

JOSEPH J. MARAZITI, JR.
CHRISTOPHER H. FALCON
DIANE ALEXANDER
BRENT BRAD CARNEY
ANDREW M. BREWER
JOANNE VOS
HEATHER A. PIERCE
AILEEN BRENNAN¹
CHRISTINE PLACIDE
PHOEBE YOUHANNA
BENJAMIN L. LINDEMAN

¹ ALSO ADMITTED IN NY
*ALSO ADMITTED IN DC

**MARAZITI
FALCON, LLP**
ATTORNEYS AT LAW

150 JOHN F. KENNEDY PARKWAY
SHORT HILLS, NEW JERSEY 07078

PHONE: (973) 912-9008
FAX (973) 912-9007
www.mfhenvlaw.com

Direct Dial Number: (973) 912-6813
E-Mail Address: abrewer@mfhenvlaw.com

January 17, 2020

M. James Maley, Esq.
Maley Givens
1150 Haddon Avenue, Suite 210
Collingswood, NJ 08108

Re: Flemington Center Redevelopment Project
Response to September 12, 2019 Letter

Dear Mr. Maley:

We serve as Special Redevelopment Counsel to the Borough of Flemington. The purpose of this letter is to provide a response to your letter of September 12, 2019. At the outset, we would like to reiterate what has been discussed in person, namely the difficulty of presenting a solely-Borough position to your letter. As you know, the Borough is contractually obligated to cooperate with Flemington Center Urban Renewal ("FCUR") in seeking the approval to construct the project which is the subject of this litigation. (See, Amended and Restated Redevelopment Agreement By and Between Borough of Flemington and Flemington Center Urban Renewal, LLC, dated December 12, 2017; and Contract for Sale of Real Estate between Borough of Flemington and Flemington Center Urban Renewal, LLC, dated December 11, 2018). We have advised the Borough that taking positions in settlement at odds with those taken by FCUR would risk a claim of breach of the contract and subject the Borough to claims for damage.

In light of the difficulties in providing a response separate from FCUR, the Borough has been working diligently with FCUR to evaluate potential revisions to the currently-approved project which would result in a satisfactory resolution of the outstanding litigation and allow the redevelopment of Flemington to proceed. In addition to those efforts, we are informed that representatives of FCUR have sought unsuccessfully to meet with your clients. It is further our understanding that the decision to not meet with the FCUR is based in part upon your client's requirement that Flemington first provide an independent response to the September 12th letter. It has been and still remains the position of Flemington that most beneficial way to seek a global

resolution would be for your client, FCUR and the Borough representatives to meet and discuss these issues. To that end, we would be amenable to scheduling such a meeting at your clients' convenience. Alternatively, we are amenable to requesting, in the context of the litigation, that Judge O'Neill refer the parties to Judge Miller for a continuation of the earlier mediation session. While those possibilities are being considered and in the interest of exploring settlement, this letter will respond to yours of September 12, 2019.

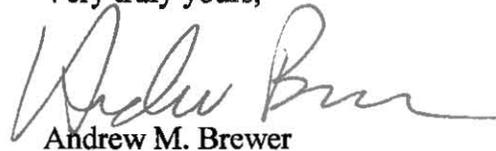
Due to the detailed nature of your initial letter, we have attached a copy for easy reference. For your convenience we have also included a copy of the earlier settlement proposal contained in your letter of July 2018.

1. **Dismissal** – The requirements of this paragraph refer to the obligations of other parties – namely FCUR and the Planning Board to take certain actions, which the Borough is not able to compel. This is one of the reasons why we feel that discussions involving all parties is necessary.
2. **Building Height** – The height of the ultimate project has been a continuing issue of discussion between the parties, and it is our understanding from public presentations made by FCUR that they are willing to discuss a project significantly lowered in height from that which was approved by the Planning Board. However, the precise mixture of what height on which properties will serve the dual purpose of preserving the historic nature of the Borough while enabling its redevelopment is best accomplished by discussion including all the parties, not a mandate by the Borough.
3. **Historic Preservation** – As a general matter, the Borough would like to preserve as much of its historic features as is reasonably possible. Your letter would require the Borough to take a position at odds with the approval obtained by FCUR and which the Borough is obligated to support and defend. Again, we urge you to consider whether the most beneficial path to settlement is to have all the parties meet to discuss these issues rather than require each party to take discrete positions.
4. **New Construction / Expanded Proposal**– The language used in these paragraphs demonstrates the need for the parties to meet. The requirement that any development be “compatible in design”, follow the “spirit and intent” of other guidelines and be otherwise “appropriate” can only be resolved with all the parties looking at and agreeing to concrete proposals. Even if we stated agreement that the development must be compatible and appropriate, that doesn't get the parties any closer to resolution.
5. **Additional Considerations** –This paragraph lists several topics which you believe are unresolved and must contain further details. Even if we “agreed” with your position, that agreement is really only a recognition that additional negotiation is required. As stated above, this is best done with all the parties contributing.

6. **Items 7 through 12** – The remainder of the items sets for the procedural steps to be taken to implement a settlement if and when one is reached.

We hope that upon review and receipt of this letter you will agree that the most beneficial way for settlement to proceed is for your client, FCUR and the Borough representatives to meet together in order to address the issues of your clients and the needs of the FCUR and the residents of Flemington.

Very truly yours,



Andrew M. Brewer

w/encl.

c Honorable Betsy Driver, Mayor
Caitlin Giles-McCormick, Council President
Chris Runion, Councilman
Michael Harris, Councilman
Kimberly A. Tilly, Councilwoman
Jeremy Long, Councilman
Jessica Hand, Councilwoman
Tara St. Angelo, Esq., Borough Attorney
Joseph Baumann, Esq.
Anthony Koester, Esq.
Kara Kaczynski, Esq.

MALEY GIVENS
A PROFESSIONAL CORPORATION

Counsellors at Law

1150 Haddon Avenue, Suite 210
Collingswood, New Jersey 08108
www.maleygivens.com

P 856 854-1515
F 856 858-2944

M. James Maley Jr.*
Emily K. Givens
Erin E. Simone
M. Michael Maley*
Kevin Diduch
Navin H. Advani
Taylor J. Derleth

* Admitted in PA & NJ

September 12, 2019

VIA ELECTRONIC MAIL

Anthony E. Koester, Esq.
Dilts & Koester
167 Main Street
Flemington, NJ 08822

Kara A. Kaczynski, Esq.
MCNALLY, YAROS, KACZYNSKI & LIME, LLC
275 East Main Street
Somerville, NJ 08876

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

Andrew Brewer, Esq.
MARAZITI FALCON, LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

Re: Friends of Historic Flemington, LLC - Proposed Global Settlement

Dear All:

Please accept this correspondence as a confidential settlement communication. In our previous settlement discussions, the Borough of Flemington and the Redeveloper's representative, Jack Cust, inquired into the conditions necessary to dismiss the pending lawsuits concerning Block 22, Lots 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 and Block 24, Lots 1, 2, 3 and 5 ("Redevelopment Area"). In response to this request, Friends of Historic Flemington ("Friends") offers the following:

1. **Dismissal**. Friends agrees to dismiss the lawsuits under Docket No.: HTN-L-170-17, HTN-L-376-18, HTN-L-13-19; A-0000613-18 and A-002658-17 (the "Lawsuits") within ten (10) days of the execution of a Settlement Agreement in which all parties to the Lawsuits agree to the conditions set forth below. Upon execution of a Settlement Agreement, Friends shall dismiss the Lawsuits with prejudice, subject to reinstatement in the event of any of the following:
 - a. The Borough of Flemington ("Borough") approves any project in the Redevelopment Area which is contrary to or inconsistent with the requirements set forth below;

- b. The Borough fails to take the actions set forth in Paragraph 7 below in accordance with the time frames set forth therein;
- c. Any redeveloper or property owner, including Flemington Center Urban Renewal or any other entity owned or controlled by Jack Cust, applies for a demolition or a building permit for any project which is contrary to or inconsistent with the requirements set forth below;
- d. Jack Cust or any entity owned or controlled, in whole or in part, by Jack Cust, including Flemington Center Urban Renewal, LLC (collectively referred to as "Redeveloper") sells any of the properties within the Redevelopment Area prior to the filing of the deed restriction required pursuant to Paragraph 10 below; or
- e. The Borough of Flemington Planning Board ("Planning Board") fails to take the action set forth in Paragraph 8 below in accordance with the time frames set forth therein; or
- f. The Borough, the Planning Board or the Redeveloper fails to give any of the notices required in Paragraph 9 below.

All parties to the Lawsuits shall agree to waive all statute of limitations and other defenses to reinstatement of the Lawsuits in the event that any party seeks to reinstate any of the Lawsuits pursuant to this Paragraph.

2. **Building Height.** Any project within the Redevelopment Area must be limited to a building height of four (4) stories above ground maximum. This concession is to a height one story taller than that specified for this area of Main Street on page 33 of the 2015 Re-examination of the Master Plan adopted on August 24, 2015, and is subject to the following conditions:
 - a. The maximum height of all buildings on Main Street must be limited to four (4) stories; the maximum height of all buildings on Spring Street and Chorister Place must be three (3) stories with the fourth story set back at least 20 feet from the plane of the wall below and no more than 10 feet higher than the third floor; and
 - b. The maximum height of all buildings must not be higher than the central flat roof of the Union Hotel, between the towers.
3. **Historic Preservation.** The project must retain all exterior features, walls, and roofs and pursue restoration of the exterior envelope of the following buildings in accordance with the Secretary of the Interior's Standards for Rehabilitation (available at https://www.nps.gov/history/local-law/arch_stnds_8_2.htm):
 - a. 76 Main Street (Union Hotel) - This building must be retained. The eastern (rear) wood and one story masonry sections may be removed.

- b. 78 Main Street - Retain the three story red brick section, which measures approximately 25' wide by 125' long; the eastern (rear) two story stuccoed section may be removed.
- c. 80-82 Main Street - Must be rebuilt to three stories along Main Street, to reflect the late nineteenth century condition of its exterior as documented by several period photographs.
- d. 90-96 Main Street (The main three-story, 60 foot by 60 foot block) - The Main Street façade of this building must not be altered; the first-floor circa 1920 granite, limestone and terracotta facade must be retained as well as the 1864 brick façade of the upper stories, including trim details and double-hung windows. The windows and doors on the first floor must be restored to their documented 1920's condition. We note that, while the Redeveloper has agreed to this treatment, the architectural renderings continue to portray a non-historic treatment for this building.
- e. 21 Bloomfield Avenue - The exterior of this two story red brick building must be retained and may be expanded upwards by one story and may be expanded eastwards.
- f. 23 Bloomfield Avenue - This stuccoed house may be removed and replaced with an appropriately designed building which architecturally turns the corner and links to new residential buildings located on the west side of Spring Street.
- g. Limited new construction may be directly attached to the sides or rear of the historic buildings referenced above. Any "hyphens" connecting one of the historic buildings to any other new or historic building, for example the Union Hotel and 78 Main, must adhere to the following conditions:
 - i. New construction may attach to the rear walls or to 33% of the wall area of the side walls (100% of the east side of 21 Bloomfield).
 - ii. 90-96 Main Street - any second and third floors which are newly constructed within 35 feet of the south facade of the historic building must be set back 32 feet minimum from the Main Street facade.
- h. The Borough must immediately enforce its own property maintenance ordinances for all the buildings and in particular must secure the Union Hotel from further harm caused by exposure to the elements or compel the Hotel's owner of record to do so.
- i. The interior of the buildings can be used in any manner which is appropriate and conforming to the underlying DB zoning ordinance. Appropriate uses for 21 and 23 Bloomfield include business, retail and/or residential on the first floor, residential on the upper floors. Appropriate uses on Spring Street are residential, compatible with the existing uses along Spring Street. Office, medical and education uses are suited to Main Street.

- j. The Friends make no objection to demolition of the following:
 - i. The rear wooden structures and one story masonry wing of the Union Hotel, which may be original but are in poor condition.
 - ii. The small one-story brick building on the east side of 80-82 Main Street.
 - iii. The one-story additions on the south and east sides of 90-96 Main Street.
 - iv. The small red barn at the rear of 68 Main Street (behind Higgins News Agency).

4. New Construction.

- a. All new construction must be compatible in design and materials with the surrounding historic structures and must follow the spirit and intent of Flemington Historic Preservation Commission's "Historic District Design Guidelines" (available at <https://www.flemingtonhpc.com/forms>).
- b. New construction facing Spring Street, a primarily residential rather than commercial district, must be residential uses with a setback of at least 25 feet or the average of the prevailing residential setbacks further south along Spring Street. The setback must also include a grass-planted utility strip, as well as lawns, vegetation and trees appropriate for a historic residential area.

5. Expanded Proposal.

- a. **Hunterdon County Parking Lot - West side of Main Street.**

If the overall density of the project is reduced, there should be no need for a parking structure on this lot. In any event, there should be no loss of free public parking on this site. If there is to be any parking structure built on this lot:

 - i. The small historic structure on the north side of this lot must not be relocated, per local and State preservation guidelines. There should be a thorough investigation into the history, architecture and archeology of this mysterious building, which has been variously rumored to have been slave quarters, a smokehouse, or a workshop.
 - ii. The design of any parking structure must be compatible with the surrounding historic district, per Section 4 above.
 - iii. Any new parking garage must provide adequate buffers and setbacks, and conform to bulk, FAR and impervious cover limitations in accordance with the current DB Borough zoning, but height is not to exceed 3 stories 35 feet, maximum. The garage must be setback sufficiently to respect the adjacent residences on Park Avenue. We note that there is a significant woodland on the west side of the lot. This green space shall be retained, as should the small lawn near Main Street. Any trees which are removed must be replaced two for one on this site.

b. Bloomfield Avenue Site - North side of Bloomfield.

- i. Any new construction must provide adequate buffers and setbacks, and conform to bulk, FAR and impervious cover limitations in accordance with the current DB Borough zoning. The building height must be limited to 3 stories, 35 feet maximum. The main facade of the building must align with the prevailing facades (not porches) of the adjacent Victorian 2-1/2 story houses.
- ii. Public access to parking on site and on the adjacent Borough lot to the north must be maintained.
- iii. This site (Block 18, Lots 17 & 18) was the location of the Opera House; an archeological investigation is required.
- iv. The Victorian House on the east side of this property must be retained.

c. Flemington Fur Company Property - East Side of Spring Street.

- i. The design of any buildings/structures on Spring Street must be architecturally compatible with the surrounding historic district per Section 4 above. The current design proposal is appropriate to a modern highway or business district, not a historic residential area.
- ii. Any new construction must provide adequate buffers and setbacks, and conform to bulk, FAR and impervious cover limitations in accordance with the current DB Borough zoning. The building height must be limited to 3 stories, 35 feet maximum. The main facade of the building must align with the prevailing facades (not porches) of the adjacent Victorian 2-1/2 story houses.
- iii. Educational/College and medical uses are not appropriate for this site in a primarily residential neighborhood. Uses on this site must be residential, similar to the rest of Spring Street.

6. Additional Considerations. The Friends have other concerns which will require further discussion and negotiation by the parties. These concerns must be addressed by way of a mutually agreeable solution to be set forth in any settlement agreement.

a. Concerns

- i. The density and height of the project are still much too large for the site. We seek to limit the overall bulk of the development by constraining the overall height and by using proper street setbacks.
- ii. The capacity of the existing sewage and water systems to serve this project are still of concern, and the associated cost projections of necessary upgrades to the sewers, wells and water mains to serve this project have still not been adequately explained to the public.
- iii. The traffic that will be imposed by this project on Main Street and the adjacent residential streets is still of concern.
- iv. The financial impact of the PILOT for this project remains very detrimental to Borough taxpayers in the long term.
- v. The Borough has still failed to come up with any plan or budget for the potential relocation of the Police Department.

- vi. We remain concerned that there has not been any analysis of the ability of and cost to the Police and Fire Departments to serve this major addition to the Borough.
 - vii. The option in the current Redevelopment Agreement allowing the Redeveloper to demolish any building which the Redeveloper deems economically non-viable must be removed.
 - viii. Site Plan Specifics must still be adequately addressed. These items were rushed thru the approvals process with insufficient oversight by the Planning Board:
 - Location and visibility of rooftop mechanical equipment.
 - Street lighting, specifically, residential street lights on Spring Street.
 - Potential emissions from the vehicles in the multi-story and the underground garages.
 - The deficiency of street trees to be provided.
 - The excess of parking spaces to be provided.
 - The appropriateness of the various design elements and exterior materials which are proposed.
 - The lack of any effort towards sustainability and resilience.
7. **Amendment to the Redevelopment Agreement, Redevelopment Plan and SHPO Approval.** Within ninety (90) days of the execution of a Settlement Agreement, the Redevelopment Agreement, Redevelopment Plan for the Redevelopment Area, and the approval by the State Historic Preservation Office for the sale of 90-96 Main Street must be amended to include the foregoing concerns and restrictions. In addition, the Redevelopment Agreement shall be amended to restrict the assignment of the Redevelopment Agreement, or any transfer of any portion of the Redevelopment Area or the Project to anyone unless the assignee/transferee agrees to be bound by the terms of the Settlement Agreement. The Borough shall also agree to require any future Redevelopment Agreement executed by the Borough for the Redevelopment Area, or any part thereof, to include a provision mandating that the redeveloper agree to abide by the resolution of foregoing concerns and restrictions.
8. **Amended Site Plan Approval.** The Resolution adopted by the Borough of Flemington Planning Board on November 27, 2018 for Application #2018-10 shall be amended within thirty (30) days of the execution of the Settlement Agreement to add as a condition of approval compliance with Paragraph 2, 3, 4, 6 and 8 of this letter and the filing of an amended site plan which conforms to the requirements contained in Paragraph 2, 3, 4, 6 and 8.
9. **Notice to Plaintiffs.** The Borough of Flemington and/or the Planning Board of the Borough of Flemington, as applicable, must give thirty (30) days advance written notice to Plaintiffs, with a copy to Plaintiffs' attorney, of its proposed action, prior to:
(a) taking any action on any "Application for Development," as the term is defined in N.J.S.A. 40:55D-3 as it relates to any property or properties in the Redevelopment Area, (b) adopting a redevelopment plan or any amendment to a redevelopment plan

for the Redevelopment Area; (c) authorizing execution of any agreement or amendment to any agreement with a "Redeveloper," as the term is defined in N.J.S.A. 40A:12A-3; (d) authorizing the demolition of any buildings identified in Paragraph 3 above, including but not limited to the issuance of any demolition permits, or (e) the issuance of any building permit for any property within the Redevelopment Area. The Redeveloper must give thirty (30) days advance written notice to Plaintiffs, with a copy to Plaintiffs' attorney, of its proposed action, prior to: (i) acquiring 90-96 Main Street; (ii) acquiring the Union Hotel; (iii) selling any property within the Redevelopment Area; (iv) applying for a demolition permit for any property within the Redevelopment Area; and (v) applying for any building permit for any Property within the Redevelopment Area.

10. **Deed Restriction.** Within thirty (30) days of the execution of the Settlement Agreement, Flemington Center Urban Renewal, LLC will file or cause to be filed a deed restriction on Block 22, Lots 5, 6, 12, 13 and 14, and Block 24, Lots 1, 2, 3 and 5 and the Borough of Flemington will file a deed restriction on Block 22, Lots 7, 8, 9 and 10 which sets forth the restrictions set forth in Paragraph 2, 3, 4, 6 and 8 of this letter. Also, at closing for the purchase of the Union Hotel Property, Block 22, Lot 4, Flemington Center Urban Renewal, LLC will file a deed restriction, which sets forth the restrictions set forth in Paragraph 2, 3, 4, 6 and 8 of this letter. All deed restrictions filed pursuant to this paragraph will contain a provision that said deed restrictions are enforceable by New Jersey Historic Trust and shall not be removed without the express written consent of New Jersey Historic Trust.
11. **Consent Order.** The foregoing agreement will be set forth in a Consent Order signed by the Court and the agreement must be binding upon the Borough, the current redeveloper as well as any future redeveloper.
12. **Remedies.** In addition to all remedies available at law and in equity, Friends of Historic Flemington, LLC will have the express right to seek specific performance of any provision of the Settlement Agreement and the Consent Order. Friends of Historic Flemington, LLC will be entitled to collect attorneys' fees for any lawsuit filed to enforce such agreements.

Please advise whether the foregoing settlement offer is acceptable. Thank you for your attention to this matter.

Very truly yours,

MALEY GIVENS
A Professional Corporation

By: 
Erin E. Simone

cc: Friends of Historic Flemington, LLC

MALEY GIVENS

A PROFESSIONAL CORPORATION

Counsellors at Law

1150 Haddon Avenue

Suite 210

Collingswood, New Jersey 08108

M. James Maley Jr.*
Emily K. Givens
Erin E. Simone
M. Michael Maley*
Denise Grugan
Kevin Diduch

P: 856.854.1515

F: 856.858.2944

*Admitted in PA & NJ

July 23, 2018

VIA ELECTRONIC MAIL

Robert Beckelman, Esq.
Greenbaum Rowe, Smith & Davis, LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, New Jersey 07095-0988

Re: Friends of Historic Flemington, LLC, et al, v. Borough of Flemington, et al
Docket No.: HTN-L – 000290-17
Superior Court of New Jersey – Law Division – Hunterdon County

Friends of Historic Flemington, LLC, et al v. Borough of Flemington, et al
Docket No.: HTN-L-170-17
Superior Court of New Jersey – Law Division – Hunterdon County

IMO of Hunterdon County, Borough of Flemington, Sale of 90-96 Main Street & Adjacent Parking Lots (Block 22, Lot 7, 8, 9 & 10) Application for Project Authorization
Docket No.: A-002658-17
Superior Court of New Jersey – Appellate Division

Dear Mr. Beckelman:

Please accept this correspondence as a confidential settlement communication. In our previous settlement discussions, the Borough of Flemington and the Redeveloper's representative, Jack Cust, inquired into the conditions necessary to dismiss the above referenced lawsuits concerning Block 22, Lots 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 and Block 24, Lots 1, 2, 3 and 5 ("Redevelopment Area"). In response to this request, Friends of Historic Flemington ("Friends") offers the following:

1. **Dismissal**: Friends agrees to dismiss the lawsuits under Docket No.: HTN-L-170-17 and A-002658-17 (the "Lawsuits") upon the execution of a Settlement Agreement in which all parties to the Lawsuits agree to the conditions set forth below. Upon execution of a Settlement Agreement, Friends shall dismiss the Lawsuits with prejudice, subject to

reinstatement in the event that the Borough approves any project in the Redevelopment Area which is contrary to or inconsistent with the requirements set forth below. All parties to the Lawsuits shall agree to waive all statute of limitations and other defenses to reinstatement of the Lawsuits in such an event. Nothing herein will require Friends to dismiss the lawsuit under Docket No.: 000290-17, nor shall said lawsuit be dismissed as a result of this settlement.

2. **Building Height:** Any project within the Redevelopment Area must be limited to a building height of four (4) stories above ground and 45 feet in height at maximum. This concession is to a height one story taller than that specified for this area of Main Street on page 33 of the 2015 Re-examination of the Master Plan adopted on August 24, 2015, and is subject to the following conditions:
 - a. The maximum height of all buildings on Main Street must be limited to four (4) stories; the maximum height of all buildings on Spring Street and Chorister Place must be three (3) stories with the fourth story set back at least 20 feet from the plane of the wall below and no more than 10 feet higher than the third floor; and
 - b. The maximum height of all buildings must not be higher than the central flat roof of the Union Hotel, between the towers.
3. **Historic Preservation:** There must be no demolition of the buildings described in section 3(a).
 - a. The redeveloper must retain all exterior features, walls, and roofs and pursue restoration of the exterior envelope of the building in accordance with the Secretary of the Interior's Standards for Rehabilitation (available at https://www.nps.gov/history/local-law/arch_stnds_8_2.htm) for the following buildings:
 - i. 76 Main Street (Union Hotel)
 - ii. 78 Main Street;
 - iii. 80-82 Main Street;
 - iv. 90-96 Main Street;
 - v. 21 Bloomfield Avenue; and
 - vi. 23 Bloomfield Avenue.
 - b. Limited new construction may be directly attached to the sides or rear of the historic buildings referenced above. Any "hyphens" connecting one building to another, for example the Union Hotel and 78 Main, must adhere to the following conditions:
 - i. New construction may attach to 25% of the wall area of the rear or side walls.

- ii. All new construction to the south of 90-96 Main Street must be kept back 25 feet minimum from the south side of the second and third floors of 90-96 Main Street.
- c. 80-82 Main Street must be rebuilt to three stories along Main Street, to reflect its late nineteenth century condition as documented by several period photographs.
- d. The Main Street façade of 90-96 Main Street must not be altered; the first-floor circa 1920 granite, limestone and terracotta must be retained as well as the 1864 brick façade of the upper stories. The windows and door on the first floor must be restored to their 1920's condition.
- e. Further, the Borough must immediately enforce its own property maintenance ordinances for all the buildings and in particular must secure the Union Hotel from further harm caused by exposure to the elements or compel the Hotel's owner of record to do so..
- f. The interior of the buildings can be used in any manner which is appropriate and conforming to zoning.
- g. The Friends make no objection to demolition of the following:
 - i. The rear wooden structures of the Union Hotel, which may be original but are in poor condition.
 - ii. The small one-story brick building on the east side of 82 Main Street.
 - iii. The one-story addition on the south and east sides of 90-96 Main Street.
 - iv. The small red barn at the rear of 68 Main Street (Higgins News Agency).

4. New Construction

- a. All new construction must be compatible in design and materials with the surrounding historic structures and must follow the spirit and intent of Flemington Historic Preservation Commission's "Historic District Design Guidelines" (available at <https://www.flemingtonhpc.com/forms>).
- b. New construction facing Spring Street, a primarily residential, rather than commercial district, must include residential use (rather than commercial space) with a setback of at least 25 feet or the average of the prevailing residential setbacks on Spring Street. It must also include a grass-planted utility strip, as well as other vegetation and trees appropriate for a residential area.

MALEY GIVENS

A PROFESSIONAL CORPORATION

Page 4 of 4

5. **Amendment to the Redevelopment Agreement, Redevelopment Plan and SHPO**

Approval. Within ninety (90) days of the execution of a Settlement Agreement, the Redevelopment Agreement, Redevelopment Plan for the Redevelopment Area, and the approval by the State Historic Preservation Office for the sale of 90-96 Main Street must be amended to include the foregoing restrictions. In addition, the Redevelopment Agreement shall be amended to restrict the assignment of the Redevelopment Agreement, or any transfer of any portion of the Redevelopment Area or the Project to anyone unless the assignee/transferee agrees to be bound by the terms of the Settlement Agreement. The Borough shall also agree to require all future Redevelopment Agreement executed by the Borough for the Redevelopment Area, or any part thereof, to include a provision mandating that the redeveloper agree to abide by the foregoing restrictions.

6. **Notice to Plaintiffs.** The Borough of Flemington and/or the Planning Board of the Borough of Flemington, as applicable, must give thirty (30) days advance written notice to Plaintiffs, with a copy to Plaintiffs' attorney, of its proposed action, prior to: (a) taking any action on any "Application for Development," as the term is defined in N.J.S.A. 40:55D-3, (b) adopting a redevelopment plan or any amendment to a redevelopment plan for the Redevelopment Area; (c) authorizing execution of any agreement or amendment to any agreement with a "Redeveloper," as the term is defined in N.J.S.A. 40A:12A-3; or (d) authorizing the demolition of any buildings identified in Paragraph 3 above, including but not limited to the issuance of any demolition permits.

7. **Consent Order.** The foregoing agreement will be set forth in a Consent Order signed by the Court and the agreement must be binding upon the Borough, the current redeveloper as well as any future redeveloper.

Please advise whether the foregoing settlement offer is acceptable. Thank you for your attention to this matter.

Very truly yours,

MALEY GIVENS
A Professional Corporation

By: 
Erin E. Simone

cc: Friends of Historic Flemington, LLC