”); and

WHEREAS, by Ordinance 2022-30 on December 12, 2022, the Borough of Flemington adopted an amendment to the Redevelopment Plan to proscribe the zoning regulations and bulk standards applicable to the Block 14, Lot 1 portion of the Redevelopment Area (the “Project Site”), which consists of 2.27 acres and fronts on Main Street and Park Avenue (the “Second Amendment to Redevelopment Plan”); and

WHEREAS, the Borough desires that the Project Site within the Redevelopment

Area be redeveloped in accordance with the Redevelopment Plan and Second Amendment to Redevelopment Plan, as may be amended from time to time, a complete copy of which are on file at Borough Hall; and

WHEREAS, by Resolution adopted in August 2022, the Borough authorized the execution of a Second Conditional Designation Agreement with Cardinal Capital Management, Inc., and thereafter engaged in negotiations for a comprehensive Redevelopment Agreement with Cardinal Capital Management, Inc. for the redevelopment of the Project Site; and

WHEREAS, the Borough has negotiated the terms of a Redevelopment Agreement with Cardinal Capital Management, Inc. for the comprehensive redevelopment of the Project Site, a copy of which is attached to this Resolution.

WHEREAS, the Borough and Redeveloper desire to enter into this Agreement, which supersedes any and all previous Agreements for the Redevelopment of the Redevelopment Area;

NOW, THEREFORE BE IS RESOLVED by the Borough of Flemington Council, County of Hunterdon, State of New Jersey, as follows:

1. The Mayor is hereby authorized and directed to execute a Redevelopment Agreement between the Borough of Flemington and Cardinal Capital Management, Inc. in substantially the form attached hereto as Attachment A.
2. The Clerk and Staff of the Borough of Flemington are hereby authorized and directed to take all actions as shall be deemed

necessary or desirable to implement this Resolution.

3. This Resolution shall be effective immediately.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

REDEVELOPMENT AGREEMENT BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND CARDINAL CAPITAL MANAGEMENT, INC.

THIS REDEVELOPMENT AGREEMENT (“**Agreement**”), made as of the ____ day of _____ 2022 (the “**Effective Date**”), by and between the BOROUGH OF FLEMINGTON, with offices At 38 Park Avenue, Flemington, New Jersey 08822, (the “**BOROUGH**” or “**FLEMINGTON**”), acting pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 and CARDINAL CAPITAL MANAGEMENT, INC. with offices located at 901 S 70th Street, West Allis, Wisconsin 53214 (“**Redeveloper**” or “**Cardinal**”).

RECITALS

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*, as amended and supplemented (the “**Act**”), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Resolution 2014-73, adopted on April 16, 2014, the Flemington Borough Council designated Block 5 Lots 1 & 2 and Block 14, Lot 1 as a non-Condemnation Redevelopment Area (“**Global Agway Redevelopment Area**”); and

WHEREAS, by Ordinance No. 2017-1 on February 13, 2017, the Borough of Flemington adopted a plan for the redevelopment of those parcels within the Borough that had previously been designated as areas in need of redevelopment comprising approximately 5.6 acres (collectively, the “**Redevelopment Area**”), which plan is known as the Global Agway Redevelopment Plan (“**Redevelopment Plan**”); and

WHEREAS, by Ordinance No. ____ on ____, 2022, the Borough of Flemington adopted an amendment to the Redevelopment Plan to proscribe the zoning regulations, bulk standards applicable to the Block 14, Lot 1 portion of the Redevelopment Area (the

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“Project Site”), which consists of 2.27 acres and fronts on Main Street and Park Avenue (the **“Second Amendment to Redevelopment Plan”**).

WHEREAS, the Borough desires that the Project Site be redeveloped in accordance with the Second Amendment to Redevelopment Plan, as may be amended from time to time, a complete copy of which is on file at Borough Hall.

WHEREAS, the Borough and Redeveloper desire to enter into this Agreement, which supersedes any and all previous Agreements for the redevelopment of the Project Site;

NOW THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the Parties hereto, each binding itself, its successors and assigns, do mutually promise covenant and agree as follows::

Article 1 **DEFINITIONS**

Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and Exhibits hereto shall have the following meanings:

“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; for purposes of this definition, the term “control,” including the correlative meanings of the terms “controlled by” and “under common control with,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person whether through ownership of voting stock or interests, status as Managing Member or Managing General Partner by contract or

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otherwise for the avoidance of doubt, the foregoing shall not be deemed to excuse Redeveloper or any Affiliate from the performance of any of its obligations under this Agreement); for purposes of this Agreement, an urban renewal entity created pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 shall be such an Affiliate and further, the Parties acknowledge that a transfer of interest in this Agreement to such an urban renewal entity is a Permitted Transfer, as that term is defined herein.

“Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Applicable Laws” means all applicable federal, state and local laws, rule and regulations.

“Borough Cost(s)” means all reasonable out-of-pocket costs and/or reasonable expenses incurred by the Borough that are required by, or necessary to, implement or defend this Agreement and/or any amendment thereto, including Redeveloper’s designation as the exclusive Redeveloper of the Project Site, the Redevelopment Plan or any amendment thereto in connection with the Project, and/or any Financial Agreement or other such agreement memorializing the terms of any PILOT, which shall include, but not be limited to, the following: subject to Section 6.1 herein, the reasonable fees and reasonable costs of any professional, consultant, contractor or vendor retained by the Borough in writing, including attorneys, environmental consultants, engineers, technical consultants, planners, and financial consultants among others.

“Certificate of Completion” means a recordable, conclusive determination issued by the Borough evidencing the satisfaction and termination of the agreements and covenants in this Agreement, as applicable, and compliance with this Agreement and the Second Amendment to Redevelopment Plan with respect to the Redeveloper's obligation to implement the Project, as follows: (i) based upon its review of a written certification of a duly authorized officer of Redeveloper, the form of which is attached as Exhibit ____ hereto, stating that: (a) the Project has been completed and all labor, services, materials and supplies used in connection thereto have been paid for (or, if disputed, bonded for as may be set forth herein) and (b) the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project; and (ii) a written determination by the Borough that the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Project, based upon: (a) the Flemington Borough Engineer Certification and (b) a physical inspection of the Project and/or review of such other documentation or information that the Borough shall reasonably deem relevant and appropriate relating to a determination of Completion only (the “**Written Determination**”). A Certificate of Completion for the Project shall be formally approved by Resolution of the Borough and such Resolution in and of itself may constitute the Written Determination defined in this paragraph.

“Certificate of Occupancy” means the certificate provided for at N.J.S.A. 52:27D-133, whether temporary or permanent, indicating that the construction has been completed in accordance with the applicable construction permit, the applicable Ordinances of the

Borough of Flemington, the State of New Jersey Uniform Construction Code, and any other ordinance or regulation implementing the State of New Jersey Uniform Construction Code.

“Effective Date” means the date this Agreement is last executed by the authorized representative of the Borough.

“Financial Agreement” means a separate agreement between the Borough of Flemington and Redeveloper regarding certain Payments in Lieu of Taxes (PILOTs).

“Flemington Borough Engineer Certification” means a written certification by the Flemington Borough Engineer that, based upon the Flemington Borough Engineer’s physical inspection and review of the Project, together with any other documentation or information that the Flemington Borough Engineer shall reasonably deem relevant and appropriate, the Project has been constructed and implemented in accordance with the relevant plans approved pursuant to the Governmental Approvals.

“Governmental Application(s)” means any and all submissions, supporting documents, reports or other proofs transmitted to any state, federal or local governmental office, agency, authority, department, officer or agent for the purpose of obtaining authorization or approval of any aspect of the Project.

“Governmental Approval(s)” means all final and unappealable necessary reviews, consents, opinions, permits or other approvals of any kind legally required by any federal, state, county or local Governmental Body or quasi-governmental entity having jurisdiction over any aspect of the implementation or construction of the Project or any portion thereof,

including, but not limited to, final and unappealable preliminary and final site plan and subdivision approval and construction permits.

“Governmental Body” means any federal, state, county, legislative or executive office or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Borough, the County of Hunterdon, the State of New Jersey or the United States of America.

“Interim Cost Agreement” or “Interim Cost and Conditional Designation Agreement” means the terms and conditions of the Interim Cost Agreement, as amended, entered into by and between the Borough and the Redeveloper on or about February 28, 2022, which sets forth the parameters by which Redeveloper may be designated as the exclusive Conditional Redeveloper of the Project Site and which required, *inter alia*, Redeveloper to establish an escrow fund for the payment of the Borough Costs incurred during the interim. Upon the Effective Date of this Agreement, the Interim Cost Agreement, and any amendments thereto, shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms contained herein with respect to same.

“Permitted Transfers” means the following transfers, as may be further defined in **Section 5.1:** (a) utility and other development easements; (b) leases to the ultimate tenants of any portion of any structure to be constructed as part of the Project; (c) a leasehold mortgage or mortgages (including, but not limited to, collateral assignment of this Agreement to the leasehold mortgage holder to be effective, at the option of the mortgagee, upon default by Redeveloper under the mortgage documents), for the purposes

of (i) Financing, of any aspect of the Project, including, but not limited to, the construction of any structure or infrastructure improvements; and (ii) permanent financing upon substantial completion of construction of Project; (d) an assignment and/or transfer of Redeveloper's interest in this Agreement or a portion thereof; provided however, that the Affiliate is under the direct or indirect control of the current owners of Cardinal and provided that such new entity is expressly subject to the terms of this Agreement; (e) a transfer of any interest in this Agreement to a qualified urban renewal entity which is under the direct or indirect control of the current owners of Cardinal or shares common membership with existing Cardinal members; (f) transfers among the existing members of Cardinal or direct or indirect holders of interests in Cardinal; (g) transfers by operation of law as a result of death of any individual; (h) transfers by any owner(s) of a direct or indirect interest in Cardinal to an entity owned by such owner(s) so long as Cardinal or any of its Affiliates remain as a direct or indirect owner of Cardinal and has control; (i) transfers of direct or indirect interests in Cardinal so long as Cardinal or any of its Affiliates remain as a direct or indirect owner of Cardinal and has control; (j) transfers of direct or indirect equity interests in Cardinal for financing purposes; and (k) deed notices and other documents required to implement any controls pursuant to a Remedial Action Workplan, if applicable.

"Progress Report" means a written report in substantially the form attached hereto as **Exhibit D** which sets forth a description of activities completed, the activities anticipated to be undertaken prior to the next monthly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of current and anticipated delaying factors and their estimated impact on performance of {350073.DOCX.1}

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

“Project” shall be as set forth in the plans which are attached hereto as **Exhibit A**, and illustrate the Project to be constructed as described in the Project Description, attached hereto as **Exhibit B** and the provisions of Section 2.1 of this Agreement.

“Redevelopment Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Redevelopment Law” means the State of New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as this statute may be amended from time to time.

ARTICLE 2 IMPLEMENTATION OF PROJECT

SECTION 2.1 Implementation of Project. The Redeveloper is hereby designated as the exclusive redeveloper of the parcel referred to herein as the Project Site, and Redeveloper agrees to perform and complete the following tasks, collectively referred to herein as the “**Project**,” consistent with all of the Exhibits, which depict the conceptual project details (the “**Project Concept Plans**”), a copy of which are attached hereto as **Exhibit A** (collectively, the “**Project Description**”), in compliance with the terms and conditions of this Agreement, the Second Amendment to Redevelopment Plan, all Applicable Laws, and in accordance with the level of skill and care ordinarily exercised by developers of such similar first class residential development:

- a. Site Acquisition: acquisition of ownership of the Property, which shall be completed by the date set forth in the Project Schedule in Exhibit C.

- b. Site Preparation: Undertaking all site preparation tasks and activities for all development and/or construction hereunder.
- c. Governmental Approvals: obtaining all applicable Governmental Approvals, as that term is defined herein, for the Project.
- d. Construction and Implementation of the Project: financing, development, construction and maintenance of one hundred (100) rental apartment units and eleven (11) rental townhouse units, which will include one (1) affordable rental townhouse unit and sixteen (16) affordable rental apartment units, which is 15% of the one hundred and eleven (111) total rental units proposed, with some surface parking and the remainder interior podium parking (the “**Project**”) for the use of residents, employees and visitors of the Project, all in accordance with the Project Schedule, attached hereto as **Exhibit C**, the Second Amendment to Redevelopment Plan, the terms of this Agreement, and all applicable laws, rules and regulations.
- e. Affordable Housing: The affordable element to this Project shall be implemented through the provision of a 15% inclusionary set-aside (50% for Low Income, including 13% VLI, and 50% for moderate income families per UHAC requirements) and all affordable units subject to thirty (30) year affordability controls. Notwithstanding the foregoing, up to two four(4)-bedroom supportive housing units for persons with disabilities shall be allowed in the Project. Each bedroom in these supportive housing units shall be equivalent to one affordable housing unit, for a total of eight (8) affordable housing units, which may be used to satisfy the 15% inclusionary set-aside requirement for the Project. The affordable element to this Project shall be implemented by phasing consistent with N.J.A.C. 5:93-5.6(d) which will include a pro rata share of affordable units constructed as the market rate units are built. There shall be no Certificate of Occupancy issued until it is demonstrated that affordable units have been built in the proper ratio, and Certificates of Occupancy shall be issued in the proper ratio of market to affordable units. For the sake of clarity, nothing herein shall prohibit the issuance

of a Certificate of Occupancy for the market-rate rental units provided a pro-rata share of affordable rental units have been constructed and a Certificate of Occupancy issued for such affordable units. Notwithstanding the foregoing, deviations from this, or any other provision herein relating to affordable housing, shall be permitted provided such deviation is approved in writing by both the Borough and the Fair Share Housing Center, and confirmation that, notwithstanding such deviation, all units restricted to low and moderate-income households required to be constructed herein are eligible for credit against the Borough's affordable housing.

- f. Parking: Provision of a total of two hundred (200) on-site auto parking spaces, as depicted on the Project Site Plans. All rental apartment unit parking spaces shall contain make-ready infrastructure for electric vehicle charging. Not less than 40% of the make-ready electric vehicle charging shall actually be constructed and installed as a condition of application for a Certificate of Occupancy. Redeveloper shall not seek “2 for 1” or any other parking space credits associated with the provision of electric vehicle parking provision.
- g. Infrastructure Improvements: Construction or extension of any improvement or utility necessitated or required by the implementation of, and to serve, the Project, which is located in whole or in part either on or off the Project Site, including but not limited roadway milling and paving, installation of electric power transmission lines, sewer transmission conduits or pipes, storm sewers, telephone transmission lines, and cable lines, and any other such utilities, all of which shall be subject to final utility connection coordination with each relevant utility provider. If requested by Redeveloper, the Borough agrees to assist Redeveloper to facilitate such coordination with the relevant utility provider, costs of which shall constitute Borough Costs.
- h. Payment of all sums due pursuant to the terms of this Agreement.

Sewer Infrastructure Improvements. The Parties agree that the Project will require the problem of sewer surcharges in the vicinity of the Project Site to be addressed, which obligation on the part of the Redeveloper will be satisfied by the payment of Two Hundred Thousand dollars (\$200,000.00) to Flemington. Such payment shall be provided to the Borough at least 60 days prior to the Borough advertising for public bids for such work, the date of which shall be determined by the Borough. The Borough shall notify the Redeveloper not less than 90 days prior to when the Borough shall advertise for public bids for such work.

- i. Improvement Contribution: Prior to the issuance of any building permits for the Project, the Redeveloper shall contribute Five Hundred Thousand dollars (\$500,000) to the Borough for use in acquiring fire truck and/or community benefit purpose.
- j. Sustainability Component: The project shall meet the requirements for LEED Certified Low-rise or Mid-rise multi-family buildings; however, the project shall not be required to achieve LEED Certification. Applicant shall submit the rating system's LEED Project Checklist (a.k.a. Scorecard) and supporting narrative and documentation to the satisfaction of the Board Planner and Board Engineer. The Project shall include the following:
 - Semi pervious surfaces where possible
 - Bicycle Facilities (both short and long term)
 - Low flow fixtures and dual flush toilets
 - Electric Vehicle Charging stations, subject to Section 2.1(f) herein
 - On site recycling collection facilities
 - Waste Management plan for disposing and recycling construction and demolition waste

- No smoking in common areas, including tobacco smoke, smoke produced from the combustion of cannabis and controlled substances and the emissions produced by electronic smoking devices.
- Provide compartmentalization by limiting occupants' exposure to indoor air pollutants by minimizing the transfer of air between units.
- Low E glass

A minimum of 75% of each of items (i) – (iv) must be Low VOC / No added formaldehyde:

- (i) Interior paint, gypsum and plaster-based wall board and ceiling panels (excluding panels exposed to the exterior)
- (ii) Interior adhesives and sealants, thermal and acoustic insulation (excluding HVAC insulation)
- (iii) Wood based interior products, including but not limited to cabinets and wood panels
- (iv) Flooring and wall coverings

SECTION 2.3 Design Approval. Redeveloper has obtained approval from the Borough for preliminary, conceptual plans for the Project. The Redeveloper shall not submit an application for Site Plan Approval to the Flemington Planning Board or Zoning Board of Adjustment until Redeveloper has obtained approval for such Site Plans from the Borough of Flemington pursuant to the procedure set forth in Section 3 below. The Redeveloper shall diligently work to obtain all final and unappealable approvals required for the Project from the Borough's Planning Board and all boards and agencies having jurisdiction over the Project.

SECTION 2.4 Construction of the Project. The Redeveloper agrees, at its sole cost and expense, to construct, implement and complete the Project in accordance with the Project Schedule attached hereto as **Exhibit C**, the Second Amendment to Redevelopment Plan, and the terms and conditions of this Agreement. Additionally, the Redeveloper shall

design and construct the Project in a good and workmanlike manner and in accordance with all applicable laws, rules and regulations. The Redeveloper shall make reasonable efforts to minimize any negative impacts, including with regard to noise, vibration, pests and odors, and any other temporary inconveniences caused by or related to the Project and shall make all reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods, where necessary. It shall be the obligation of the Redeveloper to enter into agreement(s) with owners of property to be utilized for the staging of material and/or equipment to be utilized during and for construction of the Project.

SECTION 2.5 Project Schedule. It is acknowledged by the Parties that the construction of the Project is time sensitive. The Project Schedule attached hereto as **Exhibit C** shall control the progress and completion of the Project. The Redeveloper agrees to commence construction of the Project as set forth in the Project Schedule, subject to delay caused by a Force Majeure Event(s). The Redeveloper further agrees to diligently implement and complete the Project by the Completion Date set forth in the Project Schedule, subject only to delay caused by a Force Majeure Event(s), for which written notice and justification must be provided as set forth herein. If Redeveloper intends to claim reliance upon a Force Majeure Event as a basis for its failure to comply with the Project Schedule, Redeveloper shall give written notice to the Borough pursuant to Section 11.1 herein, setting forth the reasons for delay and requesting an extension of such date, which extension the Borough shall not unreasonably deny if in the Boroughs' sole discretion it determines that the alleged Force Majeure Event exists, but only for such time as performance is prevented by such Force Majeure Event. The Borough may consider request by Redeveloper to extend the Project Schedule, or any portion thereof, that do not constitute a Force Majeure Event.

SECTION 2.6 Contingencies. The Parties acknowledge that the ability of the Redeveloper to proceed with the Redevelopment is specifically contingent upon the following:

- (a) Redeveloper obtaining all required final and unappealable Governmental

Approvals.

(b) The successful negotiation, execution, and authorization of a Financial Agreement or Financial Agreements between the Redeveloper and Borough of Flemington pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq., allowing for Payments in Lieu of Taxes, that have been authorized by legislation of the Borough Council.

(c) The Redeveloper closing title on its purchase contract for the Property, which shall occur on or before the date set forth in the Project Schedule.

SECTION 2.7 Financial Agreement. The terms, conditions and obligations contained in the Financial Agreement shall be incorporated herein.

SECTION 2.8 Waste Disposal and Recycling. Redeveloper shall be responsible for all waste disposal and recycling generated from the Project. The Redeveloper agrees that the obligations contained in this Section shall be a condition of Site Plan Approval from the Planning Board for the Project. Written confirmation of this obligation shall be a condition of the receipt of a Certificate of Completion.

ARTICLE 3 PROJECT APPROVALS

3.1 Procedures; General. In order to facilitate the development and implementation of a mutually acceptable design, Site Plan and technical approach for the Project, the Parties have established the procedures set forth in this Article 3 for the following review and approval process. The process shall consist of an Application to the Borough and the Planning Board for review and approval of a Site Plan for the Project as set forth in detail

below. The development process shall be in accordance with the Redevelopment Law and the Municipal Land Use Law. Nothing herein is intended to restrict the exercise of the Planning Board's governmental authority with respect to applications for Site Plan approval under duly adopted rules and regulations or to in any way alter the procedures established for challenging the exercise of such authority pursuant to the Municipal Land Use Law. This procedure shall be used for all development applications by Redeveloper. As of the Effective Date, the Borough has conceptually approved the Concept Plan and the Application shall be consistent with the Concept Plan.

3.2 Application for Project.

- (a) Consistency Review. Prior to making formal Site Plan Application to the Planning Board the Redeveloper shall submit to the Borough the Application and Site Plans so the Borough may confirm that same is consistent with the Second Amendment to Redevelopment Plan, which determination is within the sole discretion of the Borough.. The Borough shall within thirty (30) Days of receipt of such Site Plan notify the Redeveloper as to whether such Plans are consistent with the Second Amendment to Redevelopment Plan.

(b) Cooperative Technical Review. In order to proceed with the Project as expeditiously as possible, and to minimize the costs to both Parties, as well as avoid duplication in the review process and unnecessary delay, Redeveloper may request a technical review by the Planning Board, pursuant to N.J.S.A. 40:55D-10.1 along with the Borough and its professional staff, at the time of the Consistency Review on behalf of the Borough and the Planning Board. This provision shall not be read to supersede or supplant the Planning Board's jurisdiction under N.J.S.A. 40:55D-10.1 or Redeveloper's rights to request review under N.J.S.A. 40:55D-10.1. Additional technical reviews may occur if revisions are made to the Site Plan. Redeveloper shall, prior to submission of an Application and in the course of preparing the plans and reports referred to in Section 3.2(b), consult with the consultants and/or professionals of the Borough to review the Application(s). Such consultation may occur by way of conferences, written inquiries or informal communications and shall occur as frequently as is reasonably necessary to assure that such plans and reports comply with the Second Amendment to Redevelopment Plan, Borough Ordinances, regulations, zoning, and all other criteria that will be used by the Planning Board to determine whether the Application(s) will receive Preliminary and Final Site Plan Approval.

(c) Development and Design Concepts. It is acknowledged by Redeveloper that certain specific exterior elements of the Project as shall be approved by the Borough and its consultants, including but not limited to exterior building materials,

quality of exterior finishes and designs, exterior architectural elements, and landscaping features, are material consideration for the Borough's approval of the Project, and Redeveloper is obligated under this Agreement to construct the Project in accordance with such specific or similar/equivalent exterior elements and/or materials as have been approved. Redeveloper shall not deviate in any substantial way from such specific exterior elements or substitute any such specific materials without the Borough's express written approval.

Design concepts for the Project may be modified by Redeveloper from time to time, as approved by the Borough, to reflect additional detail and information, as such detail and information becomes available, or to reflect or accommodate the requirements of any Applicable Law, or to take into account engineering/construction considerations which render the then-existing design concepts physically or economically impractical. Any substantial modifications shall be subject to the review and approval of the Borough. Any modification which triggers the need to amend any site plan and/or subdivision approval secured by Redeveloper shall be reviewed by the Borough for consistency with the Second Amendment to Redevelopment Plan and approved by the Borough prior to filing for same before the Planning Board.

SECTION 3.2 Certificate of Completion. (a) Upon issuance of a certificate of occupancy for the Project as such term is defined in N.J.A.C. 5:23-1.1, Redeveloper may apply for, and the Borough shall determine in its reasonable discretion whether the Redeveloper has satisfied all the obligations set forth in this Agreement and the Second Amendment to

Redevelopment Plan with respect to the Redeveloper's obligations to implement the Project. If the Borough determines that all such obligations have been satisfied, it shall issue a Certificate of Completion in proper form reasonably acceptable to the parties for recording in the County Clerk's Office for the County of Hunterdon, New Jersey, with respect to the Project. The Borough shall respond to the request for an issuance of a Certificate of Completion within thirty (30) days of Redeveloper's request, upon a determination as to whether that the Project has been completed in accordance with the approved final site plan. If, on the other hand, the Borough determines the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within fifteen (15) days of such determination, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion.

(b) The issuance of a Certificate of Completion shall constitute a conclusive determination that the Project has been completed in accordance with the provisions of this Agreement, that Redeveloper has performed all of its duties and obligations under this Agreement and that the agreements and covenants in this Agreement and the Second Amendment to Redevelopment Plan have been satisfied and are thus terminated, except as contained in Section 2.7. Furthermore, upon issuance of a Certificate of Completion, the conditions determined to exist on the portion of the Property improved by the Project for which a Certificate of Completion has been requested, and which were the cause of its being determined to be in need of redevelopment, shall be deemed to no longer exist. The Property shall no longer be subject to the Act and any restrictions on transfers and encumbrances set forth herein shall terminate.

ARTICLE 4

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties by the Redeveloper. The Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Agreement and to consummate the transactions

contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company of the State of New Jersey, and is qualified to do business and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, in order to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

SECTION 4.2 Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) Authority to Enter into Agreement. The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) Binding Upon the Borough. This Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of legal requirements presently in effect.

(c) No Pending or Threatened Litigation. Except as disclosed in writing, there is no pending, or to the best of the Borough's knowledge, threatened litigation, suit, proceeding, or investigation that would prevent the Borough from performing its duties and obligations hereunder. The Borough shall notify Redeveloper of any and all litigation that

may prevent the Borough from performing its duties and obligations hereunder.

(d) **Adoption of Ordinances and Resolution.** The Ordinance adopting the Second Amendment to Redevelopment Plan as of the Effective Date, the Resolution designating the Redevelopment Area, and the Resolution designating the Redeveloper to serve as the Redeveloper, were duly adopted by the Governing Body in accordance with the Redevelopment Law and any other Legal Requirements, subject to any such ruling as may be issued by a court of competent jurisdiction.

(e) **No Interference.** The Borough agrees not to propose, adopt, or implement any zoning ordinance or regulation and/or any ordinance or regulation of general applicability that will prevent or prohibit the construction of the Project.

(f) **No Other Redevelopment Agreements.** No other Redevelopment Agreements are in effect with respect to the Project Site.

ARTICLE 5

REDEVELOPER COVENANTS

SECTION 5.1 Redeveloper Covenants. The Redeveloper covenants and agrees that:

(a) The Redeveloper shall not use the Project Site or any part thereof in a manner that is not consistent with the Redevelopment Plan or this Agreement. The Redeveloper will implement only those uses as set forth in the Project Description and established in the Second Amendment to Redevelopment Plan or as the Second Amendment to Redevelopment Plan may be modified, in writing, from time to time in accordance with the Act. The Borough acknowledges that the Project as described herein is consistent with the requirements of the Second Amendment to Redevelopment Plan. In the event Redeveloper subsequently desires or is required to materially alter anything set forth in the Project Description, Redeveloper shall provide the Borough with a copy of an amended plan or other such development application thirty (30) days prior to submission of such application to the Planning Board, for Borough's approval, which approval shall be by formal Resolution of the Borough.

(b) Completion of the Project in Accordance with the Project Schedule. The Redeveloper shall commence construction of the Project by or on the dates set forth in the Project Schedule and shall implement and complete the Project in accordance with conditions and requirements of this Agreement, the Second Amendment to Redevelopment Plan and all applicable laws, rules and regulations, including, but not limited to, Ordinances of the Borough of Flemington, Environmental Laws, and the Local Redevelopment and Housing Law.

(c) Permitted Transfers. Excepting Permitted Transfers, the Parties acknowledge that pursuant to the terms herein, and to the extent that Redeveloper has acquired title or other rights to or in the Property, Redeveloper has covenanted not to effect or permit any change, directly, or assign or attempt to assign this Agreement or make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project or this Agreement, without first having obtained the written consent of the Borough Council, which shall be by formal Resolution of the Borough Council, and which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary set forth in this Agreement, Redeveloper shall have the right to convey or transfer its interest in the Property at any time after the issuance of a Certificate of Completion, as may be applicable.

(d) Notice of Permitted Transfers. With respect to any Permitted Transfer (other than leases to a tenant or end user), Redeveloper shall provide to the Borough written notice within ten (10) days following such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the Transferee parties, individuals and/or entities involved, provided however, that the delay in providing or failure to provide such notice shall not constitute a breach or Event of Default hereunder.

SECTION 5.2 Prohibition on Discrimination. The Redeveloper shall not discriminate against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, gender, gender expression, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sub lessees, or vendees on the Project Premises.

SECTION 5.3 Effect and Duration of Covenants. The covenants in this Article shall run with the land and be referenced in any deeds, leases or other documents of conveyance for any parcel within in the Project Site. Except as provided in Section 2.7 pertaining to the Financial Agreement (which shall continue pursuant to the Term as set forth therein) the covenants shall cease and terminate when a Certificate of Completion has been issued by the Borough, which Certificate of Completion shall be in recordable form and recorded in the land records of Hunterdon County, and the deeds, leases or other documents of conveyance shall so state.

ARTICLE 6

REDEVELOPER OBLIGATIONS

SECTION 6.1 Borough Costs. The Redeveloper shall provide funding to the Borough for all the Borough Costs. The Borough Costs shall include, but not be limited to reasonable costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, technical consultants, planners and financial consultants, among others, and all other reasonable out-of-pocket costs and reasonable expenses of the Borough related to the Project and this Agreement, including the cost to defend litigation challenging this Agreement or any action taken by the Borough in furtherance or support of this Agreement or the Project.

SECTION 6.2 Payment of Borough Costs. The Redeveloper shall be responsible for the payment of all reasonable Borough Costs that have been authorized by Resolution, as follows: Within ten (10) days from the Effective Date, Redeveloper shall pay Twenty-Five Thousand Dollars (\$25,000.00) (“**Project Funds**”) to the Borough to be drawn down upon by the Borough to cover reasonable Borough Costs that Borough may continue to incur during the course of the implementation of the Project, but any amounts being held by the Borough pursuant to the Interim Cost and Conditional Designation Agreement shall be applied to the Project Funds so the Redeveloper shall owe the balance between the amount being held by the Borough and Twenty-Five Thousand Dollars (\$25,000.00) . Within fifteen (15) days of the receipt by Redeveloper of written notice from the Borough that the amount of Project Funds has decreased to Five Thousand Dollars (\$5,000.00), Redeveloper shall replenish the Project Funds to the amount of Twenty-Five Thousand Dollars (\$25,000.00). Upon request, the Borough shall within ten business (10) days provide Redeveloper with an accounting identifying by month, all Project Funds paid to the Borough consultants and professionals identified in Section 6.1 above. If Borough’s Costs exceed the amount of the Project Funds at any given time, Redeveloper agrees to pay such costs upon fifteen (15) days’ written notice from the Borough stating that such costs are due. Upon the Effective Date of this Agreement, the prior Interim Cost and Conditional Designation Agreement shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms and obligations contained herein, but any Escrow Amount held by the Borough pursuant to that Agreement shall be applied towards the Project Funds.

ARTICLE 7

SATISFACTION OF AFFORDABLE HOUSING OBLIGATION

SECTION 7.1. The Parties acknowledge that the construction of the Project will result in the creation of an obligation of the Borough of Flemington to provide low and moderate-income housing. Subject to Section 2.1(e), The Redeveloper shall provide one (1) affordable rental townhouse unit and sixteen (16) affordable rental apartment units, and said affordable {350073.DOCX.1}

apartment units shall be integrated throughout the buildings with the market rate units. The affordable units shall meet all applicable affordable housing regulations, set forth in COAH's Substantive rules, the Uniform Housing Affordability Control Rules (UHAC), and the NJ Fair Housing Act, such as but not limited to, income distribution (including 13% for very low income), bedroom distribution, phasing, affirmative marketing, and affordability controls of not less than 30 years. The Redeveloper shall submit floor plans that identify each affordable unit, including its bedrooms and income restriction (i.e., a 2-bedroom, low-income unit) to the satisfaction of the Board Planner. The Redeveloper shall utilize the Borough's Affordable Housing Administrator for administration of the affordable units, at the sole cost of the Redeveloper. No building shall be composed of more than 60% of the required affordable units.

ARTICLE 8

COMPLIANCE WITH LAWS

Redeveloper shall comply with all applicable laws, rules, ordinances, regulations and other requirements of any governmental authority ("**Legal Requirements**") to the extent such compliance is required as a result of (a) Redeveloper's specific use of the Project Site, (b) Redeveloper's acts and/or (c) its Governmental Approvals.

ARTICLE 9

MAINTENANCE OF PROJECT SITE AND PROJECT OVERSIGHT

SECTION 9.1 Maintenance/Repairs. Redeveloper shall, at its sole cost and expense, take good care of the Project Site and put, keep and maintain same in a neat, good, safe and substantial order and condition, shall not do or suffer any waste with respect thereto and

shall promptly, at Redeveloper's sole cost and expense, make all necessary repairs and replacements to the Redeveloper's improvements thereon.

SECTION 9.2 Progress Reports. The Redeveloper shall submit a Progress Report in substantially the form attached hereto as **Exhibit D**, as that term is defined herein, to the Borough on a monthly basis or as otherwise requested by the Borough but which shall not exceed monthly.

SECTION 9.3 Access to Project Site. The Borough and its authorized representatives, including but not limited to any Engineer or other such professional so designated by the Borough, shall have the right to enter the Project Site upon reasonable prior notice given to the Redeveloper to inspect the Project Site and any and all work in progress for the purpose of furthering its interest in this Agreement. The Borough shall utilize reasonable efforts to minimize any interference with Redeveloper's activities on the Project Site. Such entrance shall be for informational purposes and shall not relieve the Redeveloper of its obligation to implement the Project in accordance with this Agreement. In no event, at any time, shall the Borough's inspection of the Project be deemed acceptance of the work in progress or any completed work or be deemed to waive any right that the Borough has under this Agreement. The Borough and its authorized representatives acknowledge that the Project Site is a construction site and may contain dangerous conditions, and therefore the Borough and its authorized representatives shall enter the Project Site at its own risk.

ARTICLE 10

DEFAULT AND TERMINATION

SECTION 10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "**Event of Default**" hereunder:

- (a) Failure of the Redeveloper to observe and perform any covenant, condition or term in this Agreement and (i) continuance of such failure for a period of thirty (30) days

after receipt by Redeveloper of written notice from the Borough specifying the nature of such failure and requesting that such failure be remedied (“**Default Notice**”); provided, however, if the breach of any such covenant, condition or term is one which cannot be completely remedied within the thirty (30) days after such Default Notice has been received by the Redeveloper, it shall not be an Event of Default as long as the Redeveloper is proceeding in a diligent manner to remedy same and the default is fully remedied not later than sixty (60) days after receipt of the Default Notice by the Redeveloper, subject to further extension(s) as agreed upon by the parties in writing.

(b) The Redeveloper shall fail to satisfy its obligations with respect to the timely construction and implementation of the Project in accordance with this Agreement or shall abandon or substantially suspend construction work, and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) days after receipt of default Notice from the Borough; provided, however, if the failure, abandonment, or suspension cannot be completely cured, ended or remedied within the thirty (30) days after such Default Notice has been received by Redeveloper, it shall not be an Event of Default as long as the defaulting party is proceeding in a diligent manner to remedy the same and the failure, abandonment or suspension is fully cured, ended or remedied not later than sixty (60) days after receipt of the Default Notice by Redeveloper, subject to further extension(s) as agreed upon by the parties in writing.

(c) The Redeveloper or its successor-in-interest shall fail to pay any real estate taxes or assessments on the Project Site or any part thereof when due.

SECTION 10.2 Remedies Upon Events of Default.

(a) Termination or Institution of Lawsuit. In the event of an Event of Default by any party hereto, the non-defaulting party may terminate this Agreement and/or may institute whatever action, at law or in equity, it may deem desirable, including the seeking of damages.

(b) Additional Remedies in the Event of Default. In the event of an Event of Default, in addition to the right to terminate the Agreement, the Borough may implement any or all of the following remedies:

- (i) Suspension of cooperation with Redeveloper pursuant to the terms of this Agreement; and/or
- (ii) Suspension of the review and/or approval process of any application or submission related to Governmental Approvals.

ARTICLE 11

NOTICES

SECTION 11.1 Notices. All Notices permitted or required to be made by the Redeveloper or the Borough under this Agreement shall be made in writing and shall be deemed duly given (i) upon confirmation of facsimile, (ii) one (1) Business Day (as hereinafter defined) following the date sent, when sent by overnight delivery, and (iii) three (3) Business Days following the date when mailed by registered or certified mail, return receipt requested and postage prepaid at the following addresses:

Borough:

Borough of Flemington
38 Park Avenue
Flemington, NJ 08822
(908) 782-

With a copy to:

Andrew M. Brewer, Esq.
Maraziti, Falcon LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
(973) 912-6813

Redeveloper:

Erich Schwenker
President
Cardinal Capital Management, Inc.
901 S 70th St.
West Allis, WI 53214

(414) 395-4455

With a copy to: Frank J. Vitolo, Esq.
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-5081
FVitolo@sillscummis.com

“Business Day” means any day other than a Saturday, Sunday, or a day on which banks are legally closed for business in the Borough of Flemington, New Jersey.

ARTICLE 12

BINDING EFFECT

SECTION 12.1 This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

ARTICLE 13

MISCELLANEOUS

SECTION 13.1 Captions. The captions appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any provision of this Agreement, nor in any way affect this Agreement.

SECTION 13.2 Severability. If any provision of this Agreement or the application thereof to any person or circumstance described in this Agreement shall to any extent be held void, unenforceable or invalid, then the remainder of this Agreement or the application of such provision to any person or circumstance described in this Agreement, other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 13.3 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

SECTION 13.4 Governing Law. Without regard to principles of conflicts of law, the laws of the State of New Jersey shall govern and control the validity, interpretation, performance and enforcement of this Agreement.

SECTION 13.5 Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Agreement.

SECTION 13.6 Non-Liability of Officials and Employees of Redeveloper. No member, agent, officer, employee, representative, director, or partner of the Redeveloper or consultant retained by Redeveloper shall be personally liable to the Borough or any of the Borough's successors in interest or assigns, in an Event of Default or breach by the Redeveloper, or for any amount which may become due to the Borough or its successors in interest or assigns, on any obligation under the terms of this Agreement.

SECTION 13.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

Section 13.8 Effective Date. This Agreement shall become effective upon execution by both parties.

Section 13.9 Force Majeure Event. Performance by the Borough or the Redeveloper (each, a “**Party**”) hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following Force Majeure Events or conditions or any combination thereof, or other cause beyond such Party’s reasonable control, that has had a material adverse effect on the ability of the Parties to this Redevelopment Agreement to perform; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Redevelopment Agreement:

- (a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage, pandemics or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above (such events being required to physically affect a Party’s ability to fulfill its obligations hereunder);
- (b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either Party;
- (c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than the Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within the Borough, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such

party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be an event of Force Majeure;

(e) Default by the Borough or Redeveloper, as to the non-defaulting Party.

Section 13.10 Estoppel Certificate. Within thirty (30) days following written request by either of the Parties , and upon confirmation that all statements contained in such Estoppel Certificate are accurate, the other Party shall issue a signed Estoppel Certificate, as that term is defined herein. Except as may be otherwise provided herein, no more than two (2) Estoppel Certificates may be requested per twelve (12) month period by either of the Parties or any holder. It is acknowledged and agreed by the Redeveloper and the Borough that such Estoppel Certificate may be relied upon by any financial institution, lender, mortgage assignee, prospective mortgage assignee or prospective purchaser or tenant of

any portion of the Project or the Property or any portion thereof. In addition to other Events of Default identified herein, failure of either Party to provide such Estoppel Certificate in accordance with the terms hereof shall constitute an Event of Default for purposes of this Agreement subject to the notice provisions and time for cure set forth in Section 10.1(a), which may be cured in accordance with the terms herein.

Section 13.11. No Financial Consideration For Redevelopment Agreement.

Redeveloper warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with this Agreement, other than the costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further hereby warrants it has not paid or incurred any obligation to pay any officer or official of the Borough any money or other consideration for or in connection with this Agreement.

Section 13.12. Conflict of Interest. No member, agent, official, employee, or representative of the Borough has or shall acquire any interest, direct or indirect, in the Project or the Property or has or shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with the Project or the Property, in accordance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-11(c).

Section 13.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest and assigns of the Parties and their heirs, executors, and administrators. No provision of this Agreement shall be deemed to be for the benefit of, or enforceable by, any third party.

Section 13.14. Exhibits. All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though fully set forth herein. For purposes of clarity, any Exhibit attached hereto which is anticipated by the Parties to be updated or amended in accordance with the specific terms herein (e.g. a detailed construction schedule to amend the Project Schedule attached hereto) shall not require any separate or additional Resolution of the Borough Council, nor shall any exhibit described as being conceptual, not final or generally setting forth or depicting any element of the Project or any component thereof, except as otherwise provided herein.

Section 13.15. Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 13.16. Severability. If any term or provision of this Agreement or the application thereof shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the extent permitted by law unless the provision held invalid or unenforceable shall deprive the Redeveloper of its right to redevelop the Project or such material portion thereof as set for herein, in which case, either Party may terminate this Agreement, or, the Parties may negotiate in good faith a revised Agreement or portion thereof.

Section 13.17. Execution of the Agreement. This Agreement may be executed in one or more counterparts. This Agreement shall become binding upon the Parties and such counterparts shall constitute one and the same instrument, upon the Effective Date of

this Agreement. Additionally, the execution and delivery of this Agreement may be conducted by electronic means in accordance with the Uniform Electronic Transmissions Act, N.J.S.A. 12A:12-1.

Section 13.18. Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

Section 13.19. Drafting Ambiguities and Interpretation. In the interpretation of any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each of the Parties acknowledging that it and its counsel have had ample opportunity to review this Agreement and have contributed to the final form of same.

Section 13.20. Time Period for Notices. All notices to be served hereunder shall be provided in writing in conformance with the terms of this Agreement and, unless a certain number of days is specified, within a reasonable time.

Section 13.21. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

Section 13.22. Recitals, Definitions and Exhibits Incorporated. The Recitals, Definitions and Exhibits contained within or appended to this Agreement are hereby incorporated by reference into this Agreement, as if fully set forth herein.

Section 13.23. Entire Agreement. This Agreement constitutes the entire agreement for the redevelopment of the Project between the Parties.

[Signature Page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written.

BOROUGH OF FLEMINGTON

By: _____
 Betsy Driver
 Mayor, Borough of Flemington

CARDINALCAPITAL MANAGEMENT, LLC

By: _____

LIST OF EXHIBITS:

- A. Site Plans
- B. Project Description
- C. Project Schedule
- D. Progress Reports
- E. Redevelopment Plan Amendment

Exhibit A
Site Plans

Attachment: REDEVELOPMENT AGREEMENT BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND CARDINAL CAPITAL MANAGEMENT,

Exhibit B
Project Description

Redeveloper intends to construct a mixed-use residential project on the Property that will incorporate, among other things: one hundred (100) rental apartment units, sixteen (16) of which will be affordable units; eleven (11) rental townhouse units, one (1) of which will be an affordable unit; two hundred (200) parking stalls for the use of residents, employees and visitors to the Project; retail space; a public park; landscape improvements and resident amenities.

Exhibit C**Project Schedule**

TASK	Milestone Date
Submission of Application for Site Plan Approval	6 months after execution of Redevelopment Agreement
Submission of Application for all other Governmental Approvals (other than Building Permits)	6 months after final and non-appealable site plan approval has been obtained
Submission of Application for All Building Permits	6 months after all Governmental Approvals have been obtained and are final and non-appealable,
Commencement of construction	3 months after all Governmental Approvals and Building Permits have been obtained and are final and non-appealable.
Substantial Completion of Construction	2 years after commencement of construction

Exhibit D
Progress Report

Attachment: REDEVELOPMENT AGREEMENT BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND CARDINAL CAPITAL MANAGEMENT,

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-248**

DOC ID: 3971

Authorizing the Execution of an Amendment to the Second Amended and Restated Redevelopment Agreement with Flemington Center Urban Renewal, LLC and Approving Certain Other Actions Related Thereto

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended from time to time (the "**Redevelopment Law**"), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, in accordance with the Redevelopment Law, on September 29, 2020, the Borough Council adopted Resolution 2020-166 approving and authorizing the execution of a certain seconded amended redevelopment agreement between the Borough of Flemington and Flemington and Flemington Center Urban Renewal, LLC dated October 13, 2020 (the "**2020 Redevelopment Agreement**"); and

WHEREAS, the Borough of Flemington (the "**Borough**") and Flemington and Flemington Center Urban Renewal, LLC (the "**URE**") have determined to enter into an amendment to the 2020 Redevelopment Agreement a copy of which is attached hereto as EXHIBIT A (the "**Amendment**"); and

WHEREAS, in order to obtain financing for the Project (as defined in the 2020 Redevelopment Agreement), the Redeveloper may need to enter into separate redevelopment agreements for each phase of the Project; and

WHEREAS, in order to effectuate the redevelopment of the Property (as defined in the 2020 Redevelopment Agreement), the Borough has determined to enter into the Amendment and multiple redevelopment agreement(s) with the URE and affiliated entities for each phase of the Project on the same terms as set forth in the 2020 Redevelopment Agreement (the "**Phase Redevelopment Agreements**"),

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF FLEMINGTON, COUNTY OF HUNTERDON, AS FOLLOWS:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. The Borough hereby approves the Amendment.

Section 3. The Mayor and/or the Deputy Mayor of the Borough are hereby authorized to execute the Amendment and the Phase Redevelopment Agreement(s) with the URE or affiliated entities as applicable, subject to such additions, deletions,

modifications or amendments deemed necessary by the Mayor in consultation with counsel, which additions, deletions, modifications or amendments do not alter the substantive rights and obligations of the parties thereto, and to take all other necessary and appropriate action to effectuate the 2020 Redevelopment Agreement, Amendment and Phase Redevelopment Agreement(s).

Section 4. This Resolution shall take effect immediately.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Attorney Andrew Brewer highlighted the major elements of the agreement being voted on.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly

EXHIBIT A

THIS FIRST AMEDEMMENT TO THE SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (the "**Agreement**") is entered into this 12th day of December, 2022 (the "**Effective Date**"), by and between **THE BOROUGH OF FLEMINGTON** (the "**Borough**"), a municipal corporation and body politic of the State of New Jersey, having its offices at 38 Park Avenue, Flemington, New Jersey 08822 and **FLEMINGTON CENTER URBAN RENEWAL, LLC**, a limited liability company authorized to conduct business within the State of New Jersey and having a business office located at 5 Bartles Corner Road, Flemington, New Jersey 08822 (the "**Redeveloper**") (together the "**Parties**" and individually a "**Party**").

WHEREAS, in accordance with the Redevelopment Law, on September 29, 2020, the Borough Council adopted Resolution 2020-166 approving and authorizing the execution of a certain seconded amended redevelopment agreement between the Borough and Flemington and Flemington Center Urban Renewal, LLC dated October 13, 2020 (the "**2020 Redevelopment Agreement**"); and

WHEREAS, the Parties have determined to enter into an amendment to the 2020 Redevelopment Agreement;

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree that the 2020 Redevelopment Agreement shall be amended to add new Sections 4.10 and 4.11 to read as follows:

"4.10 Parking. The Redeveloper agrees to manage parking through a management company, which will enforce parking rules and regulations. The number and location of parking spaces will be provided as set forth in the site plan as approved by the Borough Planning Board. The parking restrictions are set forth below:

- a) With respect to the podium parking lot set forth in the site plans, parking spaces will be limited to occupants of the Courthouse Square residences, except that six spaces will be allocated to the Borough police until the Borough advises that they are no longer necessary or until the Borough police no longer occupy the current police station at 100 Main Street.
- b) With respect to the vertical garage, parking will be limited to the residences and hotel uses. Access will be obtained through a card that is swiped or through similar means.
- c) Parking in the Spring Street surface lot will be available to Courthouse Square customers, residents, hotel guests and employees. There will be no overnight parking in the Spring Street lot, except for occupants of the residences and their visitors or except as otherwise permitted by the Redeveloper. The management company will reserve 19 parking spaces in a dead-end aisle for employee and residential parking.
- d) The Redeveloper will provide parking off-site across from Bloomfield Avenue on Block 18, Lots 15, 17, 18 and 19 through a shared parking agreement. Courthouse Square's visitors, customers, guests, employees, and residents will have access to those lots. The parking spaces will not be specifically assigned or designated to

specific uses or times of day. No overnight parking will be allowed unless it is for residents and guests of the parties to the shared parking agreement or unless the parties otherwise agree.

With respect to both outdoor lots, vehicles must be removed in the event of snow, if necessary for the cleaning of the lots.

4.11 Pedestrian Access Rights. The Redeveloper will permit pedestrians to use the plaza area for non-exclusive access for ingress and egress between Main Street and Spring Street, subject to the needs of the Redeveloper and its management company, including for repairs and maintenance. The Redeveloper will work with the Borough to accommodate its requests for use of space in the plaza area, as set forth in the Flemington Borough Planning Board Resolution of Approval."

This first amendment to the 2020 Redevelopment Agreement shall govern to the extent any terms within the 2020 Redevelopment Agreement are inconsistent herewith.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of Effective Date.

FLEMINGTON CENTER URBAN RENEWAL, LLC

Witness

By: _____
John J. Cust, Jr., CPA
Managing Member

BOROUGH OF FLEMINGTON

Michael Humphrey, Acting Borough Clerk

By: _____
Hon. Betsy Driver, Mayor

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

TABLED**RESOLUTION 2022-249**

DOC ID: 3969

Authorizing an Amended Redevelopment Agreement by and Between the Borough of Flemington and HBC Liberty, LLC

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the "**Act**"), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Resolution 2021-15, on October 12, 2021, the Borough of Flemington designated the Liberty Village Redevelopment Area as a "Non-Condemnation" Redevelopment area comprising of ten (10) lots and approximately twenty-three (23) acres (collectively, the "**Redevelopment Area**"); and

WHEREAS, by Ordinance No. 2021-28 on December 13, 2021, the Borough of Flemington adopted a plan for the redevelopment of the parcels within the Redevelopment Area known as the Liberty Village Redevelopment Plan ("**Redevelopment Plan**"); and

WHEREAS, the Borough desires that certain property located within the Redevelopment Area be redeveloped in accordance with the Redevelopment Plan, as may be amended from time to time, a complete copy of which is on file at Borough Hall:

- Block 35, Lots 22, 23, 24, 25, 31, 53, 54, 69, 70, and 71 - property known as Liberty Village, consisting of approximately 23 acres located generally at the intersection of NJ Route 12, Stangl Road, and Church Street ("**Project Site**"); and

WHEREAS, by Resolution dated January 24, 2022, the Borough authorized the execution of a Conditional Designation Agreement with HBC Liberty Village, LLC, and thereafter engaged in negotiations for a comprehensive Redevelopment Agreement with HBC Liberty Village, LLC for the redevelopment of the Redevelopment Area; and

WHEREAS, by Resolution 2022-148, the Borough authorized the execution of a Redevelopment Agreement by and between the Borough of Flemington and HBC Liberty LLC ("**Redevelopment Agreement**"); and

WHEREAS, the Borough has determined that certain revisions and amendments to the Redevelopment Agreement would aid in the effective redevelopment of the Project Site and benefit the Borough; and

WHEREAS, the Borough has negotiated the terms of an Amended Redevelopment Agreement with HBC Liberty Village, LLC for the comprehensive redevelopment of the Redevelopment Area, a copy of which is attached to this Resolution.

WHEREAS, the Borough and Redeveloper desire to enter into this Amended Redevelopment Agreement, which supersedes any and all previous Agreements for the

Redevelopment of the Redevelopment Area;

NOW, THEREFORE BE IS RESOLVED by the Borough of Flemington Council, County of Hunterdon, State of New Jersey, as follows:

1. The Mayor is hereby authorized and directed to execute an Amended Redevelopment Agreement between the Borough of Flemington and HBC Liberty Village, LLC in substantially the form attached hereto as Attachment A.
2. The Clerk and Staff of the Borough of Flemington are hereby authorized and directed to take all actions as shall be deemed necessary or desirable to implement this Resolution.
3. This Resolution shall be effective immediately.

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

COMMENTS - Current Meeting:

Resolution Tabled due to unresolved items within the RDA.

RESULT:	TABLED [UNANIMOUS]	Next: 1/3/2023 5:00 PM
MOVER:	Jeremy Long, Council President	
SECONDER:	Kimberly Tilly, Council Member	
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly	

REDEVELOPMENT AGREEMENT BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND HBC LIBERTY Village LLC

THIS REDEVELOPMENT AGREEMENT (“**Agreement**”), made as of the ____ day of December, 2022 (the “**Effective Date**”), by and between the BOROUGH OF FLEMINGTON, with offices at 38 Park Avenue, Flemington, New Jersey 08822, (the “**BOROUGH**” or “**FLEMINGTON**”), acting pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 and HBC LIBERTY VILLAGE LLC, or its permitted assignees, with offices located at 331 Newman Springs Road, Building 3, Suite 310, Red Bank, New Jersey 07701 (“**Redeveloper**” or “**HBC Liberty**”).

RECITALS

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “**Act**”), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, by Resolution 2021-15, on October 12, 2021, the Borough of Flemington designated the Liberty Village Redevelopment Area as a “Non-Condemnation” Redevelopment area comprising of ten (10) lots and approximately twenty-three (23) acres (collectively, the “**Redevelopment Area**”); and

WHEREAS, by Ordinance No. 2021-28 on December 13, 2021, the Borough of Flemington adopted a plan for the redevelopment of the parcels within the Redevelopment Area known as the Liberty Village Redevelopment Plan (“**Redevelopment Plan**”); and

WHEREAS, the Borough desires that certain property located within the Redevelopment Area be redeveloped in accordance with the Redevelopment Plan, as may be amended from time to time, a complete copy of which is on file at Borough Hall:

- Block 35, Lots 22, 23, 24, 25, 31, 53, 54, 69, 70, and 71 – property known as Liberty Village,

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consisting of approximately 23 acres located generally at the intersection of NJ Route 12, Stangl Road, and Church Street (“**Project Site**”)

WHEREAS, the Borough and Redeveloper desire to enter into this Agreement, which supersedes any and all previous Agreements for the Redevelopment of the Project Site;

NOW THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the Parties hereto, each binding itself, its successors and assigns, do mutually promise covenant and agree as follows:

Article 1 **DEFINITIONS**

Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and Exhibits hereto shall have the following meanings:

“Affiliate” means with respect to any Person or entity, any other Person or entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control,” including the correlative meanings of the terms “controlled by” and “under common control with,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person; provided that the right of another entity or entities to consent to “major decisions” shall not be deemed to negate the existence of control (however, for the avoidance of doubt, the foregoing shall not be deemed to excuse Redeveloper or any Affiliate from the performance of any of its obligations under this Agreement).

“Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Applicable Laws” means any laws, statutes, codes, ordinances, orders, regulations or other such legal requirements of any governmental body, now or hereafter in effect, and, in each case, as may be amended.

“Borough Cost(s)” means all reasonable and ordinary out-of-pocket costs and/or expenses incurred by the Borough that are required by or necessary to implement or defend this Agreement and/or any amendment thereto, including Redeveloper’s designation as the exclusive Redeveloper of the Project Site, the Redevelopment Plan or any amendment thereto in connection with the Project, the cost to defend litigation challenging this Agreement or any action taken by the Borough in furtherance or support of this Agreement or the Project, and/or any Financial Agreement or other such agreement memorializing the terms of any PILOT, which shall include, but not be limited to, the following: reasonable fees and costs of any professional, consultant, contractor or vendor retained by the Borough in writing, including attorneys, environmental consultants, engineers, technical consultants, planners, and financial consultants among others.

“Certificate of Completion” means a recordable, conclusive determination issued by the Borough evidencing the satisfaction and termination of the agreements and covenants in this Agreement, as applicable, and compliance with this Agreement and the Redevelopment Plan with respect to the Redeveloper's obligation to implement Phase I or Phase II of the Project, as follows: (i) based upon its review of a written certification of a duly authorized

officer of Redeveloper stating that: (a) the Phase I or Phase II of the Project has been completed and all labor, services, materials and supplies used in connection thereto have been paid for (or, if disputed, bonded for as may be set forth herein) and (b) the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Phase of the Project for which a Certificate of Completion is sought; and (ii) a written determination by the Borough that the Redeveloper has materially performed all of its duties and obligations under this Agreement as to the Phase of the Project for which a Certificate of Completion is sought, based upon: (a) the Borough Engineer Certification and (b) any other physical inspection of the Project and/or review of such other documentation or information that the Borough shall reasonably deem relevant and appropriate (the “**Written Determination**”). A Certificate of Completion for the Phase of the Project for which a Certificate of Completion is sought shall be formally approved by Resolution of the Borough and such Resolution in and of itself may constitute the Written Determination defined in this paragraph.

“Certificate of Occupancy” means the certificate provided for at N.J.S.A. 52:27D-133, whether temporary or permanent, indicating that the construction has been completed in accordance with the applicable construction permit, the applicable Ordinances of the Borough of Flemington, the State of New Jersey Uniform Construction Code, and any other ordinance or regulation implementing the State of New Jersey Uniform Construction Code.

“Donation” means the conveyance of an interest in real or personal property for altruistic purposes. For the sake of clarity, a Donation constitutes a voluntary act for which the grantor does not receive anything in return from the grantee. With respect to any Donations called for under this Agreement, the Borough agrees to provide the Internal

Revenue Service with a written statement of the value of the property so Donated and confirming that Redeveloper did not receive anything in return from the grantee.

“Effective Date” means the date this Agreement is last executed by the authorized representative of the Borough.

“Final and Non-Appealable Site Plan Approval” shall mean the date that is 45 days after publication of site plan approval without any Complaints being filed challenging such approval, or in the event that a challenge is filed, the date upon which a decision of the Superior Court of New Jersey upholding such site plan approval and the expiration of the time to file an appeal of such ruling.

“Flemington Borough Engineer Certification” means a written certification by the Flemington Borough Engineer that, based upon the Flemington Borough Engineer’s physical inspection and review of the Project, together with any other documentation or information that the Flemington Borough Engineer shall reasonably deem relevant and appropriate, the Project has been constructed and implemented in accordance with the relevant plans approved pursuant to the Governmental Approvals.

“Governmental Application(s)” means any and all submissions, supporting documents, reports or other proofs transmitted to any state, federal or local governmental office, agency, authority, department, officer or agent for the purpose of obtaining authorization or approval of any aspect of the Project.

“Governmental Approval(s)” means all necessary reviews, consents, opinions, permits or other approvals of any kind legally required by any federal, state, county or local Governmental Body or quasi-governmental entity having jurisdiction over any aspect of the

implementation or construction of the Project or any portion thereof, including, but not limited to, preliminary and final site plan and subdivision approval and construction permits.

“Governmental Body” means any federal, state, county, legislative or executive office or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Borough, the County of Hunterdon, the State of New Jersey or the United States of America.

“Interim Cost Agreement” or “Interim Cost and Conditional Designation Agreement” means the terms and conditions of the Interim Cost Agreement, as amended, entered into by and between the Borough and the Redeveloper on or about January 24, 2022, which sets forth the parameters by which Redeveloper may be designated as the exclusive Conditional Redeveloper of the Project Site and which required, *inter alia*, Redeveloper to establish an escrow fund for the payment of the Borough Costs incurred during the interim. Upon the Effective Date of this Agreement, the Interim Cost Agreement, and any amendments thereto, shall be automatically terminated and the terms and obligations contained therein shall be replaced by the terms contained herein with respect to same.

“Mall Parcel” means a subdivided parcel of land identified as “Phase I” on Exhibit A.

“Parking Lot Parcel” means a subdivided parcel of land identified as “Phase II” on Exhibit A.

“Progress Report” means a written report in substantially the form attached hereto as **Exhibit D** which sets forth a description of activities completed, the activities anticipated to be undertaken prior to the next monthly Progress Report, the status of all Governmental

Approvals, an explanation of each activity, if any, which is showing delay, a description of current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed.

“Project” shall be as defined in accordance with the Project Description set forth in Attachment B and the site plans approved by the Borough, which shall be substantially consistent with the Concept Plan attached at **Exhibit A** (the “**Project Concept Plan**”) which illustrate the general concept and layout of the Project to be constructed as described in the Project Description, attached hereto as **Exhibit B**, and the provisions of Section 2.1 of this Agreement, as may be modified and approved in writing by the Developer with Borough approval as provided herein. Redeveloper is not permitted to submit any applications to the Flemington Planning Board for Site Plan or Subdivision approval without receipt of written approval from the Borough in accordance with Article 3 of this Agreement.

“Redevelopment Agreement” means this Redevelopment Agreement along with any written amendments, modifications, or supplements, and the exhibits hereto, together with any other agreement(s) that are incorporated herein by reference.

“Redevelopment Law” means the State of New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as this statute may be amended from time to time.

“Well Parcel” means one pad, approximately 100’ in diameter, to be donated to the Borough by the Redeveloper as a location for installation by the Borough of a future municipal well, including as required, easements for access and maintenance of such future well, the precise location of which shall be finalized and memorialized as provided in Section 2.1(g).

ARTICLE 2

IMPLEMENTATION OF PROJECT

SECTION 2.1 Implementation of Project. The Redeveloper is hereby designated as the exclusive redeveloper of the parcels referred to herein as the Project Site, and Redeveloper agrees to perform and complete the following tasks (not necessarily in the indicated sequence), collectively referred to herein as the **“Project,”** consistent with all of the Exhibits, referred to herein, which depict a two-phase development consisting of approximately 164 stacked town-homes and related improvements (the **“Town-homes”**) along with the Donation of the Well Parcel and execution of the Well Easement (as defined hereinbelow), Public Park and Donation of the Building identified as 31 Church Street to the Borough (**“Phase I”**) and approximately 225 rental residential apartment units in five (5) buildings not to exceed six (6) stories with a pool and recreation center, (**“Phase II”** and, together with Phase I, and including the further details included on Exhibit D collectively, the **“Project Description”**), in compliance with the terms and conditions of this Agreement, the Redevelopment Plan, all Applicable Laws, and in accordance with the level of skill and care ordinarily exercised by developers of such similar first class residential development. Redeveloper may not sell more than 10% of the total Town-homes in the Project to a single entity, it being the intention of the Parties that no single entity shall own more than 10% of the Town-homes in the Project after completion and sale by the Redeveloper. Redeveloper hereby agrees that the Borough of Flemington is, by this Agreement, approving the Project Concept Plan contained in Exhibit A and any and all Subdivisions and Site Plans must be further approved in writing by the Borough pursuant to Article 3 prior to seeking approval from the Planning Board:

- a. Site Acquisition: acquisition of ownership of the Property.
- b. Site Preparation: Undertaking all site preparation tasks and activities for all development and/or construction hereunder.

- c. Governmental Approvals: obtaining all applicable Governmental Approvals, as that term is defined herein, for the Project.
- d. Construction and Implementation of the Project: financing, development, construction and maintenance of a mixed-use residential and commercial project – including an affordable housing set-aside for the rental and the for-sale units, with parking for the use of residents, employees and visitors of the Project, shall be consistent with the Project Concept Plan, and in accordance with the Project Schedule attached hereto as **Exhibit C**, the Redevelopment Plan, the terms of this Agreement, and all Applicable Laws. The Project shall include approximately 385 residential units, nonresidential development, open space, and circulation, and shall be consistent with the Project Concept Plan.
- e. Affordable Housing: The affordable element to this Project shall be implemented through the provision of a 15% inclusionary set-aside of all Apartments constructed in Phase II (50% for Low Income, including 13% VLI, and 50% for moderate income families per UHAC requirements) and a inclusionary set aside of all town-home units constructed as part of Phase I which shall include 15 family for-sale affordable townhomes; two (2) group homes in a two story building with 4 bedrooms each and each bedroom used as a group home bedroom, (the “Special Needs Units”) to be owned by or leased to a Special Needs housing provider (“Special Needs Provider”), and one apartment building consisting of four (4) one-bedroom veterans apartments (“Veterans Homes”) for a total of 27 affordable units. All affordable units shall be subject to affordability controls of not less than thirty (30) years. Any lease and/or sale of any Special Needs Unit(s) or Veterans Homes to any Special Needs or Veterans Provider shall be subject to prior review and approval in writing by the Borough, which approval shall not be unreasonably withheld. The very low-income units (13% of total affordable housing units) required in Phase I shall be provided as the Special Needs Units and the Veterans Homes. The affordable element to this Project shall be implemented by phasing consistent with N.J.A.C. 5:93-5.6(d) which will include a pro rata share of affordable units

constructed as the market rate units are built; provided, however, that since the Special Needs Units will be constructed utilizing low income tax credits and similar governmental subsidies which financing may be delayed, completion of the Special Needs Units need not occur prior to the completion of the Phase I market rate units. There shall be no Certificate of Occupancy issued until it is demonstrated that affordable units have been built in the proper ratio, and Certificates of Occupancy shall be issued in the proper ratio of market to affordable units (excluding the Special Needs Units and Veterans Homes which shall be completed as provided herein). For the sake of clarity, nothing herein shall prohibit the issuance of a Certificate of Occupancy for the market-rate rental units provided a pro-rata share of market-rate affordable rental units have been constructed and a Certificate of Occupancy issued for such affordable units, or a Certificate of Occupancy for the market-rate stacked town-homes provided a pro-rata share of market-rate affordable townhome units (but excluding the Special Needs Units and Veterans Homes) have been constructed, and a Certificate of Occupancy issued for such affordable town-home units. The Special Needs Units and Veterans Homes must be constructed and a Certificate of Occupancy issued therefore prior to the issuance of any Certificate of Occupancy for any market rate rental units in Phase II. Further, prior to the issuance of any Certificate of Occupancy for the market rate Town-homes, title to the land on which the Special Needs Units will be constructed shall be placed in escrow pursuant to an escrow agreement between the Borough and Redeveloper which agreement shall provide that in the event the Special Needs Units are not constructed and a Certificate of Occupancy issued for the Special Needs Units prior to the issuance of a Certificate of Occupancy for the last market rate Town-home, the Borough shall be entitled to record same and take ownership of such land. Notwithstanding the foregoing, deviations from this, or any other provision herein relating to affordable housing, shall be permitted provided such deviation is approved in writing by both Flemington and the Fair Share Housing Center and confirmation that, notwithstanding such deviation, all

units restricted to low and moderate-income households required to be constructed herein are eligible for credit against the Borough's affordable housing obligation it being understood that the provision of Special Needs and Veterans Housing rentals will be acceptable to the Borough if acceptable to the Fair Share Housing Center.

- f. Parking: The provision of the total on-site motor vehicle parking spaces shall be completed in compliance with all Borough requirements and shall be depicted on the Project Site Plans to be approved by the Borough pursuant to Article 3 Relief to the Borough parking requirements may be granted at the Planning Board's discretion. The implementation of electric charging stations for vehicles shall be completed in compliance with the ratio and schedule required by Applicable Law.
- g. Infrastructure Improvements: Construction or extension of any improvement or utility necessitated or required by the implementation of, and to serve, the Project, which is located in whole or in part either on or off the Project Site, including but not limited to roadway milling and paving, installation of electric power transmission lines, sewer transmission conduits or pipes, storm sewers, telephone transmission lines, and cable lines, and any other such utilities all of which shall be subject to final utility connection coordination with each relevant utility provider. The Project shall include the following additional specific Infrastructure Improvements with the costs being borne by the Redeveloper:
 - i. replacement of all water and sewer lines which shall be connected to the existing mains;
 - ii. maintenance of all water infrastructure that is serving areas adjacent to the Project during this Redevelopment process and up to the issuance of the final Certificate of Occupancy;
 - iii. Donation of the Well Parcel, consisting of a one hundred (100') foot diameter circle together with an access easement (the "Well Access Easement") and provision for expansion of the existing Borough owned building at Wells #7 and #9 (the "Water Treatment

Building”) by donating additional land area adjacent to the Water Treatment Building (the “**Well Expansion Land**”). The Well Parcel and Well Expansion Land may be provided by way of permanent easement or property transfer to the Borough, at the Borough’s sole discretion. The Well Parcel shall be located at a specific location either within the Phase II of the Redevelopment Area or outside of the Redevelopment Area, the final location of which shall be determined by the Borough Engineer and the Donation thereof shall be in accordance with Subsection (j), below;

- iv. Provide minimum of one master water meter per rental building and one per Town House Unit consistent with Borough ordinances and policy (Borough shall not be responsible for billing Apartment tenants); and
 - v. Incorporation of existing drainage facilities adjacent to the Brown Street area, which the exact dimensions and locations remain to be determined in accordance with Applicable Laws and to the mutual satisfaction of the Borough and Redeveloper.
- h. Infrastructure Contribution. The Borough confirms that there is sufficient water and sewer in amounts necessary to service the Project, and that such amounts will be reserved for a period of two (2) years with respect to Phase I and up to four (4) years with respect to Phase II. Notwithstanding the foregoing, the water and sewer reservation for Phase II shall cease on the date that is the earlier of the date the New Jersey Department of Environmental Protection issues a Final denial of a Flood Mitigation Permit for Phase II or two (2) years from the Effective Date. However, if the Redeveloper receives Final Approval of a Flood Mitigation Permit for Phase II within said two-year period, the Borough shall extend the reservation of water and sewer for the full four (4) years subject to the right, in the sole discretion of the Borough, to charge Redeveloper a standard usage fee for the water and sewer so reserved in years three and four.

- i. The Redeveloper agrees to Donate Two Million Dollars (\$2,000,000.00) (the “**Infrastructure Financing**”) to be utilized by the Borough for Water, Sewer, Stormwater Infrastructure Improvements or fit out of the 1 Church Street Building (cumulatively, “**Borough Improvements**”), in addition to the improvements as stated in Section 2.1(g) above. The first installment of \$1,000,000 shall be due prior to issuance of a construction permit for the first Townhome in Phase I. The second \$1,000,000 Donation shall be due prior to issuance of the first construction permit for Phase II. Redeveloper reserves the right to apply for public or private funding to satisfy the Infrastructure Financing through grants or loans provided no additional debt liability inures to the Borough. The Borough agrees to cooperate with such efforts, but only to the extent that such funding does not conflict with other funding sources or applications sought or to be sought by the Borough, with such determination to be in the sole and absolute discretion of the Borough.
- j. Property Donation. Redeveloper shall donate the Well Access Easement and Well Expansion Land to the Borough to be used for municipal purposes in perpetuity and donate the Well Parcel or assist the Borough in acquiring the Well Parcel for use by the Borough for municipal purposes in perpetuity. The Well Parcel will be located so as to minimize the impact on the density of housing units to be constructed and will be approved in writing by the Borough Engineer and approved by the Borough pursuant to Article 3. Further, it will be described using the metes and bounds description established by a survey completed by the Redeveloper’s surveyor. Additionally, provided the location of the Well Parcel is identified by the Borough Engineer and Borough prior to commencement of construction of Phase II, Redeveloper also agrees to construct and donate piping (“**Well Infrastructure**”) at a suitable location and of a suitable diameter connecting the Well Parcel to the existing Water Treatment Building. The conveyance of the donated Well Access Easement and Well Expansion Land shall take place within 90 days after the Redeveloper has obtained Final Site Plan Approval from the Flemington Planning Board for Phase I, and Redeveloper shall request that such conveyance be a

condition of Final Site Plan Approval. If the Borough Engineer and Borough identify the location of the Well Parcel prior to the date Redeveloper submits for Site Plan Approval for Phase I, and the Well Parcel is located within the Redevelopment Area, the conveyance of the donated Well Parcel shall also take place within 90 days after the Redeveloper has obtained Final Site Plan Approval from the Flemington Planning Board for Phase I, and Redeveloper shall request that such conveyance be a condition of Final Site Plan Approval. If the Well Parcel location is identified by the Borough Engineer and approved by the Borough prior to the date Redeveloper submits for Final Site Plan Approval and the Well Parcel is located within the Redevelopment Area, and the Borough elects to take fee ownership of the Well Parcel as opposed to a perpetual easement, Redeveloper shall obtain subdivision approval from the Planning Board for the Well Parcel simultaneously with Final Site Plan Approval. However, if the location of the Well Parcel is not determined by the Borough Engineer and approved by the Borough prior to the date Redeveloper submits for Final Site Plan Approval for Phase I, Redeveloper shall be obligated to either apply for Subdivision Approval of the Well Parcel within the latter of sixty (60) days of the date the Borough Engineer and Borough determine a final location for the Well Parcel or the date Redeveloper submits for Final Site Plan Approval of Phase II, by filing an application with the Planning Board (if the Well Parcel is located within the Redevelopment Area) and convey the donated Well Parcel to the Borough within thirty (30) days after receipt of Final Subdivision Approval or, if the location of the Well Parcel as determined by the Borough Engineer and approved by the Borough is outside of the Redevelopment Area, Redeveloper shall cooperate with the Borough as necessary to acquire the land area for the Well Parcel from the owner thereof, through condemnation or otherwise, and all reasonable and actual expenses associated with such acquisition shall be within the definition of Borough Costs. The Well Parcel and Well Expansion Land shall be subject to a full inspection by the Borough which shall include but is not limited to an inspection of the condition of title and environmental status of

both. The inspection, and any follow up inspection based on items uncovered during initial inspection, shall be completed by professionals selected by the Borough and paid for by the Redeveloper. The conveyances shall be completed using a form of Deed or easement acceptable to the Borough which shall be held in escrow until filing. Redeveloper shall also donate to the Borough the building and property described generally as the 1 Church Street Building, as identified on the Concept Plan, to be used for municipal purposes in perpetuity. The property is located on Church Street as depicted on Exhibit A and will be subject to the metes and bounds description established by a survey completed by the Redeveloper's surveyor. The conveyance of this property shall take place within 90 days after the Redeveloper has obtained Subdivision Approval of the Church Street Building parcel from the Flemington Planning Board, which subdivision approval shall be sought at the same time that a Site Plan application for Phase I is submitted and the lease to the Church Street Building has expired. The building shall be conveyed in broom-clean condition for the Borough's use as a municipal building as further described herein, and the full property being conveyed shall be subject to a full inspection. This shall include but is not limited to an inspection of the structural, environmental, health and safety status of the building. The inspection, and any follow up inspection based on items uncovered during initial inspection, shall be completed by professionals selected by the Borough and paid for by the Borough. In addition, conveyance of the 1 Church Street Building shall include (i) a prohibition on the use of the Church Street Building for anything other than use and occupancy for municipal purposes by the Borough and (ii) a restriction on the use of the parking associated with the 1 Church Street Building for anything other than Borough business and parking by Borough employees during the hours in which municipal offices are open for business at the Church Street Building.

- k. Public Park and Easement: Donation of an approximately 33,000 sq. ft. below grade stormwater detention basin on top of which will be public open space in the area depicted on the Site Plans, the final design and location of which is to be

reviewed and approved by the Borough pursuant to Article 3 (“**Public Park**”) which shall be conveyed to the Borough and: (i) improved as a public park at no cost to the Borough by way of donation of such improvement by the Developer at Redeveloper’s sole cost; (ii) accessible to the public during daylight hours; (iii) a donation in the amount of \$100,000 to be used by the Borough to defray the cost of future maintenance of the Public Park (Subsections ii and iii to be codified in an easement agreement in a form acceptable to the Borough (“**Public Park Easement Agreement**”) which requirement Redeveloper shall request be included as a condition in any Final Site Plan Approval issued by the Planning Board, and (iv) feature amenities such as swings, slides, spring riders, dog run, spinners, seesaw, etc. The Borough agrees to apply for available grant funding for the Park improvements, but only to the extent that such grant funding does not conflict with other grant applications sought or to be sought by the Borough, with such determination to be in the sole and absolute discretion of the Borough. It is understood that building the below grade detention basin does not currently comply with the Green Infrastructure Rules recently adopted by the NJ Department of Environmental Protection (“NJ DEP”). The developer has applied for a waiver from NJ DEP to deviate from the Green Infrastructure Rules to permit the below ground detention basin to be built with a Public Park on top of it. In the event the NJ DEP does not approve the deviation, the developer will purchase, build, and Donate a park of at least 7,500 sq. ft. in an alternate location which will be subject to Borough approval which approval will not be unreasonably withheld.

- I. Sustainability Component. The Project shall be designed and constructed to comply with not less than the indicated minimum level of one of the following:
 - * LEED v4.1, Residential BD+C (USGBC) Certified (Min 40 Points)
 - * ICC/ASHRAE 700-2015 Bronze (Min 50 Points)
 - * Green Globes: New Construction One Globe (Min. 350 Points)
 - * Enterprise Green Communities 2015 (Min 35 Points)
 - * National Green Building Standard - ICC/ASHRAE 700-2015 Bronze (Min 50

Points).

The Project shall include the following:

- Bicycle Facilities (both short and long term)
- Low flow fixtures and dual flush toilets
- Electric Vehicle Charging stations
- On site recycling collection facilities
- Waste Management plan for disposing and recycling construction and demolition waste
- Trash and recycling pickup for the Town Homes will be provided by the Borough.
- Trash and recycling pickup for the Apartment will be provided by the building's owner(s).
- No smoking in common areas, including tobacco smoke, smoke produced from the combustion of cannabis and controlled substances and the emissions produced by electronic smoking devices.
- Provide compartmentalization by limiting occupants' exposure to indoor air pollutants by minimizing the transfer of air between units.
- Incorporation of native trees and plantings.
- A minimum of 75% of each of items (i) – (iv) must be Low VOC / No added formaldehyde:
 - (i) Interior paint, gypsum and plaster-based wall board and ceiling panels (excluding panels exposed to the exterior)
 - (ii) Interior adhesives and sealants, thermal and acoustic insulation (excluding HVAC insulation)
 - (iii) Wood based interior products, including but not limited to cabinets and wood panels
 - (iv) Flooring and wall coverings

Satisfaction of the Sustainability Component requirements set forth above shall not require actual application for any rating or certification from any particular organization but the

Redeveloper's compliance with the foregoing Sustainability Component requirements shall be subject to review and approval in writing by the Borough, prior to submission of an application for Site Plan review, and Redeveloper shall consent to the Sustainability Component requirements being a condition of Site Plan Approval.

- m. Sewer: The Borough confirms that there is sufficient sewer capacity in amounts necessary to service the Project, and that such amounts will be reserved in accordance with the provisions of Section 2.1(h), and agrees that, upon submission of a Site Plan for approval to the Planning Board, the Borough will execute any applications or providing any consents such as are required by the municipal, State, County, or regional authority to secure such additional sewer capacity.
- n. Water: The Borough confirms that there is sufficient water capacity in amounts necessary to service the Project, and that such amounts will be reserved in accordance with the provisions of Section 2.1(h).

SECTION 2.3 Design Approval. Redeveloper has obtained approval from the Borough for the Concept Plan attached at Exhibit A. Prior to making Application for Subdivision or Site Plan to the Planning Board for the Project, the Redeveloper shall obtain the written approval of all Subdivision and Site Plans from the Borough pursuant to Article 3, the Redeveloper shall also submit to the Planning Board's Technical Review Committee (the "Committee") the complete set of Site Plans, including building elevations, so that the Committee can review and approve the designs and confirm that the complete set of Site Plans be submitted to the Planning Board are in conformance with the Project Concept Plan in Exhibit A and consistent with the Redevelopment Plan and this Redevelopment Agreement Redeveloper shall not submit any application to the Planning Board, or amend any pending application, without first having obtained written approval of same by the Borough. The Redeveloper shall diligently work to obtain all approvals required for the Project from the Borough's Planning Board and all boards and agencies having jurisdiction over the Project. Redeveloper shall request the Planning Board to include all obligations contained in the Redevelopment Agreement be contained as conditions of any Site Plan approval and will consent to the inclusion of such

conditions.

SECTION 2.4 Construction of the Project. Redeveloper agrees, at its sole cost and expense, to construct, implement and complete the Project in accordance with the Project Schedule attached hereto as **Exhibit C**, the Redevelopment Plan, and the terms and conditions of this Agreement. Additionally, the Redeveloper shall design and construct the Project in a good and workmanlike manner and in accordance with all Applicable Laws. The Redeveloper shall make all reasonable efforts to minimize any negative impacts, including with regard to noise, vibration, pests and odors, and any other temporary inconveniences caused by or related to the Project and shall make all reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods. It shall be the obligation of the Redeveloper to enter into agreement(s) with owners of property to be utilized for the staging of material and/or equipment to be utilized during and for construction of the Project as required.

SECTION 2.5 Project Schedule. It is acknowledged by the Parties that the construction of the Project is time sensitive. The Project Schedule attached hereto as **Exhibit C** shall control the progress and completion of the Project. The Redeveloper agrees to commence construction of the Project as set forth in the Project Schedule. The Redeveloper further agrees to diligently implement and complete the Project by the Completion Date set forth in the Project Schedule, subject to Force Majeure delays. Subject to the notice and cure rights set forth herein, failure to meet the deadlines in the Project Schedule shall be deemed a default of the Agreement.

SECTION 2.6 Contingencies. The Parties acknowledge that the ability of the Redeveloper to proceed with the Redevelopment is specifically contingent upon the following:

- (a) Redeveloper obtaining all required Governmental Approvals.
- (b) The Redeveloper closing title on its purchase contract for the Property.

SECTION 2.7 Union Labor. All work on the Project shall be undertaken by members of labor unions if required by any State or Federal funding source.

SECTION 2.8 Financial Agreement. The terms, conditions and obligations contained in the Financial Agreement shall be incorporated herein.

SECTION 2.9 Waste Disposal and Recycling. The Borough shall provide the waste disposal and recycling services with respect to the Townhomes, the cost of which shall be borne by the owners thereof through the payment of ad valorem property taxes or payment in lieu thereof. Waste disposal and recycling for the Apartments shall be provided by Redeveloper through a commercial carrier at the sole cost and expense of the owner(s) of the Apartments.

ARTICLE 3 PROJECT APPROVALS

3.1 Procedures: General In order to facilitate the development and implementation of a mutually acceptable design, Site Plan, Subdivision and technical approach for the Project, the Parties have established the procedures set forth in this Article 3 for the review and approval of any Site Plan and/or Subdivision application. The process shall consist of an application to the Borough for a Consistency determination (the “**Pre-Application**”) and to the Planning Board for review and approval of a Site Plan and Subdivision for the Project or any Phase, as set forth in detail below. The development process shall be in accordance with the Redevelopment Law and the Municipal Land Use Law. Nothing herein is intended to restrict the exercise of the Planning Board’s governmental authority with respect to applications for Site Plan or Subdivision approval under duly adopted rules and regulations or to in any way alter the procedures established for challenging the exercise of such authority pursuant to the Land Use Law. This procedure shall be used for all development applications by Redeveloper. As of the Effective Date, the Borough has conceptually approved the Concept

Plan and, subject to any deviations or waivers approved by the Borough pursuant to Section 3.2, the Application shall be substantially consistent with the Concept Plan.

3.2 Application for Project.

- (a) Application. Redeveloper shall submit first the Pre-Application to the Borough for the purpose of determining Consistency with this Article and, after written Borough approval of same, shall then submit to the Planning Board an application for Site Plan and/or Subdivision approval of a proposed development pursuant to this Agreement (the “**Application**”), which Application must be deemed Complete by the Planning Board in accordance with its checklist and Borough Ordinances, subject to any relief requested by Developer and approved by the Planning Board. The pre-Application made to the Borough shall consist of all architectural and civil engineering plans as set forth in Subsubsections (a)(i) through (a)(x) below and shall include information sufficient to determine compliance with the Concept Plan, this Agreement and applicable provisions of the Redevelopment Plan (the “**Pre-Application Materials**”).
- (i) Plans depicting existing rights-of-way and easements in the portions of the Redevelopment area that are the subject of the Application.
 - (ii) Architectural renderings of the proposed development, including materials to be utilized for buildings, fences and other visible structures.
 - (iii) Plans noting the use, location, plan area, setbacks, height and bulk standards of all existing and proposed structures within the portions of the Redevelopment Area that are the subject of the Application.
 - (iv) Plans showing vehicular parking and loading areas and a layout of the pedestrian and vehicular circulation patterns

in relation to the buildings that are the subject of the Application.

- (v) Landscape plans sufficient to show design concepts, including but not limited to lighting and signage design.
- (vi) The location of the Public Park, and the design and equipment to be installed in the Public Park.
- (vii) The location, boundaries and metes and bounds description of the Well Parcel (if a location has been previously identified by the Borough Engineer and Borough), Well Expansion Land and any easements for access and maintenance.
- (viii) The boundaries and metes and bounds description of the property to be subdivided in order to effectuate the Donation of the Church Street Building to the Borough.
- (ix) A schedule that reflects the phasing of construction, as necessary and within the time period(s) set forth in the Project Schedule.
- (x) A list of any requirements in the Redevelopment Plan from which Redeveloper seeks design waivers, deviations or such other relief as requested by Developer and the basis upon which such relief is requested.

(b) Consistency Review. Prior to making Site Plan or Subdivision Application to the Planning Board, the Redeveloper shall submit to the Borough the Pre-Application Materials, signed by licensed professionals, so that the Borough may confirm that same is substantially consistent with the Concept Plan, this Agreement and Redevelopment Plan. The Borough, within sixty (60) days of submission of the Pre-Application Materials by the Redeveloper, shall conduct a review and advise Redeveloper in writing as to whether the submission is substantially consistent with the Concept Plan, Redevelopment Plan and this Agreement or whether

revisions must be made or additional information is reasonably required by the Borough to determine that the Application in accordance with the Concept Plan, Redevelopment Plan and/or this Agreement. If the Borough requests changes or additional information as provided above, Redeveloper shall submit such changes or additional information and the Borough shall have an additional sixty (60) days from the date of such submission to advise Redeveloper in writing as to whether the submission is substantially consistent with the Concept Plan, Redevelopment Plan and this Agreement or whether revisions must be made or additional information is reasonably required by the Borough to determine that the Application is in accordance with the Concept Plan, Redevelopment Plan and/or this Agreement. The foregoing process of requests by the Borough and resubmissions by the Redeveloper shall continue until such time as the Borough determines that the Application is in accordance with the Concept Plan, Redevelopment Plan and/or this Agreement and Redeveloper may not submit an Application to the Flemington Planning Board without the written approval of the Borough pursuant to this Section. The determination of substantial consistency with the Concept Plan, Redevelopment Plan and this Agreement shall be in the sole and absolute discretion of the Borough.

SECTION 3.3 Governmental Approvals. In accordance with the Project Schedule, Redeveloper shall promptly and diligently, at its sole cost and expense, seek all Governmental Approvals required in connection with (i) the construction and implementation of the Project and (ii) Redeveloper's intended use of the Project Site. After the submission of each application for any Governmental Approval, Redeveloper shall promptly notify the Borough of such application submission and shall provide the Borough with copies of same. Redeveloper shall provide the Borough with copies of all Governmental Approvals obtained. The Borough shall cooperate with Redeveloper in connection with the Governmental Approvals and all costs incurred by the Borough of Flemington in connection with

Redeveloper's Governmental Approvals shall be paid by the Redeveloper in accordance with Section 5.1 regarding Borough Costs.

SECTION 3.4 Certificate of Completion. (a) Upon issuance of a final Certificate of Occupancy for either Phase I or Phase II of the Project, as such term is defined in N.J.A.C. 5:23-1.1, Redeveloper may apply for, and the Borough shall determine in its reasonable discretion whether the Redeveloper has satisfied all the obligations set forth in the Redevelopment Agreement with respect to the Phase for which a Certificate of Completion is sought. If the Borough determines that all such obligations have been satisfied with respect to Phase I or Phase II, it shall issue a Certificate of Completion for such Phase in proper form reasonably acceptable to the parties for recording in the County Clerk's Office for the County of Hunterdon, New Jersey, with respect to such Phase. The Borough shall respond to the request for an issuance of a Certificate of Completion within thirty (30) days of Redeveloper's request, upon a determination as to whether that Phase of the Project has been completed in accordance with the approved final site plan. If the Borough determines the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within fifteen (15) days of such determination, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion.

(b) The issuance of a Certificate of Completion shall constitute a conclusive determination that the Phase of the Project for which the Certificate of Completion is issued has been completed in accordance with the provisions of this Agreement, that Redeveloper has performed all of its duties and obligations under this Agreement with respect to such Phase and that the agreements and covenants in this Agreement and the Redevelopment Plan have been satisfied and are thus terminated with respect to such Phase, except as contained in Section 2.7. Furthermore, upon issuance of a Certificate of Completion with respect to any Phase, the conditions determined to exist on the portion of the Property improved by the Project for which a Certificate of Completion has been requested, and which were the cause of its being determined to be in need of redevelopment, shall be deemed to no longer exist, the Property related to such Phase shall no longer be subject to the Act and any restrictions on transfers and encumbrances set forth herein shall terminate.

ARTICLE 4

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties by the Redeveloper. The Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company of the State of New Jersey, and is qualified to do business and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, in order to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

SECTION 4.2 Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, in order to consummate the transactions contemplated hereby, and to perform their obligations hereunder, including the provision of a Long Term Tax Exemption as contemplated herein.

ARTICLE 5

REDEVELOPER COVENANTS

SECTION 5.1 Redeveloper Covenants. The Redeveloper covenants and agrees that:

(a) The Redeveloper shall not use the Project Site or any part thereof in a manner that is not consistent with the Redevelopment Plan or this Agreement. The Redeveloper will implement only those uses as set forth in the Project Description and established in the Redevelopment Plan, as modified from time to time in accordance with the Act. The Borough acknowledges that the Project as described herein is consistent with the requirements of the Redevelopment Plan.

(b) Completion of the Project in Accordance with the Project Schedule. The Redeveloper shall commence construction of the Project in accordance with the dates set forth in Exhibit C - the Project Schedule - and shall implement and complete the Project in accordance with conditions and requirements of this Agreement, the Redevelopment Plan and all Applicable Laws.

(c) Transfers Prohibited without Prior Consent of the Borough. Except for Permitted Transfers, the Redeveloper shall not, without the prior written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed:

- (i) effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper;
- (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Premises; or
- (iii) make any total or partial sale, lease transfer or conveyance of the whole or any part of its interest in the Project Premises or the Project (collectively a "**Transfer**").

With respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 5.1(c), any request for consent shall be accompanied by a maximum payment/application fee equal to the greater of \$1,000 or the reasonable and actual costs

incurred by the Borough in connection with the request. The Borough shall notify the Redeveloper in writing whether the Borough consents to a Transfer request within forty-five (45) days after the Redeveloper's written request to the Borough for such consent, along with whatever additional information is requested by the Borough in consideration of such request. If the Borough does not deliver a written response to the Redeveloper's request within said forty-five (45) day period then the Borough shall be deemed to have consented to the Transfer.

(d) Permitted Transfers. The following transfers are exceptions to the prohibitions of this Section 4.1(c) and the Borough's consent is deemed given hereby (the "**Permitted Transfers**"), provided that notice of same is given to the Borough: (1) a mortgage or related security interest (including conditional assignments to mortgagees required as a condition to the closing of the financing so secured) granted by Redeveloper to a lender (2) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development, construction and/or utilization of the Project; (3) utility and other development easements, including, but not limited to, a declaration of covenants, conditions and restrictions and/or cross-easements for access, parking and/or utilities; (4) leases to residential tenants or tenants occupying premises in the Project for the purpose of operating a permitted business of that tenant as a part of the intended use of the Project, and/or sales or rentals of completed residential or commercial units in the Project; (5) Inter-Family Transfers; (6) Equity Participation; (7) conveyances to the Borough as called for herein or as otherwise required by the Governmental Approvals; (8) conveyance of Town-home lots to a publicly traded, nationally recognized developer entity with no less than twenty (20) years of development experience and having constructed and delivered no less than 5,000 homes in the prior calendar year, and (9) Production Partners. For the purposes of this Section 5.1(d), the term "Inter-Family Transfers" means a transfer of interests in the Redeveloper for estate planning purposes, the term "Equity Participation" means the inclusion of equity participants, "mezzanine" debt, "preferred equity" "limited equity partners" and other financing arrangements and the term "Production Partners" means any Affiliate of Redeveloper engaged to construct the Project in accordance with

approved Site Plans; provided transfers in accordance with the foregoing Subsections (5), (6) and (8) do not result in a change in day-to-day control of Redeveloper or materially and negatively affect the Township's ability to enforce its rights under this Agreement.

SECTION 5.2 Prohibition on Discrimination. The Redeveloper shall not discriminate against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, gender, gender expression, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sub lessees, or vendees on the Project Premises.

SECTION 5.3 Effect and Duration of Covenants. The covenants in this Article shall run with the land and be referenced in any deeds, leases or other documents of conveyance for any parcel within in the Project Site. Except as provided in Section 2.8, the covenants shall cease and terminate when a Certificate of Completion has been issued by the Borough, which Certificate of Completion shall be in recordable form and recorded in the land records of Hunterdon County, and the deeds, leases or other documents of conveyance shall so state.

ARTICLE 6

REDEVELOPER OBLIGATIONS

SECTION 6.1 Borough Costs. The Redeveloper shall provide funding to the Borough for all the Borough Costs in accordance with this Agreement and Applicable Law. The Borough Costs shall include, but not be limited to, the reasonable and actual costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, technical consultants, planners and financial consultants, among others, and all other out-of-pocket costs and expenses of the Borough related to the Project and this Agreement, including the cost to defend litigation challenging this Agreement or any action taken by the

Borough in furtherance or support of this Agreement or the Project. By this Agreement, Redeveloper accepts and approves of the following non-exhaustive list of consultants and administrative staff at the rates provided by the Borough:

- (a) Intentionally omitted
- (b) Maraziti, Falcon, LLP as attorneys
- (c) Jerome A. Harris, PE., as Borough Engineer
- (d) CME Associates, as Engineering Consultants
- (e) Beacon Financial Group
- (f) Structural Inspection Consultant
- (g) Kyle McManus Associates
- (h) Van Cleef Engineering Associates

The Redeveloper agrees that the consultants identified in items (b), (d), (g), and (h), can be replaced by other consultants at the discretion of the Mayor.

SECTION 6.2 Payment of Borough Costs. The Redeveloper shall be responsible for the payment of all reasonable Borough Costs that have been authorized by Resolution, as follows: Within ten (10) days from the Effective Date, Redeveloper shall pay Twenty-Five Thousand Dollars (\$25,000.00) (“**Project Funds**”) to the Borough to be drawn down upon by the Borough to cover Borough Costs that Borough may continue to incur during the course of the implementation of the Project, but any amounts being held by the Borough pursuant to the Interim Cost and Conditional Designation Agreement shall be applied to the Project Funds so the Redeveloper shall owe the balance between the amount being held by the Borough and Twenty-Five Thousand Dollars (\$25,000.00). Within fifteen (15) days of the receipt by Redeveloper of written notice from the Borough that the amount of Project Funds has decreased to Five Thousand Dollars (\$5,000.00), Redeveloper shall replenish the Project Funds to the amount of Twenty-Five Thousand Dollars (\$25,000.00). If Borough’s Costs exceed the amount of the Project Funds at any given time, Redeveloper agrees to pay such costs upon fifteen (15) days’ written notice from the Borough stating that such costs are due. Upon the Effective Date of this Agreement, the prior Interim Cost and Conditional Designation Agreement shall be automatically terminated and the terms and obligations contained therein

shall be replaced by the terms and obligations contained herein, but any Escrow Amount held by the Borough pursuant to that Agreement shall be applied towards the Project Funds. The Borough agrees to provide Redeveloper reasonable backup for any Projects Costs in accordance with Applicable Laws.

ARTICLE 7

SATISFACTION OF AFFORDABLE HOUSING OBLIGATION

SECTION 7.1. The Parties acknowledge that the construction of the Project will result in the creation of an obligation of the Borough of Flemington to provide low and moderate-income housing. Redeveloper shall help satisfy this obligation, as set forth below, through a 15% affordable housing set-aside for market-rate rental units and a affordable housing set-aside for market rate, for-sale units as provided in Section 2.1(e) which will be available for sale as part of the Project as affordable units of which a maximum of 20% shall be one-bedroom units, at least 30% shall be two-bedroom units, and a minimum of 20% shall be three-bedroom units. Redeveloper's obligation shall provide affordable housing in compliance with the Borough's Affordable Housing Settlement in "In the Matter of the Application of the Borough of Flemington, a municipal corporation of the State of New Jersey, for Determination of Compliance with Affordable Housing Obligations" Superior Court of New Jersey, HNT-L-308-15 (the "**Settlement**"). This requirement shall be a condition of any Site Plan approval that the Planning Board may grant. Redeveloper shall confirm in writing in a form reasonably acceptable to the Borough, that the Borough's affordable housing obligation contained in the Court sanctioned settlement is fully satisfied by the subject construction.

All inclusionary affordable housing units shall comply with the applicable requirements in the Liberty Village Redevelopment Plan, the Borough's affordable housing regulating ordinance in Section 2632 Affordable Housing Procedural Requirements, as well as the substantive rules of the Council on Affordable Housing (N.J.A.C. 5:93), the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1). This shall include, but not be limited to, reservation of at least 50% of the affordable units for low-income households (including 13% of the units as very low income), bedroom

distribution, phasing of market and affordable units as described in Section 2.1(e) above, affirmative marketing, and affordability controls of not less than 30 years. The affordable housing units shall be distributed and integrated throughout the development consistent the terms of the Redevelopment Plan and this Redevelopment Agreement.

Notwithstanding the foregoing, deviations from this, or any other provision herein relating to affordable housing, shall be permitted provided such deviation is approved in writing by both Flemington and the Fair Share Housing Center, and confirmation that, notwithstanding such deviation, all units restricted to low and moderate-income households required to be constructed herein are eligible for credit against the Borough's affordable housing obligation it being understood that the provision of Special Needs Housing rentals will be acceptable to the Borough if acceptable to the Fair Share Housing Center.

To assist in offsetting the costs associated with affordable housing and subject to the recommendation of the Borough's financial consultant, , the Redeveloper will request the Borough to consider a 5 year PILOT Agreement on the entire site beginning when the Redeveloper closes on the property and a 30 year PILOT Agreement commencing on the date a Certificate of Occupancy has been issued for each market rate for-sale housing unit and each rental building with a rate to be determined before submission of the application for such PILOT or PILOTs. In accordance with State law, the Borough shall waive the otherwise applicable connection, tap or allocation fees with respect to the provision of water or sewer service (collectively the **"Water and Sewer Fees"**) for all affordable housing units.

Any deviation from this, or any other provision herein relating to affordable housing may be made by Redeveloper subject to written approval from the Borough and Fair Share Housing Center that all units restricted to low- and moderate-income households will be credited against the Borough's affordable housing obligation and the Settlement.

ARTICLE 8

COMPLIANCE WITH LAWS

Redeveloper shall comply with all applicable laws, rules, ordinances, regulations and other requirements of any governmental authority (“**Legal Requirements**”) to the extent such compliance is required as a result of (a) Redeveloper’s specific use of the Project Site, (b) Redeveloper’s acts and/or (c) its Governmental Approvals.

ARTICLE 9

MAINTENANCE OF PROJECT SITE AND PROJECT OVERSIGHT

SECTION 9.1 Maintenance/Repairs. Redeveloper shall, at its sole cost and expense, take good care of the Project Site and put, keep and maintain same in a neat, good, safe and substantial order and condition, shall not do or suffer any waste with respect thereto and shall promptly, at Redeveloper’s sole cost and expense, make all necessary repairs and replacements to the Redeveloper’s improvements thereon.

SECTION 9.2 Progress Reports. The Redeveloper shall submit a Progress Report in substantially the form attached hereto as **Exhibit D**, as that term is defined herein, to the Borough on a monthly basis or as otherwise requested by the Borough but which shall not exceed monthly.

SECTION 9.3 Access to Project Site. The Borough and its authorized representatives, including but not limited to any Engineer or other such professional so designated by the Borough, shall have the right to enter the Project Site upon reasonable prior notice (at least 24 hours unless under emergency circumstance) given to the Redeveloper to inspect the Project Site and any and all work in progress for the purpose of furthering its interest in this Agreement. The Borough shall utilize reasonable efforts to minimize any interference with Redeveloper’s activities on the Project Site. Such entrance shall be for informational purposes and shall not relieve the Redeveloper of its obligation to implement the Project in accordance with this Agreement. In no event, at any time, shall the Borough’s inspection of the Project be deemed acceptance of the work in progress or any completed work or be deemed to waive any right that the Borough has under this Agreement.

ARTICLE 10

DEFAULT AND TERMINATION

SECTION 10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an “**Event of Default**” hereunder:

(a) Failure of the Redeveloper to observe and perform any covenant, condition or term in this Agreement and (i) continuance of such failure for a period of thirty (30) days after receipt by Redeveloper of written notice from the Borough specifying the nature of such failure and requesting that such failure be remedied (“**Default Notice**”); provided, however, if the breach of any such covenant, condition or term is one which cannot be completely remedied within the thirty (30) days after such Default Notice has been received by the Redeveloper, it shall not be an Event of Default as long as the Redeveloper is proceeding in a diligent manner to remedy same and the issue giving rise to the default is fully remedied not later than sixty (60) days after receipt of the Default Notice by the Redeveloper.

(b) The Redeveloper shall fail to satisfy its obligations with respect to the timely construction and implementation of the Project in accordance with this Agreement or shall abandon or substantially suspend construction work, and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) days after receipt of default Notice from the Borough; provided, however, if the failure, abandonment, or suspension cannot be completely cured, ended or remedied within the thirty (30) days after such Default Notice has been received by Redeveloper, it shall not be an Event of Default as long as the defaulting party is proceeding in a diligent manner to remedy the same and the failure, abandonment or suspension is fully cured, ended or remedied not later than sixty (60) days after receipt of the Default Notice by Redeveloper

(c) The Redeveloper or its successor-in-interest shall fail to pay any real estate taxes or assessments on the Project Site or any part thereof when due.

SECTION 10.2 Remedies Upon Events of Default.

(a) Termination or Institution of Lawsuit. In the event of an Event of Default by any party hereto, the non-defaulting party may terminate this Agreement and/or may institute whatever action, at law or in equity, it may deem desirable, including the seeking of damages.

(b) Additional Remedies in the Event of Default. In the event of an Event of Default, in addition to the right to terminate the Agreement, the Borough may implement any or all of the following remedies:

- (i) Suspension of cooperation with Redeveloper pursuant to the terms of this Agreement; and/or
- (ii) Suspension of the review and/or approval process of any application or submission related for Governmental Approvals.

ARTICLE 11

NOTICES

SECTION 11.1 Notices. All Notices permitted or required to be made by the Redeveloper or the Borough under this Agreement shall be made in writing and shall be deemed duly given (i) upon confirmation of facsimile, (ii) one (1) Business Day (as hereinafter defined) following the date sent, when sent by overnight delivery, and (iii) three (3) Business Days following the date when mailed by registered or certified mail, return receipt requested and postage prepaid at the following addresses:

Borough:	Michael Humphrey, Borough Clerk Borough of Flemington 38 Park Avenue Flemington, New Jersey 08822 (908) 782-8840
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With a copy to: Andrew M. Brewer, Esq.
Maraziti, Falcon LLP
240 Cedar Knolls Road
Suite 301
Cedar Knolls, New Jersey 07927
(973) 912-6813

Redeveloper: HBC Liberty Village, LLC
c/o Donald Pepe Esq.
331 Newman Springs Road
Building 3, Suite 310
Red Bank, New Jersey 07701

With a copy to: HBC Liberty Village, LLC
c/o George T. Vallone
68 Deer Haven Road
Bedminster, NJ 07921

“Business Day” means any day other than a Saturday, Sunday, or a day on which banks are legally closed for business in the Borough of Flemington, New Jersey.

ARTICLE 12 BINDING EFFECT

SECTION 12.1 This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

ARTICLE 13 MISCELLANEOUS

SECTION 13.1 Captions. The captions appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any provision of this Agreement, nor in any way affect this Agreement.

SECTION 13.2 Severability. If any provision of this Agreement or the application thereof to any person or circumstance described in this Agreement shall to any extent be held void, unenforceable or invalid, then the remainder of this Agreement or the application of

such provision to any person or circumstance described in this Agreement, other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 13.3 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

SECTION 13.4 Governing Law. Without regard to principles of conflicts of law, the laws of the State of New Jersey shall govern and control the validity, interpretation, performance and enforcement of this Agreement.

SECTION 13.5 Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Agreement.

SECTION 13.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

Section 13.7 Effective Date. This Agreement shall become effective upon execution by both parties.

Section 13.8 Force Majeure. Performance by the Borough or the Redeveloper (each, a “**Party**”) hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof, or other cause beyond such Party’s reasonable control, that has had a material adverse effect on the

ability of the Parties to this Redevelopment Agreement to perform, including Borough delays; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Redevelopment Agreement (“**Force Majeure**”):

- (a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage, pandemics, or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above (such events being required to physically affect a Party’s ability to fulfill its obligations hereunder);
- (b) A landslide, fire, explosion, flood, or release of nuclear radiation not created by an act or omission of either Party;
- (c) The order, judgment, action or inaction and/or determination of any Governmental Body with jurisdiction within the Borough, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;
- (d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the

- result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be an event of Force Majeure;
- (e) Third-party litigation that materially interferes with the ability of Redeveloper to obtain Market Rate Financing for the Project (note that Redeveloper shall pay the cost to defend any third party litigation unless an action, inaction, or error by the Borough was the cause of the litigation)
- (f) Acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes.
- (g) Interruptions in the free flow of capital markets or other instances of illiquidity in global or U.S. capital markets that have a material and adverse effect on Redeveloper's ability to finance and construct the Project.
- (e) Default by the Borough or Redeveloper, as to the non-defaulting Party.

[Signature Page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written.

BOROUGH OF FLEMINGTON

By: _____
Betsy Driver
Mayor, Borough of Flemington

HBC Liberty Village LLC

By: _____
George T. Vallone
Managing Member

LIST OF EXHIBITS:

- A. Site Plans
- B. Project Description
- C. Project Schedule
- D. Progress Reports

Exhibit A

Concept Plans

Exhibit B
Project Description

The Project shall consist of the acquisition, remediation, clearing and preparation of the Property and the construction of approximately 160 stacked townhomes, 225 rental units in five (5) multifamily residential buildings, with inclusionary affordable housing, a club house and pool, Public Park to be donated to the Borough and conveyed by deed; donation of the Church Street Building to the Borough; Donation of land to the Borough for a well and Treatment building; along with other site improvements to be included.

1. Fencing surrounding the project abutting neighboring residential areas shall be at least six (6) feet tall in height and built using solid sound reducing materials, which shall be maintained in perpetuity by the Redeveloper, its successors, and assigns and subject to Borough code enforcement.
2. The area abutting the fencing above on the Project property shall include greenery abutting the residential areas on Brown Street and Village Court and shall be maintained in perpetuity by the Project property owner(s).
3. All roadways leading into the project site shall include signage and such other decorative gateway features on either side of the road subject to Borough review of the plans prior to Site Plan approval from the Planning Board.

Exhibit C
Project Schedule

TASK	Milestone Date
Submission of a complete Application for Subdivision and Site Plan Approval for Phase I (Preliminary and Final) and Phase II (Preliminary only), including the Townhomes, Well Parcel and Church Street Building	6 months after execution of Redevelopment Agreement
Submission of Application for all other Governmental Approvals (other than Building Permits) with respect to Phase I or Phase II, as appropriate.	6 months after final and non-appealable Preliminary and Final site plan approval has been obtained with respect to Phase I and/or Phase II
Submission of Application for All Building Permits	6 months after all Governmental Approvals have been obtained and are final and non-appealable with respect to Phase I or Phase II.
Commencement of construction with respect to any Apartment Building or Townhome building	6 months after all Governmental Approvals and Building Permits have been obtained with respect to any Apartment Building or Townhome building and are final and non-appealable.
Substantial Completion of Construction with respect to any Apartment Building or Townhome building	4 years after commencement of construction with respect to any Apartment Building or Townhome building

*

Exhibit D
Liberty Village Progress Report

Date: _____

1. Description Of Activities Completed:
2. Activities Anticipated To Be Undertaken Prior To Next Monthly Progress Report:
3. Status Of All Governmental Approvals:
4. Explanation Of Each Activity (if any) Which Is Showing Delay:
5. Description Of Current And Anticipated Delaying Factors:
6. Estimated Impact Of Delaying Factors On Performance Of Other Activities And Completion Dates In The Project Schedule:
7. Explanation Of Corrective Action(s) Taken Or Proposed:

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 12/12/22 07:30 PM
Department: Governing Body
Category: Financial Approval
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

ADOPTED**RESOLUTION 2022-250**

DOC ID: 3966

Authorizing the CFO to Pay Bills for the Last 2022 Bills List

WHEREAS, the Borough of Flemington has budgeted funds for payment of obligations including, utilities, payroll, debt service, governmental fees and other statutory payments, insurance, and for the supplies, advertising, printing and mailing costs of the Borough; and,

WHEREAS, the payment of these items will occur after the last Council Meeting of the year, thereby inadvertently placing these bills and mailings in arrears because of the schedule of meetings; and

WHEREAS, the Borough's Chief Financial Officer and Borough Attorney have advised that the governing body may provide for the payment of these items, so that they may be paid in a timely manner without penalty.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that the Chief Financial Officer be and is hereby authorized and directed to make payment on the next list of bills and claims:

Adopted: December 12, 2022

Attest:

Betsy Driver, Mayor

Michael Humphrey, Acting Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Member
SECONDER:	Jeremy Long, Council President
AYES:	Hand, Johnston, Long, Parker, Rosetti, Tilly