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BEACON PLANNING AND CONSULTING SERVICES, LLC  
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## **COMMUNITY IMPACT STATEMENT UNION HOTEL/COURTHOUSE SQUARE HISTORIC FLEMINGTON, NEW JERSEY**

Beacon File: A19060  
November 2019

The original copy of this report was signed and  
sealed in accordance with N.J.S.A. 45: 14A-12.



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## Appendices

- 1) Sewer & Water Infrastructure Summary prepared by Bohler Engineering, dated October 2019;
- 2) Electronic correspondence from Kenneth Diehl, Licensed Operator Flemington Sewer Utility to Barbara Ehlen, of Beacon Planning, dated 10/23/2019;
- 3) Amended and Restated Redevelopment Agreement by and between Borough of Flemington and Flemington Center urban Renewal, LLC, dated 12/12/2017;
- 4) Financial Agreement between Flemington Center Urban Renewal, LLC and the Borough of Flemington, dated 11/08/2018;
- 5) Financial Analysis Report prepared by Otteau Group, dated 08/07/2018.

## **INTRODUCTION**

Beacon Planning and Consulting Services, LLC, has been retained by the historic Borough of Flemington to review project assumptions, as well as undertake a community and fiscal impact assessment regarding the redevelopment of the property now identified as Courthouse Square. For purposes of this review, the redevelopment has been identified as 222 multifamily residential units, a 100-room hotel, ~45,000 sq.ft. of educational/medical space, ~32,250 sq.ft. of retail space and parking for 770 vehicles. BPCS utilized resources which included, but were not limited to: planning documents including master plans prepared on the behalf of the Borough of Flemington; the most current Redevelopment and Financial Agreements associated with the project; a financial analysis prepared on behalf of the Redeveloper by Otteau; a water and sewer infrastructure statement prepared by the Redeveloper's consultant, Bohler Engineering; and notations provided by the Borough sewer utility operator. BPCS also conducted interviews with local school officials, police officials, EMS officials, the municipal engineer, public utility officials, and the Redeveloper's project engineer (regarding improvements to the water and sanitary sewer infrastructure).

The project site is located within downtown Flemington, consists of parcels adjoining Bloomfield Avenue, Main Street, Chorister Place and Spring Street, and is situated within the Union Hotel Redevelopment Area. The Redevelopment District consists of properties identified as: Block 22, Lots 4-14; Block 23, Lots 1 and 7; and Block 24, Lots 1, 2, 3 and 5.

The study area is comprised of ~3.92 gross acres pursuant to the Union Hotel Redevelopment Plan. The proposed development will occupy Block 22, Lots 4 – 14 and Block 24, Lots 1 – 3 and 5 with a total area of 3.76 acres. Improvement of Block 23 is not proposed at this time pursuant to the documentation obtained.

Flemington Center Urban Renewal, LLC, the designated redeveloper, received Preliminary and Final Site Plan Approval with Design Waivers on November 27, 2018. The scope of the approval consists of a mixed-use project containing 32,250 sq.ft. of retail and dining space, 222 residential units, a 100-room hotel, ~45,000 sq.ft. of commercial, retail, educational and/or medical space, and a structured parking facility on Block 22 (Lot A). Pursuant to information provided, 208 market rate and 14 affordable units are proposed.

The market rate residential unit breakdown will consist of (108) one-bedroom and (100) two-bedroom layouts. Affordable units will consist of (3) one-bedroom, (8) two-bedroom and (3) three-bedroom layouts. Phase 1 will also include the restoration of 3 elevations of the Union Hotel as well as the rebuilding of the interior structure in order to accommodate the 100-room boutique hotel. The existing Hunterdon County National Bank building's façade will also be renovated and the structure converted to incorporate elements of the residential, retail and parking elements. Pursuant to information provided by the Developer, ~32,250 sq.ft. of retail/commercial space and 770 parking spaces are within Lot A. The parking garage will be accessed from Spring Street. The 3-story, 45,000 sq.ft. educational/medical/commercial/retail building with 25 parking spaces is proposed on Block 24 (Lot B).

The Developer is seeking a Long Term Tax Exemption or PILOT (Payment in Lieu of Taxes) for the proposed mixed-use construction project consisting of Phase 1. PILOTs are permitted via N.J.S.A 40A:20-1 and are utilized to spur development within communities that might otherwise not attract redevelopment and/or be financially feasible. Although a PILOT may appear to be just a tax break for the Developer, the community itself benefits from unproductive, nuisance/delapidated/unsafe parcels being returned to productive use, and the attraction of new investments based on the success of the proposed initial project.

PILOTs allow communities that may not otherwise experience growth or reinvestment to attract same. In this instance, payments to the community will take the form of Annual Service Charges (ASC) as defined within the Financial Agreement between Flemington Center Urban Renewal, LLC and the Borough of Flemington dated November 08, 2019. The ASC should consist of pledged and unpledged components.

Terms associated with the Financial Agreement include:

- Pledged ASC: \$10,000.00 per year for debt service;
- Hotel Component: \$1,200.00 per room;
- Residential Component: \$1,600.00 per apartment;
- Retail Component: \$1.50 per rentable square foot;



- Educational/Medical Component: \$1.50/rentable square foot.
- Stipulated increases of 5% on the fifth anniversary from the start date and every 5<sup>th</sup> year thereafter.

In addition to the ASC, Flemington will derive a 2% Administrative Fee (~\$10,000/year) and a 3% municipal hotel tax (which is independent of any agreement). The Administrative Fee is intended to cover the Borough's costs associated with the collection and reconciliation of the Annual Service Charge, thus, this should not be included in a revenue model intended to off-set other municipal costs.

The proposed development is estimated to cost between \$68,000,000.00 and \$75,000,000.00 in hard costs (net of land, carry, design and soft costs). Considering estimated revenues and assuming a capitalization rate of 6.40%, upon stabilization the development is projected to have a market value of ~\$95,000,000.00 with the ASC or ~\$70,000,000.00 with conventional taxes. Without the proposed ASC, costs are projected to exceed the market value. Without the proposed ASC, the proposed project is not likely to be constructed.

The intangible benefits of the proposed project include redeveloping the Borough's downtown in a manner that locates increased residential density proximate to the downtown area of the community, thus supporting local businesses. The proposed development will diversify the housing stock of the community allowing for different housing options for Borough residents. For example, if a homeowner is looking to downsize. It also maintains the historic facades of the Union Hotel and will rebuild the structure in order to continue the hotel use. The proposed redevelopment will return currently vacant and/or underutilized parcels to productivity in an area targeted by the local planners for same. Finally, the increased population expands the potential volunteer pool for fire and EMS services.

This study examines the anticipated impacts of the proposed development upon Flemington's population, school infrastructure, and municipal facilities and services. Based on our review and analysis, it is anticipated that, upon completion, the proposed

development will include the following impacts of note:

- Generation of ~ 25 school age children.
- Anticipated need for 2 additional police officers and 1 or 2 police vehicles.
- The relocation of police headquarters.
- Upgrades to the Borough's existing water and sewer infrastructure.

### **PROPERTY DESCRIPTION**

The site is located in the downtown neighborhood of Flemington Borough within the Union Hotel Redevelopment Area. The Applicant is proposing to develop Block 22, Lots 4 – 14 and Block 24, Lots 1 – 3 and 5, which comprises a total area of ~3.76 acres. The proposed Lot A development will occupy the majority of Block 22 and have frontage along Spring Street, Chorister Place, Main Street and Bloomfield Avenue. The Lot B development will occupy the northwest portion of Block 24 and have frontage along Spring Street and Bloomfield Avenue.

Flemington Center Urban Renewal, LLC, the designated redeveloper, received approval to develop a mixed-use project containing 32,250 sq.ft. of retail and dining space, 222 residential units, a 100-room hotel, ~45,000 sq.ft. of commercial, retail, educational and/or medical space, and a structured parking facility on Block 22 (Lot A). Pursuant to information provided, 208 market rate and 14 affordable units are proposed. The market rate residential unit breakdown will consist of (108) one-bedroom and (100) two-bedroom layouts. Affordable units will consist of (3) one-bedroom, (8) two-bedroom and (3) three-bedroom layouts. The project will also include the restoration of 3 elevations of the Union Hotel as well as the rebuilding of the interior structure in order to accommodate the 100-room boutique hotel. The existing Hunterdon County National Bank building's façade would also be renovated and the structure converted to incorporate elements of the residential, retail and parking elements. Pursuant to information provided by the Borrower, ~32,250 sq.ft. of retail/commercial space will be provided within Lot A. The parking garage will be accessed from Spring Street. The 3-story, 45,000 sq.ft. educational/medical/commercial/retail building with 25 parking spaces is proposed on

Block 24 (Lot B).

The proposed development is located within the downtown area of Flemington and will abut commercial uses to the north and west and residential/commercial areas to the east and south.

### **MASTER PLAN AND REDEVELOPMENT PLAN**

In 2001, the Borough petitioned the State Planning Commission to designate Flemington a Regional Center. While the Borough did not achieve the requested designation, the Borough was designated a Town Center. The State defined a Town Center as: "Traditional centers of commerce or government through New Jersey, with diverse residential neighborhoods served by mixed-use core offering locally oriented goods and services." Centers are the State Plan's preferred vehicle for accommodating growth.

Pursuant to the 2015 Reexamination of the Master Plan prepared by Clark Canton Hintz, residents participating in the reexamination process opined, when questioned about desired changes within the community: "Stakeholders called for more restaurants, particularly those with outdoor dining, brewpubs, a bar, and more places serving alcohol in general. Other interviewees said the Borough needs to attract residents with luxury apartments and more vibrant and active downtown uses and activities. Stakeholders frequently said additional residential density and building heights would help achieve their vision, provided the buildings were attractive and sensitive to the Borough's historic character and existing residential neighborhoods. Many interviewees called for a return of commuter train service to Flemington. Regarding the development process, some called for the Borough to be more business-friendly." (pg. 5).

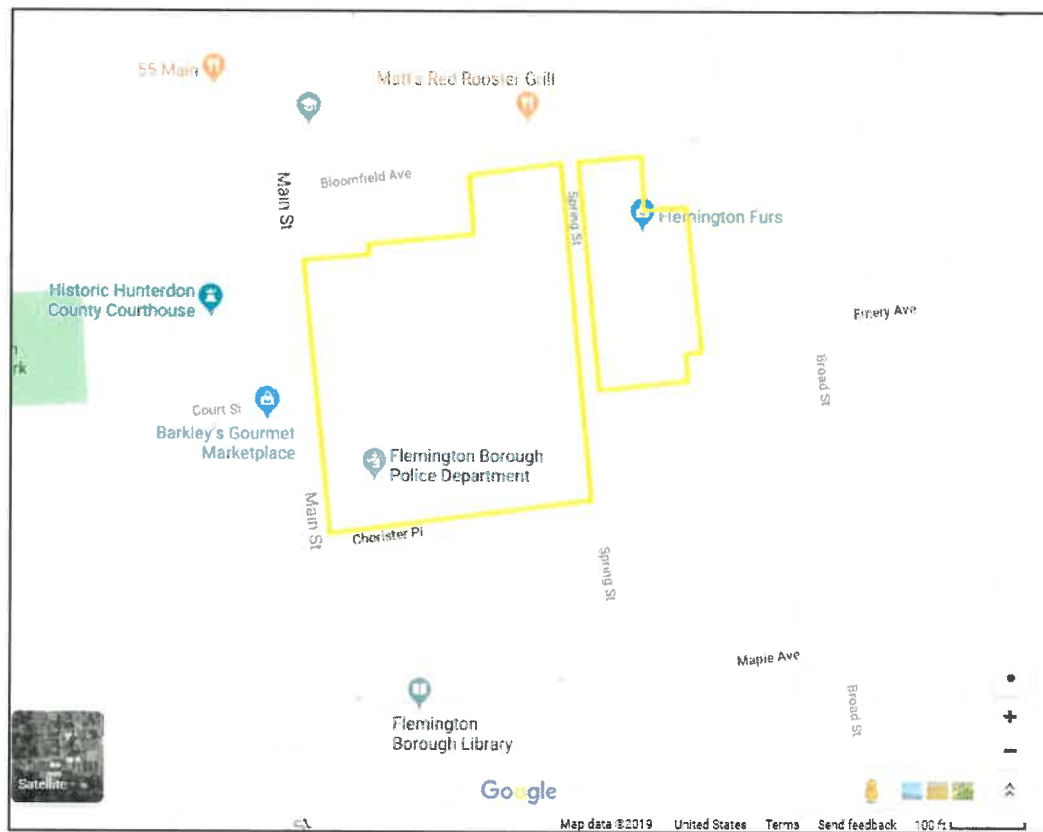
The Redevelopment Plan adopted for this area envisions the development of a "mixed-use commercial place that includes a hotel, retail businesses, restaurants and multi-family residential uses within a vibrant and socially engaging atmosphere." Goals of the Redevelopment Plan include:

- Redevelop the area consistent with the Borough's overall economic goals and regional market forces to ensure any proposed redevelopment is economically

feasible;

- Promote the revitalization of an active downtown Flemington using a key redevelopment project with elements that will attract visitors and residents and will be the impetus for future investment in the Borough;
- Create complementary land uses that will attract residents and visitors to the downtown area including a hotel, retail, restaurant with liquor license, and entertainment within the redevelopment area.

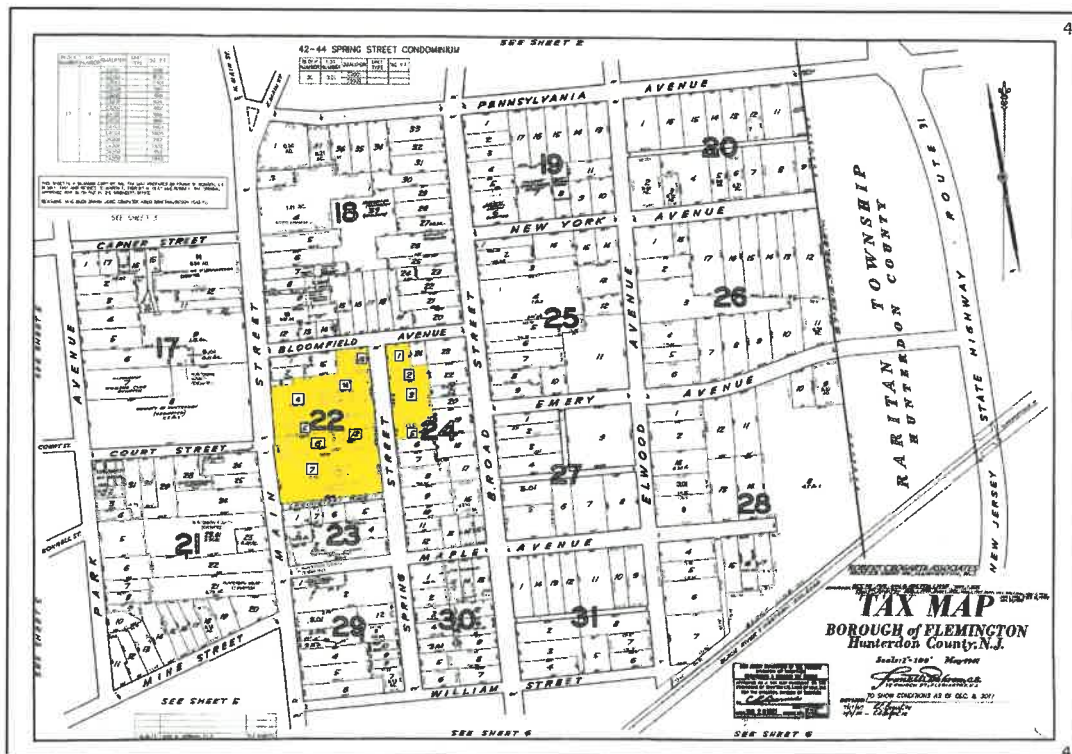
The Redevelopment Area:



Location map of the proposed redevelopment area.

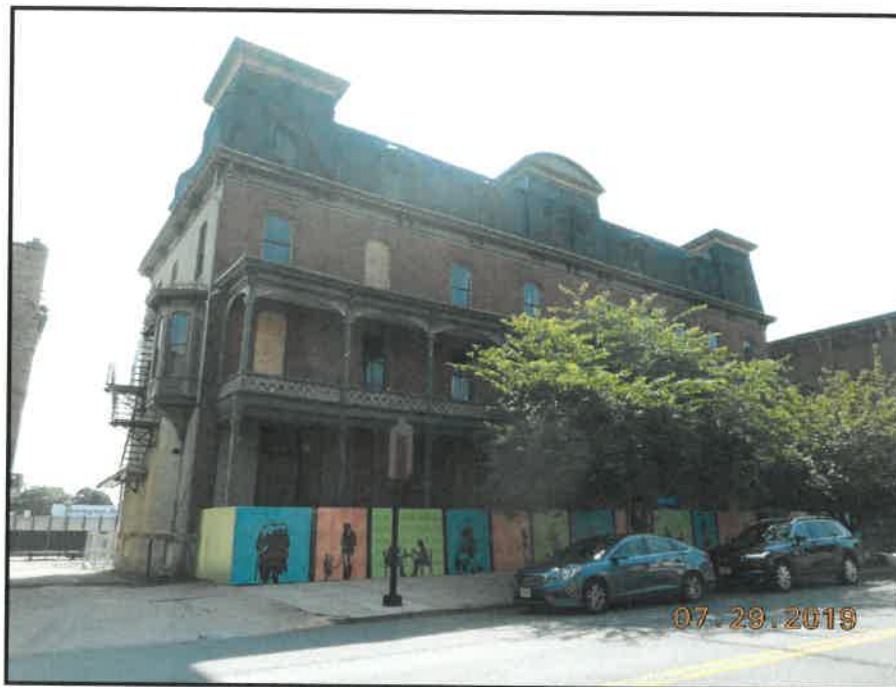


Aerial of the proposed redevelopment area.



Flemington Borough Tax Map #4.





Existing front façade of the Union Hotel



Existing rear façade of the Union Hotel.



Parking along Spring Street.



Vacant storefront along Main Street.



Vacant storefront along Bloomfield Avenue.

### **PROJECT MARKET VALUE**

The market value of the project, based on a revenue approach with conventional taxes, is estimated to be ~\$70,000,000.00. It is anticipated to have construction costs of \$68,000,000.00 to \$75,000,000.00 (hard costs for building and site improvements, net of land, carry, design and soft costs). The ASC structure defined within the Financial Agreement results in an approximate project valuation of ~\$95,000,000.00 based on estimated income. Without the ASC, the project is not feasible to undertake.

Construction costs anticipate the use of an open bidding process for construction; which would permit open-shop subcontractors to participate. Costs associated with utilizing only union labor were not anticipated and may result in higher costs than projected, potentially creating a further erosion of the market value of the completed structures and infrastructure.

### **MUNICIPAL TAX REVENUES**

The 2018 property tax rate for Flemington is \$3.061 per \$100 assessed value at an assessed to true value ratio of 100.43 percent. This translates into an equalized tax rate of



\$3.074 per \$100 of market value. Additionally, the Downtown Business District, within which the development area is located, is subject to an additional tax levy of 0.168 or an equalized tax of 0.169. The components of the 2018 tax rate, as well as the anticipated tax revenues from the project without an ASC are identified in Table 1.

Table 1  
2018 Tax Rate & Sample Revenues  
Flemington, New Jersey

2018 Tax Rate Flemington, New Jersey			
Tax	Assessed Tax Rate	Equalized Tax Rate	Estimated Taxes
County	0.316	0.317	\$ 222,151
Open Space	0.031	0.032	\$ 22,400
District School	1.309	1.315	\$ 920,240
Regional School	0.444	0.446	\$ 312,136
Municipal	0.928	0.932	\$ 652,393
Library	0.033	0.033	\$ 23,199
Downtown Business District	0.168	0.169	\$ 118,106
<b>Total:</b>	<b>3.229</b>	<b>3.244</b>	<b>\$ 2,270,626</b>
Source: Tax rate obtained from Flemington Tax Collector's Office			
Note: Equalization Ratio is 1.0043%			
Assessed valued of \$70,000,000.00 assumed.			

Table 2  
Annual Service Charges  
Flemington, New Jersey

Financial Agreement Between Flemington Center Urban Renewal, LLC and the Borough of Flemington Annual Service Charges (ACS)		
Component	ACS	Extension
Hotel	\$1,200.00/Room	\$ 120,000.00
Apartments	\$1,600.00/Apt.	\$ 355,200.00
Commercial/Retail		
Medical/Educational	\$1.50/Sq.Ft.	\$ 115,875.00
<b>Total:</b>		<b>\$ 591,075.00</b>

## **POPULATION IMPACT**

In order to determine a proposed development's impact on the municipal population, it is first necessary to establish a reference point for the introduction of the anticipated population increase. In view of the fact that construction has not yet commenced, the analysis of impacts will assume that the project has already been built out.

Pursuant to the United States Census Bureau 2010 data, 4,581 residents were reported in the Borough of Flemington, an increase of 9.1% from 2000. The Census Bureau estimates the 2018 population (as of July 1, 2018) at 4,589, essentially exhibiting no population growth since 2010.

Beacon Planning estimates 1.603 persons per household will be generated for one-bedroom market rate units, 2.342 persons per household for two-bedroom market rate units, 1.61 persons per household for one-bedroom affordable units, 2.76 persons per household for two-bedroom affordable units, and 3.82 persons per household for three-bedroom affordable units. The multipliers for household size were obtained from Who Lives in New Jersey? New Jersey Demographic Multipliers: The Profile of the Occupants of Residential and Nonresidential Development prepared by David Listokin et al., dated August 2006 (see Table II-D-1, Own/Rent, Five+ Units and Table II-H-1, 5+ Units, Rent).

Based on the proposed number of dwelling units, the estimated average household size, and estimated 2018 population, the proposed development would increase Flemington's population to 5,035. The total population of the proposed development is estimated to be ~446 residents within the 222 apartment units. See Table 3. The projected population attributable to the development represents an approximate 10% increase in the Borough's population.

Typically, developments consisting of one- and two- bedroom configurations attract young professionals, couples without children or couples downsizing from larger homes. Couples with children tend to seek housing with additional bedrooms and yard areas.

Table 3:

Proposed Flemington Center Redevelopment			
Total Persons - Central NJ			
Unit Type	Unit Count	Multiplier	# of Persons
Studio	0	1.603	0.00
1BR/1BA	108	1.603	173.12
1BR/1BA - Affordable	3	1.61	4.83
2BR/2BA	100	2.342	234.20
2BR/2BA - Affordable	8	2.76	22.08
2BR Duplex	0	2.342	0.00
3BR - Affordable	3	3.82	11.46
	222		445.69
Population projections based on Table II-D-1 (5+ Units Own/Rent-All Values) and II-H-1 (5+Units, Rent) of Who Lives in New Jersey Housing? published by the Center for Urban Policy Research, November 2006 Listokin, et. al.			
Unit breakdown interpolated from the Financial Analysis Report prepared by the Otteau Group dated 08/07/2018.			

### **SCHOOL DISTRICT IMPACT**

The Borough of Flemington utilizes two regional school systems for educating the local student population; the Flemington-Raritan School District which serves kindergarten through 8<sup>th</sup> grade students and the Hunterdon Regional High School, which services 9<sup>th</sup> through 12<sup>th</sup> grade students. Both school systems serve multiple communities. The Flemington-Raritan School District serves the Flemington and Raritan communities whereas the Hunterdon Regional High School serves Delaware Township, East Amwell Township, Flemington Borough, Raritan Township and Readington Township.

As the school districts are utilized by multiple communities, each community contributes to the districts' expenses based upon the number of students generated by their Borough/Township. The tax levy for each community is based upon the student enrollment noted in the October of the preceding year. For example, the 2019-2020 required contribution would be based upon the number of students from the community enrolled as of October 2018.

In October 2018, Flemington generated 577 students for grades K through 8 and 256 high

school students. Flemington's 2019 general tax level for the Flemington -Raritan School District is \$5,569,945.00 (excluding debt service), or ~\$9,600.00 per student. The Hunterdon Regional High School 2019 general tax level is \$2,267,100.00 (excluding debt service), or ~ \$8,900.00 per student.

Utilizing demographics multipliers published in Who Lives in New Jersey? New Jersey Demographic Multipliers: The Profile of the Occupants of Residential and Nonresidential Development prepared by David Listokin et al., dated August 2006 (see Table II-D-3 and II-H-1) the project is estimated to generate 47 school children. School children generated would be spread out from kindergarten through 12<sup>th</sup> grade. BPCS anticipates the majority of students generated by the project to be in grades K through 8 (~40) with the remaining students (~7) are projected for grades 9 – 12. See Table 4.

Utilizing the expected tax level per student, we would expect the development to generate \$384,000.00 in costs for the Flemington-Raritan School District and ~\$62,300.00 in costs for the Hunterdon Regional High School.

Table 4:

Proposed Flemington Center Redevelopment			
Public School Children - Central NJ			
Unit Type	Unit Count	Multiplier	# of Persons
Studio	0	0.062	0.00
1BR/1BA	108	0.062	6.70
1BR/1BA - Affordable	3	0.140	0.42
2BR/2BA	100	0.308	30.80
2BR/2BA - Affordable	8	0.620	4.96
2BR Duplex	0	0.308	0.00
3BR - Affordable	3	1.270	3.81
	222		46.69
Public School Children projections based on Table II-D-3 (5+ Units Own/Rent-All Values) and II-H-1 (5+Units, Rent) of Who Lives in New Jersey Housing? published by the Center for Urban Policy Research, November 2006 Zlistokin, et. al.			
Unit breakdown interpolated from the Financial Analysis Report prepared by the Otteau Group dated 08/07/2018.			

The Rutgers Center for Real Estate issued a white paper in 2018 entitled "School-Age

Children in Rental Units in New Jersey: Results from a Survey of Developers and Property Managers” (dated July 2018). Pursuant to Table 1 of the report, we would anticipate ~25 total school children from the proposed development. The 2018 model has been recognized as a more accurate estimate of school age children, particularly as applied to multi-family communities consisting primarily of one and two-bedroom units. Mr. Daniel Bland of the Flemington-Raritan School District expressed an opinion that the 2018 Rutgers White Paper model was the preferred and more accurate model to apply to the housing type proposed. BPCS concurs. See Table 5.

The 2018 model results in an estimated combined cost of \$237,200.00.

Table 5:

Proposed Flemington Center Redevelopment			
School Age Children			
Unit Type	Unit Count	Multiplier	# of Persons
Studio	0	0.016	0.00
1BR/1BA	108	0.016	1.73
1BR/1BA - Affordable	3	0.103	0.31
2BR/2BA	100	0.134	13.40
2BR/2BA - Affordable	8	0.721	5.77
2BR Duplex	0	0.134	0.00
3BR - Affordable	3	1.089	3.27
	222		24.47
School-Age Children in Rental Units in New Jersey: Results from a Survey of Developers and Property Managers, prepared by Morris A. Davis, David Frame, Ronald Ladell and Debra Tantleff, dated July 2018. (Rutgers Center for Real Estate: White Paper Series)			
Unit breakdown interpolated from the Financial Analysis Report prepared by the Otteau Group dated 08/07/2018.			

BPCS spoke with Daniel Bland at the Flemington-Raritan School District and Dr. Moore at the Hunterdon Regional High School regarding available school capacity. Each stated that there has been a trend of decreasing enrollment and that existing infrastructure would be sufficient to accommodate any additional students generated by the project. The only concerns noted were about the possible generation of special needs students.

Pursuant to a November 26, 2018 report entitled “Enrollment Trends, Fall 2018” issued by

the Flemington-Raritan Regional Board of Education, student population has decreased by almost 16% since 2010. This declining population trend has been identified to continue; however, the Flemington Raritan School District suggests continued construction of new homes will stabilize the student population. The District indicated that no school closings are required.

On November 5, 2019, Flemington Borough and Raritan Township communities voted to approve two referendums for the benefit of the Flemington Raritan School District. The first referendum was for 'Safety, Security and Structure' in the amount of \$21.755 million while the second was for 'Indoor Air Quality' in the amount of \$20.308 million. The school applied and will receive 'debt service aid' in the amount of 40% from the state; however, the District, acting conservatively, estimates the state will fund ~34% of project costs.

Pursuant to our recent conversations with Mr. Daniel Bland of the Flemington Raritan School District, the referendum is anticipated to increase per pupil costs when debt service requirements are included. The Flemington Raritan School District website, under November 5, 2019 Bond Referendum Q&A, suggests passage of the referendum is estimated to have an average impact of \$0.043 per \$100,000.00 of assessed value, or the average household in Flemington will see an increased tax impact of \$114.67 per year. Raritan Township average household will see an estimated increase tax impact of \$270.23 per year. Costs are split based on total assessed value of each community. The factors that may impact the future per pupil charges include the higher overall valuation of the Flemington community resulting in a modified cost split between Flemington and Raritan, and continued declining enrollment resulting in costs being spread over fewer students.

#### **MUNICIPAL FACILITIES AND SERVICES IMPACT**

BPCS conducted interviews with local school officials, police officials, EMS officials, the municipal engineer, public utility officials, public works officials, and the Redeveloper's project engineer (regarding improvements to the water and sanitary sewer infrastructure) in order to gauge effects to these services as they represent areas that are most likely to be impacted by the development. The results of these discussions are detailed below.

Overall Municipal Services:

Departments most likely to experience impacts from the proposed development are Public Safety, Borough infrastructure, and the School Districts.

Police Department:

A discussion with Chief Jerry Rotella of the Flemington Police Department revealed concerns regarding current staffing levels and equipment within the Borough and the ability of the department to accommodate additional population growth. He estimated that, at full build out of the Union Hotel Redevelopment, an additional 4 officers and 3 cars would be needed in order to properly patrol the proposed development. Pursuant to the local Chief of Police, Jerry Rotella, the starting salary is ~\$54,000.00 plus \$5,500.00 in equipment. After 6 years, those officers would top out at a salary of \$97,000.00. Vehicles were estimated to cost ~\$48,000.00 each.

Pursuant to the FBI Uniform Crime Reporting website, in 2017 Flemington had 14 law enforcement professionals for a population of ~4,600 (~ 1 officer for every 330 persons or approximately 1 officer for every 142 households). (2017 US Census estimates data for Flemington indicates 1,982 total households). Pursuant to 2016 FBI UCR data, cities with fewer than 10,000 residents reported an average of 3.5 officers per 1,000 inhabitants. This equates to one officer for every 286 inhabitants.

The proposed development is expected to generate ~446 additional residents in 222 residential units as well as visitors to the proposed commercial areas. Utilizing the previously identified ratios (officers per person/per household), we would expect a need for 2 more law enforcement personal and 1 to 2 vehicles.

The existing and proposed ratio exceeds that of surrounding communities. For example, Raritan maintains a ratio of 1 officer per ~665 residents while Franklin Township maintains one per ~537 residents. Therefore, while generally consistent with the national average, Flemington maintains a more conservative police to population ratio than surrounding communities. This may be attributable to Flemington being the County seat as well as a weekend destination for many regional residents.

For purposes of our analysis, BPCS estimates the project will generate ~\$190,000.00 to \$210,000.00 in additional costs to the community per year for police services.

BPCS notes that, as part of the proposed development, the police department will be relocated. The current police headquarters has been sold to the Redeveloper for approximately \$1.1M as it has been incorporated into the redevelopment area. Pursuant to our discussions with Adam Finkle of SSP Architects, the Borough is reviewing options for replacement facilities, including retrofitting an existing building or constructing a new facility. A definitive replacement has not yet been identified, however estimates of \$3M to \$5M in costs for a new, complete facility have been remarked upon. The sale price of the existing facility (\$1.1M) will leave a gap in funding for the new facility. A funding source for the balance of costs has not been identified.

BPCS recommends the consideration of a Revenue Allocation Bond (RAB) wherein proceeds from the Annual Service Charges are utilized to support a bond with which to pay for the new facility. BPCS will explore the availability of ASC revenue for such proposes later in the Report. The new facility may be constructed, retrofitted from existing space purchased for the this specific purpose of functioning as a police station, or leased as either new or retrofitted space.

#### Fire Department:

Beacon Planning was unable to contact Fire Chief Peter Nemec after several attempts and messages left at the local fire department as well as with the Borough Fire Marshall. Pursuant to a member of the fire department, an emergency at the proposed development would automatically pull in assistance from neighboring communities through mutual aid. No further concerns were voiced.

#### EMS:

The Borough currently utilizes a combination of volunteer and career paid EMS services. The Flemington-Raritan First Aid and recuse Squad services Flemington Borough, Raritan Township and parts of Readington and Delaware Townships. David Giulaini of the Squad, expressed concerns regarding the proposed development impacting the Squad's ability to



provide services. Mr. Giulaini estimated that the Squad responded to ~500 calls in 2018, or approximately 0.25 calls per household. (2017 US factfinder estimated number of households: 1,982.) Applying this ratio to the proposed residential development would result in the anticipated generation of 55 additional calls per year, or approximately 1 per week. This represents an approximate 10% increase over current levels. This excludes possible call generation by the commercial/hotel portions of the development.

Although Mr. Giulaini indicated additional staff and possibly an additional ambulance would be required in order to accommodate the proposed growth, it is unclear if this development alone would trigger the need for same. A more detailed analysis of the number of calls generated by this type of housing and proposed uses would be required for not only Flemington Borough, but the surrounding communities that also utilize the service.

#### Public Works:

Pursuant to the local resolution of approval, commercial as well as residential trash is to be handled by private waste haulers.

Residential waste hauling and recycling services for the Borough are provided by a private contractor. Total costs for the 2019 (expenses and wages/salaries) for sanitary and recycling services totaled \$237,200.00. The 2017 US Census estimates 1,982 housing units in the Borough. Costs are approximately \$120.00/household. Were trash hauling the responsibility of the Borough, we would expect ~\$27,000 in additional costs per year.

Mr. Michael Hampion, from the Borough Public Works Department, noted that on-site improvements, such as lighting, sidewalks, trashcans, etc., would be the responsibility of the developer.

Existing roadways would remain the responsibility of the Borough.

#### Water and Sewer Services:

Certain commitments on the part of the Redeveloper and the Borough have been outlined within the Amended and Restated Redevelopment Agreement between the Borough of Flemington and the Flemington Center Urban Renewal, LLC, dated December 12, 2017.

- Pursuant to Section 6.2(g): "The Borough represents that it currently has sufficient

sewer capacity and necessary easements to support Phase One and Phase Two of the Project. The Borough represents that it currently has sufficient water capacity for Phase One of the Project and may have sufficient water capacity for Phase Two of the Project. Subject to Section 4.4 herein, to the best of the Borough's knowledge there are no limits on availability of water or sewer capacity or restriction on the expansion of water and sewer infrastructure that would impact service to the Redevelopment Area site to support the Project. The Borough covenants that it shall work with the Redeveloper to confirm the availability of water and sewer capacity with the providers of those services to the Borough."

- Pursuant to Section 4.4(c)(i): "The construction of the Project will utilize the current reserved capacity and will require construction of additional wells and infrastructure for the Project. The Borough represents that it will have sufficient water and sewer capacity and necessary easements to support the Project. The Redeveloper shall be responsible for up to Two Million Dollars (\$2,000,000.00) of the cost to increase the amount of available water by the amount required for the Project and to maintain the reserves as required under Applicable Law, which currently requires a reserve of three times (3x) the actual usage required, after Completion of the Project."
- Pursuant to Section 4.4(c)(iii): "Redeveloper shall receive a dollar for dollar credit for all Public Improvements to the water distribution system, exclusive of the cost of the well(s) or connecting the well to the distribution system, and sewer collection systems undertaken, installed and/or constructed against all water and sewer connection fees, which shall be calculated at the lesser of the then current rate or the rate in effect on November 30, 2017. By way of example, if the sewer and water connection fees totaled one million dollars (\$1,000,000) and Redeveloper spends more than one million dollars (\$1,000,000) to install the sewer and water lines into, out of and within the Project, the Borough would not collect any connection fees."

The community has made representations that there is sufficient capacity within the existing infrastructure to accommodate the project. The Redeveloper will contribute \$2M

toward the new Borough well, which will service the redevelopment and the community. The Redeveloper will also receive a credit against its water and sewer connection fees for all public improvements it constructs to the community's water and sewer infrastructure.

Pursuant to Mr. Kenneth Diehl, Flemington is suffering from an aged infrastructure system that requires attention. A 30-year capital improvement plan is envisioned to replace the water and sewer infrastructure. Mr. Diehl indicated such improvements would be necessary independent of the proposed redevelopment; however the redevelopment serves as a catalyst to commence the work and to direct the work to an area that has a more immediate need for such improvements.

The Redeveloper will be responsible for all improvements, on and off site, necessary for the development of the proposed project; however, the scope of those improvements have not yet been settled. The Borough's plan, pursuant to Mr. Diehl, consists of a community grid identifying those areas in critical condition. Critical areas were identified in the vicinity of the proposed development area.

Bohler Engineering prepared a Sewer and Water Infrastructure Summary dated October 2019 on behalf of the developer. This report purports to outline the scope of infrastructure improvements and costs associated with same for two options; one wherein only the bare minimal of work required to utilize existing services is outlined and the second incorporating work requested by the Borough to be completed in conjunction with the development. BPCS reviewed this report with the local utility operators (water and sewer only) and engineers in order to discuss the report's assumptions. There is conflicting information between the developer and the community regarding what is required in order to service the project and the method by which improvements will be accomplished. By Example, Bohler contends that existing pipes may be relined where Flemington identified such a solution would not be acceptable.

Additional concerns related to sanitary sewer include a 10" sanitary sewer main in Main Street and a 6" sanitary sewer main in Spring Street, which would typically be sufficient to service the proposed development; however, the local officials have identified a manhole downstream of the project that experiences inflow and infiltration problems resulting in

overflows during heavy wet weather. The Developer, per the Bohler Engineering Report, anticipates redistributing the sanitary flow away from the manhole currently experiencing inflow and infiltration problems to other portions of the community via the installation of 500 LF of new sewer line within New York Avenue; however, Borough professionals indicate that simply moving the problem from one area of the community to another is not an available option and would most likely not be approved by the NJDEP.

With respect to water service, the Bohler report assumes that limited water infrastructure improvements would be necessary if minimum improvements required for the project were implemented; however, pursuant to Borough engineers, water flow tests have not yet been conducted. Therefore, the capacity of those existing lines and limited proposed upgraded lines to provide fire water services to the site is unknown at this time. Additionally, the Borough's professionals indicate that, were the project not to proceed, they would prioritize other water mains ahead of those within the redevelopment district for replacement. Bohler's representations related to the obligation of the redeveloper are summarized in the following table (Table 6):

Table 6:

Bohler Engineering Estimate Cost to Redevelop Water/Sewer Infrastructure			
Item	Required to Service Site		Option Requested by Flemington (per Bohler)
Off-Site Sewer Imp.	\$	30,000.00	\$ 388,213.00
Off-Site Water Imp.	\$	260,000.00	\$ 905,135.00
<b>Total Off-Site Costs**</b>	<b>\$</b>	<b>290,000.00</b>	<b>\$ 1,293,348.00</b>
<b>Well Contribution</b>	<b>\$</b>	<b>2,000,000.00</b>	<b>\$ 2,000,000.00</b>
Sewer Connection Fee	\$	1,067,408.00	\$ 1,067,408.00
Water Connection Fee	\$	24,240.00	\$ 24,240.00
<b>Total Connection Fees**</b>	<b>\$</b>	<b>1,091,648.00</b>	<b>\$ 1,091,648.00</b>
<b>Total Cost</b> <b>=Off-Site Cost + Well Contribution</b> <b>+(Connection Fees-Off-Site Cost)</b>	<b>\$</b>	<b>3,091,648.00</b>	<b>\$ 3,293,348.00</b>
Information obtained from Sewer and Water Infrastructure Summary prepared by Bohler Engineering dated 10/2019.			
**If off-site costs exceed connection fees, effective connection fee is \$0.00 pursuant to Paragraph 4.4(c)(iii) of the Amended and Restated Redeveloper's Agreement dated 12/12/2017.			

The Bohler report indicates that required infrastructure improvements will not exceed proposed connection fees; however, as the scope of work is not clearly defined, this statement cannot be evaluated for accuracy. The Borough's professionals are requesting an updated Form A detailing the anticipated water and sanitary sewer flow demands associated with the project so that they may better evaluate the ability of existing infrastructure to accommodate same. BPCS cannot comment upon the possible benefits or costs to the community with respect to infrastructure improvements at this time until a complete scope of work is defined. The following table (Table 7) depicts the use distribution depicted in the initial Form A submitted by the Bohler and a more recent representation Bohler alleges to be more indicative of project approval:

Table 7:

Bohler Engineering Representations of Water/Sewer Uses		
	Form A - 06/01/2016	06/13/2019 Estimate
1 BR. Apt.	121	111
2 BR. Apt.	141	108
3 BR. Apt.	0	3
Retail	30,000 sq.ft.	29,600 sq.ft.
Restaurant	750 seats	350 seats
Hotel	105 rooms	100 rooms
Health Club	750 members	0
Educational	400 students	300 students
Med/Office	15,000 sq.ft.	15,000 sq.ft.
Total Water Est. (Gross Demand)	86,416 GPD	*Bohler calculation not clear.
Total Sewer Est. (Gross Demand)	112,700 GPD	68,060 GPD
Existing Water Demand (Credit)	15,532 GPD	15,532 GPD
Existing Sewer Demand (Credit)	19,640 GPD	19,640 GPD
Information obtained from Sewer and Water Infrastructure Summary prepared by Bohler Engineering dated 10/2019.		

### **COST/REVENUE ANALYSIS**

As the costs for infrastructure are not clearly defined, BPCS is unable to comment upon the complete fiscal impact to the community. It is, however, our understanding that the Redeveloper has agreed to complete off-site improvements, including improvements that are not exclusive to the project and a benefit to the community, in exchange for credits against connection fees. Alternate water infrastructure approaches are discussed in Section 4.4(c)(ii) of the Amended and Restated Redevelopment Agreement. The sanitary sewer routing and scope remains unresolved. The threshold issue will be cost and the ability to absorb said costs without disruption of the financial viability of the project. Mr. Kenneth Diehl has been asked to opine regarding the Redeveloper's representations and to offer any pertinent information, particularly the identification of any costs that may be the sole responsibility of the Borough. Our analysis below will incorporate those costs which

have been clearly identified. BPCS will amend its findings if and when infrastructure costs have been clearly identified.

With respect to the police station gap, BPCS has analyzed the potential costs to allocate a portion of the ASC for the purchase or construction of a new police station. Assuming a cost of \$4,500,000.00 to \$5,000,000.00 and a credit of \$1,100,000.00 for revenue derived from the sale of the current facilities, an obligation may be considered under a RAB to cover +/- \$4,000,000.00. The RAB, with a 20-year term and at a 3.5% interest rate, would require a bond issuance of +/- \$4,500,000.00 to \$4,600,000.00 (including debt service reserve and cost of issue that is financeable) resulting in a gross annual payment of ~\$317,000.00.

Thus in terms of identified costs see Table 8.

Table 8:

Proposed Union Hotel/Courthouse Square Development Anticipated Fiscal Impact - Year 1 Flemington, New Jersey		
	Estimated Range	
	Low	High
Total Population Growth	446	
Public School Children	25	47
School District Costs	\$ 237,200.00	\$ 446,300.00
Municipal		
Police - Staff/Equipment	\$ 190,000.00	\$ 210,000.00
EMS	\$ -	\$ -
Other Municipal	\$ -	\$ -
Debt: Police Station	\$ 317,000.00	\$ 317,000.00
Total Overall Costs	\$ 744,200.00	\$ 973,300.00

Table 9: Estimated Revenue to Flemington from ASC

Revenue from Porposed Development		
Revenue from ASC	\$	591,075.00
Less Land Tax	\$	(113,902.00)
Less County Portion	\$	(23,859.00)
<b>Net to Flemington</b>	<b>\$</b>	<b>453,314.00</b>
Plus Local Land Tax	\$	39,182.00
<b>Total:</b>	<b>\$</b>	<b>492,496.00</b>

The projected revenues to the Borough from the redevelopment do not incorporate the additional proceeds anticipated to be generated by the project, i.e. hotel tax. The Borough has experienced the benefits of the proceeds of the sale of the existing police facility; however, for purposes of this study, we are assuming the revenue will be rolled back into a new facility.

There are also intangible economic benefits associated with the project that should be given consideration. These economic benefits include increased population with disposable income to support local merchants and businesses, including restaurants, retail stores and service providers. There will also be an increased pool of volunteers for the fire department, first aid squad, and recreation programs.

### **CONCLUSION**

The analysis herein has been supplemented with information regarding the adequacy of existing facilities and services.

There are numerous intangible benefits that the community will accrue, including the following:

- Restoration of the Union Hotel façade and rebuilding of the hotel structure to continue the hotel use;
- Redevelopment of vacant and/or underutilized properties that will contribute to the community's tax base;
- A diversification of housing within the community;



- Increased support for local businesses;
- Community revitalization and loyalty; and
- Maintain and expand the community volunteer pool.

**Our findings and opinions are based on information provided by third parties and are subject to the limitations imposed by the providing parties. All information furnished and analyzed is from sources deemed reliable, but no warranty or representation is made as to the accuracy thereof and same is submitted subject to errors, omissions and changes. We reserve the right to amend our findings if new or updated information is provided or uncovered. We do not assume the responsibilities of the design professionals. Our services are being rendered solely as an advisor. This report is intended to be read in whole. Information provided in the various sections is complementary and, in some instances, provides additional explanation of information concerning the assessment. Therefore, interpretations and conclusions drawn by reviewing only specific sections are the sole responsibility of the user.**

**ANDREW W. JANIW, P.P., A.I.C.P.**  
**BEACON PLANNING AND CONSULTING SERVICES, LCC**  
**315 HIGHWAY 34, SUITE 129**  
**COLTS NECK, NEW JERSEY 07722**  
**TEL: 732.845.8103/FAX: 732.845.8104**  
**Professional Planner #5775**  
**American Institute of Certified Planners**

8/97 - Present    **Founder and Managing Member**  
**Beacon Planning and Consulting Services, L.L.C.**  
**Colts Neck, New Jersey**

**EDUCATION**

New Jersey Institute of Technology  
Newark, New Jersey 07102  
**Master of Science in Civil Engineering (Construction Management)**

New Jersey Institute of Technology  
Newark, New Jersey 07102  
**Bachelor of Science in Civil Engineering**

**PROFESSIONAL APPOINTMENTS**

Borough of Carteret  
Middlesex County, New Jersey  
**Borough Planner, 2001-2019**  
**Brownfield Development Area Steering Committee Member, 2008-2019**

City of Wildwood  
Cape May County, New Jersey  
**Redevelopment Consultant, 2018-2019**

Township of Cranford  
Union County, New Jersey  
**Redevelopment Advisor, 2005-2012**  
**Planning Board Planner, 2009-2012**  
**Borough Planning Consultant, 2012**

South Amboy Redevelopment Agency  
City of South Amboy  
Middlesex County, New Jersey  
**Redevelopment Agency Planner 2014-2019**

Perth Amboy Redevelopment Agency  
City of Perth Amboy  
Middlesex County, New Jersey  
**Economic Redevelopment Consultant, 2005-2012**

**Borough of Neptune City  
Monmouth County, New Jersey  
Borough Planner, 2005-2017**

Previous public assignments have also included redevelopment consulting, PILOT structure analysis, fiscal review, redeveloper selection, and redevelopment agreement negotiation support for the Borough of Matawan, Township of Edison, Borough of Keyport, Borough of Allenhurst, Borough of Tinton Falls, Borough of Palmyra and The City of Newark.

## **ASSOCIATIONS**

**AMERICAN PLANNING ASSOCIATION**

**AMERICAN INSTITUTE OF CERTIFIED PLANNERS**

**AMERICAN SOCIETY OF CIVIL ENGINEERS**

**CHI EPSILON, THE CIVIL ENGINEER'S HONOR SOCIETY**

**URBAN LAND INSTITUTE**

**LICENSED NEW JERSEY REAL ESTATE SALESPERSON**

**Qualified as an expert in land use planning, affordable housing and real estate/construction financing by the New Jersey Superior Court. Continued education in credit analysis, credit quality, real estate analysis, negotiations, environmental assessment, and market trends. Listed in Who's Who in Finance and Industry. Curriculum Advisor to Monmouth University's Kislak Real Estate Institute. Guest Lecturer at Monmouth University's Kislak Real Estate Institute on the topics of "Construction Loan Risk Management" and "Redevelopment Public/Private Partnerships". Guest speaker at NJ Future Redevelopment Forum 2009 and 2010 on the topic of "Redeveloper Agreements: Understanding and Negotiating the Deal". Guest speaker at PlanSmartNJ 2016 Regional Summit on the topic of: "It's All About Financing: Providing Incentives to Repurpose Vacant and Underutilized Properties". Selected to participate as a member of the Smart Growth Economic Development Coalition, Land Use Group, whose mission was to identify initiatives to promote development in New Jersey and to present the strategies to Governor Murphy. Lecturer at the New Jersey Redevelopment Authority's Redevelopment Law and Planning Training Course. Served as a member of the New Jersey Builder's Association Land Use Committee and the ASTM Property Condition Survey Advisory Committee, the latter of which established industry standards for the performance of property condition assessments. Currently serving as Vice Chairman of the Central Jersey Arts Council.**

**Barbara Ehlen, MBA, PP, AICP** is a graduate of the State University of New York and Monmouth University. Ms. Ehlen has worked for Beacon Planning since 2008 as a project assistant and grown into a vital associate.

Ms. Ehlen received her planning license in the State of New Jersey (#33LI00629400) in 2015 and is a member of the American Institute of Certified Planners. Ms. Ehlen has over 10 years of experience in the field of professional planning, redevelopment assessments, redevelopment plans for various local governments such as the Borough of Carteret and South Amboy, as well as due diligence for real estate transactions for private clients in New York and New Jersey.

Ms. Ehlen has established herself as an excellent professional providing testimony for professional planning clients and appears before planning and zoning board hearings regularly. Ms. Ehlen recently achieved a Certification in Construction Management from Northeastern University.

- |              |  |
|--------------|--|
| 2013-Present | <b>Project Manager<br/>Beacon Planning and Consulting Services, LLC<br/>Colts Neck, New Jersey</b>   |
| 2008-2013    | <b>Project Assistant<br/>Beacon Planning and Consulting Services, LLC<br/>Colts Neck, New Jersey</b> |
| 2006-2008    | <b>Municipal Development Volunteer<br/>Peace Corps<br/>Santo Domingo de Guzman, El Salvador</b>      |

### **EDUCATION**

Monmouth University  
**Master of Business Administration (Real Estate)**

Northeastern University  
**Certification in Construction Management**

State University of New York  
**Bachelor of Arts in Business Administration**

## Appendix

- 1) Sewer & Water Infrastructure Summary prepared by Bohler Engineering, dated October 2019.

# SEWER & WATER INFRASTRUCTURE SUMMARY

*Prepared for:*

**Flemington Center Urban Renewal, LLC**

Block 22, Lots 407 & 12-14

Block 24, Lots 1-3 & 5

Main St., Bloomfield Ave.,

Spring St., & Chorister Pl.

Borough of Flemington

Hunterdon County, New Jersey

*Prepared by*



**BOHLER**  
ENGINEERING

35 Technology Drive

Warren, NJ 07059

908-668-8300

Date: October 2019

BENJ # J1604591

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Our office has prepared this memorandum to summarize the anticipated impacts to the Borough of Flemington's water and sanitary sewer infrastructure resulting from the proposed Courthouse Square development which has been reviewed and approved by the Borough's Planning Board. The subject project proposes a mixed-use development in downtown Flemington where existing utility services are readily available. The existing site is currently served by the Borough of Flemington's water and sewer department. However, based on our due diligence performed to date, the Borough of Flemington's water and sewer infrastructure is inadequate under existing conditions in regard to capacity and conveyance respectively. The condition of the water and sewer infrastructure within the Borough of Flemington is detrimental to the Borough in its current state and potentially limits new development and redevelopment within the Borough. This memo will provide a description of the local water and sewer infrastructure, summarize the infrastructure improvements that have been planned and reviewed with the Borough of Flemington's Municipal Utilities Authority (MUA) to mitigate existing issues and offset any detrimental impact that the subject development may otherwise have and summarize the costs and benefits associated with the improvement options being considered.

#### **Water Infrastructure – Capacity**

##### **Existing Water Supply Capacity:**

Based upon our discussions and meetings to date with the Borough's MUA, the Flemington Water Department has historically faced challenges to provide water capacity ('FIRM Capacity' as described by the NJDEP) for current and future developments. The Borough's MUA recently brought a new municipal well, known as 'Well 10', on-line which helped mitigate their issues related to FIRM Capacity. However, the MUA is planning for an additional proposed municipal well which will be known as 'Well 11'. Prior to the establishment of 'Well 10', the Flemington water Department was at a deficit for FIRM capacity according to the New Jersey Department of Environmental Protection. **Based on our discussions with the Borough MUA to date, the MUA has been performing tests at potential well sites in an effort to begin permitting and construction of 'Well 11' whether or not the subject project moves forward.** Construction and implementation of 'Well 11' will further mitigate the Borough's issues related to FIRM capacity and will provide a surplus of capacity for currently planned and future developments. **As described in section 4.4(c) of the Redevelopment Agreement, the applicant has agreed to contribute up to \$2,000,000 towards the construction of 'Well 11' to offset the amount of water required for the project.** The contribution towards the construction of well 11 will provide a substantial benefit to the Borough of Flemington's water system and will offset any impact that the project has on the Borough's Water Capacity and provide capacity for future Borough Development.

##### **Existing Water Supply Capacity Available for the Subject Project:**

- **Form 'A' Allocation Request:** During the early stages of planning and due diligence for the subject project (June 2016), the applicant submitted the Form 'A' application (provided in Appendix for reference) to the Borough's Water and Sewer Department to



determine feasibility for the project's sewer and water allocation. The anticipated water demand estimated for the project at that time was 86,416 gallons per day. **Please note that since the initial estimates for water and sewer demands were conducted, changes in proposed uses and a reduction in the overall scope of the project has resulted in a significantly reduced sewer and water demand. Our office prepared an updated estimate for proposed water demand, the revised anticipated demand is 34,975 gallons per day.** This revised estimate is based upon the uses and yields presented on the Site Plan documents that have been approved by the Borough's Planning Board, Resolution 2018-137, dated September 11, 2018.

- **Allocation of Water Per the Redevelopment Agreement:** As described in section 6.2 (g) of the redevelopment agreement, the Borough represents that it has sufficient water capacity to support 'Phase One' of the project and may have sufficient capacity to support 'Phase Two' of the project. As defined in the redevelopment agreement, 'Phase One' includes the commercial, hotel and residential improvements proposed on Block 22 whereas 'Phase two' includes the office and education building proposed on Block 24. **Due to the substantial reduction in anticipated flow for the project, our office anticipates that the Borough has sufficient water capacity to serve both phases of the subject project.**

### **Water Infrastructure – Distribution**

#### **Existing Water Distribution System:**

Based on our conversations to date with the Borough's MUA, much of the Borough's water distribution system is dated, deficient and in the need of replacement. More specifically, for the area adjacent to the subject project, water is conveyed from the Borough's water tank via the 12" main within Capner Street, through the 8" main within Main Street which ultimately services the site and existing water mains within Bloomfield Avenue, Spring Street and Chorister Place. The Borough's MUA has recently replaced several hundred linear feet of water main within Main Street north of the project area and plans to ultimately continue replacement of the water main south down Main Street, along Bloomfield Avenue, Spring Street, Chorister Place and beyond regardless of whether or not the subject project moves forward.

#### **Description of Proposed Infrastructure Improvements for Water Distribution:**

- **Option 'A' - Minimum Improvements Required for Project:**
  - Scope of Work: Due to the poor condition of the existing water mains within Main Street and Bloomfield Avenue, upgrades to the public water distribution system would be required for the subject project to be feasible. A sketch outlining the minimum anticipated improvements required for the project (Option 'A') has been provided in the appendix for reference; the improvements include installation of approximately 300 LF of 10" water main which will connect the proposed project directly to the 12" water main that runs from Capner Street to

New York Avenue. This option also includes replacement of approximately 475 lf of the existing 6" water main within Spring Street with new 8" main. It is anticipated that these improvements would provide adequate flow and pressure for the project's buildings and on-street fire hydrants as outlined on the approved Utility Plan (Sheet C-06 in the appendix) approved by the Flemington Borough's Planning Board

- Benefits to the Borough: The replacement of 475 LF of dated and deficient 6" main within Spring Street with a new 8" main will provide an inherent benefit to the Borough's water system. Based on our discussions with the Borough's MUA, replacement of the existing 6" main within Spring Street, from Bloomfield Avenue to Maple Avenue, is a goal of theirs regardless of whether or not the subject project moves forward.
- **Cost: The anticipated construction cost for Option A is approximately \$260,000, a cost estimate has been provided in the Appendix for reference.**

- Option 'B' - Borough's Preferred Approach:

- Scope of Work: Due to the poor condition of the existing water mains within Main Street and the streets that loop the existing site, the Borough MUA would prefer to upgrade the public water distribution system beyond the scope identified in Option 'A'. The Borough's preferred option for water system upgrades would involve replacement of approximately 850 LF of the existing 8" water main, within Main Street, with a new 12" water main. This would connect the proposed project directly to the existing 12" main that runs from Capner Street to New York Avenue, similar to Option 'A'. Option 'B' would also involve replacement of approximately 1,450 LF of existing 3" and 6" mains, within Bloomfield Avenue, Spring Street and Chorister Place, with new 8" water main. The replacement of the 3" and 6" mains would provide a new looped water distribution system around the project and provide connection points for the proposed buildings and fire hydrants along Spring Street as illustrated in the approved Utility Plan (Sheet C-06 in the appendix). Please note that this scope of work would also require replacement of all existing service connections to all existing buildings/structures along the 2,300 lf of new water main. A sketch outlining the anticipated improvements associated with Option 'B' has been provided in the appendix for reference.
- Benefits to the Borough: The replacement of approximately 2,300 LF of existing water main that is dated and deficient would provide a substantial benefit to the Borough's water system by increasing the flow, pressure and reliability of the water distribution system in the downtown area.
- **Cost: The anticipated construction cost for Option B is approximately \$905,135, a cost estimate has been provided in the Appendix for reference.**

## **Sanitary Sewer**

### **Existing Sewer Capacity:**

- **Form 'A' allocation Request:** The anticipated sewer demand estimated for the project at the time that Form 'A' was completed was 112,700 gallons per day. Please note that since the initial estimates for water and sewer demands were conducted, changes in proposed uses and a reduction in the overall scope of the project has resulted in a significantly reduced sewer and water demand. **Our office prepared an updated estimate for proposed sewer demand, the revised anticipated demand is 68,060 gallons per day. This revised estimate is based upon the uses and yields presented on the Site Plan documents that have been approved by the Borough's Planning Board.**
- **RTMUA Sewer Treatment capacity:** Because sewer effluent from the Borough is ultimately treated by the RTMUA, our office requested and has received written confirmation from the RTMUA that their facility has capacity to treat the estimated sewer demand submitted as part of Form 'A'.
- **Allocation of Sewer Per the Redevelopment Agreement:** As described in section 6.2 (g) of the redevelopment agreement, the Borough represents that it has sufficient sewer capacity to support 'Phase One' and 'Phase Two' of the project.
- **Impact of project to Borough's Sewer Capacity:** Based on the information presented above, the Borough of Flemington has adequate sewer treatment capacity and the proposed project would have no adverse impact on the Borough's capacity to have their sanitary sewer effluent treated.

### **Existing Sanitary Sewer Conveyance:**

- The existing buildings located in project area utilize the existing 10" sanitary sewer main in Main Street and the existing 6" sanitary sewer main in Spring Street. These mains are sufficient in size and capacity to handle the additional flow from this project and is shown on site plan that is approved by the Flemington Planning Board. The cost for our sanitary sewer connections would be approximately \$30,000.
- Based on our due diligence and discussions with the MUA to date, the existing sanitary sewer conveyance system within the Borough performs generally well under dry weather conditions. The subject site could potentially be served by an existing 10" sewer main within Main Street and an existing 6" sewer main within Spring Street which would typically be more than adequate to convey the anticipated sewer flow from the project. However, based on our discussions with the MUA, the Borough's existing sewer conveyance system has a manhole located downstream from our site that overflows in heavy wet weather conditions. During wet weather conditions, surface water and infiltration from groundwater flows into the sanitary sewer pipes due to the poor condition of the pipes. This inflow and infiltration is commonly referred to as 'I&I'. Negative impacts to the Borough that result from I&I include the following;
  - Additional water entering and being conveyed through the sewer system is ultimately treated by the RTMUA. This increases the burden on the RTMUA

treatment capacity and results in a higher sewer bill to the Borough of Flemington because the fee for treatment is charged based on flow.

- I&I is notorious for overburdening the sewer systems and causing back-ups. There are also certain sanitary sewer structures within the Borough that are known to overflow during extreme wet weather. Over flow of a sanitary structure can lead to the release of raw sewage which is detrimental to the environment and health of Borough residents.
- Due to the burden imposed by I&I during wet weather, new/future development may be restricted.

#### **Description of Proposed Sewer Improvements:**

- **Scope of Work:** The proposed improvements will help to mitigate the existing I&I issues in two ways; first, new sewer line will be installed to redirect sewer flow from areas known to be problematic under wet weather conditions. More specifically, approximately 500 LF of new sewer line will be installed along New York Avenue to redirect sewer effluent from the subject project and several adjacent blocks. This will redirect sewer flow more directly to a nearby sewer trunk line and away from sewer mains within East Main Street that are known to be problematic. The second beneficial improvement being proposed is the lining of existing sewer mains. Under proposed conditions, several hundred feet of existing sewer main will be lined to eliminate I&I within those specific pipe runs. A sketch outlining the anticipated improvements has been provided in the appendix for reference.
- **Benefits to the Borough:** The proposed improvements would result in a net benefit to the Borough's sewer conveyance system and help to mitigate all of the negative impacts noted above. The reduction in I&I would reduce the burden on the existing sewer system, mitigate back-ups/overflows and reduce the sanitary sewer flow that the Borough pays the RTMUA to treat (less cost to the Borough).
- **Cost:** The anticipated construction cost for this option is approximately \$388,213, a cost estimate has been provided in the Appendix for reference.

#### **Summary of Costs & Contributions:**

A summary of the anticipated sewer and water connection fees is provided in the appendix for reference. Please note that during the early stages of this project, between 2016 and 2017, the fee for sewer connection more than doubled from \$1,800 per EDU to \$4,705 per EDU (26% increase). As a result, the anticipated sewer connection fee is in excess of \$1,000,000. Between the sewer connection fee, water connection fees and the contribution towards construction of 'Well 11' the developer could contribute more than \$3,000,000 to the Borough of Flemington's sewer and water infrastructure. Considering the financial contributions for infrastructure along with the sewer and water improvements outlined above, progression of the subject project would provide a substantial net-benefit to the Borough's sewer and water infrastructure relative to existing conditions.

<b>Summary of Costs:</b>	<b>Option A (Min. Required for Project)</b>	<b>Option B (Requested by Borough)</b>	<b>Net Value Added by Project for Existing Infrastructure</b>
Offsite Sewer Improvements	\$30,000	\$388,213	\$358,213
Offsite Water Distribution Improvements	\$260,000	\$905,135	\$645,135
Well Contribution	\$2,000,000	\$2,000,000	\$2,000,000
Sewer Connection Fee*	\$1,067,408	\$1,067,408	N/A
Water Connection Fee*	\$24,240	\$24,240	N/A
Total Anticipated Cost to Developer	\$3,091,648	\$3,293,348	N/A

***\*Refer to section 4.4(c)(iii) of the redevelopment agreement: The connection fees will be greater than the required infrastructure improvement costs.***

## **APPENDIX**

- **Site & Utility Plans (Sheets C-04 & C-06)**
  - **Form 'A'**
  - **Estimated Proposed Water Demand**
- **Estimated Proposed Sewer Demand & Summary of Connection Fees**
- **Opinion of Probable Cost for Potential Off-Site Water & Sanitary Sewer Improvements**
  - **Water & Sewer Sketches**

**Site & Utility Plans (Sheets C-04 & C-06)**









## **Form 'A'**

**THE BOROUGH OF FLEMINGTON  
SEWER UTILITY AND WATER DEPARTMENT  
38 PARK AVENUE, FLEMINGTON, NEW JERSEY 08822**

**FORM A: PLANNING BOARD APPLICATION FOR REPORT ON FEASIBILITY  
AND ALLOCATION OF PUBLIC SEWER AND WATER**

This form must be submitted with the Planning Board application.

Questions related to the completion of the Sanitary Sewer portion of the application should be directed to the Flemington Sewer Collections Supervisor at (908) 782-8578

Questions related to the completion of the Potable Water portion of the application should be directed to the Flemington Water Superintendent at (908) 806-7214

**1. APPLICANT**

Name: Flemington Stagecoach, LLC Telephone: (908)872-6969

Address: 5 Bartles Corner Road, Flemington, NJ 08822

**1a. OWNER**

Name or LLC: Stage Coach, LLC Telephone: (908)872-6969

Address: 5 Bartles Corner Road, Flemington, NJ 08822

Site emergency contact name and phone number: \_\_\_\_\_

**1b. DEVELOPER / CONTRACTOR:**

Company Name: Jack Cust Jr. Company Phone Number: (908)872-6969

Company Address: 129 River Road, Flemington, NJ 08822

**Applicant's Agent**

~~Site superintendent contact name:~~ Bohler Engineering, Keith Cahill

~~Site Superintendent~~ Emergency contact number: (908)668-8300

**2. EXISTING USAGE AND PROJECT TO BE SERVICED:**

Name of Site: Stage Coach

Location: Main Street, Bloomfield Avenue & Spring Street

Portion to be serviced: Entire Site

No. Lots: 12 Block (s): 22 & 24 Lot (s): 4-7, 12-14 & 1-3, 5, 24

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**THE BOROUGH OF FLEMINGTON  
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Please see attached  
sheet for estimated  
existing and proposed  
sewer/water demand

Total number of existing sewer units for Block and Lot: Single Family: \_\_\_\_\_ Townhouses: \_\_\_\_\_

Apartments: \_\_\_\_\_ Commercial: \_\_\_\_\_ Professional: \_\_\_\_\_ Restaurant: \_\_\_\_\_

Existing Building Square Footage: \_\_\_\_\_ Total Existing Restaurant Seating: \_\_\_\_\_

Number of existing full time employees: \_\_\_\_\_ Number of existing part time employees: \_\_\_\_\_

Number of total proposed full time employees: \_\_\_\_\_ Number of total proposed part time employees: \_\_\_\_\_

Existing # of total club / studio members: \_\_\_\_\_ Proposed # of total club / studio members: \_\_\_\_\_

Total existing sewer laterals by diameter and pipe material that service the block and lot: \_\_\_\_\_

2a. Size and number of existing water meters: Single Family: \_\_\_\_\_ Townhouses: \_\_\_\_\_

Apartments: \_\_\_\_\_ Commercial: \_\_\_\_\_ Building Square Footage: \_\_\_\_\_

Type of Use: \_\_\_\_\_ Other: \_\_\_\_\_

Size and number of existing water services: \_\_\_\_\_

Size and number of proposed water meters: \_\_\_\_\_

Apartments: \_\_\_\_\_ Commercial: \_\_\_\_\_ Building Square Footage: \_\_\_\_\_

Type of Use: \_\_\_\_\_ Other: \_\_\_\_\_

Size and number of proposed water connections: Single Family: \_\_\_\_\_ Townhouses: \_\_\_\_\_

2b. DEMOLITION

Are any structures being demolished as part of the project: Yes or No circle one

If yes has a demolition permit been completed: Yes or No circle one

2c. Are there any existing utility easements within the block and lot: Yes or No circle one

If yes please attach a copy of each

3. PROFESSIONAL ENGINEER DESIGNING WATER / SEWER SYSTEM IF APPLICABLE:

Name: Bohler Engineering

Address: 35 Technology Drive, Warren, NJ 07059

Telephone: (908)668-8300 Email: kcahill@bohlereng.com



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## 4. DESCRIPTION OF PROPOSED SYSTEMS:

Water: Proposed water service laterals for domestic and fire service of the proposed facility.

Sewer: Proposed sewer laterals to service the proposed facility. Our office anticipates utilizing a gravity sewer system for this project.

## 5. SUPPORTING DATA REQUIRED:

- A. Water estimated volumes of flow based on N.J.A.C. 7:10-12.6 Average Daily Flow Demand: 86,416 GPD
- B. Linear Feet of Water Main: TBD
- C. Sewer estimated volumes based on N.J.A.C. 7:14A- 23.3 Projected Flow Criteria calculation: 112,700 GPD
- D. Linear Feet of Sewer Main: TBD

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE, CORRECT, AND COMPLETE TO THE BEST OF MY INFORMATION AND BELIEF. I AM AWARE THAT I AM SUBJECT TO PENALTIES OF LAW IF ANY OF THE INFORMATION IN THIS APPLICATION IS WILLFULLY FALSE.

Signature

Date

DO NOT WRITE BELOW THIS LINE: FLEMINGTON USE ONLY

Date and Time application received: \_\_\_\_\_

Flemington Water Superintendent

Date

Flemington Sewer Collections Supervisor

Date

- ☐ NO FURTHER ACTION REQUIRED
- ☐ FURTHER REVIEW REQUIRED CONTACT \_\_\_\_\_ FOR ADDITIONAL INFORMATION
- ☐ INCOMPLETE REASON: \_\_\_\_\_



# BOHLER ENGINEERING

## Estimated Proposed Water Demand FOR

Proposed Stage Coach Development  
Block 22, Lots 4-7 & 12-14; Block 24, Lots 1-3, 5 & 24  
Main Street, Bloomfield Avenue and Spring Street  
Borough of Flemington, Hunterdon County, New Jersey  
Date: 06/01/2016  
BENJ #: 160459

Prepared by:  
BOHLER ENGINEERING, P.C.  
35 Technology Drive, Warren, NJ 07059

### Estimated existing water demand:

#### Existing Buildings:

Anticipated Flows According to NJDEP N.J.A.C. 7:10-12.6

\* Number of Residents Per Dwelling According to RSIS (N.J.A.C. 5:21)

Lot Use	Quantity	Units		Flow/Unit (GPD)	Anticipated Flow
<b>Block 22</b>					
Lot 4 Union Hotel	250	Seats	X	10 GPD/Seat =	2,500 GPD
Lot 5 Retail	4500	SF	X	0.125 GPD/SF =	563 GPD
2- 1 Bdr. Apartments	3	Residents*	X	75 GPD/Resident*=	236 GPD
Lot 6 Office	7000	SF	X	0.125 GPD/SF =	875 GPD
1- 1 Bdr. Apartment	2	Residents*	X	75 GPD/Resident*=	118 GPD
Lot 7 Office	24000	SF	X	0.125 GPD/SF =	3,000 GPD
Lot 12 Undeveloped				N/A	0 GPD
Lot 13 Office	1000	SF	X	0.125 GPD/SF =	125 GPD
2- 1 Bdr. Apartments	3	Residents*	X	75 GPD/Resident*=	236 GPD
Lot 14 Office	3900	SF	X	0.125 GPD/SF =	488 GPD
2- 1 Bdr. Apartments	3	Residents*	X	75 GPD/Resident*=	236 GPD
<b>Block 24</b>					
Lots 1-3 Retail	55000	SF	X	0.125 GPD/SF =	6,875 GPD
Lot 5 Undeveloped				N/A	0 GPD
Lot 24 Residential (3 BR Unit)	3	Residents*	X	100 GPD/Resident*=	283 GPD

Total Average Existing water Demand =

15,532 gallons per day  
0.016 MGD

### Estimated proposed water demand:

Note: Anticipated Flows According to NJDEP N.J.A.C. 7:10-12.6

\* Number of Residents Per Dwelling According to RSIS (N.J.A.C. 5:21)

#### Proposed Buildings 1 & 2:

Use	Size	Units		Flow/Unit (GPD)	Anticipated Flow
Retail Area	20000	SF	X	0.125 GPD/SF =	2,500 GPD
Retail Area	10000	SF	X	0.125 GPD/SF =	1,250 GPD
Restaurants	750	Seats	X	10 GPD/Seat =	7,500 GPD
Fitness/Health Club	750	Members	X	25 GPD/Member =	18,750 GPD
1 Bedroom Apartment	162	Residents*	X	75 GPD/Resident*=	12,161 GPD
2 Bedroom Apartment	302	Residents*	X	75 GPD/Resident*=	22,631 GPD
Hotel	210	Guests	X	75 GPD/Resident*=	15,750 GPD

#### Proposed Medical/Educational Office Building:

Education	400	Students	X	10 GPD/Student =	4,000 GPD
Office/Retail	15,000	SF	X	0.125 GPD/SF =	1,875 GPD

Total Average Proposed water Demand =

86,416 gallons per day  
0.086 MGD

Net Increase in water Demand =

70,884 gallons per day



# BOHLER ENGINEERING

## Estimated Proposed Sewer Demand FOR

Proposed Stage Coach Development  
Block 22, Lots 4-7 & 12-14; Block 24, Lots 1-3, 5 & 24  
Main Street, Bloomfield Avenue and Spring Street  
Borough of Flemington, Hunterdon County, New Jersey  
Date: 06/01/2016  
BENJ #: 160459

Prepared by:  
BOHLER ENGINEERING, P.C.  
35 Technology Drive, Warren, NJ 07059

### Estimated existing sewer demand:

#### Existing Buildings:

Anticipated Flows According to NJDEP N.J.A.C. 7:14A-23.3:

Lot	Use	Quantity Units		Flow (GPD)	Anticipated Flow
<b>Block 22</b>					
Lot 4	Union Hote)	250 Seats	X	35 GPD/Seat =	8,750 GPD
Lot 5	Retail	4,500 SF	X	0.1 GPD/SF =	450 GPD
	2- 1 Bdr. Apartments	2 Dwelling	X	150 GPD/Dwelling	300 GPD
Lot 6	Office	7,000 SF	X	0.1 GPD/SF =	700 GPD
	1- 1 Bdr. Apartment	1 Dwelling	X	150 GPD/Dwelling	150 GPD
Lot 7	Office	24,000 SF	X	0.1 GPD/SF =	2,400 GPD
Lot 12	Undeveloped			N/A	0 GPD
Lot 13	Office	1,000 SF	X	0.1 GPD/SF =	100 GPD
	2- 1 Bdr. Apartments	2 Dwelling	X	150 GPD/Dwelling	300 GPD
Lot 14	Office	3,900 SF	X	0.1 GPD/SF =	390 GPD
	2- 1 Bdr. Apartments	2 Dwelling	X	150 GPD/Dwelling	300 GPD
<b>Block 24</b>					
Lots 1-3	Retail	55,000 SF	X	0.1 GPD/SF =	5,500 GPD
Lot 5	Undeveloped			N/A	0 GPD
Lot 24	Residential (3 BR Unit)	1 Dwelling	X	300 GPD/Dwelling	300 GPD

Total Average Existing sewer Demand =

19,640 gallons per day  
0.020 MGD

### Estimated proposed sewer demand:

Note: Anticipated Flows According to NJDEP N.J.A.C. 7:14A-23.3 & N.J.A.C. 5:21-5.2

#### Proposed Buildings 1 & 2:

Use	Size Units		Flow (GPD)	Anticipated Flow
Retail Area	20,000 SF	X	0.1 GPD/SF =	2,000 GPD
Retail Area	10,000 SF	X	0.1 GPD/SF =	1,000 GPD
Restaurants	750 Seats	X	35 GPD/Seat =	26,250 GPD
Fitness/Health Club	750 Members	X	35 GPD/Member =	26,250 GPD
1 Bedroom Apartment	121 Units	X	100 GPD/Unit	12,100 GPD
2 Bedroom Apartment	141 Units	X	225 GPD/Unit	31,725 GPD
Hotel	105 Rooms	X	75 GPD/Unit	7,875 GPD

#### Proposed Medical/Educational Office Building:

Education	400 Students	X	10 GPD/Student =	4,000 GPD
Office/Retail	15,000 SF	X	0.1 GPD/SF =	1,500 GPD

Total Average Proposed sewer Demand =

112,700 gallons per day  
0.113 MGD

Net Increase in sewer Demand =

93,060 gallons per day

## **Estimated Proposed Water Demand**





# BOHLER ENGINEERING

## Estimated Proposed Water Demand FOR

Proposed Courthouse Square Development  
Block 22, Lots 4-7 & 12-14; Block 24, Lots 1-3, 5 & 24  
Main Street, Bloomfield Avenue and Spring Street  
Borough of Flemington, Hunterdon County, New Jersey  
Date: 10/16/2019  
BENJ #: 1604591

Prepared by:  
BOHLER ENGINEERING, P.C.  
35 Technology Drive, Warren, NJ 07059

### Estimated proposed water demand:

Note: Anticipated Flows According to NJDEP N.J.A.C. 7:10-12.6  
\* Number of Residents Per Dwelling According to RSIS (N.J.A.C. 5:21)

#### Proposed Buildings 1 & 2:

Use	Notes:	Size Units	Flow/Unit (GPD)	Anticipated Flow
Retail Area	(General Retail)	19,600 SF	0.125 GPD/SF =	2,450 GPD
Restaurants	(2 - 5,000 SF Restaurants) Per RSIS & NJAC - 77 units x 1.34 residents/unit=162	350 Seats	10 GPD/Seat =	3,500 GPD
1 Bedroom Apartment	Per RSIS & NJAC - 109 units x 2.14 residents/unit=233	111 Residents*	75 GPD/Resident*=	8,325 GPD
2 Bedroom Apartment	PER RSIS & NJAC - 3 units x 3.56 residents/unit=11 (Not Spified Per RSIS for highrise ; used Garden Apt.) assume up to 2 people per room	108 Residents*	75 GPD/Resident*=	8,100 GPD
3 Bedroom Apartment Hotel	assuming up to 400 students for 30,000 SF building	3 Residents* 100 Guests	75 GPD/Resident*= 75 GPD/Resident*= 10 GPD/Student = 0.125 GPD/SF =	225 GPD 7,500 GPD 3,000 GPD 1,875 GPD

#### Proposed Medical/Educational Office Building:

Education  
Office/Retail:

Total Average Proposed water Demand =

34,975 GPD  
0.035 MGD

## **Estimated Proposed Sewer Demand & Summary of Connection Fees**



# BOHLER ENGINEERING

## Estimated Proposed Sewer & Water Connection Fees

FOR

Proposed Courthouse Square Development  
Block 22, Lots 4-7 & 12-14; Block 24, Lots 1-3, 6 & 24  
Main Street, Bloomfield Avenue and Spring Street  
Borough of Flemington, Hunterdon County, New Jersey  
Date: 06/13/2019  
BENJ #: 1604591

Prepared by:  
BOHLER ENGINEERING, P.C.  
35 Technology Drive, Warren, NJ 07059

### Sanitary Sewer

Per Section 11-4 of Borough of Flemington, Connection fees are \$4,705.00 per number of equivalent units; one equivalent unit shall be the quotient of the NJDEP flow criteria divided by 300.

#### Proposed Buildings 1 & 2:

Use	Flow Criteria (GPD Per Unit)	Size Units	Flow (GPD)	Number of Equivalent Units	Cost Per Category
Retail Area	0.1	19,600 SF	1,960	7 Units	\$30,739
Restaurant with bar	35	350 SF & 350 Seats (Assumes 10,000)	12,250	41 Units	\$192,121
1-Bedroom Apartment	150	111 Apartments	16,650	56 Units	\$261,128
2-Bedroom Apartment	225	108 Apartments	24,300	81 Units	\$381,105
3-Bedroom Apartment	300	3 Apartments	900	3 Units	\$14,115
Hotel Rooms	75	100 Rooms	7,500	25 Units	\$117,825
Education	10	300 Students	3,000	10 Units	\$47,050
Office/Retail	0.1	15,000 SF	1,500	5 Units	\$23,525
<b>Total Estimated =</b>			<b>63,060 GPD</b>	<b>227 Units</b>	<b>\$1,067,408</b>

### Water

Anticipated connection fee assuming one fire meter and one domestic meter per building.  
Per Section 11-1 of Borough of Flemington, Connection fees are \$4,040.00 per meter

Meter Size	Fee for Connection
3/4 and 1"	\$4,040
1 1/2"	\$4,040
2"	\$4,040
Over 2"	\$4,040

(Ord. No. 2012-11; Ord. No. 2015-6, Ord. No. 2015-18)

Proposed Buildings 1 & 2:	Number of Meters	Cost per Meter
Proposed Medical/Educational Office Building:	4	\$4,040.00
	2	\$4,040.00
<b>Total Estimated =</b>		<b>\$8,080</b>

Cost per Building  
\$16,160  
\$8,080

\$24,240

Total Estimated Connection Fees for Sewer and Water =

**\$1,091,648**

# 11-4 SEWER FEES AND RULES AND REGULATIONS. (2017 Sewer Rates and Fee Schedule)

Note: the sewer connection fee, per equivalent unit, increased from \$1,800 to \$4,705 between 2016 and 2017.

**Editor's Note:** This section 11-4 as adopted by Ordinance No. 2-1989 became effective January 1, 1989.

Prior ordinances codified in this section 11-4 include Ordinance Nos. 2-1973, 4-1973, 5-1973, 6-1973, 2-1974, 8-1979, 29-1979, 2-1982, 2-1986, 4-1988.

## 11-4.1 Definitions.

Definitions of words and phrases as used in this section shall be as follows:

- a. A "sewer rental unit," sometimes hereinafter referred to as "unit," shall be considered to be the equivalent of a flow of 300 gallons of effluent per day.
- b. The word "employee," used herein, shall include proprietors and part-time employees.
- c. "B.O.D.," denoting biochemical oxygen demand, shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under laboratory procedure in five days at 20 degrees C, expressed in parts per million, ppm, by weight.
- d. "R.T.M.U.A." shall mean Raritan Township Municipal Utilities Authority.
- e. The words "sanitary sewer utility system" shall mean the Borough of Flemington Sewer Utility System.
- f. The word "borough" shall mean Borough of Flemington.
- g. The word "meter" shall mean a device which measures and indicates a flow rate of sewerage or water.

## 11-4.2 Prohibitions.

### a. Prohibitions.

1. Within the service area, it shall be unlawful for any person to place, deposit, or permit to be deposited, in an unsanitary manner upon public or private property, any human or animal excrement, garbage, or other objectionable waste.
  2. Within the service area, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, package plant, or other facility intended for, or used for, the disposal of sewage or wastewater.
- b. *Connection and use of public sewers required.*
1. The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the service area and abutting on any street, alley or right-of-way in which there is now located, or may, in the future be located, a public sanitary sewer of the Borough of Flemington, are hereby required, at the owner's expense, to install suitable toilet facilities therein and to connect such facilities directly with the public sewer in accordance with the provisions of this section within 120 days after the date of official notice to do so. No connection shall be made to the system trunk unless authorized in writing by the administrative authority and a permit has been issued therefor.
  - c. *Abandonment of private facilities.* At such time as the public sewer becomes available to a property and a connection is made to the sewer, any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled within 180 days with a suitable material approved by the Hunterdon County Board of Health.

## 11-4.3 Permit and Fee Required for Sewer Connection.

No person shall make connection to the sanitary sewer utility system without first obtaining a permit to do so from the utility clerk. A connection fee of \$4,705.00 shall be charged and collected for each equivalent unit as set forth in schedule of units in subsection 11-4.4 or pursuant to the NJDEP Regulation N.J.A.C. 7:14A-23. Each application will be reviewed and considered by the Sewer Superintendent in conjunction with the Borough Engineer to determine which schedule of units is most applicable. Said payment being due and payable in advance to the Borough of Flemington Sewer Utility System before the time the connection or tie-in is made. The amount of the connection fee shall be recomputed by the Borough at the beginning of each calendar year in accordance with N.J.S.A. 40:14A-8. Notwithstanding the previous sentences, for purposes of calculating the connection fee, the equivalent units for commercial or professional establishments (including government offices) as described in subsection 11-4.4a, 7, shall be the quotient of one-tenth of the gross square footage divided by 300. For purposes of calculating the connection fee or age restricted housing units the equivalent units shall be the quotient of the anticipated wastewater flow, as calculated in accordance with New Jersey Department of Environmental Protection (NJDEP) flow criteria, divided by 300. The NJDEP flow criteria for such units are as follows: 110 gallons per day (gpd) for a one-bedroom unit, 170 gpd for a two-bedroom unit, and 225 gpd for a three-bedroom unit. The anticipated wastewater flow shall be the product of the number of each type of unit times the appropriate flow criteria.

It shall be the responsibility of the person making application for a sewer connection permit to provide sufficient information for the Borough to determine the number of equivalent units that are proposed for connection. Costs incurred by the Borough, including its professionals, in determining the connection fee shall also be the responsibility of the person making application for a sewer connection through the establishment of an escrow account.

(Ord. 2-1989, S 2; Ord. 3-1989, SS 1, 3; Ord. 18-1995, S 1; Ord. 19-1995, S 1; Ord. 14-1997, S 1; Ord. 2004-23; Ord. 2005-32, S 1; Ord. No. 2015-22; Ord. No. 2016-14)

#### 11-4.4 Sewer Charges.

a. Sewer charges shall be made by the Borough of Flemington Sewer Utility System to the owners of real property upon which buildings stand in the Borough at the sanitary sewer rental or charge of a fixed annual amount of \$435.00 per year for each sewer unit, with an increase of \$25.00 annually, plus a variable cost of \$0.00223 per gallon of water usage, billable and payable in quarterly installments as follows:

1. Single family dwelling..... 1 unit
2. Multiple family dwellings (2 or more)  
perdwelling..... 1 unit
3. Boarder's room in a single or multi-family  
residential dwelling, per room..... 1/2 unit
4. Boarding house, per person..... 1/2 unit
5. Hotel or motel, per room..... 1/2 unit
6. Restaurant with bar..... 5 units
7. Commercial or professional establishment  
(including government offices)  
    With 3 or less employees..... 1 unit  
    4 to 8 employees..... 2 units  
    9 to 12 employees..... 3 units  
    13 to 16 employees..... 4 units  
    Each additional 4 employees over 16..... 1 unit
8. Laundromat, per washing machine..... 1 1/4 units
9. Church..... 1 unit
10. Church with kitchen..... 2 units
11. Schools..... 1/12 unit  
    Per student plus 1 unit for each 4 employees
12. Automatic-drive-through car wash..... 10 units
13. Manual self-service car wash, per bay..... 2 units
14. Service station..... 1 1/4 units
15. Tavern..... 5 units
16. Club..... 1 unit
17. Club with bar..... 5 units
18. Restaurant, per 10 seats..... 1 unit
19. Movie theater, per seat..... 1/70 unit
20. Professional office with residential dwelling..... 1 unit
21. Industrial user, per 4 employees (or metered  
    and sampling basis)..... 1 unit
22. Jail..... 40 units
23. Fairgrounds..... 60 units
24. Public restrooms  
    (or metered and sampling basis)..... 7 units

Plus 1 unit for every 10 seats

If the above schedule results in fractional units, the number of units shall be increased to the nearest 1/4 unit.

Users with private wells shall pay the fixed cost for operations and capital costs of the Borough of Flemington Sewer Utility System, plus the calculated amount of 40,000 annual gallons of variable cost charges.

b. All charges for service shall be billed quarterly in accordance with the schedule set up by the Borough of Flemington Sewer Utility System, copies of which are available at the Office of the Sewer Utility System, Borough Hall, 38 Park Avenue, Flemington New Jersey. Such sewer charges are based upon estimated annual operating and capital costs due and owing to R.T.M.U.A. and the operation and capital costs of the Borough of Flemington Sewer Utility System, and may be increased a maximum of two percent per year hereafter.

c. Should any bill or part thereof rendered for sewer usage remain unpaid for a period of ten days, said bill or part thereof shall be considered delinquent and subject to payment of interest at the prevailing rate fixed for interest on delinquent real estate taxes from the due date until such time as the bill is paid in full. Charges for use of sewers shall be



# 11-4 **SEWER FEES AND RULES AND REGULATIONS.** **(2016 Sewer Rates and Fee Schedule)**

**Editor's Note:** This section 11-4 as adopted by Ordinance No. 2-1989 became effective January 1, 1989. Prior ordinances codified in this section 11-4 include Ordinance Nos. 2-1973, 4-1973, 5-1973, 6-1973, 2-1974, 8-1979, 29-1979, 2-1982, 2-1986, 4-1988.

## 11-4.1 *Definitions.*

Definitions of words and phrases as used in this section shall be as follows:

- a. A "sewer rental unit," sometimes hereinafter referred to as "unit," shall be considered to be the equivalent of a flow of 300 gallons of effluent per day.
- b. The word "employee," used herein, shall include proprietors and part-time employees.
- c. "B.O.D.," denoting biochemical oxygen demand, shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under laboratory procedure in five days at 20 degrees C, expressed in parts per million, ppm, by weight.
- d. "R.T.M.U.A." shall mean Raritan Township Municipal Utilities Authority.
- e. The words "sanitary sewer utility system" shall mean the Borough of Flemington Sewer Utility System.
- f. The word "borough" shall mean Borough of Flemington.
- g. The word "meter" shall mean a device which measures and indicates a flow rate of sewerage or water.

## 11-4.2 *Prohibitions.*

### a. *Prohibitions.*

1. Within the service area, it shall be unlawful for any person to place, deposit, or permit to be deposited, in an unsanitary manner upon public or private property, any human or animal excrement, garbage, or other objectionable waste.
2. Within the service area, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, package plant, or other facility intended for, or used for, the disposal of sewage or wastewater.

### b. *Connection and use of public sewers required.*

1. The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the service area and abutting on any street, alley or right-of-way in which there is now located, or may, in the future be located, a public sanitary sewer of the Borough of Flemington, are hereby required, at the owner's expense, to install suitable toilet facilities therein and to connect such facilities directly with the public sewer in accordance with the provisions of this section within 120 days after the date of official notice to do so. No connection shall be made to the system trunk unless authorized in writing by the administrative authority and a permit has been issued therefor.
- c. *Abandonment of private facilities.* At such time as the public sewer becomes available to a property and a connection is made to the sewer, any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled within 180 days with a suitable material approved by the Hunterdon County Board of Health.

## 11-4.3 *Permit and Fee Required for Sewer Connection.*

No person shall make connection to the sanitary sewer utility system without first obtaining a permit to do so from the utility clerk. A connection fee of \$1,800.00 shall be charged and collected for each equivalent unit as set forth in schedule of units in subsection 11-4.4 or pursuant to the NJDEP Regulation N.J.A.C. 7:14A-23. Each application will be reviewed and considered by the Sewer Superintendent in conjunction with the Borough Engineer to determine which schedule of units is most applicable. Said payment being due and payable in advance to the Borough of Flemington Sewer Utility System before the time the connection or tie-in is made. The amount of the connection fee shall be recomputed by the borough at the beginning of each calendar year in accordance with N.J.S.A. 40:14A-8. Notwithstanding the previous sentences, for purposes of calculating the connection fee, the equivalent units for

commercial or professional establishments (including government offices) as described in subsection 11-4.4a, 7, shall be the quotient of one-tenth of the gross square footage divided by 300. For purposes of calculating the **connection fee** or age restricted housing units the equivalent units shall be the quotient of the anticipated wastewater flow, as calculated in accordance with New Jersey Department of Environmental Protection (NJDEP) flow criteria, divided by 300. The NJDEP flow criteria for such units are as follows: 110 gallons per day (gpd) for a one-bedroom unit, 170 gpd for a two-bedroom unit, and 225 gpd for a three-bedroom unit. The anticipated wastewater flow shall be the product of the number of each type of unit times the appropriate flow criteria.

It shall be the responsibility of the person making application for a **sewer connection** permit to provide sufficient information for the borough to determine the number of equivalent units that are proposed for **connection**. Costs incurred by the borough, including its professionals, in determining the **connection fee** shall also be the responsibility of the person making application for a **sewer connection** through the establishment of an escrow account.

(Ord. 2-1989, S 2; Ord. 3-1989, SS 1, 3; Ord. 18-1995, S 1; Ord. 19-1995, S 1; Ord. 14-1997, S 1; Ord. 2004-23; Ord. 2005-32, S 1; Ord. No. 2015-22)

#### 11-4.4 **Sewer Charges.**

a. **Sewer** charges shall be made by the Borough of Flemington **Sewer** Utility System to the owners of real property upon which buildings stand in the Borough at the sanitary **sewer** rental or charge of a fixed annual amount of \$410.00 per year for each **sewer** unit plus a variable cost of \$0.00223 per gallon of water usage, billable and payable in quarterly installments as follows:

1. Single family dwelling..... 1 unit
  2. Multiple family dwellings (2 or more)  
per dwelling..... 1 unit
  3. Boarder's room in a single or multi-family  
residential dwelling, per room..... 1/2 unit
  4. Boarding house, per person..... 1/2 unit
  5. Hotel or motel, per room..... 1/2 unit
  6. Restaurant with bar..... 5 units  
seats
  7. Commercial or professional establishment  
(including government offices)  
With 3 or less employees..... 1 unit  
4 to 8 employees..... 2 units  
9 to 12 employees..... 3 units  
13 to 16 employees..... 4 units  
Each additional 4 employees over 16..... 1 unit
  8. Laundromat, per washing machine..... 1 1/4 units
  9. Church..... 1 unit
  10. Church with kitchen..... 2 units
  11. Schools..... 1/12 unit  
Per student plus 1 unit for each 4 employees
  12. Automatic-drive-through car wash..... 10 units
  13. Manual self-service car wash, per bay..... 2 units
  14. Service station..... 1 1/4 units
  15. Tavern..... 5 units
  16. Club..... 1 unit
  17. Club with bar..... 5 units
  18. Restaurant, per 10 seats..... 1 unit
  19. Movie theater, per seat..... 1/70 unit
- Plus 1 unit for every 10

- 20. Professional office with residential dwelling..... 1 unit
- 21. Industrial user, per 4 employees (or metered and sampling basis)..... 1 unit
- 22. Jail..... 40 units
- 23. Fairgrounds..... 60 units
- 24. Public restrooms (or metered and sampling basis)..... 7 units

If the above schedule results in fractional units, the number of units shall be increased to the nearest  $\frac{1}{4}$  unit.

Users with private wells shall pay the fixed cost for operations and capital costs of the Borough of Flemington **Sewer** Utility System, plus the calculated amount of 40,000 annual gallons of variable cost charges.

b. All charges for service shall be billed quarterly in accordance with the schedule set up by the Borough of Flemington **Sewer** Utility System, copies of which are available at the Office of the **Sewer** Utility System, Borough Hall, 38 Park Avenue, Flemington New Jersey. Such **sewer** charges are based upon estimated annual operating and capital costs due and owing to R.T.M.U.A. and the operation and capital costs of the Borough of Flemington **Sewer** Utility System, and may be increased a maximum of two percent per year hereafter.

c. Should any bill or part thereof rendered for **sewer** usage remain unpaid for a period of ten days, said bill or part thereof shall be considered delinquent and subject to payment of interest at the prevailing rate fixed for interest on delinquent real estate taxes from the due date until such time as the bill is paid in full. Charges for use of sewers shall be a lien upon the premises connected until paid and be collectible, together with interest, costs and penalties in the same manner provided by law for the collection of taxes upon real estate.

d. Where premises or a building are occupied by more than one use set forth in subsection 11-4.4 hereof, or by a combination of such uses, the charge will be determined by applying the aforesaid rates to each use.

e. With respect to charges for properties which shall be connected for the first time with the **sewer** utility system from and after the effective date of this section, the charge for the first quarterly billing period shall be a percentage of the fixed cost charge hereinabove set forth, equal to the percentage of the quarterly period remaining after such **connection**. The following quarterly bill will include the variable charge based on the actual water usage during the initial **connection** quarter.

(Ord. No. 2013-4; Ord. No. 2015-7)

#### 11-4.5 *Right of Inspection.*

The officers, agents and employees of the Borough of Flemington, the Borough of Flemington **Sewer** Utility System and the R.T.M.U.A. shall have unrestricted access at reasonable hours to all premises served by the Borough of Flemington **Sewer** Utility System to inspect the collection system and to see that the requirements regarding the use of the customer's **sewer connection** are being observed. Additionally, any owner of property which discharges industrial waste into the **sewer** utility system shall, at the owner's expense, provide suitable facilities to enable samples of such wastes to be collected for analysis and further permit the authorized representatives above-named to collect such samples from users within the borough. (Ord. 2-1989, S 4.; Ord. 14-1997, S 1)

#### 11-4.6 *Damage to Property.*

Any damage to pipes, manholes, treatment facilities, appurtenances or any other property of the borough, the Borough of Flemington **Sewer** Utility System or R.T.M.U.A. caused by the carelessness or neglect or noncompliance with any applicable rule or regulation herein or otherwise established pursuant to law shall be paid for by the customer, upon demand, upon presentation of a bill therefor. (Ord. 2-1989, S 5; Ord. 14-1997, S 1)

#### 11-4.7 *Prohibited Discharge.*

Under no circumstances will any of the following be discharged, directly or indirectly, into the sanitary **sewer** utility system:



**OPINION OF PROBABLE COST FOR  
POTENTIAL OFF-SITE  
WATER & SANITARY SEWER IMPROVEMENTS**

**OPINION OF PROBABLE COST FOR  
POTENTIAL OFF-SITE  
WATER & SANITARY SEWER IMPROVEMENTS**

*Prepared for:*

**Flemington Center Urban Renewal, LLC**

Block 22, Lots 407 & 12-14

Block 24, Lots 1-3 & 5

Main St., Bloomfield Ave.,

Spring St., & Chorister Pl.

Borough of Flemington

Hunterdon County, New Jersey

*Prepared by*



**BOHLER**  
ENGINEERING

35 Technology Drive

Warren, NJ 07059

908-668-8300

Date: September 2019

BENJ # J1604591

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## **Summary of Water and Sanitary Cost Estimate**

### **Water Cost Estimate**

#### **Option A:**

Option A proposes approximately 300 linear-feet of new 10" water main through Block 18, Lots 39 and 17, currently owned by Flemington Borough and Flemington Furs. In addition, Option A proposes the replacement of approximately 1,800 linear-feet of the existing 3", 6" and 8" water mains within Bloomfield Avenue, Spring Street and Chorister Place with a new 8" water main to loop water system around site.

Total Cost = **\$259,792.50** (excluding cost of easements and soft costs)  
Please refer to attached Appendix for more details.

#### **Option B:**

Option B proposes the replacement of approximately 850 linear-feet of the existing 8" water main along Main Street with a new 12" water main. In addition, Option B also proposes the replacement of approximately 1,450 linear-feet of the existing 3" and 6" water mains within Bloomfield Avenue, Spring Street and Chorister Place with a new 8" water main to loop the water system around the site.

Total Cost = **\$905,135** (excluding soft costs)  
Please refer to attached Appendix for more details.

### **Sanitary Cost Estimate**

#### **Option A:**

The scope of this estimate includes two lateral connections to the existing sewer; the first connection would be from the proposed buildings to the existing 10" main along Main Street, the second would be from the proposed office/education building to the existing 6" main within Spring Street. The scope would also include trenching and restoration of the sidewalks and streets as required.

Total Anticipated Cost = **\$30,000** (excluding soft costs)

#### **Option B:**

The scope of this estimate includes the replacement of approximately 505 linear-feet of the existing 10" sanitary main along New York Avenue with a new 10" sanitary main and the lining of approximately 1,145 LF of existing 10" mains (not previously lined) along Broad Street, New York Avenue and NJSH Rt. 31.

**Total Cost = \$238,164 (excluding soft costs)**  
Please refer to attached Appendix for more details.

In addition, if required by the MUA, additional cost may be needed for the relining of the existing sanitary pipes within Chorister place, Spring Street, Bloomfield Avenue, and a portion of New York Avenue.

**Potential Total Additional Costs (for relining of additional sewer mains) = \$150,049 (excluding soft costs)**

**Total Potential Cost = \$388,213**

### Water Cost Estimate Calculations

#### Public Water Infrastructure Cost Estimate:

**Option A** – per Water Service Sketch by Bohler Engineering NJ, LLC. Dated 10/16/2019

1. Installation of approximately 300 linear-feet of new 10" water main; estimated unit cost = \$260/LF

$$300 \text{ LF} \times \$250 = \$78,000 \text{ (excluding cost of easements or contingency)}$$

2. Replacement of approximately 475 linear-feet of existing 6" water mains with new 8" main; estimated unit cost = \$333/LF

$$475 \text{ LF} \times \$333/\text{LF of 8" main} = \$158,175 \text{ (excluding contingency)}$$

$$\text{Total Cost} = (\$78,000 + \$158,175 \times 1.10 \text{ (10\% for contingency)}) = \$259,792.50$$

(excluding soft costs & cost of easements)

**Option B** – per Water Service Sketch by Bohler Engineering NJ, LLC. Dated 06/16/2016.

1. Replacement of approximately 850 linear-feet of existing 8" main with new 12" water main; estimated unit cost = \$400/LF

$$850 \text{ LF} \times \$400/\text{LF} = \$340,000 \text{ (excluding contingency)}$$

2. Replacement of approximately 1,450 linear-feet of existing 3" and 6" mains with new 8" water main; estimated unit cost = \$333/LF

$$1,450 \text{ LF} \times \$333/\text{LF of 8" main} = \$482,850 \text{ (excluding contingency)}$$

$$\text{Total Cost} = (\$340,000 + \$482,850) \times 1.10 \text{ (10\% for contingency)} = \$905,135$$

**Items included in this unit price:**

1. Mobilization.
- 2.1. Installation, disinfection, operation and maintenance of the temporary by-pass system to continue customer service during the replacement construction.
- 2.2. Disconnecting existing service connections and connecting them to the temporary by-pass system and reconnecting them to the new main once constructed.
3. Saw-cutting pavement for trench excavation.
4. Excavation and disposal of excavated trench pavement section.
5. Excavation and disposal of trench excavated in-situ soil.
6. Installation of 6"-thick  $\frac{3}{4}$ " clean crushed stone pipe bedding to pipe spring line.
7. Installation and replacement of 8" cement lined class 54 DIP, fittings, valves and hydrants.
8. Installation/hand-placement of 6"-thick  $\frac{3}{4}$ " clean crushed stone to 6" above top of pipe.
9. Installation and compaction of NJDOT certified DGA up to underside of pavement section.
10. Replacement of temporary pavement repair in kind.
11. Pressure testing and disinfection of main.
12. Installation of new service laterals and valve boxes.
13. Disconnection of existing services at the main corp. stops.
14. Re-connection of existing services behind curbs to the new service laterals/valve boxes.
15. Activation of new main/services.
16. Disassembling and removal of temporary by-pass system.
17. Conducting final trench pavement restoration three months after construction completion.

**Items not included in this unit price:**

**Soft Costs**

1. Local Water Authority
  - a. Application and Plan Review Fees.
  - b. Connection Fees.
  - c. Construction Inspection Fees.
  - d. Bonding
    - i. Performance Bond – 20% of Estimated Cost.
    - ii. Maintenance Bond – 100% of As-Built Cost for 2 years.
2. NJDEP – Water Main Extension Permits
  - a. Application and Review Fees.
3. Engineering
  - a. Construction Plan (9%-13%)
    - i. Site Survey for Design (3% of estimated construction cost)
    - ii. Plan calculations (Hardy Cross Analysis), Design, Design Report and Specifications (5%-8% of estimated construction cost)
    - iii. Construction cost estimate for bidding and bonding (1%-2% of estimated construction cost)
  - b. Obtaining Local and State water main extension permits, and meetings as required. (Cost = T&M)
  - c. Construction Services
    - i. Preparing Bid documents, solicit bidding and bid analysis (2%-3% of estimated construction cost)
    - ii. Construction Administration (4%-7% of estimated construction cost)
    - iii. Survey stake-out (CPA – 10% of estimated construction cost)
    - iv. Preparing Record/As-Built Survey (CPA – 10% of estimated construction cost)



## Sanitary Cost Estimate Calculations

### Cost Estimate for Anticipated Sanitary Sewer

Description of work within each right-of-way impacted by proposed sanitary sewer improvement:

1. Chorister Place – Use existing 315 LF of lined 8" main. (Main Street to Spring Street)
2. Spring Street – Use existing 485 LF of lined 8" main. (Chorister Place to Bloomfield Avenue)
3. Bloomfield Avenue – Use existing 285 LF of lined 8" main. (Main Street to Spring Street)
4. Bloomfield Avenue – Use existing 300 LF of lined 8" main. (Spring Street to Broad Street)
5. Broad Street – Propose Lining of 305 LF of existing 10" main. (Bloomfield Avenue to New York Avenue)
6. New York Avenue – Propose Replacement of 505 LF of 10" main. (Broad Street to Elwood Avenue)
7. New York Avenue – Use existing 450 LF of lined 10" main. (Elwood Avenue to NJSH Rt. 31)
8. New York Avenue – Propose lining of 515 LF of existing 10" main. (Elwood Avenue to NJSH Rt. 31)
9. NJSH Rt. 31 – Propose Lining 325 LF of existing 10" main. (New York Avenue to RTMUA 18" Trunk, just north of Emery Avenue)

### Proposed Construction Costs:

#### Proposed Pipe Lining Construction Costs

- Broad Street (305 LF), New York Avenue (515 LF) and NJSH Rt. 31 (325 LF)
    - a. Lining 1,145 LF of 10" main @ \$65/LF = **\$74,425**
    - b. Approximately twelve (26) short liner lateral connections @ \$106 each. = **\$2,756**
    - c. Clean and Video two (3) streets @ \$2,400/day-street = **\$7,200**
    - d. PD Traffic two (2) officers/cars x 3 days @ \$750/day = **\$4,500**
- Subtotal = \$88,881**

**Proposed Sanitary Sewer Main Replacement Construction Costs:**

**New York Avenue**

- a. Temporary By-pass Pump with Force Main and Trench box - one (1) LS @ \$10,000 each = **\$10,000**
- b. Shoring/Trench box – two (2) each @ \$500/day x 4 days = **\$4,000**
- c. Sawcut asphalt 6" deep x 6' wide @ \$3/LF x 1,000 LF = **\$3,000**
- d. Asphalt removal – 1,000 LF x 6' wide x \$1/SF = **\$6,000**
- e. Asphalt disposal – 5 loads @ \$250/load = **\$1,250**
- f. Replace 505 LF of 10" main with new SDR-35 PVC pipe @ \$83/LF = **\$41,915**
- g. Manhole demo (8' deep) – one (1) @ \$3,000 each = **\$3,000**
- h. Reconnect five (5) existing laterals to new 10" main @ \$1,500 each = **\$7,500**
- i. Restore temporary pavement, full depth (6") [505 LF x 8' wide x 1/9 = 450 SY x 1T/(17 SY-1" thick) x 6" = 159 T @ \$100/T] = **\$15,900**
- j. Disposal of excavated material [505 LF x 5' wide avg. x 8' deep x 1/27 = 748 CY x 1 load/20CY @ \$180/load] = **\$6,733**
- k. Furnish DGA backfill material [505 LF x 5' wide x (8' – 1' around pipe – 1' of pavement section) x 1CY/27CF @ \$30/T] = **\$16,833**
- l. Clean, video and test new 10" SDR-35 PVC pipe – one (1) LS @ \$4,000 = **\$4,000**
- m. PD Traffic Control- one (1) week x 5days/week x 2 officers/cars @ \$750/officer-car/day = **\$7,500**

**Subtotal = \$127,631**

**Total = \$216,512 x 1.10 (10% for contingency) = \$238,164**

**Potential Added Cost for Additional Pipe Lining:**

In case Lining of existing main is required in Chorister Place between MH 209 and MH 208 (315 LF), in Spring Street between MH 208 and MH 206 (485 LF), in Bloomfield Avenue between MH 206 and MH 207 (285 LF), in Bloomfield Avenue between MH 206 and MH 205 (300 LF), and in New York Avenue between MH 192 and MH 191 (450 LF):

1. Lining - 1,385 LF of 8" main @ \$60/LF = **\$83,100**
2. Lining - 450 LF of 10" main @ \$65/LF = **\$29,250**
3. Approximately (43) short linear lateral connections @ \$106 each = **\$4,558**
4. Clean and video (5) streets @ \$2,400/day-street = **\$12,000**
5. PD traffic (2) officers/cars x 5 days @ \$750/day = **\$7,500**

**Total Potential Added Cost = \$136,408 x 1.10 (10% for contingency) = \$150,049**

**Items not included in this unit price:**

**Proposed Soft Costs**

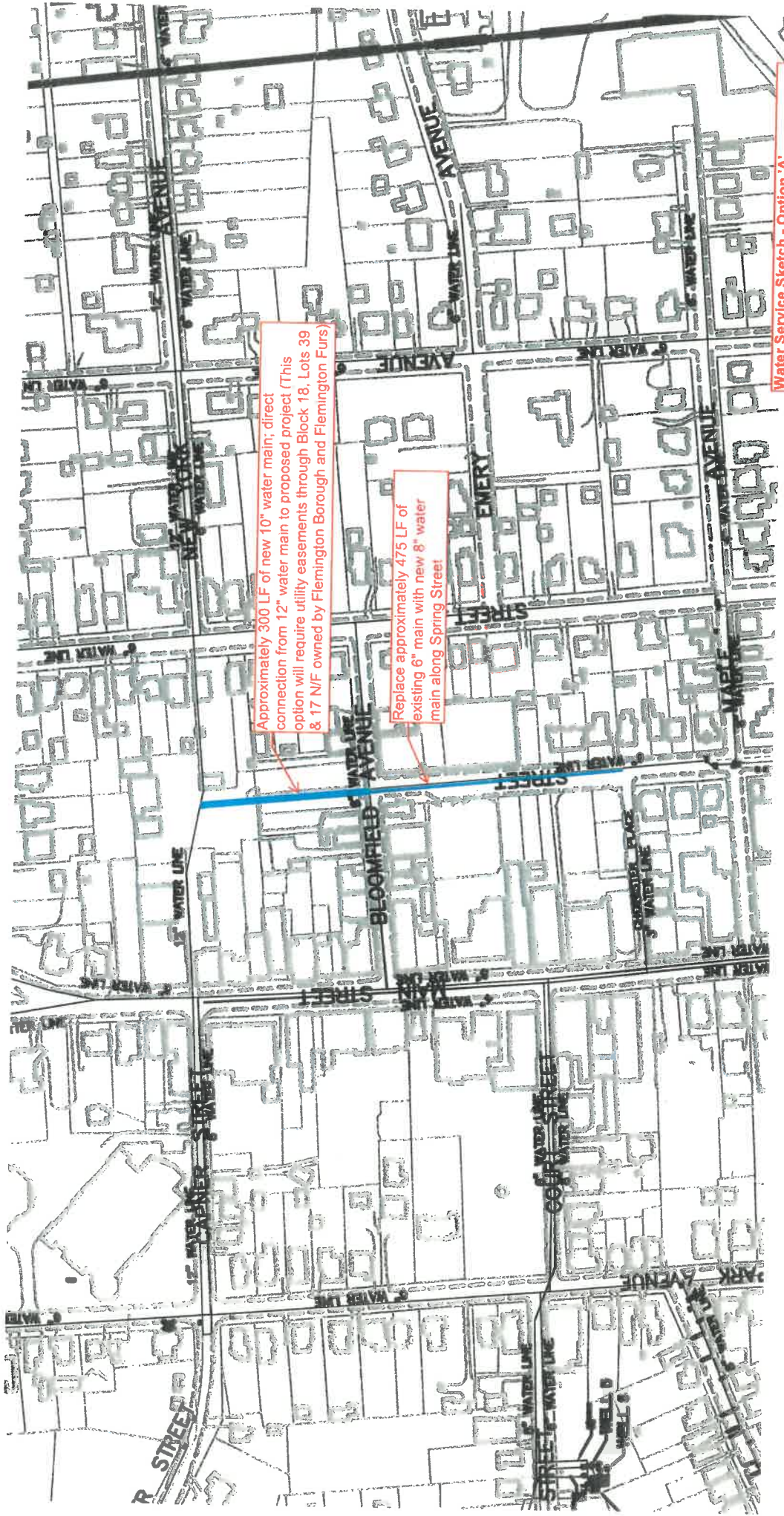
1. Local Sewer Utility Authority
  - a. Application and plan Review Fees
  - b. Connections Fees
  - c. Construction Inspection Fees (5% of estimated construction cost)
  - d. Bonding
    - i. Performance Bond (20% of estimated construction cost)
    - ii. Maintenance Bond (100% of as-built construction for (2) years)
2. NJDEP – TWA Permit
  - a. Application and Review Fees
3. Engineering
  - a. Construction Plan
    - i. Site survey for design (3% of estimated construction cost)
    - ii. Design calculations, Design, Plan preparation, Design Report and Specifications (5% - 8% of estimated construction cost)

- iii. Preparing Construction cost estimation for Bidding and Bonding (1% - 2% of estimated construction cost)
- b. Obtain Local and State TWA main extension permits, and meeting attendance as required (Cost = T&M)
- c. Construction Services
  - i. Preparing Bid documents, solicit bids, bid analysis (2% - 3% of estimated construction cost)
  - ii. Construction administration review, grade sheets, shop drawings, site construction meetings, etc., as required (4% - 7% of estimated construction cost)
  - iii. Survey stake-out (CPA 10%)
  - iv. Record/As-built survey (CPA 10%)

**References:**

- MUA Map showing dates of lining and replacement of existing mains.
- Van Cleef Engineering Associates plan entitled: "Northeast Quadrant Plan for Flemington Sanitary Sewer System situated in Borough of Flemington Hunterdon County, New Jersey" Progress Print dated: 03/08/2016

## **Water & Sewer Sketches**



Approximately 300 LF of new 10" water main; direct connection from 12" water main to proposed project (This option will require utility easements through Block 18, Lots 39 & 17 N/F owned by Flemington Borough and Flemington Furs)

Replace approximately 475 LF of existing 6" main with new 8" water main along Spring Street

Water Service Sketch - Option 'A'  
Prepared by: Bohler Engineering  
Dated: 10/16/2019  
Scale: Not to Scale





Water Service Sketch - Option B  
Prepared by: Bohler Engineering  
Dated: 10/16/19

Note: This option would require approximately 20 service reconnects along Main Street and 20 service reconnects along Bloomfield Avenue, Spring Street and Chorister Place





SANITARY MAIN IMPROVEMENTS SKETCH  
PREPARED BY BOHLER ENGINEERING  
DATE: 10/16/2019.



## Appendix

- 2) Electronic correspondence from Kenneth Diehl, Licensed Operator Flemington Sewer Utility to Barbara Ehlen, of Beacon Planning, dated 10/23/2019.

## Barbara Ehlen

---

**From:** Kenneth Diehl <kdiehl@historicflemington.com>  
**Sent:** Wednesday, October 23, 2019 2:02 PM  
**To:** Barbara Ehlen  
**Cc:** Betsy Driver; Michael Campion; Joshua Parks  
**Subject:** RE: Fwd: Union Hotel - Flemington, NJ

Barbara,

Per our phone conversation Flemington's Water & Sewer Comments regarding the Sewer & Water Infrastructure Summary completed by Bohler Engineering October 2019 are drafted below. A complete review of the document requires more time. Feel free to give us a call with any questions.

Kenneth Diehl

Licensed Operator Flemington Sewer Utility

38 Park Avenue Flemington NJ 08822

Phone: (908) 782-8578 Fax: (908) 782-1718

Sewer Comments

- Conveyance of sanitary sewer flow within the Flemington Collections system is of concern during times of high ground water table and extraordinary rain events. Applicant's plan does not address specific areas that currently have inflow and infiltration issues. Bohler Engineering's plan will be difficult for the NJDEP to approve a treatment works approval permit as sewer conveyance and I&I simply being moved from one area of the collections system to another area is not a viable solution.
- Flemington Borough's planning board site plan approved in 2018 was not based on the reduced flows represented in the Bohler Engineering Sewer and Water Infrastructure summary dated October 2019. A revised Flemington Water & Sewer Form A and amended site plan is required for verification of infrastructure requirements.
- Due to rain induced conveyance concerns within the sanitary sewer collection system Bohler Engineering's sewer option A of \$30,000.00 in sewer improvements should not be considered a viable option.
- Flemington Sewer proposed redirecting sewer flow from the East Main Sewer Interceptor to the Pennsylvania Avenue Sewer Interceptor by the replacement and redirection of sewer mains within Spring Street, Bloomfield Avenue, Chorister Place, Broad Street, and New York Avenue to Route 31. The lining of these sewer mains is not in accordance with Flemington's complete streets approach to infrastructure improvement. Sanitary Sewer Mains South of Bloomfield Avenue should be considered for replacement now, or at a later date.
- Additional time is required for Flemington Sewer and its professionals to present a complete review of the Bohler Engineering Sewer & Water Infrastructure Summary.
- Mathematical errors exist within the table on page 6 of the sewer and water infrastructure summary. The option A total should be \$3,381,648.00. The option B total should be \$4,384,996.00
- On page 4 under "Existing Sanitary Sewer Conveyance the Spring Street Sewer Main is represented as a 6-inch sewer main. This is incorrect the sewer main has a diameter of 8 inches

### Water Comments

- Flemington Water had sufficient firm capacity prior to the construction of Well 10.
- Flemington Water did not commit to running new 10-inch or 12-inch water main within Main Street from Capner Street to Bloomfield Avenue.

- No guaranteed flow rate was communicated to applicant. Results of Flemington Water meeting with the applicant and applicants Engineer was to conduct flow studies within the Main Street Area of Flemington.
- Applicant to verify reduced water supply needed by providing amended form A along with site and floor plans.
- Cost estimates provided do not match estimates prepared by Borough Engineer, line item costs are in need of review.
- Option B as detailed on page 3 of the Bohler sewer and water infrastructure summary dated October 2019 provides better flow to hydrants within Bloomfield Avenue and Main Street. Option B also provides for a hydrant on Chorister Place and Main Street.
- Flemington Water agrees that water mains should be replaced, however if this project does not proceed, water mains in other areas of Flemington Borough should be considered for replacement prior to the ones discussed in this report.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Barbara Ehlen <[behlen@beaconplanning.net](mailto:behlen@beaconplanning.net)>

Date: 10/18/19 11:01 AM (GMT-05:00)

To: [jparks@historicflemington.com](mailto:jparks@historicflemington.com), [rmartucci@vancleefengineering.com](mailto:rmartucci@vancleefengineering.com), [kdiehl@historicflemington.com](mailto:kdiehl@historicflemington.com), [jdoshna@historicflemington.com](mailto:jdoshna@historicflemington.com)

Cc: Andrew Janiw <[ajaniw@beaconplanning.net](mailto:ajaniw@beaconplanning.net)>, Andrew Brewer <[abrewer@mfhenvlaw.com](mailto:abrewer@mfhenvlaw.com)>, "Joseph Maraziti" ([jmaraziti@mfhenvlaw.com](mailto:jmaraziti@mfhenvlaw.com)) <[jmaraziti@mfhenvlaw.com](mailto:jmaraziti@mfhenvlaw.com)>

Subject: Union Hotel - Flemington, NJ

Gentlemen,

Attached please find a summary report prepared by Bohler Engineering addressing infrastructure requirements and approach as they relate to the redevelopment project at the Union Hotel. We would ask that you please review the attached and comment upon the contents of same.

Thank you for your attention to this matter.

Best regards,

Barbara and Andrew

Barbara Ehlen, AICP, PP  
Beacon Planning and Consulting Services, LLC  
315 Route 34, Suite 129  
Colts Neck, NJ 07722  
Tel: 732.845.8103  
Fax: 732.845.8104

## Appendix

- 3) Amended and Restated Redevelopment Agreement by and between Borough of Flemington and Flemington Center urban Renewal, LLC, dated 12/12/2017.

*Clerks Copy*

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**BOROUGH OF FLEMINGTON**  
**as Redevelopment Entity**

**AND**

**FLEMINGTON CENTER URBAN RENEWAL, LLC**  
**as Redeveloper**

---

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (the "Agreement") is entered into this 12<sup>th</sup> day of December, 2017 (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**, pursuant to Borough Council Resolution 2010-94, adopted June 14, 2010, the Borough Council designated the Union Hotel property, located at 70-76 Main Street, Flemington, and identified as Block 22, Lot 4 on the Borough of Flemington Tax Map (the "Initial 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 2010-14, adopted on October 25, 2010, the Borough Council adopted the Union Hotel Redevelopment Plan; and

**WHEREAS**, pursuant to Borough Council Resolution 2014-44, adopted February 10, 2014, the Borough Council designated the area south of the Union Hotel property, inclusive of properties located at 78 Main Street, 80 Main Street, 82 Main Street, 90-100 Main Street, 104 Main Street, 110 Main Street, 7 Spring Street, 19 Spring Street, 3 Chorister Place and 6 Chorister Place, identified on the Borough Tax Map as Block 22 Lots 5, 6, 7, 8, 9, 10 and 12 and Block 23, Lots 1 and 7 as an area in need of redevelopment pursuant to the Redevelopment Law (such properties, together with the Initial Redevelopment Area, is the "2014 Redevelopment Area") and, subsequently, on March 7, 2014, the Borough enacted an ordinance adopting a redevelopment plan for the Redevelopment Area (the "2014 Redevelopment Plan"); and

**WHEREAS**, on March 13, 2017, the Borough Council adopted Resolution 2017-65 approving and authorizing the execution of a certain redevelopment agreement between the Borough and Redeveloper dated April 12, 2017 (the "Initial Redevelopment Agreement")

**WHEREAS**, on March 13, 2017, the Borough Council, via the adoption of Resolution 2017-166, directed the Planning Board to undertake a preliminary investigation to determine whether Block 22, Lots 13 and 14 (23 Bloomfield Avenue and 21 Bloomfield Avenue) and Block 24, Lots 1, 2, 3 and 5 (2 Spring Street, 8 Spring Street, 12 Spring Street) (the "Study Area") qualifies as a "Non-Condensation Redevelopment Area," pursuant to *N.J.S.A. 40A:12A-5*; and

**WHEREAS**, the Planning Board held a duly-noticed public hearing regarding a preliminary investigation of the Study Area on June 5, 2017, and upon conclusion of the hearing, determined that the Study Area qualifies for inclusion in a redevelopment area under Section 3 of the Redevelopment Law as necessary for the effective redevelopment of the area

and, therefore, voted unanimously to recommend to the Borough Council that the Study Area be designated as an area in need of redevelopment under the Redevelopment Law; and

**WHEREAS**, at its regular meeting on June 27, 2017, the Planning Board adopted Resolution 2017-9, memorializing its findings and its recommendation that the Borough Council designate the Study Area as a Non-Condensation area, pursuant to the Redevelopment Law; and

**WHEREAS**, on July 10, 2017, the Borough Council accepted the Planning Board's recommendation and, via Resolution 217-130, designated the Study Area to be included in the "Union Hotel Redevelopment Area" (2014 Redevelopment Area and Study Area collectively referred to herein as the "Redevelopment Area"); and

**WHEREAS**, the Borough Council thereafter authorized and directed Clarke Caton Hintz (the "CCH"), licensed Professional Planners in the State of New Jersey, to prepare an updated and amended draft redevelopment plan for the Redevelopment Area; and

**WHEREAS**, CCH, working in conjunction and consultation with the Borough Council's Redevelopment Committee and a subcommittee of other individuals, prepared a draft redevelopment plan, entitled, "Redevelopment Plan: Union Hotel Redevelopment Area," dated October 19, 2017; and

**WHEREAS**, on December 11, 2017 the Borough Council adopted Ordinance 2017-206 approving the Union Hotel Redevelopment Area Plan dated October 19, 2017 (the "Redevelopment Plan"); and

**WHEREAS**, Redeveloper has proposed a Project for the Redevelopment Area that meets the Borough's goals for the redevelopment of the Redevelopment Area; and

**WHEREAS**, N.J.S.A. 40A:12A-8 (e) and (f) authorize the Borough Council, as the redevelopment entity, to enter into contracts or agreements for the planning, construction and undertaking of development projects and redevelopment work in an area designated as an area in need of redevelopment; and

**WHEREAS**, it is now the intention of the Parties to enter into this Agreement to further define and memorialize the respective obligations of the Parties with regard to proceeding with the redevelopment of the Redevelopment Area, which Agreement shall restate and supersede the Initial 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 as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

**1.1 Defined Terms.**

The Parties agree that, unless the context otherwise specifies or requires, in addition to the terms defined above, the following terms shall have the respective meanings specified below and such definitions shall be applicable equally to the singular and plural forms of such terms.

2014 Redevelopment Area is defined in the recitals to this Agreement.

2014 Redevelopment Plan is defined in the recitals to this Agreement.

Affected Party is defined in Section 7.8.

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.

Agreement is defined in the preamble to this Agreement.

Applicable Law means any and all federal, state, county and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, Governmental Approvals, and similarly binding authority, applicable to the Project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

Application is defined in Section 3.2(a).

Borough is defined in the preamble to this Agreement.

Borough Costs is defined in Section 4.6(a).

Borough Ordinances means the ordinances of the Borough of Flemington.

Business Day means any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State of New Jersey.

CCH is defined in the recitals to this Agreement.

Certificate of Completion means a written certificate issued by the Borough in accordance with Section 4.3, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to a certain Phase of the Project or the entire Project, as applicable, whose issuance shall serve to release the relevant Phase of the Project or the entire Project, as applicable, and Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law.



Certificate of Occupancy is as defined in the Uniform Construction Code at *N.J.A.C. 5:23.1.4*, and as may be issued by the Borough relative to a particular Phase of the Project or the entire Project, as applicable, indicating that such Phase of the Project or the entire Project, as applicable, has been Completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

Claims is defined in Section 9.1.

Commencement of Construction means the beginning of vertical construction.

Completion, Complete or Completed means (i) that all work related to a Phase or the entire Project, has been Completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan and any amendments thereto, and in compliance with all Applicable Law so that the developed Redevelopment Area may be used and operated under the applicable provisions of this Agreement, and (ii) that all Governmental Approvals required for the Redevelopment Area are in full force and effect. Completion shall be evidenced by the issuance of a Certificate of Completion.

Concept Plan is as shown in Exhibit A.

Control (including the correlative meanings of the terms "Controlled by" and "under common Control with" and "Controlling") means with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Declaration is defined in Section 6.3(a).

Deeds means the deeds transferring title to the Redevelopment Area or any portion thereof.

Effective Date is defined in the preamble to this Agreement.

Event of Default is defined in Section 7.1.

Event of Force Majeure is defined in Section 7.8.

Financial Agreement means an agreement entered into in accordance with *N.J.S.A. 40A:20-1, et seq.* or *N.J.S.A. 40A:21-1, et seq.*

Force Majeure is defined in Section 7.8.

Foreclosure means that event in which a Holder forecloses its mortgage secured by the Redevelopment Area, or part thereof, or takes title to the Redevelopment Area, or part thereof, by deed-in-lieu of foreclosure or similar transaction.

Governmental Approval(s) means any approvals, authorizations, permits, licenses or certificates required and issued or granted by any Governmental Body having jurisdiction

necessary to implement and Complete the Project or any Phase in accordance with the Redevelopment Plan, Applicable Law and this Agreement.

Governmental Body means any federal, state, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government.

Historic Sites Council is defined in *N.J.A.C. 7:4-1.3*.

Holder means a mortgagee or its Affiliate providing financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any Phase.

Impositions means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for Public Improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Redevelopment Area or on any of the Improvements constructed thereon.

Improvements means all buildings, structures and appurtenances including, without limitation, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Redevelopment Area and the streets immediately abutting the Redevelopment Area.

Indemnified Parties is defined in *Section 9.1*.

Initial Redevelopment Agreement is defined in the recitals to this Agreement.

Initial Redevelopment Area is defined in the recitals to this Agreement.

LSRP is defined in *Section 6.1(i)*.

Municipal Land Use Law means the New Jersey Municipal Land Use Law, *N.J.S.A. 40:55D-1, et seq.*

NJDEP means the New Jersey Department of Environmental Protection established pursuant to *N.J.S.A. 13:1D-9, et seq.*

New Jersey State Historic Preservation Office means the Historic Preservation Office as defined in *N.J.A.C. 7:4-1.3*.

Notice of Default is defined in *Section 7.1(a)*.

Option A is defined in *Section 4.4(c)*.

Option B is defined in Section 4.4(c).

Party and Parties are defined in the preamble to this Agreement.

Permitted Transfer is defined in Section 13.2.

Person means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or partnership, trust, unincorporated association, institution, public or Governmental Body or any other Person.

Phase means a building or component of the Project as set forth in Exhibit A or as determined pursuant to any approved phasing plan.

Planning Board means the Borough of Flemington Planning Board, pursuant to *N.J.S.A. 40:55D-23*.

Preliminary and Final Site Plan Approval means Preliminary Approval as defined in *N.J.S.A. 40:55D-6* and Final Approval as defined in *N.J.S.A. 40:55D-4*.

Progress Meeting is defined in Section 4.1.

Progress Report is defined in Section 4.1.

Project means the development of the Improvements, as more specifically described in the Concept Plan and in Redeveloper's Application for Site Plan approval to be filed with the Planning Board pursuant to the terms set forth in this Agreement.

Project Schedule means the schedule attached hereto as Exhibit B.

Public Improvements means streets, grading, pavement, gutters, curbs, sidewalks, street lighting, surveyors' monuments, water mains, culverts, storm and sanitary sewers, drainage structures, erosion control and sedimentation devices, open space, and landscaping required under Site Plan approval memorialized by the Planning Board that will be dedicated to the Borough pursuant to Applicable Law.

Qualified Entity is defined in Article 2.5(b).

Redeveloper is defined in the preambles to this Agreement.

Redevelopment Area is defined in the recitals to this Agreement.

Redevelopment Law is defined in the recitals to this Agreement.

Redevelopment Plan is defined in the recitals to this Agreement.

Site Plan is defined in *N.J.S.A. 40:55D-7*.

Spill Act means the Spill Compensation and Control Act pursuant to N.J.S.A. 58:10-23.11, *et seq.*

Study Area is defined in the recitals to this Agreement.

Uniform Commercial Code means N.J.S.A. 12A:1-101, *et seq.*

United State Bankruptcy Code means 1 U.S.C. 1, *et seq.*

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

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after the Effective Date.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Unless otherwise noted, the terms "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation."

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(e) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) days, unless the context dictates otherwise.

(f) The word "days" as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided in this Agreement for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

(g) Any reference to Applicable Law shall be read to mean as the Applicable Law, as amended from time to time, except where Redeveloper's obligation to comply was satisfied prior to the amendment.

(h) The recitals hereto contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

## **ARTICLE 2**

### **DESCRIPTION OF PROJECT**

**2.1 Designation as Redeveloper.** The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Redevelopment Area by Redeveloper. The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Redevelopment Area. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Redevelopment Area. Further, the Borough agrees that, absent an Event of Default by Redeveloper or with respect to any Holder's rights, it will not negotiate for the provision of another redeveloper or developer for the Redevelopment Area or any portion thereof.

**2.2 The Project.** The Project encompasses the entire Redevelopment Area. The Project shall be designed in accordance and conformance with the Concept Plan, the Redevelopment Plan and Applicable Law. In the event of a conflict between the Concept Plan and the Redevelopment Plan, the latter shall be controlling.

**2.3 Phases and Project Schedule.** The Project may be developed in Phases, subject to the Borough's approval, which shall not be unreasonably withheld. The Borough hereby approves the Phases set forth in Exhibit A.

**2.4 Development Milestones.** Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule, subject to relief resulting from (a) mutually agreed upon extensions to the Project Schedule by the Redeveloper and the Borough or (b) by an Event of Force Majeure. If Redeveloper intends to claim reliance upon an Event of Force Majeure as a basis for its failure to comply with the Project Schedule, Redeveloper shall give written notice to the Borough pursuant to Section 7.9, setting forth in detail the reasons for delay and requesting an extension of such date, which extension the Borough shall not unreasonably deny if it determines that the alleged Event of Force Majeure exists in accordance with Article 7. The Borough shall consider requests by Redeveloper to extend the Project Schedule or any portion thereof for reasons that do not constitute an Event of Force Majeure, such as significantly adverse market conditions, which request the Borough shall not unreasonably deny upon satisfaction that requiring Redeveloper to proceed under the circumstances would be economically or practically infeasible.

**2.5 Qualified Entities.**

(a) **Redeveloper of Project.** The Project or any Phase will, at Redeveloper's option, be developed, in whole or in part, by (i) Redeveloper, (ii) any Person to which Redeveloper and/or any Affiliate of Redeveloper is the sole beneficial owner, or (iii) any Person to which Redeveloper and/or any Affiliate of Redeveloper are collectively the sole beneficial owners, subject to the review of the Borough.

(b) Qualified Entity Defined. A "Qualified Entity" is a Person which has demonstrated to the satisfaction of the Borough that it meets the following:

- (i) It is able to comply with the terms of this Agreement and expressly assumes all the obligations hereunder;
- (ii) No petition under federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such Person, or any partnership in which such Person was or is a general partner or any Person in which such Person was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of ten percent (10%) (and, in the case of an involuntary proceeding, such proceeding has not been terminated within sixty (60) days of its commencement) within the ten (10) full calendar years preceding the date of submission of such Person's application for consideration as a Qualified Entity;
- (iii) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such Person, is not a target of or a potential witness in a criminal investigation;
- (iv) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Borough or Redeveloper which has been terminated due to an Event of Default by such Person or which is currently the subject of a dispute in which the Borough or Redeveloper alleges such Event of Default, nor is such Person an adverse party in any currently pending litigation involving the Borough or Redeveloper;
- (v) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision;

- (vi) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any Borough, state, or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest; and
  - (vii) Such Person shall comply with any other conditions that the Borough may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.
- (c) Redeveloper as Qualified Entity. Redeveloper represents and warrants herein that it meets the above criteria for a Qualified Entity and, based upon such representations and warranties, upon which the Borough relies in entering into this Agreement, Redeveloper is hereby deemed a Qualified Entity.
- (d) Qualified Entity Approval Process. In the event that the Redeveloper seeks to assign or transfer any interest in any Phase or the Project that is not deemed a permitted transfer under Section 13.2, Redeveloper shall provide written notice to the Borough of any Person which Redeveloper desires be approved by the Borough as a Qualified Entity. Within thirty (30) calendar days after the date of such notice from Redeveloper, the Borough shall provide written notice to Redeveloper either (i) requesting additional information concerning the proposed Person, (ii) approving such Person as a Qualified Entity, or (iii) refusing to approve of such Person as a Qualified Entity, setting forth the basis for such denial. Approval by the Borough of a Person as a Qualified Entity shall authorize such Person to be considered a Redeveloper or hold a beneficial interest in Redeveloper. In the event of a denial by the Borough of a Person as a Qualified Entity as provided above, or in the event the Borough requests additional information, Redeveloper may resubmit its request to the Borough that the subject Person be approved as a Qualified Entity and Redeveloper shall in such resubmitted request set forth additional information and/or such reasons that demonstrate why Redeveloper believes the subject Person to be a Qualified Entity. Within fifteen (15) calendar days after the date of such further request from Redeveloper, the Borough shall provide written notice to Redeveloper stating whether the Borough approves of such Person as a Qualified Entity and, if the Borough does not approve of such Person as a Qualified Entity, the basis for such denial.



**ARTICLE 3**  
**PROCEDURES GOVERNING REVIEW AND APPROVAL OF APPLICATIONS FOR  
REDEVELOPMENT OF PROJECT**

**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 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 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, absent any deviations or waivers approved by the Borough pursuant to Section 3.2, the Application shall be consistent with the Concept Plan. Notwithstanding the foregoing, Redeveloper shall have the right to begin cleanout work, environmental and structural studies and testing upon the Redevelopment Area; this shall not include the right or authorization to demolish any structures within the Redevelopment Area, except as otherwise expressly authorized hereunder in Article 12.

**3.2 Application for Project.**

(a) **Application.** Redeveloper shall submit first to the Borough for a pre-application review pursuant to Section 3.2(c) and, after Borough approval of same, to the Planning Board an application for Site Plan approval of a proposed development pursuant of this Agreement (the "Application"), which Application must be deemed Complete by the Planning Board in accordance with its checklist and Borough Ordinances. The Application shall consist of submission of a report and required architectural and civil engineering plans.

(b) **Redevelopment Plan Application Requirements.** The Application shall also include information sufficient to determine compliance with applicable provisions of the Redevelopment Plan encompassing the following:

- (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.
- (iii) Plans noting the use, location, plan area, setbacks, height and bulk of all existing and proposed structures within the portions of the Redevelopment Area that are the subject of the Application and their consistency with the Redevelopment Plan.

- (iv) Plans showing vehicular parking and loading areas and a layout of pedestrian and vehicular circulation patterns in relation to the buildings that are the subject of the Application.
- (v) Landscape plans sufficient to show general design concepts, including but not limited to lighting and signage design.
- (vi) A schedule that generally reflects the phasing of construction, as necessary and within the time period(s) set forth in the Project Schedule.
- (vii) A list of any requirements in the Redevelopment Plan from which Redeveloper seeks design waiver relief and the basis upon which such relief is requested.
- (viii) Such other information as may be reasonably required of the professionals employed by the Planning Board in writing no later than five (5) calendar days prior to any hearing before the Board on the Application, so as to afford Redeveloper an adequate opportunity to review and respond to such reports prior to the aforesaid Board hearing.

(c) Concept Review. Prior to making formal Site Plan Application to the Planning Board, the Redeveloper shall submit to the Borough, in concept form, the items in Sections 3.2(b)(i) through (vii) so that the Borough may confirm that same is consistent with the Redevelopment Plan. The Borough, within thirty (30) days of submission of the plans by the Redeveloper, shall conduct a review and advise Redeveloper in writing as to whether the submission is consistent with the Redevelopment Plan or whether revisions must be made in accordance with the Redevelopment Plan.

(d) 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 Concept 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 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.

(e) 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, which shall not be unreasonably withheld.

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, which approval shall not be unreasonably withheld. 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 Redevelopment Plan and approved by the Borough prior to filing for same before the Planning Board.

**3.3 Other Governmental Approvals.** It is acknowledged by both Parties that it may be necessary for Redeveloper to obtain Governmental Approvals or permits from other Governmental Bodies in order to undertake the development of the Project. Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed permits and Governmental Approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information in its possession and to provide any reasonable assistance which may be required of it to enable Redeveloper to properly apply for and obtain such permits or Governmental Approvals in a timely fashion, including making applications in the name of the Borough if deemed necessary for such approval or permit or if required by Applicable Law. The Borough agrees to support and endorse any applications for any Governmental Approvals required for the Project. Redeveloper shall report to the Borough on a monthly basis the status of such applications and Governmental Approvals.

**3.4 New Jersey State Historic Preservation Office Approval.** Redeveloper shall be responsible for preparation of the materials and application for project authorization on behalf of the Borough for approval of demolition of any structures that may be subject to review and authorization of the New Jersey State Historic Preservation Office and/or the Historic Sites Council, as may be required under Applicable Law. Such application(s) may be submitted either by the Borough or, in the Borough's discretion, by the Redeveloper after receipt of the

Borough's written authorization to proceed. The Borough agrees to submit written or oral testimony in support of the application when the application is heard before the Historic Sites Council and to otherwise cooperate with Redeveloper's efforts in this regard.

#### **ARTICLE 4**

##### **CONSTRUCTION OF PROJECT**

4.1. **Progress Reports and Progress Meetings.** Redeveloper shall submit to the Borough a quarterly report in writing concerning the actual progress of Redeveloper with respect to the implementation and construction of the Project, including ongoing updates concerning efforts to market and lease portions of the Project to tenants and end users and Redeveloper's progress toward leasing of residential and nonresidential space (the "Progress Report"). Other than statutorily required Uniform Commercial Code construction inspections, employees or representatives of the Borough shall not enter onto the Redevelopment Area or inspect the Project without prior written consent of the Redeveloper, which consent shall not be unreasonably withheld. Notwithstanding, the Borough shall have the right, upon reasonable notice, to inspect any work including deviations approved pursuant to Section 3.2. Upon the request of the Borough, Redeveloper and any necessary consultants and professionals shall meet with the Borough to report on its progress or to address any concerns the Borough has based upon its review of any Progress Report (the "Progress Meeting").

4.2. **Suspension of Construction.** Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project or Redevelopment Area, except for the occurrence of an Event of Force Majeure, as set forth in Article 7.

If Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of one hundred twenty (120) consecutive days for reasons other than an Event of Force Majeure, and the suspension or abandonment is not cured, remedied or explained to the satisfaction of the Borough, in its sole discretion, in writing within fifteen (15) calendar days after written demand by the Borough to do so, then such shall constitute an Event of Default by Redeveloper under this Agreement and the Borough shall have the right to seek any remedies pursuant of this Agreement.

4.3. **Certificates of Occupancy and Certificate of Completion.**

(a) **Certificate of Occupancy.** Upon Completion of the construction of the Project and/or Phase, as may be applicable, in accordance with the Governmental Approvals, Redeveloper may apply to the Borough for a Certificate of Occupancy for the Project or Phase that has been Completed.

(b) **Certificate of Completion.** Upon Completion of the entire Project and/or a Phase, for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law, the Borough shall issue a Certificate of Completion in proper

form for recording, which shall acknowledge that Redeveloper has performed all of its duties and obligations under this Agreement and has Completed construction of the Project or Phase in accordance with the requirements of the Applicable Law, the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to Redeveloper's construction of the Project or Phase. Upon issuance of a Certificate of Completion (a) the agreements, restrictions, and covenants set forth in Section 6 shall cease and terminate, except for those covenants and restrictions set forth in Section 6 which shall survive in accordance with the terms of Section 6 for the Project and/or a Phase, (b) the conditions determined to exist at the time the Redevelopment Area was designated as in need of redevelopment shall be deemed to no longer exist for the Project and/or a Phase, and (c) the land and Improvements constituting the Completed Project and/or a Phase within the Redevelopment Area shall no longer be subject to eminent domain based upon such conditions. If the Borough shall fail or refuse to provide the Certificate of Completion within twenty (20) days after written request by Redeveloper, the Borough shall provide to Redeveloper a written statement setting forth in detail the respects in which it believes that Redeveloper has failed to Complete the Project or Phase, or portion thereof, in accordance with the provisions of this Agreement or otherwise has committed an Event of Default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, Redeveloper may record it in the Hunterdon County Clerk's office.

#### **4.4 Utility and Public Improvements.**

(a) On-Site Utilities. On-site utility services, including but not limited to telecommunications, water, sewer, gas and electric shall be the sole responsibility of Redeveloper. The cost for utility upgrades and installations required as a result of the construction of the Project shall be the sole responsibility of Redeveloper.

(b) Public Improvements. The Project will require some Public Improvements. The Parties agree that the Redeveloper shall be solely responsible to undertake, install and/or construct such Public Improvements that are included in the plans submitted for Preliminary and Final Site Plan Approval and any additional Public Improvements required by the Preliminary and Final Site Plan Approval.

(c) Water and Sewer.

(i) Additional Wells. The construction of the Project will utilize the current reserved capacity and will require construction of additional wells and infrastructure for the Project. The Borough represents that it will have sufficient water and sewer capacity and necessary easements to support the Project. The Redeveloper shall be responsible for up to Two Million Dollars (\$2,000,000.00) of the cost to increase the amount of available water by the amount required for the Project and to maintain the reserves as required under Applicable Law, which currently requires a

reserve of three times (3x) the actual usage required, after Completion of the Project. By way of example, if the Project requires Eighty-Five Thousand gallons per day (85,000 GPD), the Redeveloper shall be responsible for up to Two Million Dollars (\$2,000,000.00) of the cost to generate an additional two hundred and fifty-five Thousand gallons per day (255,000 GPD). The Borough shall use its best efforts to obtain financing through the New Jersey Environmental Trust to finance the water and sewer improvements. If the Borough is successful the Borough and Redeveloper shall use a special assessment or similar mechanism to secure the repayment of such New Jersey Environmental Trust loan by the Redeveloper up to the amounts for which the Redeveloper is obligated hereunder. If such financing is not secured prior to Site Plan Approval, upon submission of an application for a building permit the Redeveloper shall post a Two Million Dollars (\$2,000,000.00) performance bond or escrow account to be draw down to fund the construction of any additional required wells and infrastructure, which shall be a condition of Site Plan Approval. Should the total amount required to fund the additional wells and infrastructure to replenish the required reserves be less than Two Million Dollars (\$2,000,000.00), any remaining unused funds shall be returned to the Redeveloper. Notwithstanding anything contained herein, in the event the Borough has sufficient water and sewer capacity at the time Redeveloper applies for a building permit and Redeveloper has posted the performance bond or escrow account required in this paragraph, Redeveloper shall be permitted to proceed with the construction of Phase One and Phase Two.

(ii) Location of Water Lines. The Parties acknowledge that there are two options for water service to the Project: location of lines along Spring Street (the "Option A") or location of lines along Main Street (the "Option B"). The Borough wishes to implement Option B, but acknowledges that this poses additional costs to Redeveloper than Option A. The Parties agree to discuss and explore in good-faith cost saving options, reimbursement mechanisms or other concepts to facilitate Option B. In the event that the Parties cannot reach a mutual agreement to provide for Option B, after engaging in such good-faith negotiations, Option A may be implemented.

(iii) Credits Against Connection Fees. Redeveloper shall receive a dollar for dollar credit for all Public Improvements to the water distribution system, exclusive of the cost of the well(s) or connecting the well to the distribution system, and sewer collection systems undertaken, installed and/or constructed against all water and sewer connection fees, which shall be calculated at the lesser of the then current rate or the rate in effect on November 30, 2017. By way of example, if the sewer and water connection fees totaled one million dollars (\$1,000,000) and Redeveloper spends more than one million dollars (\$1,000,000) to install the sewer and water lines into, out of and within the Project, the Borough would not collect any connection fees. If Redeveloper spends less than one million dollars (\$1,000,000), then the difference between the one million dollars (\$1,000,000) and the actual cost would be charged to Redeveloper as the balance for connection fees. The dollar for dollar credits do not apply to the cost of replenishing the Borough's well reserve capacity, which cost to the developer is capped at two million dollars (\$2,000,000). Additionally, Redeveloper shall reimburse the

Borough for the costs or fees, if any, imposed by the Raritan Township Municipal Utilities Authority.

#### **4.5 Design Elements.**

(a) **Streetscape Improvements.** All costs for streetscape improvements that are shown on the approved Site Plan are the responsibility of Redeveloper. This includes landscaping, lighting, public furniture and all other on-site Improvements located between the curb and the Improvements.

(b) **Green and Sustainable Design Elements.** The Redeveloper shall make good faith efforts to include and incorporate certain "green" or sustainable design elements, consistent with any objective standards set forth in the Sustainable Design Element of the Borough Master Plan, as adopted by the Borough Planning Board in June, 2011, where in Redeveloper's sole opinion it is cost-effective and economically feasible.

(c) **Historic Preservation.** Redeveloper shall make good-faith efforts to preserve and salvage, for reincorporation and re-use into the Project, where in Redeveloper's opinion it is cost-effective and economically feasible, any artifacts, architectural elements or other historically relevant objects or elements. Redeveloper shall respond to all Borough inquiries concerning any particular opportunities for preservation or salvage, such elements and make good faith and commercially reasonable efforts to fulfill any such Borough goals. Redeveloper shall cooperate with the Borough so that the Borough may fully-document the buildings and any historic artifacts prior to demolition, destruction or removal of same and the Borough's efforts shall not unreasonably delay or interfere with Redeveloper's implementation of the Project.

(d) **Coordination of Projects.** Streetscape improvements are being made by the Borough in 2017 pursuant to the \$1M Transportation Alternatives Program (TAP) grant. Redeveloper will use good-faith efforts to match the architectural and design aesthetic of the Project regarding material and block choices, to the extent practical and permissible, to the streetscape improvements made under the TAP grant. Redeveloper shall be responsible to repair or replace any portions of such streetscape improvements that are damaged in connection with the construction of the Project. The Borough shall work with Redeveloper to locate and coordinate conduits and utilities so as to avoid damage to or destruction of such streetscape improvements.

#### **4.6 Contribution To Costs, Financial and Approval Obligations.**

(a) **Administrative Costs.** The Parties acknowledge that there have been and will be various administrative costs associated with the redevelopment of the Redevelopment Area and the Project, including, but not limited to, professional costs, personnel time and expenses related to negotiations, development of the Redevelopment Area, meetings between the Redevelopment principals and Borough officials, public

meetings, telephone conferences, staff scheduling of meetings, staff and secretarial work in preparation for said meetings and/or negotiations, and the like. In furtherance of the objectives of the Redevelopment Plan and this Agreement, and to alleviate the continuing and unique administrative burden and costs to the Borough associated with redevelopment initiatives, Redeveloper has executed an escrow agreement and made payment to the Borough in the amount of Fifteen Thousand Dollars (\$15,000.00) which the Borough has deposited into an escrow account established by it for the payment of its reasonable and necessary third-party interim costs in connection with the Project (the "Borough Costs"). If, when and as often as may occur that the escrow account is drawn down to Fifteen Thousand Dollars (\$15,000.00) then the Redeveloper, upon the Borough's written request, shall within fifteen (15) Business Days thereafter, provide to the Borough for deposit funds sufficient to replenish the escrow account to the amount of Fifteen Thousand Dollars (\$15,000.00) for use in accordance with these terms, unless such time period shall be extended for good reason by the Borough in its sole discretion. The Borough shall provide the Redeveloper with copies of all invoices to be paid from the escrow account at least thirty (30) days prior to payment. The Redeveloper shall have fifteen (15) days from the receipt of the invoices to provide comments to the Borough or appeal the charges. In the event this Agreement either expires or is lawfully terminated by the Borough, then all escrowed monies and the interest earned thereon shall be returned to the Redeveloper following the payment from the fund of the Borough Costs incurred up to the time of said expiration or cancellation.

(b) Grants, Loans and Other Financing. Upon the execution of this Agreement, the Borough will reasonably assist Redeveloper as requested in applying for and securing any and all available grants, loans and other types of financing available from public entities at all levels of government to assist in the construction of the Project. Any expenses incurred by the Borough will be deemed Borough Costs.

(c) Redevelopment Project Financial Tools. Redeveloper has determined that it will be necessary for the Borough to enter into a Financial Agreement and issue NON-RECOURSE redevelopment area bonds pursuant to *N.J.S.A. 40A:12A-65 et seq.* in order to undertake the Project. Such redevelopment area bonds shall be issued in an amount not anticipated to exceed One Million Dollars (\$1,000,000.00) and shall be secured by the Project and the Financial Agreement. The Borough shall NOT be required to pledge its full faith and credit OR taxing power to the repayment of such bonds. The bondholders shall only look to the Project for repayment of such bonds. Redeveloper will present to the Borough, for its consideration, a request for a Financial Agreement and bond financing, pursuant to *N.J.S.A. 40A:12A-65 et seq.* The Borough agrees to consider such requests in good faith on terms acceptable to the Borough. Redeveloper represents that it has the financial capability to finance the acquisition of the Redevelopment Area, purchase a liquor license and construct the Project provided the Borough executes a Financial Agreement and issues such bonds. Notwithstanding the above, the Borough and Redeveloper may agree to issue redevelopment area bonds as a part of any New Jersey Environmental Trust Financing as described in Section 4.4(c).



(d) Approval Process. The Borough shall coordinate with the Planning Board to provide, to the extent that it can be provided, for an expedited review process by the Planning Board, including provisions for special meetings, if necessary, to expedite the approval process for the Project.

4.7 Groundbreaking. Prior to Commencement of Construction, Redeveloper shall sponsor and host a groundbreaking ceremony at the Redevelopment Area, to which the public will be invited and at which a principal of Redeveloper and the Mayor, and a representative of the Borough Council, as well as any other Person agreed upon by the Parties, will be invited to speak. The Parties shall confer and mutually agree upon all other details concerning the groundbreaking.

4.8. Estoppel Certificates (Prior to Issuance of Certificate of Completion). At any time and from time to time prior to the issuance of a Certificate of Completion, the Borough shall, within ninety (90) days of its receipt of a written request by the Redeveloper or of any mortgagee, lender, purchaser, tenant or other party having an interest in the Project, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Borough (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Borough the Redeveloper is in an Event of Default under this Agreement, and, if so, specifying each such Event of Default of which the Borough shall have knowledge; and (iii) confirms such other factual matters within the Borough's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Redevelopment Area. The Redeveloper shall not request and the Borough shall not be required to issue more than two estoppel certificates in any calendar year. Any costs incurred by the Borough in connection with preparing such estoppel certificate shall be reimbursable Borough Costs, pursuant to Section 4.6(a).

4.9 Affordable Housing. Redeveloper shall address the affordable housing obligation created by the Project through the construction, at its sole cost and expense, of affordable housing units within the Redevelopment Area equal to the greater of 14 units or five percent (5%) of the total number of residential units constructed, whichever is greater. Notwithstanding, the Parties acknowledge that the Borough's housing obligations have not been finally-determined and are the subject matter of a proceeding pending in the Superior Court, the outcome of which may or may not impact the Project and the number of affordable units required therein. In the event that the proceeding results in a requirement to construct more affordable housing units than agreed to herein, the Parties shall confer and work in good faith to meet such obligations but, in the event that Redeveloper determines that meeting such obligation would render the Project economically unfeasible, Redeveloper shall have the right to request modifications to the Project to render compliance feasible, which requests shall not be unreasonably denied by the Borough. In the event that the Parties cannot agree upon revisions to the Project that are necessary to meet the housing obligation so as to render the Project economically feasible, Redeveloper shall have the right to terminate this Agreement.

**ARTICLE 5**  
**PURCHASE, ACQUISITION, AND CONTROL OF THE REDEVELOPMENT AREA**  
**AND RELATED EASEMENTS**

**5.1 Purchase of the Redevelopment Area.** Redeveloper shall use its best efforts to acquire title to the Redevelopment Area in accordance with the Project Schedule, subject to the occurrence of an Event of Force Majeure. Should Redeveloper be unable to acquire title to the Redevelopment Area or establish site control of the Redevelopment Area as required to submit an Application for Preliminary and Final Site Plan Approval within the time period set forth in the Project Schedule, the Borough may make written demand for completion of the purchase(s) or site control. Redeveloper shall provide an explanation for its inability to complete the transaction by such date and request such additional time as may be necessary to complete the transaction, which request for additional time the Borough shall not unreasonably deny. The Borough may determine to assist Redeveloper with the acquisition of properties within the Redevelopment Area, which may include, but not be limited to, directing the Planning Board to study the Redevelopment Area as a condemnation redevelopment area, to the extent permitted by Applicable Law and pursuant to the Redevelopment Law. In the event that the Borough does not grant an extension or determine to assist Redeveloper with property acquisition, either Party may terminate this Agreement.

**ARTICLE 6**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**6.1 Redeveloper's Representations, Warranties and Covenants.** Redeveloper hereby represents and warrants to, and covenants with the Borough that:

- (a) **Organization.** Redeveloper is a limited liability company duly formed under the laws of the State of New Jersey and validly existing and in good standing under the laws of the State of New Jersey with all requisite power and authority to enter into this Agreement. Redeveloper's ownership structure is attached hereto as **Exhibit C**.
- (b) **Authorization: No Violation.** The execution, delivery and performance by Redeveloper of this Agreement has been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of Redeveloper or constitute an Event of Default under any loan or credit agreement, or other material agreement to which Redeveloper is a party or by which Redeveloper may be bound or affected.
- (c) **Valid and Binding Obligations.** The Person executing this Agreement on behalf of Redeveloper has been duly authorized and empowered and this Agreement has been duly executed and delivered by Redeveloper and constitutes the valid and binding obligation of Redeveloper.
- (d) **Litigation.** No suit is pending against Redeveloper which could have a material adverse effect upon Redeveloper's performance under this Agreement, other than the two matters entitled *Friends of Historic Flemington, LLC v. the Borough of Flemington, et al.*, under Docket Nos. HTN-L-170-17 and HTN-L-290-17, or the financial condition or business of Redeveloper. There are no outstanding judgments against Redeveloper that would have a material adverse effect upon Redeveloper or which would materially impair or limit of the ability of Redeveloper to enter into or carry out the transactions contemplated by this Agreement.
- (e) **No Conflicts.** This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which Redeveloper is a party or is otherwise subject.
- (f) **No Violation of Laws.** As of the Effective Date, Redeveloper has not received any notices asserting any noncompliance in any material respect by Redeveloper with applicable statutes, rules and regulations of the United States, the State of New Jersey or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Redeveloper's ability to perform its obligations under this Agreement. Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

(g) Qualifications of Redeveloper. Redeveloper is fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder.

(h) Limited Undertakings. Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the sole purpose of redevelopment of the Redevelopment Area and not for speculation in land holding.

(i) Environmental Contamination. In the event of discovery of environmental contamination within the Redevelopment Area which is not historic fill and which requires remediation, which shall include but not be limited to any type of active remedial treatment of soil and/or groundwater, engineering and site controls, a cap, a deed notice, a remedial action permit, and/or a classification exception area for groundwater and monitored natural attenuation, Redeveloper, who and/or which the Borough acknowledges is not a responsible party and is not in any way responsible for any discharges under the Spill Act, may terminate this Agreement in his or its sole discretion if the estimated cost of the remediation by a licensed site remediation professional (the "LSRP") reduces the return on Redeveloper's investment to the point that the project is economically and practically infeasible. In that case, Redeveloper shall provide written notice of termination of this Agreement within forty-five (45) days of the receipt of the LSRP's estimate of the cost of remediation. Should Redeveloper choose to construct the Project or any Phase regardless of any remediation requirement and cost, the Redeveloper's sole obligation to the Borough is to bring the Redevelopment Area into compliance with respect to reporting obligations to NJDEP. If other Persons are responsible, or in any way responsible, or alleged to be so, for the environmental contamination on-site, Redeveloper may pursue legal, administrative, enforcement or contribution action(s) against such Persons at Redeveloper's sole cost and expense. Redeveloper may also agree by contract with another Person that shall assume some or all of any remediation responsibility at its or their cost and expense. The Borough agrees to cooperate with Redeveloper's efforts to obtain any necessary Governmental Approvals from the NJDEP, and any other agencies to facilitate remediation and/or compliance. The Borough shall assist Redeveloper in applying for and obtaining any grants or loans that may facilitate environmental investigation or remediation efforts. It is understood and agreed that should Redeveloper choose to remediate the Redevelopment Area, Redeveloper may utilize any Remediation method acceptable to the NJDEP. As of the Effective Date, it is understood by the Parties that the Redeveloper is not a responsible Person for any discharges or for remediation of the Redevelopment Area and any remediation that is being conducted, or will be conducted, is being or will be conducted by or on behalf of the responsible Persons.

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

adjudication of bankruptcy of Redeveloper or a filing for voluntary bankruptcy by Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to Redeveloper shall have been filed.

(k) Reasonable Efforts to Complete. Developer shall use commercially reasonable efforts to Complete each Phase of the Project on or before the timeframes set forth in the Project Schedule.

6.2 Borough's Representations, Warranties and Covenants. The Borough hereby represents and warrants to, and covenants with, Redeveloper that:

(a) Organization. The Borough is a public body corporate and politic and a political subdivision of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement.

(b) Authorization; No Violation. The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough under, and will not violate, the statutes, rules and regulations establishing the Borough and governing its activities, have been duly authorized by all necessary Resolution(s) and/or Ordinances and will not result in the breach of any material agreement to which the Borough is a party or, to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

(c) Valid and Binding Obligations. The Person executing this Agreement on behalf of the Borough has been duly authorized by Resolution to execute this Agreement, has been duly executed and delivered by the Borough and constitutes the valid and binding obligation of the Borough.

(d) Litigation. No suit is pending against or affects the Borough which could have a material adverse effect upon the Borough's performance under this Agreement, other than the two matters entitled *Friends of Historic Flemington, LLC v. the Borough of Flemington, et al.*, under Docket Nos. HTN-L-170-17 and HTN-L-290-17, or the financial condition or business of the Borough. There are no outstanding judgments against the Borough that would have a material adverse effect upon the Borough or which would materially impair or limit of the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

(e) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

(f) No Violation of Laws. As of the Effective Date, the Borough has not received any notices from any public agency asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any other public agency having jurisdiction over and with respect to the transactions contemplated in and by this

Agreement which would have a material adverse effect on the Borough's ability to perform its obligations under this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby. The Borough shall comply with all Applicable Law in fulfilling its obligations under this Agreement.

(g) Water and Sewer Infrastructure. The Borough represents that it currently has sufficient sewer capacity and necessary easements to support Phase One and Phase Two of the Project. The Borough represents that it currently has sufficient water capacity for Phase One of the Project and may have sufficient water capacity for Phase Two of the Project. Subject to Section 4.4 herein, to the best of the Borough's knowledge there are no limits on availability of water or sewer capacity or restriction on the expansion of water and sewer infrastructure that would impact service to the Redevelopment Area site to support the Project. The Borough covenants that it shall work with the Redeveloper to confirm the availability of water and sewer capacity with the providers of those services to the Borough.

(h) Adoption of Redevelopment Plan. The Redevelopment Plan has been duly adopted in compliance with all Applicable Law.

(i) Borough Authorization. All requisite action has been taken by the Borough and all requisite consents have been obtained in connection with the entering into this Agreement and the instruments and documents referenced herein to which the Borough is a party, and the consummation of the transaction contemplated hereby, are to the best of the Borough's knowledge and belief authorized by all Applicable Law. To the best knowledge of the Borough there are no writs, injunctions, orders or decrees of any court or Governmental Body that would be violated by the Borough entering into or performing its obligations under this Agreement.

(j) Extinguishment of All Public Access Easements. The Borough agrees to extinguish any and all public access easements or interests located within the Redevelopment Area that will impede the development or operation of the Project.

### 6.3 Redeveloper Declaration of Covenants.

(a) Recording. Redeveloper agrees to record, and provide a recorded copy to the Borough, a Declaration of Covenants and Restrictions (the "Declaration"), with respect to the Redevelopment Area that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deeds. All provisions hereinafter with respect to the insertion in or the application to the Deeds of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

(b) Description of Covenants and Restrictions. The Covenants and Restrictions to be imposed upon Redeveloper for so long as the Redeveloper is a party of this Agreement, its successors and assigns, herein and recorded in the Deeds and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Construct only the uses established in the current Redevelopment Plan;
- (ii) Pursuant to the Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any buildings or structures erected or to be erected thereon, or any part thereof;
- (iii) In the sale, lease or occupancy of the Redevelopment Area or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status, and Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status to the extent required by the Applicable Law;
- (iv) Commence Construction of the Improvements within the Project Schedule provided that the Governmental Approvals and permitting are not delayed by the actions or inactions of the Borough, or an Event of Force Majeure; and
- (v) Not sell, lease or otherwise transfer the Redevelopment Area, or any part thereof, without the written consent of the Borough, except for permitted transfers to a Qualified Entity as set forth in Section 2.6(b).

(c) Effect and Term of the Covenants and Restrictions. Subject to the provisions of Section 6 it is intended and agreed, and the Deeds and the Declaration shall so expressly provide to the extent permitted by Applicable Law, that the Covenants and Restrictions set forth in Section 6 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Redevelopment Area, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in

possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 6 shall remain in effect until the issuance by the Borough of a Certificate of Completion for the Project or any Phase, as provided in Section 4.3 (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate for the Project or any Phase, as applicable), except, however, that the Covenants and Restrictions provided in Sections 6.3(b)(ii) and (iii) shall remain in effect without limitation as to time; provided that, until their termination as provided above, such Covenants and Restrictions shall be binding on Redeveloper itself, each successor in interest to the Project and/or any Phase, the Redevelopment Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Area, and the Improvements constructed thereon or any part thereof.

(d) Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 6, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 6(b) both for and in their own right but also for the purposes of protecting the interests of the community and other Persons, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Borough shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.



## **ARTICLE 7** **DEFAULT**

**7.1 Events of Default.** Each of the following shall constitute an Event of Default by the applicable party, respectively:

- (a) **Failure to Perform.** Failure of the Redeveloper or the Borough to observe or perform any covenant, condition, representation, obligation, warranty or agreement hereunder, and any act or omission characterized elsewhere in this Agreement as an Event of Default, subject to the occurrence of an Event of Force Majeure and the provisions hereto, and the continuance of such failure, act or omission for a period of thirty (30) days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure, act or omission be remedied (the "Notice of Default"); provided, however, that if the Event of Default is one that cannot be completely cured within thirty (30) days after receipt of the Notice of Default, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Event of Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Event of Default as soon as practicable, but in no event longer than ninety (90) days unless the non-defaulting party consents, in writing, to an extension of time to cure. It shall not be deemed to be an Event of Default if the Redeveloper diligently contests, in good faith, and by appropriate proceedings, such compliance with any Applicable Law.
- (b) **Default in Payment.** Redeveloper is in default in the payment of any sum payable to the Borough hereunder or associated with the Project, as the same shall become due and payable, and such Event of Default shall have continued for a period of thirty (30) days after receipt of written notice specifying such Event of Default, and demanding that same be remedied.
- (c) **Failure to Construct.** In the event Redeveloper shall fail to implement or construct the Project pursuant to the Project Schedule, subject to the occurrence of an Event of Force Majeure and the provisions hereto, or shall abandon or substantially suspend construction of the Project for a continuous period in excess of one hundred twenty (120) days, unless such suspension arises out of an Event of Force Majeure, and any such Event of Default, violation, abandonment, or suspension shall not be cured within thirty (30) days after written demand by the Borough to do so, or such longer period if incapable of cure within such thirty (30) day period and Borough agrees to extend such time to cure, provided that Redeveloper has commenced and is diligently prosecuting such cure.
- (d) **Failure to Pay Impositions.** Redeveloper or its successor in interest shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within thirty (30) days after written demand by the Borough to do

so, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion.

(e) Transfers. There is, in violation hereto, any transfer of the fee title to the Redevelopment Area or a portion thereof, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within thirty (30) days after written demand served upon the Redeveloper by the Borough.

(f) Redeveloper Dissolved or Bankrupt. Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of Redeveloper as bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within sixty (60) days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

(g) Court Action. A decision or order determination by a court of competent jurisdiction that Redeveloper has engaged in fraud in the inducement of, or willful misconduct in connection with the Project.

7.2. Right to Cure Upon Event of Default. Except as otherwise provided in this Agreement, in the Event of Default by any party hereto or any successor to such party, such party (or successor) shall, within thirty (30) days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to cure or remedy such Event of Default. In case such action is not taken or diligently pursued, or the Event of Default shall not be cured or remedied within such proscribed time, or any extension of such time granted at the discretion of the non-defaulting party, the non-defaulting party may pursue its remedies in accordance with this Agreement.

7.3 Borough's Remedies. If Redeveloper shall fail to timely cure any Event of Default by Redeveloper as set forth in Section 7.1, the Borough shall have the right to:

- (a) terminate this Agreement and de-designate Redeveloper; and
- (b) retain any payments already made by Redeveloper hereunder for Public Improvements; and
- (c) pursue all other remedies available to it at law or equity.

7.4 Redeveloper's Remedies. If the Borough shall fail to timely cure any Event of Default by Borough as set forth in Section 7.1, Redeveloper shall be entitled, in its sole and

absolute discretion, to terminate this Agreement and/or seek any other remedies available to it at law or equity.

**7.5 Limitation of Liability.** The Parties agree that if an Event of Default occurs, the Parties shall look solely to the Parties hereto and/or their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages. In no event shall either Party be responsible for any consequential or punitive damages.

**7.6. No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of or limit the aggrieved party's rights in any way (it being the intent of this provision that the aggrieved party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved party may still resolve the problems by the Event of Default involved; nor shall any waiver in fact made by the aggrieved party with respect to any specific Event of Default by the other party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other Event of Default by the other party under this Agreement or with respect to the particular Event of Default except to the extent specifically waived in writing.

**7.7. Rights and Remedies Cumulative.** The rights and remedies of the Parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Event of Default or of any of its remedies for any other Event of Default by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

**7.8 Force Majeure.** For purposes of this Article and as otherwise used in this Agreement, "Event of Force Majeure" shall mean any of the events or conditions set forth below, or any combination thereof, that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (an "Affected Party") under this Agreement:

(a) **Acts of God.** An act of God including severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people,

or any other similar act or event outside the Control of the Affected Party; provided however, that any question as to whether any such conditions should be deemed to constitute an Event of Force Majeure shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe natural weather conditions, taking into account the geographic location and topographic and geotechnical conditions of the Project;

(b) Condemnation or Taking. The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Redevelopment Area, or any material portion or part thereof, by the action of any federal, state or local government or governmental agency or authority;

(c) Governmental or Utility Approvals. Delays incurred in obtaining Governmental Approvals or approvals by utilities caused solely by the approving agency or utility after the Affected Party has taken all required action in obtaining such Governmental Approval and the continued delay is outside and beyond the Control of the Affected Party;

(d) Legal Challenges. Legal challenges brought to challenge any permit and/or Governmental Approval related to this Project by third-parties over whom the Affected Party has no Control;

(e) Labor Union Actions. Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of Redeveloper and have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;

(f) Unavailability of Materials. The unavailability of suitable fill or materials required for performance of the work related to the Project due to fluctuations in the historically reasonable commercial rates for fill or materials, shortages of same in the market place and/or the inability to obtain transportation services for transporting fill or materials to the Redevelopment Area or the Project area as a result of a public or private labor dispute;

**7.9 Notice of Event of Force Majeure.** If an Event of Force Majeure has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such Event of Force Majeure shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within five (5) days following such party's knowledge of the occurrence of such Event of Force Majeure. The party receiving such notice may contest and/or reject the claim of an Event of Force Majeure in writing, setting forth its bases for such rejection and demanding that the Affected Party proceed with its obligations under this Agreement. If the Affected Party intends to continue to rely upon the condition claimed to result in an Event of Force Majeure, it may request, in writing, a neutral professional review. The Parties shall then mutually select and designate a local member of the profession to which the Event of Force Majeure relates and agree to permit such individual to

arbitrate and decide the reasonableness of the claim of Force Majeure and the appropriate extension of time to be granted to the Affected Party.

**7.10 Effect on Obligations.**

(a) Extension Equal to Delay Caused by Event of Force Majeure. In the event of an Event of Force Majeure, the applicable deadline, obligation or term affected by such Event of Force Majeure shall be extended for a period of time equal to the delay caused by the Event of Force Majeure, provided that timely notice was provided by the Affected Party.

(b) Not an Event of Default. The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is/are the result of an Event of Force Majeure, provided, however, that the Event of Force Majeure (a) was not invoked in bad faith or intentionally by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the Event of Force Majeure.

(c) Mitigation of Event of Force Majeure. Each party shall diligently and in good faith seek to mitigate the effect of such Event of Force Majeure and to perform its obligations to the extent practicable notwithstanding the occurrence of an Event of Force Majeure and to overcome such Event of Force Majeure as soon as is possible or practicable.

(d) Reinstatement of Performance Obligations. The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an Event of Force Majeure and, in the case of the party not seeking to delay its performance based upon such Event of Force Majeure, after receipt by such party from the Affected Party of written notice that the Event of Force Majeure is no longer occurring and that such party can resume performance of its obligations under this Agreement.

**7.11 Defense of Governmental Approvals.** Except as set forth herein or below, Redeveloper shall assume the defense to any challenge to any Governmental Approval it requires to proceed with the Project without cost to the Borough so as to continue to move forward with the Project, until a final, non-appealable judicial determination is obtained, subject to the provisions set forth in Section 14.1. Notwithstanding the above, the Borough shall assume the defense of any and all actions taken by the Borough in furtherance of the Project including the establishment of the Redevelopment Area, adoption of the Redevelopment Plan and amendments thereto, authorization and execution of any and all agreements including this

Agreement and the Financial Agreement and the issuance of any debt related to the Project, until a final, non-appealable judicial determination is obtained, subject to the provisions set forth in Section 14.1. Redeveloper shall be solely responsible for its own costs and attorneys' fees if it is named in or chooses to intervene in any such actions.

**ARTICLE 8**  
**INSURANCE**

**8.1 Insurance Requirements.** During the term hereto, or as required prior to any construction at the Redevelopment Area, Redeveloper shall provide and maintain adequate insurance including the types of coverage and in amounts reflecting industry standards for adequate insurance against risk of loss and casualty in connection with the type, extent and magnitude of work to be performed under this Agreement until such work has been Completed and furnish the Borough with a copy of certificates of insurance evidencing that Redeveloper has obtained such insurance. This coverage shall be primary to any other policies of the Borough and shall not be contributing with any other insurance or similar protection available to the Borough whether other available insurance be primary, contributing or excess.

## **ARTICLE 9**

### **INDEMNITY**

**9.1 Obligation to Indemnify.** Redeveloper and the Borough agree to indemnify and hold each other and their respective officials, members, agents, servants, employees and consultants (collectively, the "Indemnified Parties") harmless from and against any and all demands, suits, causes of action, recoveries, judgments, losses, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys' fees and expenses and experts' fees and expenses) (collectively, "Claims") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the condition, use, possession, conduct, management, planning, design, financing, implementation, construction, inspection, or maintenance of the Project, marketing, leasing or sale of the Redevelopment Area or the Project or any activities of or on behalf of Redeveloper or Borough within the Redevelopment Area, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of the Indemnified Parties. The Redeveloper or Borough shall provide notice to the other Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) days of the Redeveloper or Borough receiving actual notice of the subject Claims, provided, however, that in the event such notice is not timely received, Redeveloper or Borough shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

**9.2 Notice of Claims.** In any situation in which the Indemnified Parties are entitled to receive and desire defense and/or indemnification, the Indemnified Parties shall give prompt notice of such situation to Redeveloper or Borough, as the case may be. Failure to give prompt notice shall not relieve Redeveloper or Borough of any liability to indemnify the Indemnified Parties, unless such failure to give prompt notice materially impairs Redeveloper's or Borough's ability to defend. Upon receipt of such notice, Redeveloper or Borough shall resist and defend any action or proceeding on behalf of the Indemnified Parties, including the employment of counsel reasonably acceptable to the Redeveloper or Borough, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper and Borough shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the Redeveloper or Borough unless the employment of such counsel is specifically authorized by Redeveloper or Borough, which authorization shall not be unreasonably withheld or delayed, provided, however, that if the defense of such action is assumed by Redeveloper's or Borough's insurance carrier, employment of such separate counsel by the Redeveloper or Borough shall be at the sole discretion of such carrier. Redeveloper or the Borough shall not be liable for any settlement of any such action effected without their respective consent, but if settled with the consent of Redeveloper or the Borough, or if there is a final judgment against Redeveloper party or Borough party in any such action, Redeveloper or the Borough, as the case may be, shall indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Indemnified Parties are entitled to indemnification hereunder.



**9.3 Survival of Indemnity.** The provisions of this Article 9 shall survive the termination of this Redevelopment Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as a result of the recording of a Certificate of Completion, provided, however, that such indemnity shall be binding on each successor in interest to the Project, the Redevelopment Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Area, the Project or any part thereof.

**ARTICLE 10**  
**CONSUMPTION OF LIQUOR WITHIN PROJECT**

**10.1 Liquor License.** The Project shall require a liquor license for use with the hotel and restaurant portions of the Project. Redeveloper may secure a liquor license in connection with the construction of the hotel with at least one hundred (100) rooms. The redeveloper has secured another liquor license in the Borough which liquor license shall be utilized for the Project in the event that Redeveloper does not secure another liquor license in connection with the 100 room hotel or otherwise. So long as this Agreement remains effective and has not been terminated, Redeveloper shall not sell or convey the liquor license it currently owns unless and until it has fully-secured another liquor license for use in the Project. This shall not preclude Redeveloper from use of the current liquor license during the implementation of this Project so long as it is reserved for the Project for use in the Completed Project pursuant to this Agreement. This provision shall not survive the termination of this Agreement.

**ARTICLE 11**  
**NOTICES AND DEMANDS**

**11.1 Notices.** A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number) or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or facsimile numbers:

If to the Borough, to:

Borough Clerk  
Borough of Flemington  
Borough Hall  
38 Park Avenue  
Flemington, New Jersey 08822

With a copy to:

Robert Beckelman, Esq.  
Greenbaum Rowe Smith & Davis LLP  
99 Wood Avenue South  
Iselin, New Jersey 08830-2712

and if to Redeveloper, to:

John J. Cust, Jr., CPA  
5 Bartles Corner Road  
Flemington, New Jersey 08822

with a copy to:

George Dilts, Esq.  
Dilts and Koester  
167 Main Street  
Flemington, New Jersey 08822

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 11.1 change the address, facsimile number or persons to which notices shall be sent.

## **ARTICLE 12**

### **CONSTRUCTION AND PROJECT FINANCING**

#### **12.1 Redeveloper's Commitment to Finance Construction of the Project.**

Redeveloper represents that it has obtained or can obtain, and will commit the requisite equity in an amount necessary to purchase the Redevelopment Area on the terms and conditions set forth herein, and to perform all of Redeveloper's obligations hereunder in order to Commence Construction and to Complete Construction of the Project within the time periods required under this Agreement. Redeveloper shall provide the Borough with evidence that it has closed on the institutional financing and contributed equity required to complete construction of the Block 22 portion of the Project prior to the demolition of any structures required to be demolished for the Block 22 portion of the Project.

**12.2 Rights of Institutional Mortgagee.** Any financial institution lending money on the security of the real Redevelopment Area in the Project shall be entitled to the protection of *N.J.S.A. 55:17-1, et seq.* providing for notification, right to cure, right to possession, right to assume Control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with Foreclosure, right to proceed to Foreclosure, separately from or together with suit on the underlying obligation, and such other rights all as specifically provided in *N.J.S.A. 55:17-8*.

(a) **Continuation.** This Agreement as a financial arrangement made by a Governmental Body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any Event of Default in or Foreclosure of any mortgage loan made to finance the project, as though such Event of Default or Foreclosure had not occurred, subject to the provision of *N.J.S.A. 55:17-1, et seq.*

(b) **Subordination and Attornment.** To the extent necessary, the Borough agrees to execute subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

**12.3 Rights of Mortgagees.** Notwithstanding any other provision hereto, the Holder of any mortgage (including any such Holder who obtains title to the Redevelopment Area or any part thereof), or any other party who thereafter obtains title to the Redevelopment Area or such part from or through such Holder or any purchaser at Foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project except to secure and make the Project site and Redevelopment Area safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any Deeds conveying the Redevelopment Area to Redeveloper be construed to so obligate such Holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Redevelopment Area or any part thereof to any uses, or to construct any Improvements thereon,

other than those uses or Improvements provided, or permitted under the Redevelopment Plan or otherwise approved by the Borough.

**12.4 Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any Event of Default by Redeveloper of its obligations or covenants under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each Holder of any mortgage at the last known address of such Holder shown in the land records of the County. Notice that such Event of Default subsequently has been cured shall also be provided by the Borough to each such Holder of any mortgage.

**12.5 Mortgagee's Right to Cure Event of Default and Assume Redeveloper's Obligations.** After any Event of Default referred to in Section 7, each Holder shall have the right, at its option, to cure or remedy such Event of Default (if the Holder shall opt to cure or remedy the Event of Default, the times to cure provided herein shall be extended for such a period of time equal to the time otherwise applicable to Redeveloper for cure) and to add the cost thereof to its mortgage. If the Event of Default is with respect to construction of the Project or Phase, nothing contained in this Agreement shall be deemed to require the Holder to obtain the Borough's approval, either before or after Foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project or Phase. Any such Holder who shall properly Complete the Project or Phase shall be entitled, upon written request made to the Borough, to receive the Certificate of Occupancy for the Project, Phase or portion thereof and the Certificates of Completion as set forth in Section 4.3, and such Certificate shall mean and provide that any remedies or rights that Borough shall have or to be entitled to due to the failure of Redeveloper or any successor in interest to the Redevelopment Area, or any part thereof, to cure or remedy any Event of Default with regard to construction of the Project or Phase, or due to any other Event of Default by Redeveloper or such successor, shall not apply to the part or unit of the Redevelopment Area to which such Certificate relates.

**12.6 Mortgage Modifications.** If the Holder of any mortgage obtained by the Redeveloper under this Agreement reasonably requires any changes or modifications to the terms of this Agreement, the Borough shall reasonably cooperate with the Holder of any such mortgage(s).

**ARTICLE 13**  
**RESTRICTIONS ON TRANSFERS**

**13.1 Restrictions on Transfer.** The Redeveloper recognizes the importance of the Borough Lots to the general welfare of the community and that the reputation of the Redeveloper and its qualifications are critical to the Borough in entering into this Agreement. The Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Agreement with the Redeveloper, and, in so doing, the Borough is relying on the obligations of the Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder. Accordingly, so long as the Agreement is effective, prior to the issuance of a Certificate of Completion for the Project or Phase, pursuant to *N.J.S.A. 40A:12A-9(a)*, except as otherwise permitted by this Agreement, Redeveloper shall be without power to sell, otherwise transfer title to or ownership of the Project or Phase, without the written consent of the Borough, which consent shall not be unreasonably withheld, delayed or conditioned. The prohibition in this Section 13.1 shall apply to any sale, transfer, pledge, or hypothecation by Redeveloper of all or substantially all of its assets "in bulk" (but not to sales in the ordinary course of business) or all or substantially all of its stock, or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the stock of Redeveloper if Redeveloper's stock is not publicly traded; or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the beneficial ownership interest in Redeveloper if Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper, provided that there is no change in the beneficial ownership of Redeveloper which is prohibited by the third sentence of this Section. The restrictions in this Section 13.1 shall not apply to conveyances set forth in Section 13.2 and these restrictions shall no longer apply to any individual unit or Phase for which a Certificate of Occupancy or Certificate of Completion has been issued.

As a result, prior to completion of the Project or Phase, as evidenced by the issuance of a Certificate of Completion, except with the express prior written consent of the Borough, which consent shall not be unreasonably withheld by the Borough, the Redeveloper agrees for itself and all successors in interest that there shall be no sale, transfer or assignment of (i) the Redevelopment Area; (ii) any equity interest in the Redeveloper, nor any direct or indirect change in Control of the Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger, or otherwise; or (iii) the Agreement. With respect to this provision, the Redeveloper and the persons signing the Redevelopment Agreement on behalf of the Redeveloper represents that each has authority to agree to this provision on behalf of the current members of the Redeveloper and to bind it with respect thereto.

**13.2 Consent to Permitted Transfers.** The Borough hereby consents, without the necessity of further approvals from the Borough, to the following transfers:

- (a) a mortgage or related security granted by the Redeveloper to a mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Agreement;
- (b) a merger or consolidation of Redeveloper with another financially responsible Person;
- (c) the sale and/or lease of the residential units and/or the commercial/industrial space built as part of the Project;
- (d) the conveyance of driveways, roads, infrastructure, or open space;
- (e) utility and other necessary easements;
- (f) a conveyance of the Redevelopment Area or any portion thereof to the Holder of any mortgage authorized under this Agreement, whether through Foreclosure, deed-in-lieu of Foreclosure, or otherwise;
- (g) a conveyance of any properties in the Redevelopment Area or an interest therein and/or assignment by the Redeveloper of its rights under this Agreement, but only upon the following conditions: (i) such conveyance or assignment must be to an Affiliate or an Person Controlling, Controlled by, or under common Control of the Redeveloper, including but not limited to an urban renewal entity formed by the Redeveloper pursuant to *N.J.S.A. 40A:20-4*; (ii) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations; (iii) a copy of the written instrument of conveyance and assignment and assumption of this Agreement shall be delivered to the Borough for review; and (iv) such conveyance or assignment does not violate any of the Government Approvals; or
- (h) the sale, transfer, pledge or hypothecation of any percent of stock or beneficial ownership interest so long as the original members of the Redeveloper shall maintain a Controlling management interest, including an Affiliated urban renewal entity.

**13.3 Prohibition Against Speculative Development.** Because of the importance of the development of the Redevelopment Area to the general welfare of the community, the Redeveloper represents and agrees that its acquisition of the Redevelopment Area and the Redeveloper's undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the redevelopment or rehabilitation of the Redevelopment Area as provided herein, and not for speculation in land holding.

**13.4 Information as to Ownership of Redeveloper.** In order to assist in the effectuation of the purpose of this Article 13, simultaneously with the execution hereto and as a condition thereto, the Redeveloper shall submit to the Borough an incumbency certificate of the Redeveloper as of the Effective Date, subscribed and sworn to by an officer of the Redeveloper, setting forth the name(s) and address(es) of all Persons owning at least a ten percent (10%), interest in the Redeveloper, and, as to each such Person, all Persons owning at least a ten percent (10%) interest therein, such disclosure being intended to be the same disclosure that the Redeveloper will be required to make in connection with its Governmental Applications for land use approvals pursuant to *N.J.S.A. 40:55D-48.2* and as is required under *N.J.S.A. 52:25-24.2*. Redeveloper shall provide an incumbency certificate for any Person affiliated with the Redeveloper.

(a) **Notice of Change in Ownership.** Redeveloper will immediately notify the Borough in writing of any change of ten percent (10%) or greater in the ownership of the Redeveloper, legal or beneficial change in ownership, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the Persons in Control of the Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(b) **Provision of Statement of Ownership Upon Borough's Request.** Redeveloper shall, at such time or times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by an officer of the Redeveloper, setting forth all owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Redeveloper, their names and the extent of such interest.

**13.5 Conveyance to a Qualified Entity.** Upon a conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.6, Redeveloper shall be relieved of its right and obligations hereunder.

**13.6 Subsequent Conveyance by Redeveloper.** Upon issuance of a Certificate of Completion for the Project or any Phase, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber any such Phase or the Project, as applicable, without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations that expressly survive such transfer or conveyance.



## **ARTICLE 14**

### **MISCELLANEOUS**

**14.1 Term.** This Agreement shall terminate upon the sooner of (1) the Completion of the Project, evidenced by a Certificate of Completion for the entire Project, (2) seven (7) years and three (3) months from the Effective Date of this Agreement, inclusive of any events of Force Majeure, subject to a reasonable extension in the Boroughs sole discretion (3) termination by either Party as may be provided for in this Agreement. If there is a judicial determination that any property within the Redevelopment Area and included in the Redevelopment Plan does not qualify as an area in need of redevelopment under the Redevelopment Law or a Financial Agreement is not executed by the Parties after a reasonable period of time to be determined mutually by the Parties in good faith and the exercise of reasonable judgment, the Parties may mutually agree to terminate this Agreement.

**14.2 No Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

**14.3 Amendment; Waiver.** No alteration, amendment or modification hereto shall be valid unless executed by an instrument in writing by the Parties to this Agreement with the same formality as this Agreement, including approval by Resolution of the Borough. The failure of the Borough or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Borough or Redeveloper.

**14.4 Consents.** Unless otherwise specifically provided herein, no consent or approval by the Borough or Redeveloper permitted or required under the terms hereto shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the party by or on whose behalf such consent is given.

**14.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall be filed in either the Superior Court of New Jersey, Hunterdon County, or in the United States District Court for the District of New Jersey in accordance with their respective rules of court.

**14.6 Severability.** If any Article, Section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Section, subsection, term or provision of this Agreement or the application of same to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining Article,

Section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

**14.7 Binding Effect.** Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of Redeveloper, the Borough and their respective successors and assigns.

**14.8 Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and the Borough, their relationship being solely as contracting parties under this Agreement.

**14.9 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

**14.10 Prior Agreements Superseded.** This Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties respecting the within subject matter, including but not limited to the Initial Redevelopment Agreement. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

**14.11 Exhibits.** All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

**14.12 Affirmative Action.** Should Redeveloper use any public funding or financing for the Project which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (N.J.S.A. 17:27), Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

**14.13 Non-Discrimination.** The Redeveloper shall not discriminate against or segregate any person, a group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation of the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Redevelopment Area; 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 tenants, lessees, subtenants, sub lessees or vendees on the Redevelopment Area.

**14.14 Construction.** Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Agreement shall be construed in favor of or against either Party by virtue of

the fact that such Party or its counsel have provided an initial or any subsequent draft of this Agreement or of any portion hereto.

**14.15 Cooperation.** The Parties agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Borough further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project. The Borough further agrees to take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation agreeing to modify or amend this Agreement, designating Borough staff liaisons to assist the Redeveloper in interacting with Borough departments, commissions, boards, authorities and the like and granting of special meetings and other expedited processing of Redeveloper's applications, submissions and the like to the extent authorized under Applicable Law. Any costs incurred by the Borough in connection therewith shall be deemed Borough Costs, reimbursable pursuant to Section 4.6(a).

**[SIGNATURES ON NEXT PAGE]**

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

FLEMINGTON CENTER URBAN  
RENEWAL, LLC

  
Witness

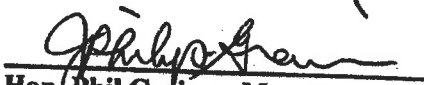
By:

  
John J. Cust, Jr., CPA  
Managing Member

BOROUGH OF FLEMINGTON

  
Sallie Graziano, Borough Clerk

By:

  
Hon. Phil Greiner, Mayor

**EXHIBIT LIST**

**Exhibit A:**    **Concept Plan**

**Exhibit B:**    **Project Schedule**

**Exhibit C:**    **Ownership Structure of the Redeveloper**

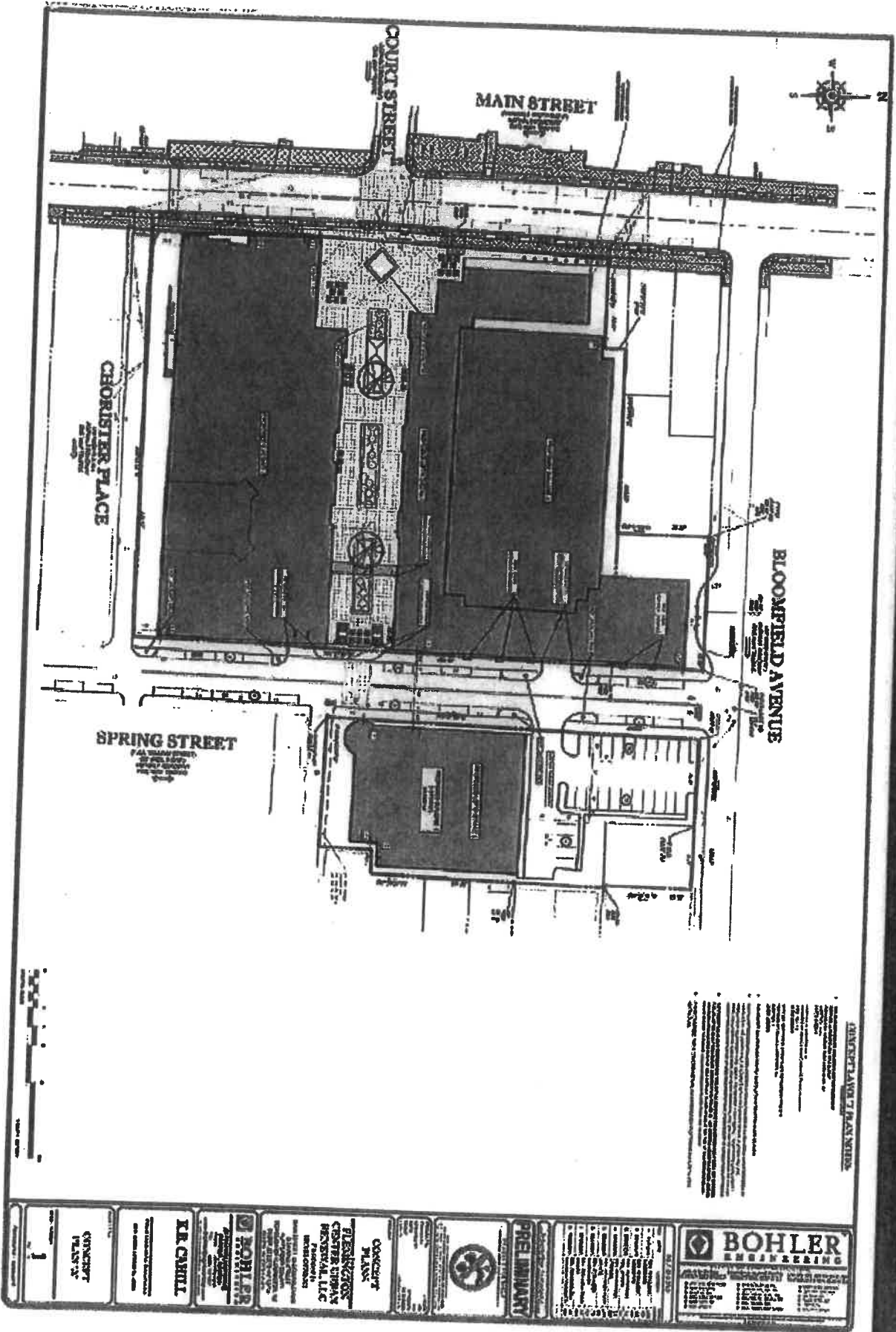
**EXHIBIT A**  
**CONCEPT PLAN**

**Phase One:** The development of the portion of the Project to be located on Block 22 on the Borough tax map.

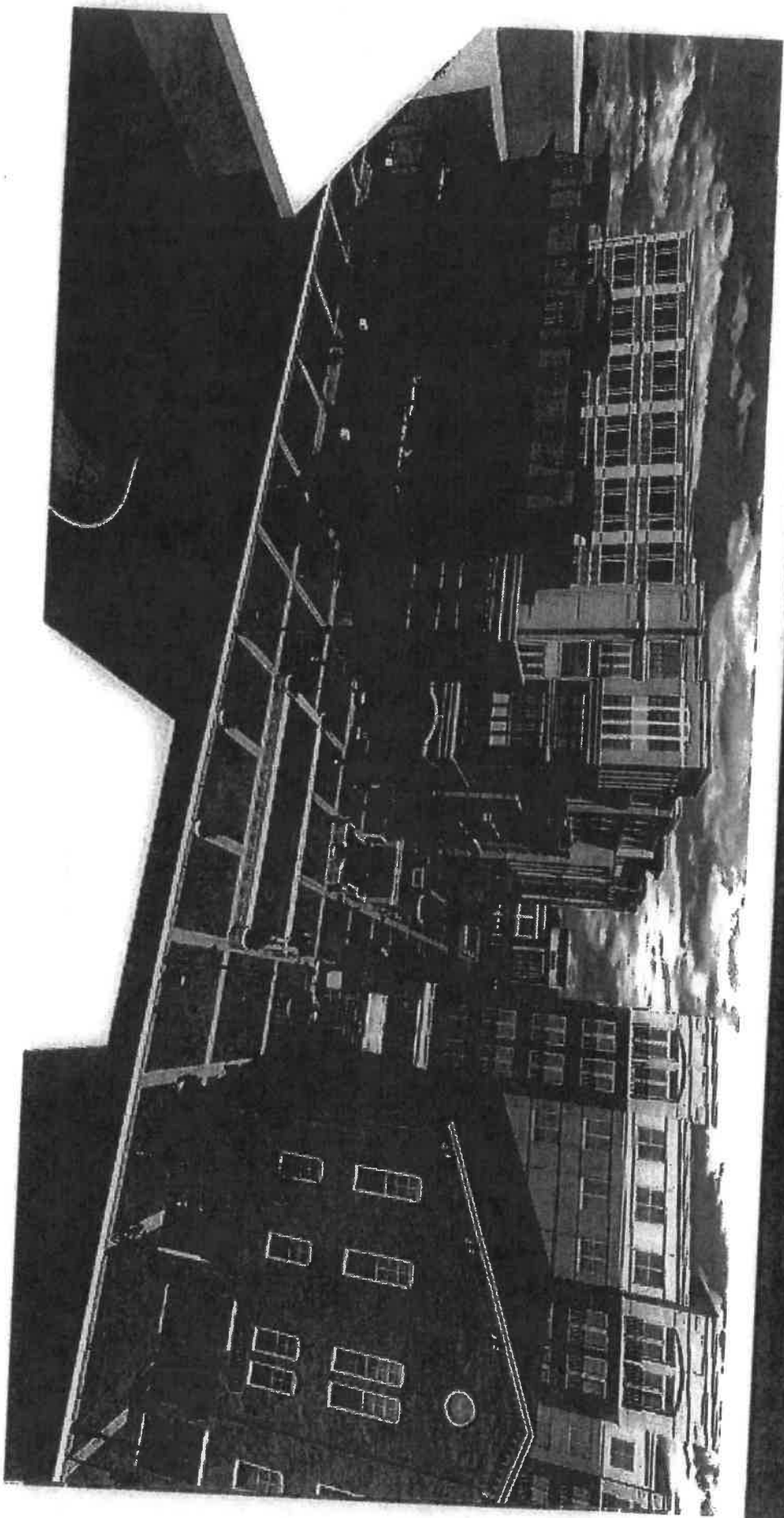
**Phase Two:** The development of the portion of the Project to be located on Block 24 on the Borough tax map.

**\*The drawing attached in Exhibit A are for purposes of reference to the Project Concept and Design details but do represent any analysis or determination of compliance with any applicable zoning and development requirements and standards, such as parking, height, coverage, setbacks, density, etc., all of which shall be set forth and determined pursuant to the Redevelopment Plan and the Project will be required to comply with such zoning and development requirements and standards.**

# Concept Plan A



# Concept Plan B



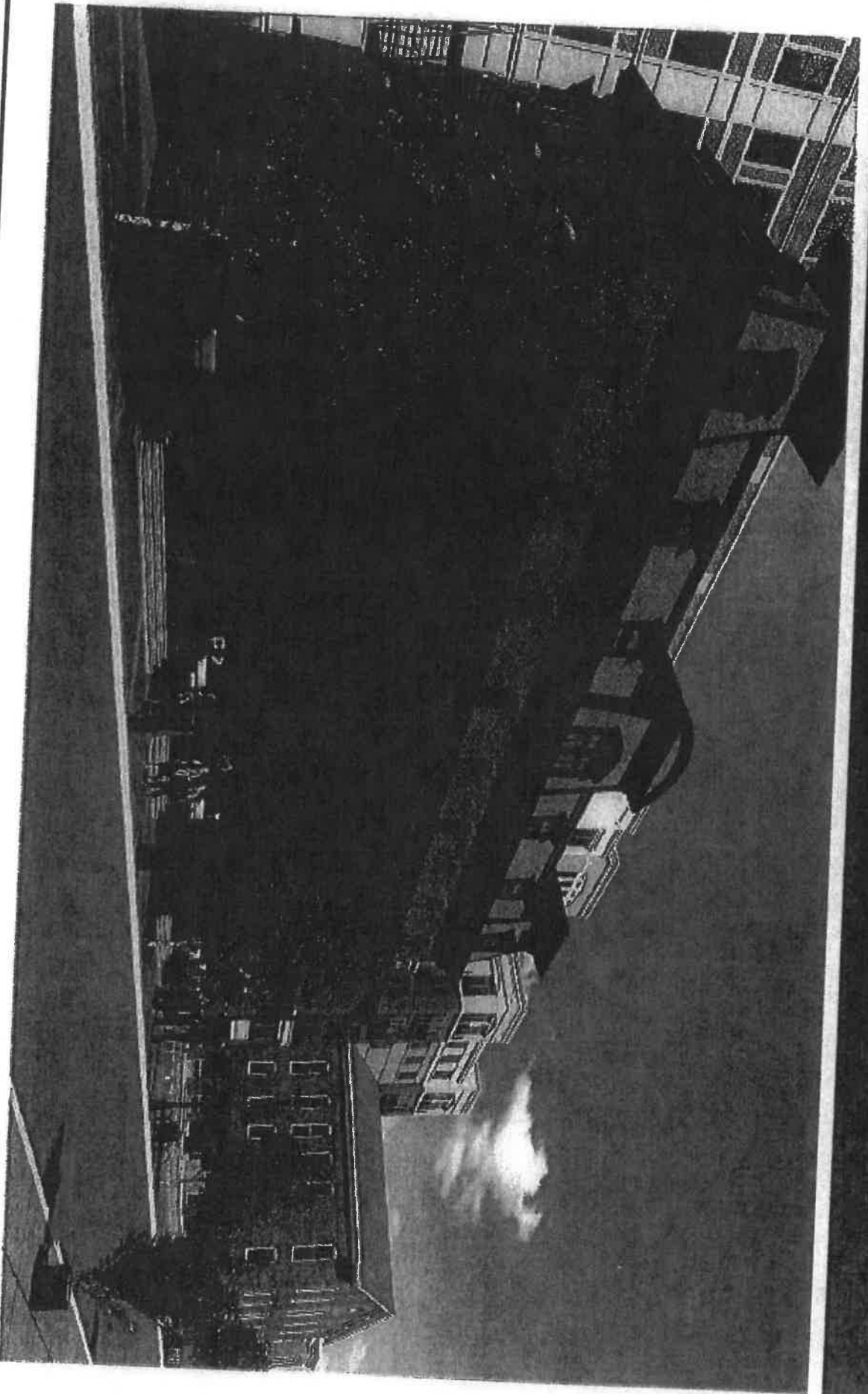
**MINNO ■ WASKO**  
 ARCHITECTS AND PLANNERS  
11111 UNIVERSITY AVENUE, SUITE 100, NEW YORK, NY 10019  
 (212) 696-1111

**MAIN STREET LOOKING DOWN PLAZA PERSPECTIVE**  
 FLEMINGTON CENTER  
 URBAN RENOVATION LLC

**COURTHOUSE SQUARE**  
11111 UNIVERSITY AVENUE, SUITE 100, NEW YORK, NY 10019  
 (212) 696-1111



## Concept Plan C



**MINNO ■ WASKO**  
ARCHITECTS AND PLANNERS  
RENEWED VISION FOR THE FUTURE OF NEW JERSEY  
www.minnowasko.com

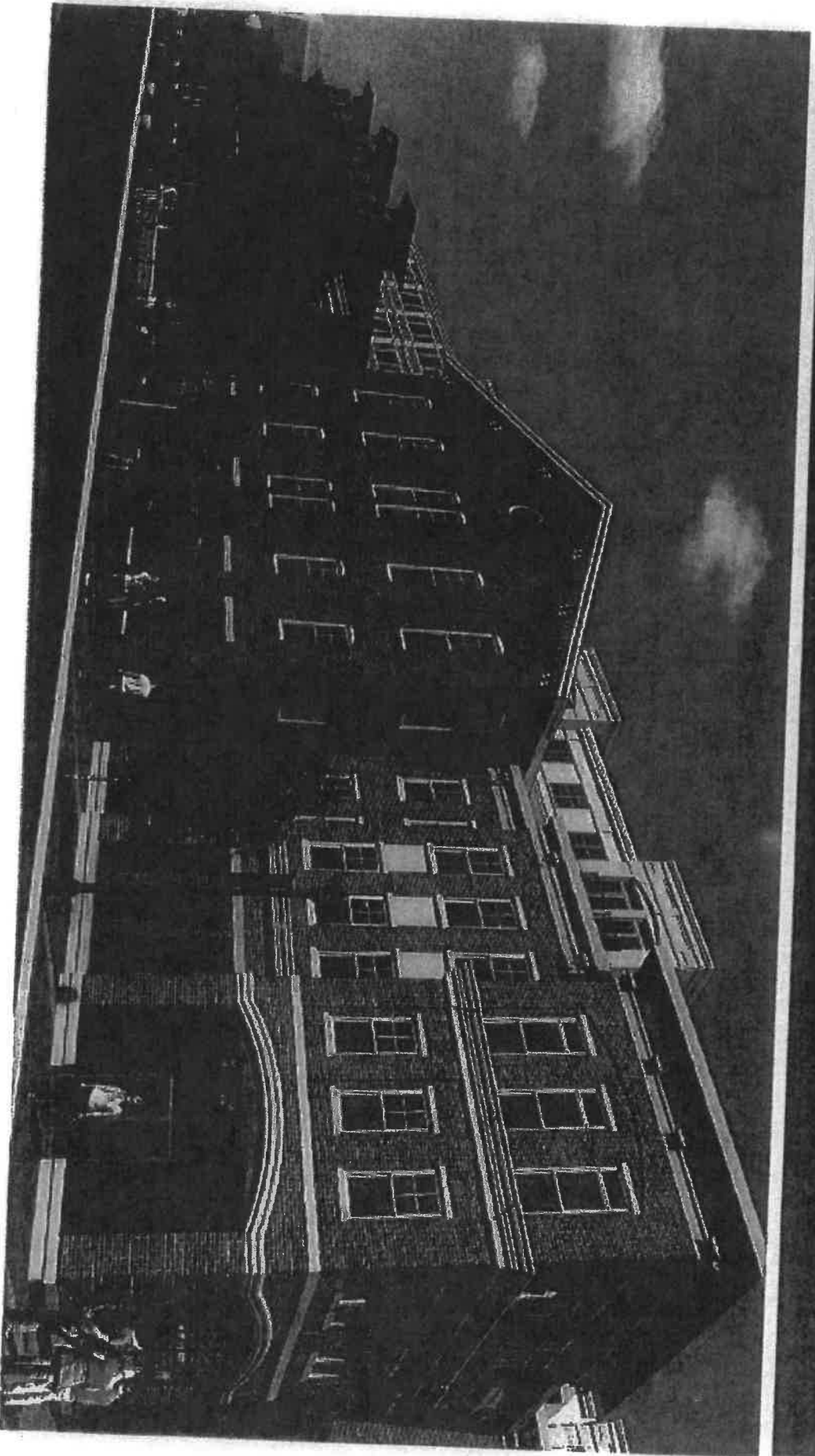
**FLEMINGTON CENTER  
URBAN RENOVATION LLC**

**MAIN STREET VIEW OF HISTORIC HOTEL**

**COURTHOUSE SQUARE**

CONCEPT BY MINNO WASKO ARCHITECTS AND PLANNERS  
FLEMINGTON, NJ

Concept Plan D



**MINNO ■ WASKO**  
ARCHITECTS AND PLANNERS  
601 UNIVERSITY AVENUE, SUITE 1000, NEW BRUNSWICK, NJ 08901  
WWW.MINNOWASKO.COM

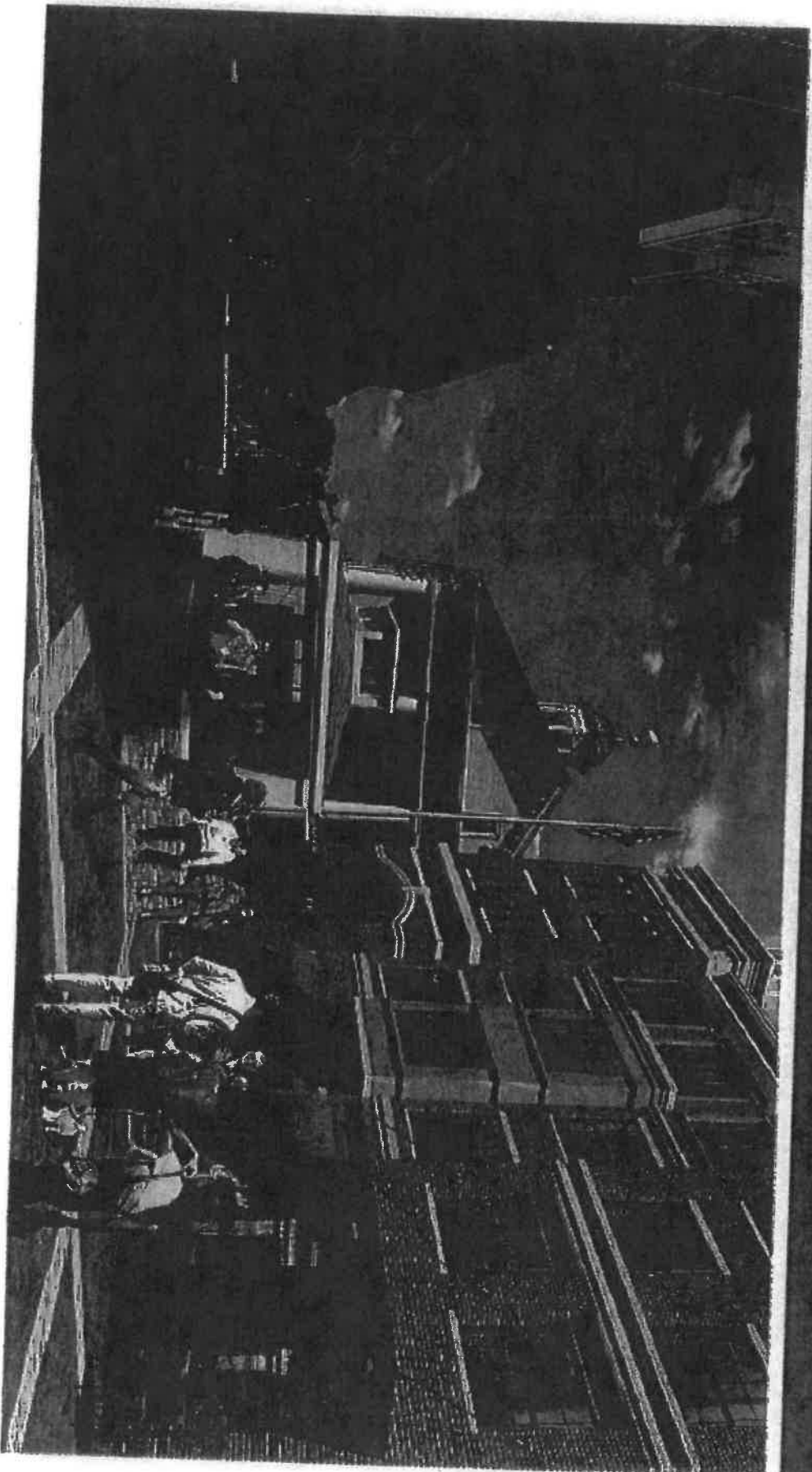
REBANGION CENTER  
URBAN RENAISSANCE LLC

**COURTHOUSE SQUARE**

MAIN STREET VIEW OF BANK

REBANGION, NJ  
REBANGION CENTER  
URBAN RENAISSANCE LLC  
601 UNIVERSITY AVENUE, SUITE 1000, NEW BRUNSWICK, NJ 08901

## Concept Plan E



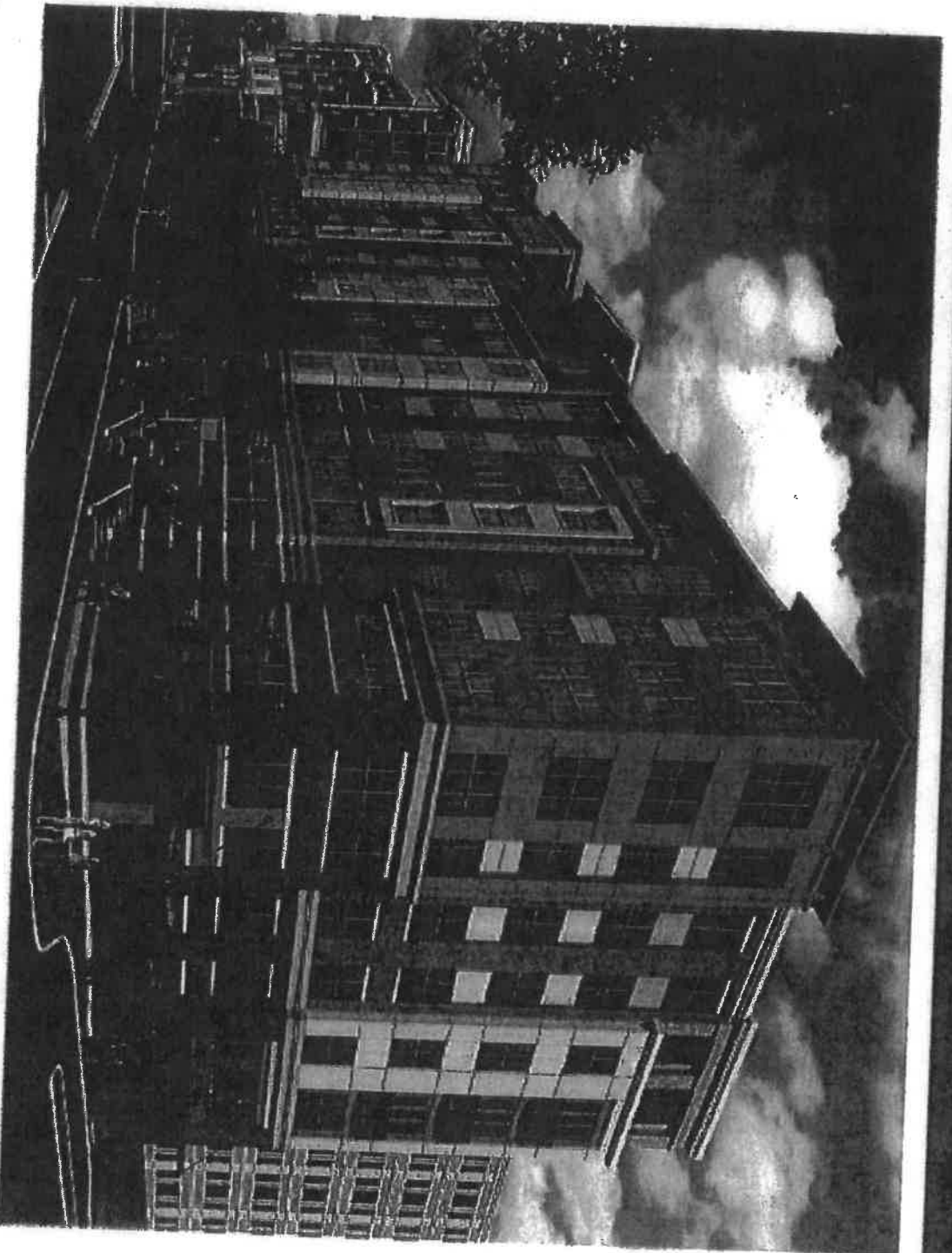
**MINNO ■ WASKO**  
ARCHITECTS AND PLANNERS

PLEASANTON CENTER  
URBAN REDEVELOPMENT, LLC

PLAZA VIEW OF COURTHOUSE  
COURTHOUSE SQUARE

PLEASANTON, IN  
CONCEPT DESIGN BY WASKO ARCHITECTS AND PLANNERS

# Concept Plan F



**MINNO ■ WASKO**  
ARCHITECTS AND PLANNERS  
22 MARKET AVENUE, SUITE 200, LAWRENCEVILLE, GA 30046  
770.962.1000

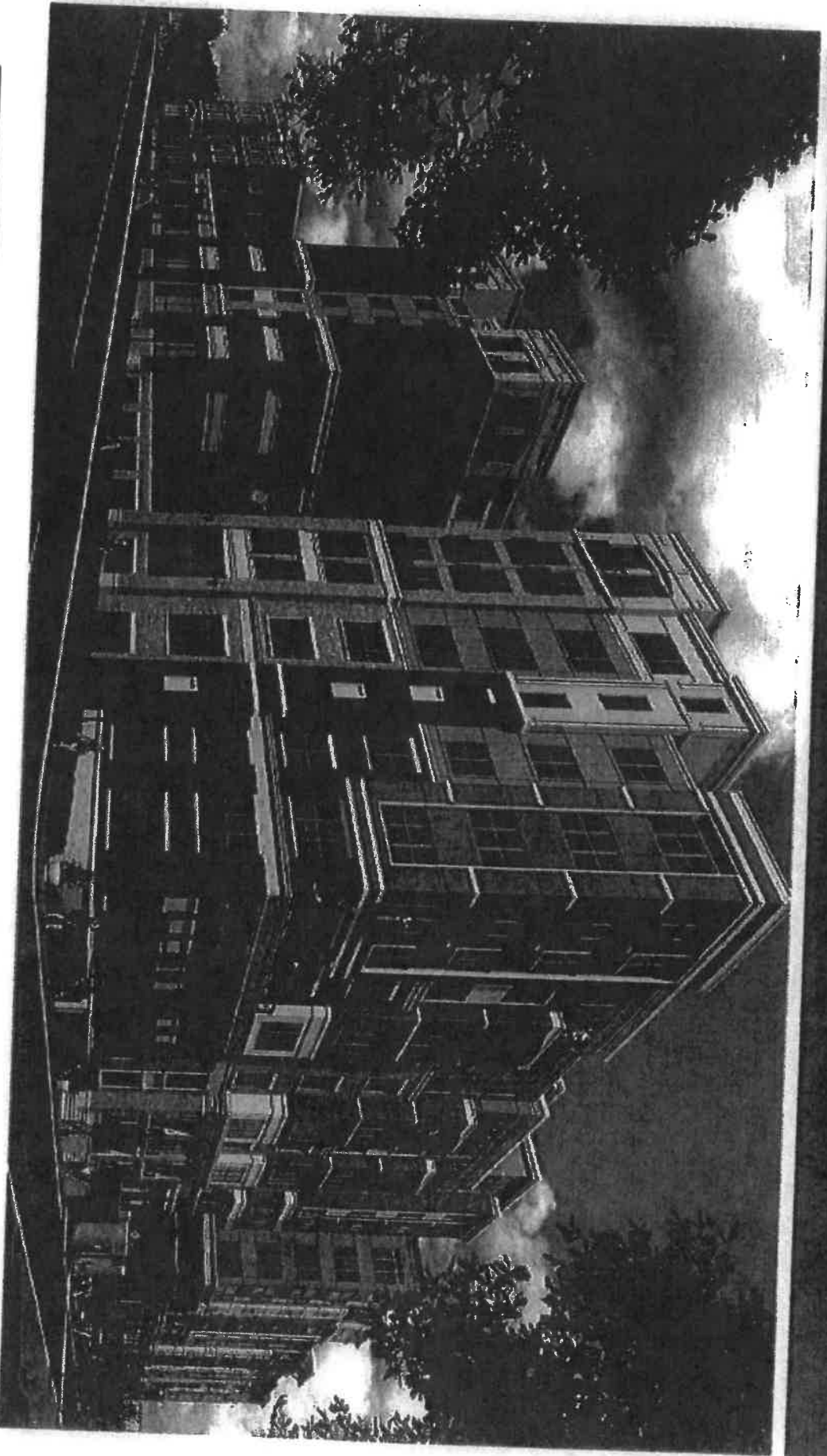
FLEMINGTON CENTER  
URBAN REDEVELOPMENT LLC

**COURTHOUSE SQUARE**

FLEMINGTON, IN  
11/11/2011

SPRING STREET & BLOOMFIELD AVE. PERSPECTIVE

## Concept Plan G



**MINNO ■ WASKO**  
ARCHITECTS AND PLANNERS  
1000 MARKET STREET, SUITE 1000, NEW JERSEY CITY, NJ 07310  
201.524.1100

**SPRING STREET & CHORISTER PLACE PERSPECTIVE**  
RELANDSON CENTER  
URBAN RENOVATION, LLC

**COURTHOUSE SQUARE**

RELANDSON CENTER  
URBAN RENOVATION, LLC  
NEW JERSEY CITY, NJ 07310  
201.524.1100



**EXHIBIT B**  
**PROJECT SCHEDULE**

The Project implementation tasks and completion dates set forth below shall be adhered to by Redeveloper and Borough, as applicable, in accordance with the terms and condition of this Redevelopment Agreement.

Execution of a Financial Agreement by the Parties shall be completed within 90 days of execution of this Agreement

Concept Plan Review Application for Phase One shall be submitted to the Borough pursuant to Section 3.2(c) of the Agreement within 60 days of the receipt of a final, non-appealable judicial determination concluding any and all litigation concerning the establishment of the Redevelopment Area, adoption of the Redevelopment Plan and amendments thereto, authorization and execution of the Redevelopment Agreement and the Financial Agreement related to the Project

Planning Board Application for Final Site Plan Approval for Phase One and applications for all other Governmental Approvals for Phase One shall be submitted to Planning Board and other applicable Governmental Bodies within 30 days after Borough's approval pursuant to Section 3.2(c) of the Agreement

Closing on Financing for Phase One shall be completed with 90 days of receipt of all Government Approvals and the expiration of all applicable appeal periods

Acquisition of Property required for Phase One shall be completed within 60 days of Closing on Financing

Application for demolition permits for Phase One shall be submitted within 30 days of closing on Acquisition of Property for Phase One

Application for building permits for Phase One shall be submitted within 30 days after completion of demolition for Phase One

Commencement of Construction of Phase One shall occur within 30 days after receipt of building permits for Phase One

Application for Certificate of Occupancy for Phase One shall be submitted to Borough within 24 months of Commencement of Construction for Phase One

Application for Certificate of Occupancy for Phase Two shall be submitted to Borough within 36 months of Commencement of Construction for Phase One

The entire Project shall be completed and eligible for a Certificate of Completion within seven (7) years and three (3) months from the Effective Date of this Agreement, inclusive of any events of Force Majeure, subject to a reasonable extension in the Boroughs sole discretion

In the event Redeveloper commences Phase Two at the same time as Phase One, then Phase Two shall be subject to the same schedule as applicable to Phase One as set forth above.

**EXHIBIT C**  
**OWNERSHIP STRUCTURE OF REDEVELOPER**

Flemington Center Urban Renewal, LLC is owned 100% by John J. Cust, Jr.

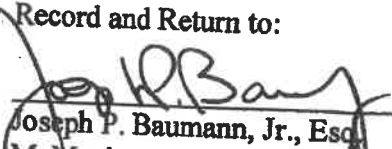


## Appendix

- 4) Financial Agreement between Flemington Center Urban Renewal, LLC and the Borough of Flemington, dated 11/08/2018.

**THIS AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT C SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED**

Record and Return to:

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

### **FINANCIAL AGREEMENT**

**THIS FINANCIAL AGREEMENT** (as the same may be amended, modified or supplemented from time to time, hereinafter this "Agreement"), made this 8th day of November, 2018, by and between **FLEMINGTON CENTER URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the "Exemption Law"), with offices at 5 Bartles Corner Road, Flemington, New Jersey 08822 (together with its permitted successors and assigns, the "Entity"), and the **BOROUGH OF FLEMINGTON**, a municipal corporation in the County of Hunterdon and the State of New Jersey, with offices at 38 Park Avenue, Flemington, New Jersey 08822 (together with its permitted successors and assigns, the "Borough", and together with the Entity, the "Parties" or "Party"),

### **WITNESSETH:**

**WHEREAS**, by Resolution 2010-94, adopted on June 14, 2010, the Borough designated the Union Hotel property, located at 70-76 Main Street, Flemington, and identified on the Borough tax map as Block 22, Lot 4 (the "Initial Redevelopment Area") as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

**WHEREAS**, by Ordinance 2010-14, adopted on October 25, 2010, the Borough adopted the Union Hotel Redevelopment Plan for the Initial Redevelopment Area; and

**WHEREAS**, by Resolution 2014-44, adopted February 10, 2014, the Borough designated the area south of the Union Hotel property, inclusive of properties located at 78 Main Street, 80 Main Street, 82 Main Street, 90-100 Main Street, 104 Main Street, 110 Main Street, 7 Spring Street, 19 Spring Street, 3 Chorister Place and 6 Chorister Place, identified on the Borough Tax Map as Block 22 Lots 5, 6, 7, 8, 9, 10 and 12 and Block 23, Lots 1 and 7 as an area in need of redevelopment pursuant to the Redevelopment Law (such properties, together with the

Initial Redevelopment Area, is the "2014 Redevelopment Area") and, subsequently, on March 7, 2014, the Borough enacted an ordinance adopting a redevelopment plan for the 2014 Redevelopment Area (the "2014 Redevelopment Plan"); and

**WHEREAS**, the Redevelopment Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

**WHEREAS**, by Resolution 2017-65, adopted on March 13, 2017, the Borough designated the Entity as redeveloper of the 2014 Redevelopment Area and the anticipated 2017 Redevelopment Area (as defined herein) in accordance with the Redevelopment Law, and authorized the execution of a redevelopment agreement (the "Initial Redevelopment Agreement") with the Entity; and

**WHEREAS**, by Resolution 2017-130, adopted on July 10, 2017, the Borough expanded the 2014 Redevelopment Area to include Block 22, Lots 13 and 14 (23 Bloomfield Avenue and 21 Bloomfield Avenue) and Block 24, Lots 1, 2, 3 and 5 (2 Spring Street, 8 Spring Street and 12 Spring Street) (collectively the "2017 Redevelopment Area" and together with the 2014 Redevelopment Area is the "Redevelopment Area"); and

**WHEREAS**, by Ordinance 2017-17, adopted on December 11, 2017, the Borough adopted a redevelopment plan for the entire Redevelopment Area (the "Redevelopment Plan"); and

**WHEREAS**, the Redevelopment Plan envisions the redevelopment of the Redevelopment Area to provide for a mixed-use, multi-phase project comprised of hotel, residential, retail, restaurant, commercial, medical office and educational uses, structured parking, and any improvements ancillary or necessary thereto (collectively, the "Project") upon Block 22, Lots 4, 5, 6, 7, 12, 13 and 14 and Block 24, Lots 1, 2, 3 and 5 (the "Project Area" as further depicted on *Exhibit A* hereto); and

**WHEREAS**, as authorized by Resolution 2017-206, adopted on December 11, 2017, the Borough and the Entity entered into an Amended and Restated Redevelopment Agreement dated December 12, 2017 (the "Redevelopment Agreement"), for the purpose of setting forth their respective undertakings, rights and obligations in connection with the construction of the Project which shall be undertaken by the Entity; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Exemption Law and the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.*, as amended and supplemented (the "Bond Financing Law"), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough; and

**WHEREAS**, the Entity submitted an application with the Mayor of the Borough (the "Application", attached hereto as *Exhibit B*), and in accordance with the Exemption Law the Mayor has recommended to the Borough that the Application be approved; and

**WHEREAS**, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to N.J.S.A. 40A:20-8, the Borough Council (i) on October 9, 2018 adopted Resolution No. 2018-138 approving the Application, and (ii) on October 9, 2018 adopted Ordinance No. 2018-18 authorizing the execution of this Agreement (the "**Ordinance**"); and

**WHEREAS**, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Agreement and the Ordinance, constitute a municipal lien on the Land, as defined herein, and the Project within the meaning of the law; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Borough may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds, which bonds may be secured by the Annual Service Charge (as defined herein) (the "**Bonds**"); and

**WHEREAS**, in order to assist in financing a portion of the costs of the Project relating to public infrastructure improvements and certain other costs, the Borough has agreed that it shall issue, or reissue, the Bonds in accordance with the terms and provisions of a bond resolution (the "**Bond Resolution**") authorizing the issuance of such Bonds; and

**WHEREAS**, pursuant to the terms of this Agreement and the Bond Resolution and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Pledged Annual Service Charge shall be pledged to the payment of the Debt Service and the Administrative Expenses (both as defined below); and

**WHEREAS**, the Entity and the Borough have agreed that the Unpledged Annual Service Charge shall be paid to the Borough for any lawful use and purpose in the exercise of the Borough's sole discretion; and

**WHEREAS**, the Borough has made the following findings with respect to the Project:

A. Relative Benefits of the Project:

The Project will accelerate the development of longstanding, vacant and currently unusable land; save the facades of historic buildings, provide restaurant(s) and retail establishments, provide a downtown venue for the use of a liquor license, establish the first higher educational facility in the county, develop a medical offices building in the town, develop a hotel and with all such improvements develop jobs, ratables and a new vibrancy for the town center. New residents will occupy the residential component of the Project while substantial infrastructure improvements shall be made to the water system.

- B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

Tax exemption is required to allow the Project to move forward, and influence the residents, retailers, restaurateurs, hotelier, centers for higher learning and medical tenants to locate in the Borough while allowing the Entity to pay for the extraordinary costs associated with the saving of certain components of the historic buildings in the Borough and the expenses associated with the significant infrastructure improvements.

**WHEREAS**, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to (a) the payment of the Annual Service Charge by the Entity and (b) the issuance of the Bonds, the Parties have determined to execute this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is mutually covenanted and agreed as follows:

## **ARTICLE I** **GENERAL PROVISIONS**

### **SECTION 1.01      Governing Law.**

This Agreement shall be governed by and construed by the laws of the State, including (a) the Exemption Law, the Redevelopment Law, the Bond Financing Law and such other State statutes as may be the sources of relevant authority, and (b) the Ordinance, and (c) all other applicable laws, without regard to conflict of law principles.

### **SECTION 1.02      General Definitions.**

Defined terms shall have the meaning assigned to such terms in the preambles hereto and as follows:

Acts – Tax Exemption Law, Redevelopment Law and the Bond Financing Law.

Administrative Expenses – Expenses and fees of the Trustee. A total of Seventy Percent (70%) of the Administrative Expenses is allocated to the Residential Component. Ten Percent (10%) of the Administrative Expenses is allocated to each of the Retail Component, the Hotel Component and the Educational/Medical Component. Notwithstanding such allocation, until such time as all of the Components are complete and paying the Annual Service Charge, the Administrative Expenses shall be allocated to the first Component required to pay the Annual Service Charge.

Administrative Fee – As defined in Section 4.05(d) hereof.

Allowable Net Profit – The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3(c).

Allowable Profit Rate – The greater of twelve percent (12%) or the percentage per annum arrived at by adding one and one-quarter percent (1¼ %) to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of twelve percent (12%) or the percentage per annum arrived at by adding one and one-quarter percent (1¼%) per annum to the interest rate per annum that the Borough determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Service Charge – The Pledged Annual Service Charge plus the Unpledged Annual Service Charge.

Annual Service Charge Start Date – For each Component, the first day of the month immediately following the month in which the Certificate of Occupancy for such Component is issued.

Auditor's Report – A complete financial statement prepared by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State and not a principal of the Entity, that fully details all items as required by the Exemption Law, including without limitation, (a) the terms and interest rate on any mortgage(s) associated with the Land or any Improvements related thereto, (b) the Net Profit for the period shown, including the calculation thereof, showing, inter alia, the percentage of excess profits utilized to maintain reserves pursuant to the Exemption Law, (c) the Total Project Cost, and (d) such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder.

Bondholder – Any person who is the registered owner of any outstanding Bond, or any credit enhancement entity that is deemed to be the registered owner of any outstanding Bond, all in accordance with the terms of the Bond Resolution.

Bonds – Three Hundred Thousand Dollars (\$300,000.00) principal amount of non-recourse redevelopment area bonds secured by the Pledged Annual Service Charge, bearing interest at zero percent (0%) per annum, payable over a period of thirty (30) years and issued pursuant to the Bond Resolution for the purpose of funding a portion of the Project Public Improvements.

Certificate of Occupancy – Document, whether temporary or permanent, issued by the Borough authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

Component(s) – Individually or collectively, the Hotel Component, the Residential Component, the Retail Component, and the Educational/Medical Component (and any phase thereof).

Condominium Association – Either (a) a New Jersey nonprofit corporation formed in accordance with the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq. or (b) an Entity organized as a condominium association in accordance with N.J.S.A. 46:8B-12.

County – The County of Hunterdon, New Jersey.

County Amount – Five percent (5%) of the Annual Service Charge.

Cumulative Allowable Net Profit – In accordance with the calculation set forth in the Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Allowable Net Profit of the Entity in each year from and including the year that any Improvement is

completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated.

**Cumulative Net Profit** – In accordance with the calculation set forth in the Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Net Profit of the Entity in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Net Profit is being calculated.

**Debt Service** – Ten Thousand Dollars (\$10,000.00) per year. A total of Seventy Percent (70%) of the Debt Service is allocated to the Residential Component. Ten Percent (10%) of the Debt Service is allocated to each of the Retail Component, the Hotel Component and the Educational/Medical Component. Notwithstanding such allocation, until such time as all of the Components are complete and paying the Annual Service Charge, the Debt Service shall be allocated to the first Component required to pay the Annual Service Charge.

**Default** – A breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the law, beyond any applicable grace or cure periods.

**Educational** – Any permanent building or portion thereof designed or used as an institution of higher learning or offices, support services and amenities for the institution of higher learning.

**Educational/Medical Component** – Any Educational or Medical portion of the Project for which a Certificate of Occupancy has been issued.

**Effective Date** – The earlier of (a) the Annual Service Charge Start Date for each Component (or phase thereof) or (b) the date of the issuance of the initial series of Bonds.

**Excess Net Profit** – In any given year, an amount equal to the sum of (a) the Cumulative Net Profit, minus (b) the Cumulative Allowable Net Profit.

**Gross Revenue** – The meaning applied to such term in, and calculated in accordance with, the Exemption Law, specifically N.J.S.A. 40A:20-3(a).

**Hotel** – Any permanent building or portion thereof designed or used for the business of renting, leasing, maintaining, keeping, operating, conducting or providing of overnight or temporary sleeping or housing accommodations, for a consideration, to tourists, transients or travelers or any building or structure or group of buildings or structures devoted exclusively or primarily to said business, commonly known as "tourist lodges," "motels," "motor lodges," "motor courts" or "hotels," whether meals are served therein or not.

**Hotel Component** – Any Hotel portion of the Project for which a Certificate of Occupancy has been issued.



Improvements – Any building, structure or fixture permanently affixed to the Land and to be constructed and tax exempted under this Agreement.

Improvement Parcel(s) – Any subdivided portion of the Land owned by the Entity on which a Component is, or shall be, located.

Indemnified Parties – As defined in Section 14.01(d) hereof.

In Rem Foreclosure – A summary proceeding by which the Borough may enforce the lien for taxes or Annual Service Charge due and owing by a tax sale in accordance with the Tax Sale Law.

Land – The land, but not the Improvements, identified on the official tax map of the Borough as Block 22, Lots 4, 5, 6, 7, 12, 13 and 14, and Block 24, Lots 1, 2, 3 and 5, and more particularly described by the metes and bounds description set forth within *Exhibit A* of this Agreement. The Land may be subdivided in furtherance of the Project.

Land Tax Credit – The amount, without interest, of Land Tax Payments made in the last four preceding quarters for any Improvement Parcel or portion thereof.

Land Taxes – The amount of taxes assessed on the value of Land on which any Component is located, which Land Taxes shall be determined following a determination of the assessment of the Land by the Tax Assessor for the Borough, at such time and to the extent required by law for all other properties generally in the Borough.

Land Tax Payments – Payments made on the quarterly due dates for Land Taxes on the Land, as determined by the Tax Assessor and the Tax Collector.

Material Conditions – As defined in Section 4.04 hereof.

Medical – Any permanent building or portion thereof designed or used as a medical office.

Net Profit – The Gross Revenue of the Entity, minus all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A.* 40A:20-3(c).

Pledged Annual Service Charge – The Debt Service plus the Administrative Expenses.

Project Public Improvements – Improvements on the Project Area accessible to the public including but not limited to, sidewalks, curbs, paved parking areas, landscaping, and courtyards.

Residential – Any permanent building or portion thereof designed or used as the residence or sleeping place of one or more persons, excluding the Hotel Component.

Residential Component – Any Residential portion of the Project for which a Certificate of Occupancy has been issued regardless of whether the individual units are for-sale or for-rent.

Retail – Any permanent building or portion thereof designed or used for the sale of goods or services to the public for use or consumption.

Retail Component – Any Retail portion of the Project for which a Certificate of Occupancy has been issued.

State – State of New Jersey.

Successor Entity(ies) – Urban renewal entity created to develop a Component (or phase thereof), provided any such Successor Entity shall be subject to the requirements of the Redevelopment Agreement, including, but not limited to, the transfer provisions set forth in Article 5 thereof.

Tax Assessor – The Borough tax assessor.

Tax Collector – The Borough tax collector.

Tax Sale Law – N.J.S.A. 54:5-1 *et seq.*

Term – As defined in Section 3.01 hereof.

Termination – Any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption subject to the provisions set forth in Section 3.02 hereof.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

Trustee – A bank with corporate trust powers selected by the Entity to serve as trustee pursuant to a Bond Resolution.

Unpledged Annual Service Charge – For the Hotel Component, One Thousand Two Hundred Dollars (\$1,200.00) per room. For the Residential Component, One Thousand Six Hundred Dollars (\$1,600.00) per apartment. For the Retail Component, One Dollar Fifty Cents (\$1.50) per rentable square foot. For the Educational/Medical Component, One Dollar Fifty Cents (\$1.50) per rentable square foot. The Annual Service Charge for each Component shall increase by Five Percent (5%) on the fifth (5<sup>th</sup>) anniversary of the Annual Service Charge Start Date for each applicable Component, and increase by an additional Five Percent (5%) every fifth (5<sup>th</sup>) anniversary thereafter.

Urban Renewal Entity – An entity as defined, used and applied in the Exemption Law.

**SECTION 1.03      Exhibits Incorporated**

All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

**SECTION 1.04      Designation as Redeveloper**

The Entity is designated to act as redeveloper for the Project, in accordance with the Redevelopment Agreement, the Redevelopment Plan and all site plan applications, as the same may from time to time be amended or supplemented by the Entity in accordance with applicable law.

**ARTICLE II**  
**APPROVAL**

**SECTION 2.01      Borough Approval of Tax Exemption**

Pursuant to the Ordinance, any and all Improvements shall be exempt from taxation as provided for herein and in the Exemption Law. In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement, commencing on the Annual Service Charge Start Date. Upon acquisition of the Project Area by the Entity and prior to the Annual Service Charge Start Date, the Entity shall be responsible for the payment of *ad valorem* taxes. The Project shall be as described in the Application and the Entity hereby expressly covenants, warrants and represents that the Land and Improvements thereto shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Acts.

**SECTION 2.02      Borough Approval of Project, Related Assignment and Proposed Conveyances to Successor Entities**

(a) Approval is hereby granted by the Borough to the Entity for the development, financing, acquisition, construction, management and operation of the Project, which is hereby acknowledged to be a redevelopment project under and consistent with the Redevelopment Plan, and which shall in all respects materially comply and conform to the Redevelopment Plan and all applicable statutes of the State, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof.

(b) In order to facilitate the implementation and financing of the Project, the Borough hereby acknowledges and consents to one or more partial assignments of this Agreement by the Entity to Successor Entities, following their qualification as Urban Renewal Entities and in accordance with the provisions of the Exemption Law, N.J.S.A. 40A:20-5(e). The Borough shall

execute any documents required to approve and acknowledge each such assignment subject to the Entity providing satisfactory documentation that each Successor Entity meets the qualifications of a Qualified Entity under the Redevelopment Agreement and such assignment meets the requirements for a Permitted Transfer under the Redevelopment Agreement. After such assignment, this Agreement shall remain in full force and effect with respect to each Successor Entity solely with respect to the specific Component of the Project to which such assignment applies.

(c) Subject to subsection (b) above, the Borough hereby acknowledges and consents to the several subsequent conveyances of the Land, or any portion thereof to, by and among the Entity and a Successor Entity(s) to ensure that each of the Successor Entities owns fee title or its equivalent if a Condominium Association to the Land required for implementation of its Component (or phase thereof) of the Project.

(d) For all purposes of this Agreement, upon the partial assignment of a portion of this Agreement pursuant to subsection (b) above, the applicable Successor Entity shall be deemed the sole Urban Renewal Entity and shall fully assume and be solely responsible for the performance of the obligations of an Urban Renewal Entity under the Exemption Law and this Agreement (such that the provisions of this Agreement shall be separately applicable to such Component (or phase thereof) and the applicable Successor Entity independently of each other Component (or phase thereof) and each other Entity; provided, however, that nothing shall be construed as obligating the Entity to utilize the proposed Project structure or to assign this Agreement in whole or in part to any Successor Entity, if the Entity in the exercise of its business judgment determines that doing so is not necessary or desirable for the implementation of the Project.

(e) The Borough hereby acknowledges and consents to the use of a Condominium Association (if determined appropriate by the Entity) with respect to the properties comprising the Land, as may be required for implementation of the Project. The provisions of this Agreement shall continue to apply to such properties following the filing of a master deed establishing the Condominium Association, notwithstanding any resulting change to (i) the tax map designation (i.e., block and lot number) thereof or (ii) ownership of a portion of the Land remaining with an Entity.

(f) Any transfer in the ownership of the Entity or any Successor Entities shall be governed by and conducted in accordance with the provisions of the Redevelopment Agreement.

(g) The Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and governing law, the use of which is more specifically described in the Application.

(h) The Entity represents that it will acquire the Project Area upon which the Improvements are to be constructed and which is the subject of this Agreement and acknowledges that this Agreement is contingent upon the Entity securing ownership of the Project Area.

(i) The Entity anticipates that the Improvements shall be financed in accordance with the financial plans provided in the Application. The financial plans set forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization for the Project.

### **ARTICLE III** **DURATION OF AGREEMENT**

#### **SECTION 3.01      Term**

(a) It is hereby expressly understood and agreed by the Parties that this Agreement, or any portion of this Agreement that has been partially assigned to a Successor Entity pursuant to Section 2.02(b) hereof, including the obligation to pay the Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall commence on the Effective Date and shall remain in effect for each amended and restated financial agreement as permitted hereunder, until the earlier of (i) thirty-five (35) years from the date of execution of this Agreement, or (ii) thirty (30) years from the issuance of the Certificate of Occupancy for the related Component (or phase thereof) (the "Term"). Upon the expiration of the tax exemption granted and provided for herein, the Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Borough.

(b) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Agreement imposed upon the relevant Entity and the respective Land, and Improvements thereto, excluding (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, (ii) the requirement to make payment to the Borough of any reserves, Net Profit, or Excess Net Profit, if applicable, in accordance with Article VIII hereof, and (iii) any and all related and available remedies of the Borough or the Trustee, shall terminate upon the end of the fiscal year of the relevant Entity, in accordance with N.J.S.A. 40A:20-13, provided, however, that the Entity has rendered, and the Borough has accepted, the Entity's final accounting in accordance with N.J.S.A. 40A:20-12.

#### **SECTION 3.02      Voluntary Termination Not Permitted**

NEITHER THE ENTITY NOR THE BOROUGH MAY AT ANY TIME TERMINATE THIS AGREEMENT DURING ANY PERIOD WHEN BONDS REMAIN "OUTSTANDING" OR AMOUNTS REMAIN DUE TO THE ENTITY WITHIN THE MEANING OF THE BOND RESOLUTION AND/OR TRUST INDENTURE. THE ENTITY FURTHER EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT IN ACCORDANCE WITH THE BOND FINANCING LAW, SPECIFICALLY N.J.S.A. 40A:12A-66(a), THE RELINQUISHMENT PROVISIONS SET FORTH IN THE EXEMPTION LAW, SPECIFICALLY N.J.S.A. 40A:20-9(g) AND -13, SHALL NOT BE APPLICABLE IN ACCORDANCE WITH, PURSUANT TO, AND UNDER THIS AGREEMENT. THE ENTITY

FURTHER EXPRESSLY REJECTS, REFUSES, RELINQUISHES, SURRENDERS, AND OTHERWISE WAIVES ANY AND ALL RIGHTS OF RELINQUISHMENT OF ITS STATUS UNDER THE ACTS AND THIS AGREEMENT THAT IT MAY HAVE OTHERWISE BEEN ENTITLED TO IN ACCORDANCE WITH ANY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, N.J.S.A. 40A:20-13 DURING ANY PERIOD WHEN BONDS REMAIN "OUTSTANDING" OR AMOUNTS REMAIN DUE TO THE ENTITY WITHIN THE MEANING OF THE BOND RESOLUTION.

#### **ARTICLE IV** **ANNUAL SERVICE CHARGE**

##### **SECTION 4.01      Annual Service Charge**

The Pledged Annual Service Charge shall be paid quarterly to the Trustee at the same times taxes are due. Once received by the Trustee, the Pledged Annual Service Charge shall be disbursed in accordance with the Bond Resolution. The Unpledged Annual Service Charge shall be paid quarterly to the Borough at the same times taxes are due.

##### **SECTION 4.02      County Annual Service Charge**

In accordance with N.J.S.A. 40A:20-12, the County Amount shall be paid, immediately upon receipt of the Annual Service Charge, by the Borough to the County.

##### **SECTION 4.03      Land Taxes, Credits and Waivers; Other Charges**

(a) The Entity hereby expressly acknowledges, understands and agrees that the tax exemption provided for herein shall apply to the Improvements.

(b) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments and shall be entitled to the Land Tax Credit. In any year that the Entity fails to make any Land Tax Payments if and when due and owing, such delinquency for the period of delinquency only shall render the Entity ineligible for any Land Tax Credits against the Annual Service Charge for the subsequent year.

(c) The Entity expressly acknowledges, understands and agrees that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), the Annual Service Charge shall not be restricted or limited by, or otherwise subject to, the minimum, maximum or staged increase provisions of the Exemption Law.

(d) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to Land Taxes and Annual Service Charges, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon its property, including, without limitation, any and all special benefit assessments, water and sewer charges, hotel tax and other municipal charges, whether presently existing or hereinafter imposed, and that the Borough may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

#### **SECTION 4.04      Material Conditions**

It is expressly agreed and understood that payment of Land Taxes and Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement ("Material Conditions"). If any other term, covenant or condition of this Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

#### **SECTION 4.05      Payments of Annual Service Charges**

(a) The Entity shall be responsible for payment of the Annual Service Charge commencing on the Effective Date for each Component. The Entity is required to pay the Pledged Annual Service Charge if Debt Service and Administrative Expenses are due prior to completion of the Project.

(b) The Annual Service Charge shall be due and payable in equal quarterly installments on each November 1, February 1, May 1 and August 1 after the Effective Date for each Component. The Unpledged Annual Service Charge shall be prorated in the year in which the Effective Date begins and the year in which this Financial Agreement terminates, such that the Entity shall pay the amount of the prorated Unpledged Annual Service Charge on the quarterly payment date immediately following the Effective Date of the Annual Service Charge. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

(c) The Entity waives the right to file a tax appeal during the term of this Agreement, unless the Borough consents and agrees that a tax appeal is necessary to correct the future Land assessment due to errors in the assessments. The Parties agree, however, that neither the amounts nor dates established for payment of the Unpledged Annual Service Charge, as provided herein, shall be reduced through any tax appeal or any other legal proceeding regarding the Project during the term of this Agreement.

(e) In addition to the Annual Service Charge, the Entity shall pay to the Borough an annual fee of two percent (2%) of the projected Unpledged Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the end of the Term of this Agreement (the "Administrative Fee"). In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the Borough until paid.

#### **SECTION 4.06      Annual Service Charge as Municipal Lien**

(a) The Parties hereby expressly acknowledge, understand and agree that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, and such other statutes as may be sources of relevant authority, if any, upon the recordation of the Ordinance and this Agreement, the Annual Service Charge shall be a continuous municipal lien on the Land and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien. In order to secure the full and timely payment of the Annual Service Charges, the Borough reserves the right to prosecute an In Rem Foreclosure action against the Property, as more fully set forth in this Agreement.

(b) The Entity hereby expressly acknowledges, understands and agrees, and the Borough acknowledges, without making any representation, warranty or covenant, that (i) the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including, specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, and (ii) any applicable process, procedure or action of any court, government body or other relevant authority, including, without limitation, any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

#### **SECTION 4.07      Annual Service Charge as Percentage of Gross Revenue**

In accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), the calculation of the Annual Service Charge under the Exemption Law, at N.J.S.A. 40A:12A-12(b)(1), as a percentage of annual Gross Revenue or Total Project Cost is not applicable. Accordingly, should any Residential Component be implemented as a Condominium regime, N.J.S.A. 40A:20-14 shall not apply.

### **ARTICLE V**

#### **PLEDGE OF ANNUAL SERVICE CHARGE TO BONDS**

##### **SECTION 5.01      Consent to Annual Service Charge**

The Entity hereby acknowledges, consents and agrees (a) to the amount of the Annual Service Charge and to the liens established in this Agreement, (b) that it shall not contest the validity or amount of any such lien, and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law.

##### **SECTION 5.02      Security for the Bonds**

(a) Pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Borough and the Entity agree to and do hereby assign (effective only upon the Effective Date and satisfaction of the conditions set forth in Section 2.02 hereof) all of its interest in each payment of the Pledged Annual Service Charge, including interest, penalties and costs of collection, to the extent necessary and for the purpose of meeting the Entity's



obligations herein, to the Trustee as part of the pledge of the trust estate under the Bond Resolution. Notwithstanding any law, or any provision contained herein, to the contrary, this pledge shall constitute an absolute and unconditional assignment of all of the Borough's right, title and interest in and to the Pledged Annual Service Charge, or any installment thereof, along with all of the Borough's rights and remedies available under this Agreement, including but not limited to, the right of collection of any and all Pledged Annual Service Charge due hereunder; provided, however, that notwithstanding the foregoing, the Bond Resolution shall require that only the Borough can undertake the sale of the tax sale certificates, and in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) necessary to realize the collection of the Pledged Annual Service Charge remaining unpaid in accordance with this Agreement. The Borough hereby expressly represents, warrants and covenants that it has not, prior to the date hereof, and shall not, subsequent to the date hereof, pledge the Pledged Annual Service Charge, including any installment or portion, or any right or interest therein, to any person or entity other than the Trustee, it being hereby expressly acknowledged and represented by the Borough that the Bond Resolution is a reaffirmation of the pledge and assignment contained herein and shall not constitute a separate pledge and assignment, nor supersede or in any way alter the pledge and assignment contained herein.

(b) If any installment of the Pledged Annual Service Charge is not paid to the Trustee in accordance with this Agreement on the date and in the full amount scheduled to be paid, the Entity hereby expressly waives any objection or right to challenge the use by the Borough or the Trustee of the enforcement of remedies to collect such installment of the Pledged Annual Service Charge as are afforded the Borough by law, including the Tax Sale Law, provided, however, that in no event shall there be any acceleration of any amounts due and owing to repay the Bonds, and such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties and costs of collection provided for by the Tax Sale Law.

(c) Pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Pledged Annual Service Charge shall not be included within the general funds of the Borough. The Borough's pledge and assignment of the Pledged Annual Service Charge to the Trustee hereunder shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough.

(d) If received by the Borough, the Borough's Chief Financial Officer shall forward or cause the forwarding of all installments of the Pledged Annual Service Charge to the Trustee in accordance with this Agreement and as further set forth in the Bond Resolution.

(e) It is hereby expressly understood by the Parties that under no circumstances shall the Borough be required to (i) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Pledged Annual Service Charge, the sole obligation of the Borough being to undertake the sale of the tax sale certificates in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to

all applicable laws (including bankruptcy laws), or (ii) "guarantee" payment of unpaid Pledged Annual Service Charge as if they constituted taxes owing to another taxing district.

## **ARTICLE VI**

### **CERTIFICATE OF OCCUPANCY AND NO FURTHER ACTION LETTER**

#### **SECTION 6.01      Certificate of Occupancy**

It is understood and agreed that the Entity shall make application for and make all good faith efforts which are reasonable to obtain a Certificate(s) of Occupancy in a timely manner for the Land and the Improvements related thereto.

#### **SECTION 6.02      Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, Tax Collector, and Chief Financial Officer of the Borough a copy of any such Certificate of Occupancy.

## **ARTICLE VII**

### **BOROUGH DETERMINATIONS**

#### **SECTION 7.01      Tax Exemption and Annual Service Charge**

(a) The Borough hereby expressly covenants, warrants, represents and otherwise agrees that the tax exemption granted and provided herein shall continue in accordance with the terms hereof, notwithstanding any permissive provision of the Exemption Law.

(b) The Borough hereby expressly covenants, warrants, represents and otherwise agrees that the Annual Service Charge shall be calculated in accordance with the terms hereof, and shall not otherwise be increased regardless of any permissive provision of the Exemption Law.

## **ARTICLE VIII**

### **ANNUAL AUDITS**

#### **SECTION 8.01      Accounting System**

The Entity hereby expressly covenants and agrees to maintain a system of accounting as prescribed in the Exemption Law during the term of this Agreement.

#### **SECTION 8.02      Periodic Reports**

(a) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(d), the Entity shall submit, on an annual basis and within ninety (90) days after the close of the Entity's fiscal year, its Auditor's Report prepared by an independent certified public accountant for the preceding fiscal year to the Trustee, Mayor, the Board of Commissioners and the Borough Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs.

(b) Prior to December 1st of each year, the Entity shall certify (a) the total square feet of the Retail Component and (b) the total square feet of the Educational/Medical Component.

#### **SECTION 8.03      Inspection**

In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(e), upon the request of the Borough, the Trustee, or the State, the Entity shall permit the inspection of the Land and Improvements thereto, by the requesting party or its agents. It also shall permit, upon request of the Borough, the Trustee, or the State, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Borough, the Trustee, or the State. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent of the Entity. To the extent reasonably possible, the inspection will not materially interfere with the construction or operation of the Project.

#### **SECTION 8.04      Payment of Dividends and Profits**

In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(a) and -15, during the period of tax exemption as provided herein, the Entity (as a limited dividend entity) shall not make any distribution of profits, or pay or declare any dividend or other distribution on any shares of any class of its stock, unless, after giving effect thereto, the Cumulative Allowable Net Profit preceding the date of the proposed dividend or distribution would otherwise equal or exceed the amount of all dividends and other distributions paid or declared on any shares of its stock since its incorporation or establishment.

#### **SECTION 8.05      Limitation on Profits and Reserves**

(a) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(a) and -15, the Entity (as a limited dividend entity), shall, within one hundred and twenty (120) days of the close of its fiscal year, or in accordance with N.J.S.A. 40A:20-13 upon termination of this Agreement, within ninety (90) days of the close of its fiscal year, pay any Excess Net Profit to the Borough, provided, however, that the Entity may maintain a reserve against vacancies, unpaid rentals and contingencies in an amount not to exceed ten percent (10%) of its Gross Revenue and may retain such part of the Excess Net Profits as is necessary to eliminate a deficiency in such reserve, provided, however, that upon the termination of this Agreement, the amount of such reserve, if any, shall be paid to the Borough within ninety (90) days of the close of the Entity's fiscal year.

(b) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20- 9(a) and - 16, the Entity (if it is a nonprofit entity) shall, within ninety (90) days of the close of its fiscal year, pay over its Net Profit, if any, to the Borough, provided, however, that the Entity may maintain a reserve against vacancies, unpaid rentals and contingencies in an amount not to exceed ten percent (10%) of its Gross Revenue and may retain such part of the Net Profits as is necessary to eliminate a deficiency in such reserve, provided, however, that upon the termination of this Agreement, the amount of such reserve, if any, shall be paid to the Borough within ninety (90) days of the close of its fiscal year.

**SECTION 8.06      Gross Revenue**

The Borough hereby expressly acknowledges and agrees that in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-3(a), any gain realized by the Entity on the sale of any Component or any unit within a Component in fee simple, shall not constitute Gross Revenue, regardless whether any such gain shall be taxable under Federal or State law.

**ARTICLE IX**  
**SALE AND/OR TRANSFER OF PROPERTY**

**SECTION 9.01      Approval**

(a) The Entity may sell, transfer, lease, or otherwise convey all or a portion of the Land and Improvements thereto, provided that (for as long as this Agreement is in effect) such sale, transfer, lease, or other conveyance is to an Urban Renewal Entity and is in compliance with the Exemption Law and the Redevelopment Agreement. A Declaration of Restriction on Transfer to such effect will be recorded against the Land and Improvements in the office of the Hunterdon County Clerk simultaneously with the recordation of this Agreement on or after the Effective Date. Any purported sale, transfer, conveyance or lease of the Land, including any Improvement related thereto, in violation of this Section 9.01(a) shall be void *ab initio*. The Trustee shall each be deemed to be a third-party beneficiary of this Section 9.01(a) for as long as any Bonds remain outstanding. Subject to the satisfaction of the conditions set forth above, the Borough hereby expressly consents to (i) any sale, transfer, conveyance or lease of the Land and Improvements thereto, and (ii) the continuation of the tax exemption of the Improvements as provided for herein.

(b) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-6 and -15, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (as a limited dividend entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided, however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or other transfer of fee title occurred, such Entity shall pay to the Borough reserves it was authorized to maintain, if any, and all Excess Net Profits, if any, all in accordance with Section 8.05(a) hereof.

(c) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-6 and -16, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (if it is a nonprofit entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided, however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or transfer occurred, such Entity shall pay to the Borough reserves it was authorized to maintain, if any, and all Net Profits, if any, all in accordance with Section 8.05(b) hereof.

(d) THE BOROUGH AND THE ENTITY HEREBY EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT UPON THE CONVEYANCE, WHETHER BY SALE, GRANT, AWARD, GIFT, TRANSFER OR OTHERWISE, OF FEE TITLE TO THE PROPERTY AND ANY IMPROVEMENTS THERETO, WHETHER IN ACCORDANCE WITH AND PURSUANT TO THE TERMS HEREOF, THE TAX SALE LAW, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY STATE INSOLVENCY LAW, THE CONSTRUCTION LIEN LAW (N.J.S.A. 2A:44A-1 *ET SEQ.*) OR ANY LAW OF SIMILAR EFFECT, OR THE FEDERAL BANKRUPTCY CODE, THE PROPERTY AND IMPROVEMENTS THERETO, AND THE RELEVANT ENTITY, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED AND BOUND BY THE TERMS OF THIS AGREEMENT. ANY ACCEPTANCE OR CLAIM OF TITLE OR OWNERSHIP OF THE

PROPERTY AND ANY IMPROVEMENTS THERETO, SHALL CONSTITUTE AN ACKNOWLEDGEMENT AND ASSUMPTION, FOR ALL PURPOSES OF LAW, BY SUCH PERSON OR ENTITY ACCEPTING OR CLAIMING TITLE OR OWNERSHIP, THAT IT, INCLUDING ITS SUCCESSORS IN INTEREST IN THE PROPERTY, AND THE PROPERTY AND ANY IMPROVEMENTS THERETO, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THIS AGREEMENT.

A Declaration of Restriction on Transfer to such effect will be recorded against the Land and Improvements thereto in the office of the Hunterdon County Clerk simultaneously with the recordation of this Agreement on or after the Effective Date.

**SECTION 9.02      Operation of Project**

The Land and Improvements thereto shall be operated in accordance with all applicable laws.

**SECTION 9.03      Subordination of Fee Title**

It is expressly acknowledged, understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge and to the rights of the Borough and Trustee hereunder, to encumber the fee title to the Land and Improvements thereto, and that any such encumbrance shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien on the Land and Improvements thereto, it being expressly understood that a mortgage lien takes subject to the municipal lien created by the Annual Service Charge under the Acts.

**ARTICLE X**

**WAIVER**

**SECTION 10.01      Waiver**

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough, the Trustee or the Entity, as applicable, of any rights and remedies provided by law, except, as applicable, for the express waiver herein of certain rights of acceleration and certain rights to terminate this Agreement and the tax exemption provided for herein, for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Borough, the Trustee or the Entity, as applicable, has under law, in equity, or under any provision of this Agreement.

**ARTICLE XI**

**NOTICE**

**SECTION 11.01      Notice**

A notice required hereunder by any Party to another Party, or to all other Parties, shall be sufficiently given or delivered if dispatched by United States certified or registered mail, postage prepaid and return receipt requested, or hand delivered (and receipt acknowledged), or delivered by a reputable overnight delivery service for next business day delivery, to another Party, or all other Parties simultaneously, at their respective addresses, as follows, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the other(s) as provided by this Article XI:

- (a) When sent to the Entity, it shall be addressed as follows:

Attn: John J. Cust Jr., CPA  
5 Bartles Corner Road  
Flemington, New Jersey 08822

With copies to:

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

- (b) When sent to the Borough, it shall be addressed as follows:

Attn: Borough Clerk  
Borough of Flemington  
Municipal Building  
38 Park Avenue  
Flemington, New Jersey 08822

With copies to:

Attn: Robert Beckelman, Esq.  
Greenbaum Rowe Smith & Davis LLP  
99 Wood Avenue South  
Iselin, New Jersey 08830-2712

The Trustee shall receive copies of all notices given hereunder, which shall be addressed as directed by the Entity by written notice to the Borough.

**SECTION 11.02** Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. Any Party shall have the right from time to time and any time upon at least ten (10) days' written notice thereof, to change its respective address, and each shall have the right to specify as its address any other addresses within the United States of America.

## **ARTICLE XII** **COMPLIANCE**

### **SECTION 12.01**     **Statutes and Ordinances**

The Entity hereby expressly agrees at all times prior to the expiration or other termination of this Agreement to remain bound by applicable provisions of Federal and State law, including the Acts and any applicable lawful ordinances and resolutions of the Borough. The Entity's failure to comply with any such statutes, ordinances or resolutions shall constitute a violation and breach of this Agreement.

## **ARTICLE XIII** **CONSTRUCTION**

### **SECTION 13.01**     **Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

## **ARTICLE XIV** **INDEMNIFICATION**

### **SECTION 14.01**     **Indemnification**

(a) It is hereby expressly acknowledged, understood and agreed that in the event the Borough or the Trustee and their respective directors, officers, shareholders, employees, successors and assigns shall be named as defendant in any action by reason of any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Acts by the Entity, or any challenge to the validity of this Agreement, it being hereby expressly acknowledged that as of the date hereof, the Entity shall indemnify and hold the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, default or a violation of any of the provisions of this Agreement, the provisions of the Acts, and/or any Federal or State securities law and/or any challenge to the validity of this Agreement; provided, however, that to the extent that the Entity shall also be named in any such action, so long as the Entity shall actually be paying the costs of any such defense and to the extent the interests of the Entity and any of the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns, as applicable, shall align on any particular issue



of any such defense, the Entity (and its counsel and other professionals) shall direct any such defense.

(b) In the event the Entity alone is named a defendant to any action of the type set forth in subsection (a) above, the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns each maintain the right to intervene as a party thereto, to which intervention the Entity hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Entity, provided that so long as any such Entity shall actually be paying the costs of any such defense, the Entity (and its counsel and other professionals) shall direct any such defense.

(c) Notwithstanding the foregoing subsections (a) and (b), the Entity shall not be so obligated to provide any such indemnity to the extent that such action is brought as a result of the gross negligence or willful misconduct of the Borough or the Trustee or any of their respective officers, elected officials, employees or agents, although in either such case, should the Entity be a named party to any such action, the Entity shall defend itself in such suit at its sole cost and expense.

(d) The Entity, shall indemnify and defend the Borough, the Trustee and their respective directors, officers, shareholders, employees, successors and assigns, and the holders from time to time of the Bonds (collectively, the "**Indemnified Parties**"), against, and hold the Indemnified Parties harmless from, and reimburse the Indemnified Parties for, any and all claims, demands, judgments, penalties, liabilities, costs, damages, expenses, diminution of value of the Bonds, incurred by any of the Indemnified Parties, including court costs and reasonable attorneys' fees (prior to trial, at trial and on appeal), caused by, resulting from or arising out of any of the following acts or omissions committed, permitted or omitted by the Entity:

- (i) fraud or intentional or material representation;
- (ii) misappropriation of rents or security deposits;
- (iii) intentional material physical waste of any portion of the Land; or
- (iv) failure by the Entity to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of its Land or Improvements which would, or could, be superior or equal in priority to the lien or security title of this Agreement.

## **ARTICLE XV** **DEFAULT**

### **SECTION 15.01     Default**

A default hereunder shall be deemed to have occurred if the Entity fails to conform to the terms of this Agreement or fails to perform any obligation imposed upon the Entity by applicable statute, ordinance or lawful regulation.

#### **SECTION 15.02      Cure Upon Default**

Should the Entity be in default of any obligation under this Agreement, the Borough, or the Trustee shall notify the Entity in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Entity shall have ninety (90) days to cure any default (other than a default in payment of any installment of the Annual Service Charge in which case the Entity shall have twenty (20) days to cure such payment default). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Entity shall have such additional time as reasonably necessary to remedy or cure such default provided that the Entity shall at all times be acting with diligence, and in good faith, to remedy or cure such default as soon as practicable. Upon the expiration of such default and cure period, the Borough, or the Trustee shall have the right to proceed against the Land and Improvements thereto, pursuant to any and all applicable provisions of law, but subject to the limitations on acceleration as set forth in Sections 5.02 and 15.03 hereof. So long as any bonds remain outstanding, no default hereunder by the Entity shall terminate the tax exemption described herein and the Entity's obligation to make payment of the Annual Service Charge shall continue in effect for the duration set forth in this Agreement.

#### **SECTION 15.03      Remedies**

In the event of a default of this Agreement by any of the Parties hereto or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any Party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Acts. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of a Material Condition, then the Parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing Party. In the event of a default on the part of the Entity to pay any installment of the Land Taxes or the Annual Service Charge required by Article IV hereof, the Borough or the Trustee, in addition to their other remedies, specifically and without limitation, reserve the right to proceed against the Land through an In Rem Foreclosure, in the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof; provided, however, that in no event shall there be any acceleration of any future Annual Service Charge. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Borough or the Trustee to proceed in the above-mentioned manner.

#### **SECTION 15.04      Remedies Upon Default Cumulative: No Waiver**

Subject to the provisions of Section 15.03 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Borough and the Trustee,

and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Borough or the Trustee of any of their remedies or actions against the Entity or the Land and Improvements thereto, because of the Entity's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with an In Rem Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Agreement.

## **ARTICLE XVI** **MISCELLANEOUS**

### **SECTION 16.01      Conflict**

The Parties agree that in the event of a conflict between the Application and this Agreement, the language in this Agreement shall govern and prevail.

### **SECTION 16.02      Oral Representations**

There have been no oral representations made by any of the Parties hereto which are not contained in this Agreement. This Agreement, the Ordinance, and the Application by and between the Parties, to be executed contemporaneously with this Agreement, constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Bond Resolution or with the express written consent of the Trustee.

### **SECTION 16.03      Municipal Services**

Subject to the provisions of Section 12.02 hereof, the Entity shall make payments for certain municipal utility services, including water and sewer charges, to the extent that such utility services, such as water and sewer charges, are not otherwise included in the real property taxes generally assessed upon property within the Borough, and any other services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law. Nothing herein is intended to release the Entity from its obligation to make such payments. The obligation to make payment of the Annual Service Charge herein shall entitle the Entity, the Land, and any Improvements related thereto, to the benefit of all of the municipal services that any other property within the Borough that is subject to generally applicable real property taxes generally enjoys.

### **SECTION 16.04      Financing Matters**

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application.

**SECTION 16.05**      Filing with Local Government Services

In accordance with N.J.S.A. 40A:20-12, upon execution of this Agreement, the Borough shall cause this Agreement and the Ordinance to be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State.

**SECTION 16.06**      Recording

Upon the Effective Date, this entire Agreement and the Ordinance, together with the declaration(s) of restriction on transfer referenced in Sections 9.01(a) and 9.01(d) hereof, shall be filed and recorded with the Hunterdon County Clerk by the Borough, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Hunterdon as a municipal lien upon, and a covenant running with, the Land and Improvements thereto.

**SECTION 16.07**      Delivery to Tax Assessor

Upon the Effective Date, the Clerk of the Borough shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Agreement. Such delivery by the Borough Clerk to the Tax Assessor shall constitute the certification as required in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12. Upon such delivery, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the Borough Clerk, until the expiration of the tax exemption in accordance with the terms hereof. Upon any partial assignment of this Agreement pursuant to Section 2.02(b) hereof, the Entity shall cause an executed copy of the assignment and assumption agreement to be filed with the Borough Clerk and the Tax Assessor.

**SECTION 16.08**      Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto, provided, however, that notwithstanding anything contained herein to the contrary, no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Bond Resolution or with the express written consent of the Trustee. In the event that the Local Finance Board, in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-18, shall implement a financial plan that shall require modification of this Agreement, the Borough hereby expressly covenants, warrants and represents that it shall not approve any modification if such modification would alter, adjust, amend, revise or otherwise change (a) any Annual Service Charge due hereunder, or the calculation thereof, (b) the date on which any Annual Service Charge shall be due hereunder, or (c) the pledge and assignment by the Borough to the Trustee, as set forth herein and as may be further described in the Bond Resolution. The Parties hereby expressly acknowledge that the

Bond Financing Law, specifically N.J.S.A. 40A:12A-71, provides, among other things, that the State pledges, covenants and agrees with the Bondholders that it will not limit or alter the terms of any agreement, ordinance or resolution, which shall include, but not be limited to, the Ordinance and this Agreement, made in connection with the security for the Bonds, that shall in any way impair the rights or remedies of the Bondholders.

**SECTION 16.09**     Good Faith

In their dealings with each other, the Parties agree that they shall act in good faith.

**SECTION 16.10**     Entire Document

All conditions in the Ordinance and the Application are incorporated in this Agreement and made a part hereof.

**SECTION 16.11**     Effective Date

Notwithstanding the date of execution of this Agreement by the Parties hereto, this Agreement shall be effective as of, and shall automatically be of full force and effect on, the Effective Date, it being hereby expressly acknowledged, understood and agreed by each of the Borough and Entity, respectively, that this Agreement shall not be amended, modified or terminated prior to the Effective Date without the express written consent of each of the Borough and the Entity, respectively.

**SECTION 16.12**     Counterparts

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed as of the day and year first above written.

ATTEST:

Devin M. Spatuto

FLEMINGTON CENTER URBAN RENEWAL,  
LLC

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

ATTEST:

Allison Pincell

THE BOROUGH OF FLEMINGTON

By:   
Phil Greiner, Mayor

STATE OF NEW JERSEY

)  
) SS:  
)

COUNTY OF HUNTERDON

The foregoing instrument was acknowledged before me this 5th day of November, 2018 by John J. Cust, Jr. on behalf of Flemington Center Urban Renewal, LLC.

Suzanne Mangin #2450244  
Notary Public

SUZANNE MANGIN

Commission Expiration: NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 10/3/2019

STATE OF NEW JERSEY

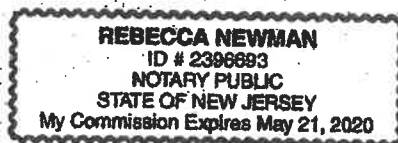
)  
) SS:  
)

COUNTY OF HUNTERDON

The foregoing instrument was acknowledged before me this 21st day of NOV., 2018, by the Borough of Flemington, a municipal corporation in the County of Hunterdon and the State of New Jersey, by Phil Greiner, its Mayor on behalf of the Borough.

[Signature]  
Notary Public

Commission Expiration: \_\_\_\_\_



## Appendix

- 5) Financial Analysis Report prepared by Otteau Group, dated 08/07/2018.





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100 Matawan Road, Suite 320  
Matawan, New Jersey 07747

112 W. 34th Street, 18th Floor  
Manhattan, New York 10120

325-41 Chestnut Street, Suite 800  
Philadelphia, Pennsylvania 19106

[www.otteau.com](http://www.otteau.com)

## FINANCIAL ANALYSIS REPORT

OG File No. 18040042

Flemington Center Urban Renewal, LLC

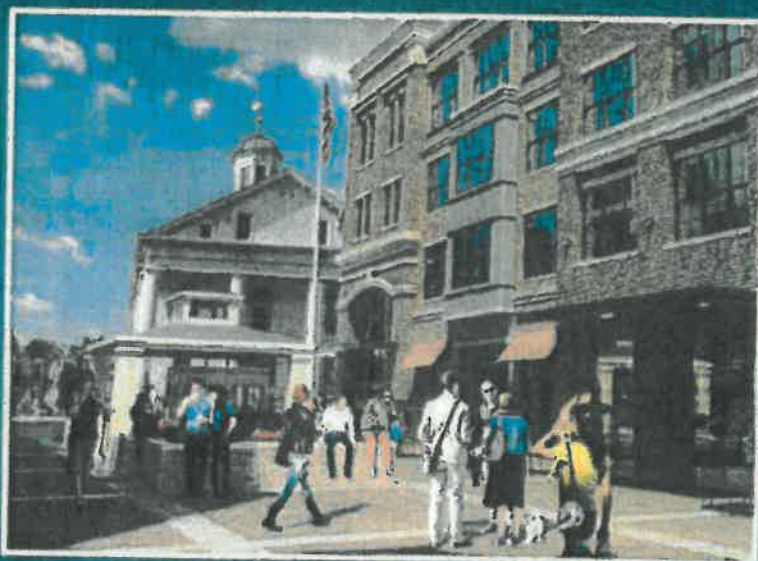
d/b/a Courthouse Square

Block 22, Lots 4-10, 12-14; Block 23, Lots

1 & 7; Block 24, Lots 1-3, 5

Borough of Flemington

Hunterdon County, New Jersey



## PREPARED FOR

Flemington Center Urban Renewal, LLC c/o

McManimon, Scotland & Baumann, LLC

5 Bartles Corner Road

Flemington, New Jersey 08822



**OTTEAU GROUP**  
VALUATION | RESEARCH | CONSULTING | BROKERAGE  
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Manhattan, NY 10120

*Pennsylvania Office*  
325-41 Chestnut Street, Suite 800  
Philadelphia, PA 19106

August 7, 2018

Flemington Center Urban Renewal, LLC  
c/o McManimon, Scotland & Baumann, LLC  
5 Bartles Corner Road  
Flemington, New Jersey 08822

**RE: OG File No. 18040042**  
**Flemington Center Urban Renewal, LLC**  
**d/b/a Courthouse Square**  
**Block 22, Lots 4-10, 12-14; Block 23, Lots 1 & 7; Block 24, Lots 1-3, 5**  
**Borough of Flemington**  
**Hunterdon County, New Jersey**

Dear Flemington Center Urban Renewal, LLC:

In accordance with your request, I submit my **financial analysis study** report for the proposed **Downtown Flemington Redevelopment** known as **Courthouse Square**. The purpose of our financial analysis is to provide professional assistance in determining the reasonableness of a proposed financial agreement related to a Payment-in-Lieu of Taxes (PILOT) agreement. The intended use of the report is to provide guidance on drafting a viable development or redevelopment plan which aligns with market demand, is financially viable and fills an unmet need in the local submarket area.

I have inspected the subject site and investigated relevant economic, demographic and real estate market factors within the context of the regional and local market area. This study has been developed and the report has been prepared in accordance with the Code of Professional Ethics (CPE) of the Appraisal Institute and the Standards of Professional Practice (SPP) of the Appraisal Institute.

This study summarizes the various processes employed in developing our conclusions, the relevant data which formed the basis of our analyses, various exhibit documents upon which I have relied and any assumptions upon which my conclusions have been based.

**Conclusions:** Based upon my investigation and analysis, I have concluded that the redevelopment of the subject property with a PILOT is reasonable based on the analysis in the report. In my opinion, the project could be expected to achieve a reasonable rate of return on investment with a PILOT, without it the project is not financially feasible. Furthermore, the proposed initial PILOT for a project of this scope as well as the incremental increases to the PILOT payments are also reasonable and were utilized in the analysis. As indicated in the PILOT analysis report on pages 69 & 70, the Borough of Flemington will expect to receive approximately an average of \$694,126 annually, or a total of \$20,823,786 over the 30-year period.

I further reviewed other PILOT agreements from other municipalities on similar development projects, which included Belmar Borough, Bordentown City, Elizabeth City, Fanwood Borough, Jersey City, Linden City, Long Branch City, New Brunswick City, West New York Town. The structure of these PILOTs vary greatly, but ultimately are designed to achieve financial feasibility without the developer obtaining above market returns. The typical unlevered return range for a feasible project is from 6.5% to 12%. It is further important note the subject has obtained a Redevelopment Area Bond (RAB), which eliminates any regulation on minimal service charges as percentage of total project costs or a percentage of gross income. Since the subject project is projecting returns rates to the lower end of the scale, this PILOT is successfully achieving financial feasibility and ensuring the borough is not in a disadvantageous position. Without a PILOT, the project does not pass the simple feasibility test until Year 17 of the project and has an unlevered return range of 0.6% to 6.10% over the 35-year period, which is below the acceptable standards.

Respectfully submitted,



Christopher J. Otteau, MAI, AI-GRS  
Principal  
New Jersey SCGRE #42RG00219400  
New York SCGRE #46000049674  
Pennsylvania SCGRE #GA003794

CJO/td



### ***Certification of the Consultant***

I certify that, to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this study.

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Christopher J. Otteau, MAI, AI-GRS has made a personal inspection of the property that is the subject of this report.

I have not performed a prior study, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Connor F. Montferrat has provided research and report writing assistance to the person(s) signing this report.

As of the date of this report, Christopher J. Otteau, MAI, AI-GRS has completed the continuing education requirements for designated Members of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

I have completed the continuing education requirements of my active appraisal license.



Christopher J. Otteau, MAI, AI-GRS  
Principal  
New Jersey SCGRE #42RG00219400  
New York SCGRE #46000049674  
Pennsylvania SCGRE #GA003794

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## **PART I – INTRODUCTION**

### **Executive Summary**

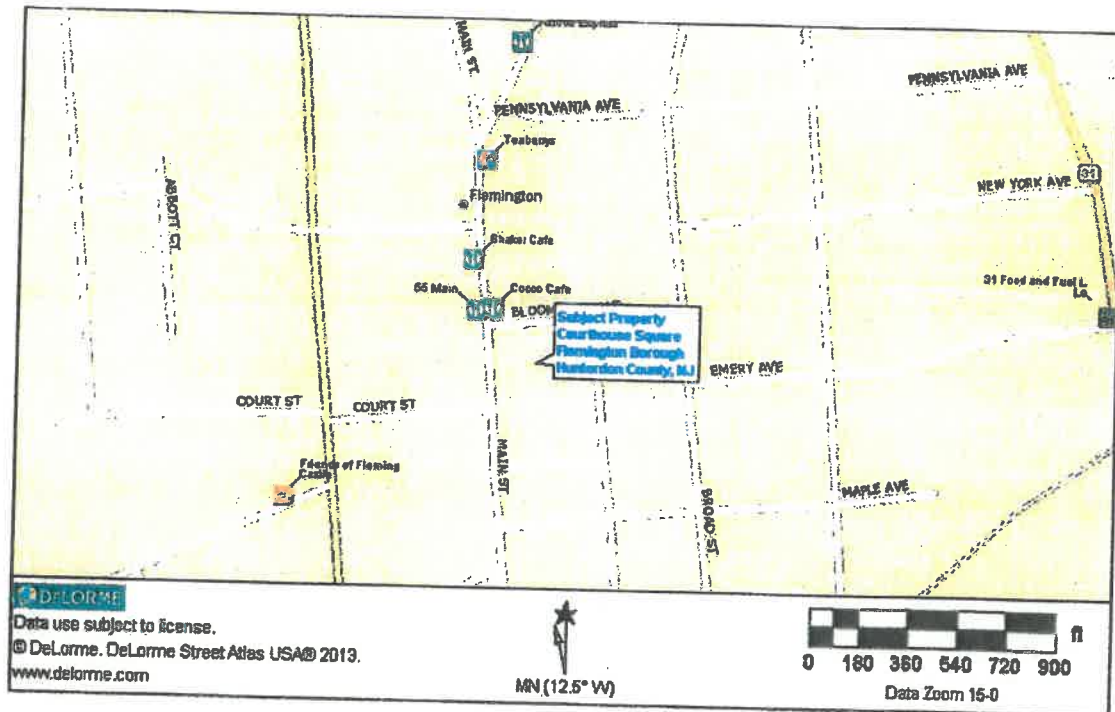
Effective Date of Report:	August 7, 2018
Date of Report:	August 7, 2018
Location:	Main Street, Bloomfield Avenue, Spring Street, & Chorister Place Flemington Borough Hunterdon County New Jersey
Block/Lot:	Block 22, Lots 4-10, 12-14; Block 23, Lots 1 & 7; Block 24, Lots 1-3, 5
Land Area:	4.28 acres / 186,419 square feet
Building Area:	Proposed Mixed-Use Redevelopment
Utilities:	Public Water, Public Sewer, Natural Gas
Current Zoning:	Union Hotel Redevelopment Area DB, Downtown Business Flemington Borough Historic District
Present Use:	Improved Structures
Proposed Use:	Proposed Redevelopment

**Property Description:** The site which is the subject of this report is a proposed mixed-use development in Flemington Borough, New Jersey, consisting of 222-unit multifamily units, of which 14 units will be affordable housing units. The property will also contain 100-room hotel, 45,000 square feet of educational/medical space, 32,250 square feet of retail space, 4,800 square feet of amenity space, 760 parking spaces, which will include 565 structured parking, 159 podium parking, and 26 surface parking spaces. The property is approximately 4.92 acres, or 186,419 square feet, located along Main Street, Bloomfield Avenue, Chorister Place and Spring Street in the Union Hotel Redevelopment Area. Presently, the subject property consists of several structures and a parking lot. Several buildings will be razed while the exteriors of the Union Hotel and Bank Building will be preserved to facilitate the redevelopment of the site.

**Conclusions:** Based upon my investigation and analysis, I have concluded that the redevelopment of the subject property with a PILOT is reasonable based on the analysis in the report. In my opinion, the project could be expected to achieve a reasonable rate of return on investment with a PILOT, without it the project is not financially feasible. Furthermore, the proposed initial PILOT for a project of this scope as well as the incremental increases to the PILOT payments are also reasonable and were utilized in the analysis. As indicated in the PILOT analysis report on pages 69 & 70, the Borough of Flemington will expect to receive approximately an average of \$694,126 annually, or a total of \$20,823,786 over the 30-year period.

The consultant also reviewed other PILOT agreements from other municipalities on similar development projects, which included Belmar Borough, Bordentown City, Elizabeth City, Fanwood Borough, Jersey City, Linden City, Long Branch City, New Brunswick City, West New York Town. The structure of these pilots vary greatly, but ultimately are designed to achieve financial feasibility without the developer obtaining above market returns. The typical unlevered return range for a feasible project is from 6.5% to 12%. Since the subject project is projecting returns rates to the lower end of the scale, this pilot is successfully achieving financial feasibility and ensuring the borough is not in a disadvantageous position. It is further important note the subject has obtained a Redevelopment Area Bond (RAB), which eliminates any regulation on minimal service charges as percentage of total project costs or a percentage of gross income. Without a PILOT, the project does not pass the simple feasibility test until Year 17 of the project and has an unlevered return range of 0.6% to 6.10% over the 35-year period, which is below the acceptable standards.

### Subject Property Location Map





### ***Date of Study***

The effective date of the market study is **August 7, 2018**, which establishes the context for the analysis in terms of economic, demographic and real estate market conditions. The date of this market study report is **August 7, 2018**, which identifies when the analyses and report were prepared.

### ***Identification of Property***

The subject property is commonly known as Courthouse Square, Block 22, Lots 4-10, 12-14; Block 23, Lots 1 & 7; Block 24, Lots 1-3, 5, Borough of Flemington, Hunterdon County, New Jersey. The subject property is located along Main Street, Bloomfield Avenue, Spring Street, and Chorister Place.

The current owner of the records are as follows:

Address	Block	Lot	Owner Name
24 Bloomfield Avenue	18	17	Flemington Fur Company, LLC
26 Bloomfield Avenue	18	18	56 Main Street LLC
28 Bloomfield Avenue	18	19	Flemington Fur Company
70-74 Main Street	22	4	Flemington Union Hotel, LLC
80 Main Street	22	5	Flemington Revitalization
82 Main Street	22	6	Tweed Group LLC
90 Main St	22	7/X	Flemington Borough
98 Main St	22	7/CI	Flemington Borough
104 Main St	22	8	Flemington Borough
6 Chorister Pl	22	9	Flemington Borough
19 Spring St	22	10	Flemington Borough
7 Spring Street	22	12	Flemington Revitalization
23 Bloomfield Avenue	22	13	Flemington Fur Company, LLC
21 Bloomfield Avenue	22	14	Flemington Fur Company, LLC
2 Spring Street	24	1	Flemington Fur Company, LLC
8 Spring Street	24	2	Flemington Fur Company, LLC
12 Spring Street	24	5	Flemington Fur Company, LLC

### ***Purpose & Intended Use of the Study***

The purpose of our financial analysis is to provide professional assistance in determining the reasonableness of a proposed financial agreement related to a Payment-in-Lieu of Taxes (PILOT) agreement. The intended use of the study is to provide guidance on drafting a viable development or redevelopment plan which aligns with market demand, is financially viable and fills an unmet need in the local submarket area.

### ***Intended User of the Study***

The intended user of the study is the client, **Flemington Center Urban Renewal, LLC c/o McManimon, Scotland & Baumann, LLC**, and the **Borough of Flemington**, which will be a third-party beneficiary to this agreement. Any reliance upon this report by anyone other than the client is unintended.

### ***Scope of Work***

The scope of work in developing this study included the following:

1. **Scope of Work Determination**: Identification of the study area, purpose and intended use of the study. The scope of work was determined by Borough of Flemington.
2. **Document Review**: Reviewed various documents that relate to the subject property that was provided by the client including but not limited to legal descriptions, surveys, municipal zoning and tax maps, financial agreement, deed, conceptual site plans and conceptual program mix.
3. **Research & Verification**: Collection of facts information and data points including but not limited to economic conditions, demographic trends, land use controls, existing infrastructure, real estate market data and other pertinent factors which are relevant to the assignment. Data sources include US Census Bureau, Bureau of Labor Statistics, Federal Reserve Bank(s), Environics Analytics, GIS and geographical mapping, municipal zoning ordinances, public records, recorded deeds, various national, local and regional subscribed information services, real estate brokers, property managers, the Internet and records maintained in the files of Otteau Group, Inc. Connor F. Montferrat has provided research assistance to the person(s) signing this report.
4. **Market Analytics**: The application of applicable analytical techniques to identify development use types which are suitable to the subject property and viable within the study area.
5. **Performance Projections**: The application of applicable analytical techniques to develop bulk quantities, performance projections and design guidelines for the project.
6. **Other PILOTS**: Included in the scope of work, the consultant reviewed pilot programs from other municipalities on similar development projects, which included Belmar Borough, Bordentown City, Elizabeth City, Fanwood Borough, Jersey City, Linden City, Long Branch City, New Brunswick City, West New York Town. The structure of these pilots vary greatly, but ultimately are designed to achieve financial feasibility without the developer obtaining above market returns. The typical unlevered return range for a feasible project is from 6.5% to 12%. Since the subject project is projecting returns rates to the lower end of the scale, this pilot is successfully achieving financial feasibility and ensuring the borough is not in a disadvantageous position. It is further important note the subject has obtained a Redevelopment Area Bond (RAB), which eliminates any regulation on minimal service charges as percentage of total project costs or a percentage of gross income.

The results of our study analysis are presented in this report which "summarizes" the study process, methodology and conclusions. Additional supporting documentation has therefore been retained in our work file.

## PART II – FACTUAL DESCRIPTIONS

### Tax and Assessment Analysis

According to the official records of the Hunterdon County Board of Taxation, the subject property is legally described as the following:

#### 2017 Assessments:

Address	Block	Lot	Owner Name	Land Value	Improvement Value	Total Value	Tax Rate	2017 Taxes	EQ Ratio	EQ Tax Value
24 Bloomfield Avenue	18	17	Flemington Fur Company, LLC	\$114,200	\$11,300	\$125,500	\$3.246	\$4,073.73	98.76%	\$127,075.74
26 Bloomfield Avenue	18	18	58 Main Street LLC	\$120,100	\$13,400	\$133,500	\$3.246	\$4,333.41	98.76%	\$135,176.16
28 Bloomfield Avenue	18	19	Flemington Fur Company	\$124,700	\$142,600	\$267,300	\$3.086	\$8,246.86	98.76%	\$270,656.14
70-74 Main Street	22	4	Flemington Union Hotel, LLC	\$480,000	\$245,000	\$725,000	\$3.246	\$23,533.50	98.76%	\$734,102.68
80 Main Street	22	5	Flemington Revitalization	\$360,000	\$365,000	\$725,000	\$3.246	\$23,533.50	98.76%	\$734,102.68
82 Main Street	22	6	Tweed Group LLC	\$365,000	\$600,000	\$965,000	\$3.246	\$28,727.10	98.76%	\$996,111.79
90 Main St	22	7/X	Flemington Borough	\$485,000	\$220,000	\$705,000	\$0.000	\$0.00	98.76%	\$713,851.76
96 Main St	22	7/C1	Flemington Borough	\$25,000	\$40,000	\$65,000	\$0.000	\$0.00	98.76%	\$65,616.12
104 Main St	22	8	Flemington Borough	\$52,600	\$7,100	\$59,700	\$0.000	\$0.00	98.76%	\$100,961.60
6 Chorister Pl	22	9	Flemington Borough	\$66,000	\$100	\$66,100	\$0.000	\$0.00	98.76%	\$67,181.04
19 Spring St	22	10	Flemington Borough	\$80,500	\$100	\$80,600	\$0.000	\$0.00	98.76%	\$81,611.69
7 Spring Street	22	12	Flemington Revitalization	\$82,300	\$0	\$82,300	\$3.086	\$2,539.78	98.76%	\$83,333.33
23 Bloomfield Avenue	22	13	Flemington Fur Company, LLC	\$116,000	\$116,900	\$232,900	\$3.086	\$7,249.01	98.76%	\$237,849.33
21 Bloomfield Avenue	22	14	Flemington Fur Company, LLC	\$292,200	\$362,800	\$655,000	\$3.246	\$21,261.30	98.76%	\$663,223.66
2 Spring Street	24	1	Flemington Fur Company, LLC	\$158,200	\$354,800	\$513,000	\$3.246	\$16,651.68	98.76%	\$519,441.07
6 Spring Street	24	2	Flemington Fur Company, LLC	\$273,300	\$1,001,700	\$1,275,000	\$3.246	\$41,366.50	98.76%	\$1,291,008.61
12 Spring Street	24	5	Flemington Fur Company, LLC	\$29,500	\$0	\$29,500	\$3.086	\$910.37	98.76%	\$29,570.36
<b>Total</b>				<b>\$3,306,600</b>	<b>\$1,289,900</b>	<b>\$4,596,500</b>		<b>\$182,449.06</b>		<b>\$6,771,364.93</b>

Utilizing the 2017 equalization ratio of 98.76%, the equalized tax value for the subject property was \$6,771,364.93. Based on the value estimate contained within this analysis, current assessments appear reasonable.

Tax Entity	\$	%
County	\$ 0.312	10%
County Library	\$ -	0%
County Open Space	\$ 0.031	1%
District School	\$ 1.351	44%
Regional School	\$ 0.435	14%
Municipal Purpose	\$ 0.924	30%
Municipal Open Space	\$ -	0%
Municipal Library	\$ 0.033	1%
<b>Total General Tax Rate</b>	<b>\$ 3.086</b>	<b>100%</b>
<b>Business Improvement District</b>	<b>\$ 0.160</b>	<b>-</b>
<b>Total w/ BID</b>	<b>\$ 3.246</b>	<b>-</b>

Given the scope of work in this assignment we have utilized the rate of \$3.246 for the analysis of projected taxes after the transfer of ownership of the remaining parcels. This rate includes the downtown business improvement district (BID) rate. The land value only projected taxes would be \$107,332.24, with an equalized 100% value for 2018 of \$3,306,600.

### **Area Analysis**

The subject property is located within Hunterdon County, which is located on the western boundary of New Jersey. Hunterdon County is contiguous to Warren and Morris counties to the north, Somerset County to the east, Mercer County to the south and the Delaware River and Commonwealth of Pennsylvania on the west. Hunterdon County generally consists of small towns, villages and individual homes scattered amidst rolling farmland and foothills.



Many important roads pass through the county. They include state routes, such as Route 12, Route 29, Route 31, Route 165, Route 173 and Route 179. Two U.S. Routes that pass through are U.S. Route 22 and U.S. Route 202. The only limited access road that passes through is Interstate 78. Rail service to the northern part of the county from Newark Penn Station is provided to High Bridge, Annandale, Lebanon and Whitehouse Station by New Jersey Transit's Raritan Valley Line.

According to the Greater Raritan Workforce Development Board, the largest employer in Hunterdon County is Hunterdon Healthcare employing more than 1,000 people. Other major employers in the county with 500-2,499 employees include Foster Wheeler, Chubb Group and Johanna Foods. Also noteworthy, is that there are 2,479 state government employees located in Hunterdon County.

Population growth in Hunterdon County has declined over the past eight years (-3.48%), while the state saw an increase of 2.01%. Also noteworthy, is that the age of Hunterdon County resident's is greater than New Jersey overall, with a median age of 46.58 years, compared to 40.13 statewide.



POPULATION FACTS & TRENDS				
Population	Hunterdon County		New Jersey	
		%		%
2000 Estimate	121,993		8,414,361	
2010 Census	128,349		8,791,894	
2018 Census	123,886		8,968,348	
Growth 2000 - 2010		5.21		4.49
Growth 2010 - 2018		-3.48		2.01
2018 Est. Median Age	46.58		40.13	
2018 Est. Average Age	43.00		40.10	

Source: US Census Bureau; Envirionics Analytics; Otteau Group, Inc.

Consistent with the decline in population growth, household formation in Hunterdon County has also declined (-1.41%) since 2010. Approximately 65.11% of county households have no children under the age of 18 living at home, which is consistent with the statewide factor.

HOUSEHOLD FACTS & TRENDS				
Households	Hunterdon County		New Jersey	
		%		%
2000 Estimate	43,679		3,064,642	
2010 Census	47,169		3,214,360	
2018 Census	46,503		3,283,467	
Growth 2000 - 2010		7.99		4.88
Growth 2010 - 2018		-1.41		2.15
Households with 1 or More People under Age 18:	16,224	34.89	1,147,467	34.95
Households with No People under Age 18:	30,279	65.11	2,136,000	65.05
2018 Est. Households by Number of Vehicles	270,283		3,283,467	
No Vehicles	1,863	4.01	369,693	11.26
2018 Est. Households by Household Size	46,503		3,283,467	
1-person	10,724	23.06	840,588	25.60
2-person	15,669	33.70	969,133	29.52
3-person	8,106	17.43	574,259	17.49
4-person	7,743	16.65	504,518	15.37
5-person	3,060	6.58	238,090	7.25
6-person	882	1.90	92,912	2.83
7-or-more-person	319	0.69	63,967	1.95
2018 Est. Average Household Size	2.59		2.67	

Source: US Census Bureau; Envirionics Analytics; Otteau Group, Inc.

In terms of education attainment, approximately 50% of the county residents have a bachelor's degree or higher, which is greater than statewide figures. On average residents in the county have a 36-minute commute to work compared to the statewide average of 34 minutes.

EDUCATION & EMPLOYMENT				
	Hunterdon County		New Jersey	
		%		%
<b>2018 Est. Pop Age 25+ by Edu. Attainment</b>	<b>88,132</b>		<b>6,198,293</b>	
Bachelor's Degree	27,242	30.91	1,435,321	23.16
Master's Degree	11,813	13.40	638,910	10.31
Professional School Degree	2,441	2.77	150,864	2.43
Doctorate Degree	2,218	2.52	92,496	1.49
<b>2018 Est. Pop 16+ by Occupation Classification</b>	<b>66,988</b>		<b>4,366,606</b>	
White Collar	49,843	74.41	2,857,215	65.43
Blue Collar	7,765	11.59	769,006	17.61
Service and Farm	9,380	14.00	740,385	16.96
<b>2018 Est. Workers Age 16+ by Transp. to Work</b>	<b>65,404</b>		<b>4,274,982</b>	
Drove Alone	53,814	82.28	3,071,466	71.85
Car Pooled	3,573	5.46	326,508	7.64
Public Transportation	1,403	2.15	488,241	11.42
Walked	1,160	1.77	135,928	3.18
Bicycle	117	0.18	13,930	0.33
Other Means	343	0.52	64,012	1.50
Worked at Home	4,994	7.64	174,897	4.09
<b>2018 Est. Avg Travel Time to Work in Minutes</b>	<b>36.00</b>		<b>34.00</b>	
<b>2018 Est. Average Number of Vehicles</b>	<b>2.20</b>		<b>1.70</b>	

Source: US Census Bureau; Environics Analytics; Otteau Group, Inc.

Household income in Hunterdon County is greater than statewide figures, with an average household income of \$156,231, and median of \$111,405.

INCOME				
	Hunterdon County		New Jersey	
		%		%
<b>2018 Est. Households by HH Income</b>	<b>46,603</b>		<b>3,283,467</b>	
Income < \$15,000	2,281	4.91	282,134	8.59
Income \$15,000 - \$24,999	2,284	4.91	247,013	7.52
Income \$25,000 - \$34,999	1,964	4.22	235,878	7.18
Income \$35,000 - \$49,999	3,017	6.49	334,600	10.19
Income \$50,000 - \$74,999	5,999	12.90	489,727	14.91
Income \$75,000 - \$99,999	5,255	11.30	394,820	12.02
Income \$100,000 - \$124,999	5,219	11.22	327,067	9.96
Income \$125,000 - \$149,999	4,058	8.73	247,394	7.54
Income \$150,000 - \$199,999	5,812	12.50	297,768	9.07
Income \$200,000 - \$249,999	2,939	6.32	145,948	4.45
Income \$250,000 - \$499,999	4,395	9.45	177,176	5.40
Income \$500,000+	3,280	7.05	103,942	3.17
<b>2018 Est. Average Household Income</b>	<b>\$156,231</b>		<b>\$112,273</b>	
<b>2018 Est. Median Household Income</b>	<b>\$111,405</b>		<b>\$78,026</b>	
<b>2018 Est. Families by Poverty Status</b>	<b>33,876</b>		<b>2,268,374</b>	
2018 Families at or Above Poverty	32,905	97.13	2,084,580	91.90
2018 Families at or Above Poverty with Children	14,392	42.48	953,814	42.05
2018 Families Below Poverty	971	2.87	183,794	8.10
2018 Families Below Poverty with Children	657	1.94	139,468	6.15

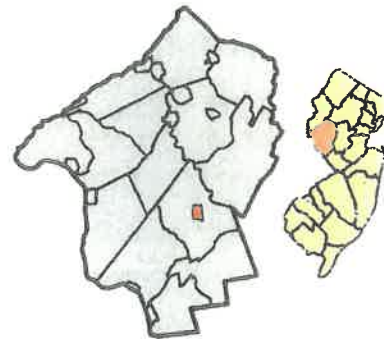
Source: US Census Bureau; Environics Analytics; Otteau Group, Inc.

The median home price in Hunterdon County is \$412,407, which is 24% greater than the statewide median of \$333,253. The majority of the homes in the county are single family detached (74.98%), with an average age of 41 years.

HOUSING				
	Hunterdon County		New Jersey	
		%		%
<b>2018 Est. Occupied Housing Units by Tenure</b>	<b>46,503</b>		<b>3,283,467</b>	
Owner Occupied	39,037	83.94	2,132,497	64.95
Renter Occupied	7,466	16.05	1,150,970	35.05
<b>2018 Owner Occ. HUs: Avg. Length of Residence</b>	<b>18</b>		<b>18</b>	
<b>2018 Renter Occ. HUs: Avg. Length of Residence</b>	<b>7</b>		<b>7</b>	
<b>2018 Est. Median All Owner-Occupied Housing Value</b>	<b>\$412,407</b>		<b>\$333,253</b>	
<b>2018 Est. Housing Units by Units in Structure</b>	<b>49,544</b>		<b>3,654,659</b>	
1 Unit Attached	4,753	9.59	340,301	9.31
1 Unit Detached	37,150	74.98	1,946,394	53.26
<b>2018 Est. Median Year Structure Built</b>	<b>1977</b>		<b>1968</b>	

Source: US Census Bureau; Envirionics Analytics; Otteau Group, Inc.

**U.S. Census Information:** The subject property is located within **Flemington**, a borough in Hunterdon County, New Jersey, United States. The borough has a total area of 1.077 square miles, all of which was land. As of the 2010 United States Census, the borough's population was 4,581, reflecting an increase of 381 from the 4,200 counted in the 2000 Census, which had in turn increased by 153 from the 4,047 counted in the 1990 Census. The 2016 estimate is 4,621. Flemington is an independent municipality located entirely surrounded Raritan Township and is located near the geographic center of the township. It is the county seat of Hunterdon County. Most of the borough is in the Amwell Valley (a low-lying area of the Newark Basin), but northwest portions of the borough sit on the Hunterdon Plateau.



At the 2010 United States Census, there were 4,581 people, 1,815 households, and 996.4 families residing in the borough. The population density was 4,252.2 per square mile. There were 1,926 housing units at an average density of 1,787.8 per square mile. There were 1,815 households, of which 28.5% had children under the age of 18 living with them, 37.6% were married couples living together, 11.5% had a female householder with no husband present, and 45.1% were non-families. 37.1% of all households were made up of individuals, and 12.5% had



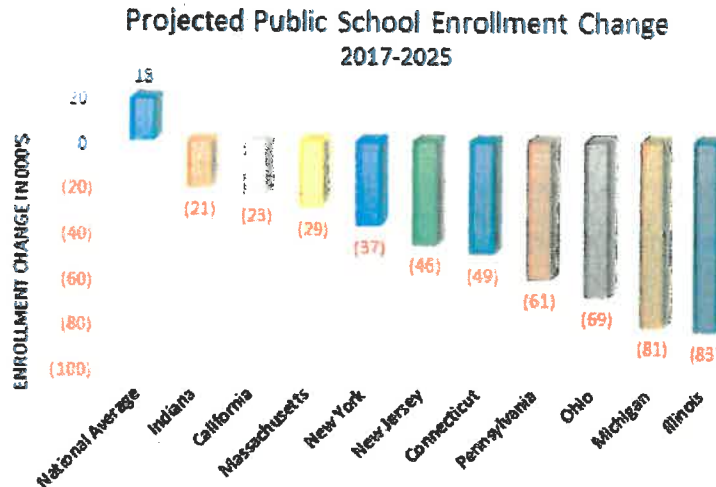
someone living alone who was 65 years of age or older. The average household size was 2.44 and the average family size was 3.20. In the borough, 22.3% of the population were under the age of 18, 9.1% from 18 to 24, 33.9% from 25 to 44, 24.3% from 45 to 64, and 10.3% who were 65 years of age or older. The median age was 35.3 years.

The Census Bureau's 2006-2010 American Community Survey showed that median household income was \$54,261 and the median family income was \$66,042. Males had a median income of \$45,934 versus \$47,917 for females. The per capita income for the borough was \$31,407. About 14.0% of families and 16.1% of the population were below the poverty line, including 30.0% of those under age 18 and 8.9% of those age 65 or over.

Education: Students in public school for pre-Kindergarten through eighth grade attend the Flemington-Raritan Regional School District, which also serves children from the neighboring community of Raritan Township. Schools in the district are four elementary schools — Barley Sheaf School - Flemington; Copper Hill School- Ringoes; Francis A. Desmares School- Flemington; and Robert Hunter School- Flemington — Reading-Fleming Intermediate School in Flemington and J. P. Case Middle School – Flemington. Public school students in ninth through twelfth grades attend Hunterdon Central Regional High School, part of the Hunterdon Central Regional High School District, which serves students in central Hunterdon County from Flemington and from Delaware Township, East Amwell Township, Raritan Township and Readington Township. High school students from Flemington, and from all of Hunterdon County, may also attend Hunterdon County Polytech Career Academy, a county-wide vocational school that offers career and technical education at two campuses in Raritan Township, New Jersey.

A 2017 report from the National Center for Education Statistics titled Projections of Education Statistics to 2025 – 44<sup>th</sup> Edition, which projects that New Jersey will experience the 6<sup>th</sup> highest decline in public school enrollment in the nation with a decline of 46,000 students from 2017-2025.





*Source: US Department of Education*

And there is evidence that these trends are beginning to affect the Flemington-Raritan Regional School District as well, where public school enrollment declined its peak of 3,625 for the 2010-2011 school year to 3,055 for the current 2017-2018 school year. This reflects a decline of 570 students (grades Pre-K-12<sup>th</sup>), or an annual decline of 1.6%.

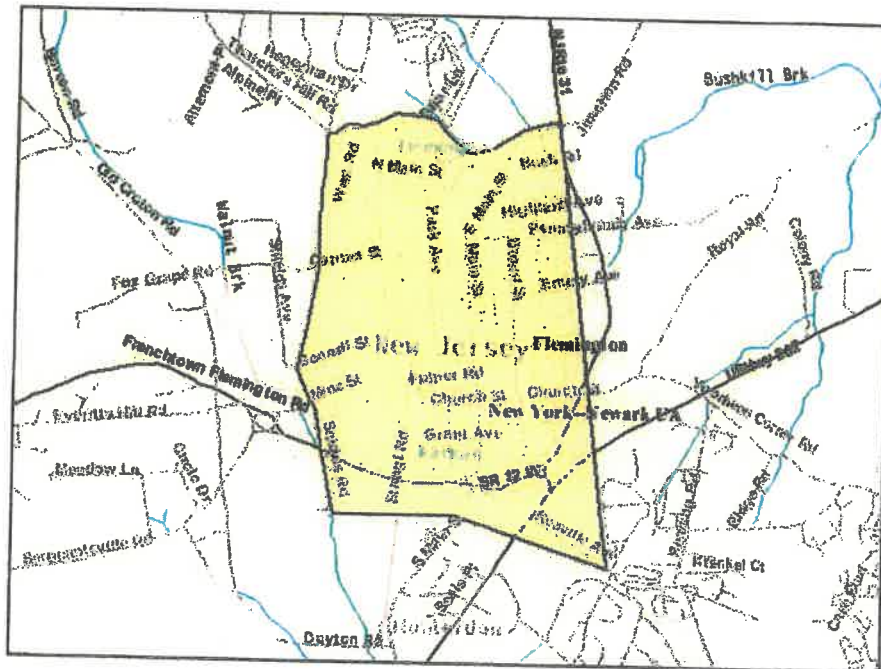
<b>Flemington-Raritan Regional Public Schools Enrollment Totals</b>	
2010-2011	3,625
2017-2018	3,055
Decline (# students)	-570
Decline (%)	-15.7%

*Source: NJ Dept. of Education*

**Public Transportation:** As of May 2010, the borough had a total of 13.85 miles of roadways, of which 12.09 miles were maintained by the municipality, 0.17 miles by Hunterdon County and 1.59 miles by the New Jersey Department of Transportation. Flemington Circle is the largest of three traffic circles in the environs of Flemington and sits just to the southeast of Flemington's historic downtown. U.S. Route 202 and New Jersey Route 31 approach the circle separately from the north and continue south concurrently, and the circle is the eastern terminus of Route 12. It is one of only a handful of New Jersey's once-widespread traffic circles still extant according to its original design. The circle sees significant congestion on weekends because of the new developments and big-box retailers. Unlike most circles, traffic on US 202 does not

yield on entry; US 202, being a main four-lane divided highway, gets the right of way. Two other traffic circles exist on Route 12 just west of the Flemington Circle. Both handle a much smaller volume of traffic; the first one, at South Main Street, named the Main Street Circle (old Route 31), is also in Flemington, and the other, at Flemington Road / Route 523 (old Route 12) and Mine Street, is in Raritan Township. This circle is known informally amongst residents as Dvoor Circle after the historic farm that surrounded parts of it. Route 12 traffic has the right of way in both of these circles, just as US 202 does in Flemington Circle.

Trans-Bridge Lines provides frequent daily bus service, west to Doylestown / Bethlehem, Pennsylvania and east to Newark Liberty International Airport, the Port Authority Bus Terminal in Midtown Manhattan and John F. Kennedy International Airport. Local routes are provided by Hunterdon County's "Flemington Shuffle" bus service, as well the Cross County Service, which offers demand-response service to all municipalities in Hunterdon County.



***Neighborhood Analysis***

The neighborhood is bound by Raritan Township to the north, Readington Township to the east, East Amwell Township to the south and Frenchtown Borough to the west. The subject property's neighborhood area is given over to retail, office, healthcare, residential, and public uses, which enhances its appeal.. The subject property's neighborhood is situated in the center of Flemington which is also near the Hunterdon Medical Center, HeathQuest Fitness, the Hunterdon Central High School and Hunterdon Medical. The commercial uses along Route 31, US Route 202, and Route 12 include Costco, BJ's Wholesale, the Flemington Mall, the Shoppes at Flemington, the Hunterdon Shopping Center, the Flemington Circle Shopping Center, the Flemington Department Store. Recently the New Jersey Department of Transportation reconfigured the Routes 12 & 31, and Route 202 Flemington Circle for to allow for easier traffic flow and safety. This will further improve safety, as well as a steadier traffic flow along Route 31 to the benefit of the subject property.

The subject property's proposed use is considered well suited for its neighborhood location. The properties in this neighborhood area are serviced by the availability of electricity, telephones, municipal water, municipal sewerage and natural gas lines. The costs to property owners for these utilities are competitive with those of surrounding communities.

The four stages of a neighborhood area's life cycle when analyzing the growth rate are as follows:

- Growth – period during which the market gains public favor and acceptance
- Stability – period of equilibrium without marked gains or losses
- Decline – period of diminishing demand
- Revitalization – period of renewal, redevelopment, modernization, and increasing demand

The subject property's neighborhood is considered to be in the Revitalization stage.

### ***Zoning & Land Use Regulations***

The subject property is located within the **Union Hotel Redevelopment Area** zoning district of the subject municipality. The Redevelopment Plan provides the policy and regulation for a revitalized downtown Flemington. The Redevelopment Area is envisioned as a mixed-use commercial place that includes a hotel, retail businesses, restaurants and multi-family residential uses within a vibrant and socially engaging atmosphere.

The following are mandatory uses within this zoning district:

1. Hotel with not less than 50 hotel rooms, and associated hotel operations. Hotel operations may include, but may not be limited to, a lobby, office, lounge, fitness facility, conference space, etc.
2. Multi-family and townhouse residential units of not less than 200 units.
3. Affordable housing, not less than 5% of the total housing units or 14 units, whichever is greater.
4. Affordable housing units, consisting of very low, low, and moderate income units shall comply with the Borough's affordable housing regulations and the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1 et. seq.).
5. Commercial use of not less than 20,000 square feet on the first floor located along Main Street and the pedestrian plaza. Said commercial space may consist of the following:
  - a. Retail sales and services,
  - b. Personal services,
  - c. Restaurant,
  - d. Brewery,
  - e. Fitness uses,
  - f. Museum,
  - g. Art studio (painting, sculpture, music, dance, etc.), and/or
  - h. Art gallery.
6. Restaurant with liquor license (this mandatory use may constitute a portion of the required 20,000 square feet of commercial space). Liquor licenses may be shared by multiple uses, subject to applicable state regulation.
7. Educational and training facilities. This use is defined to include higher education, vocational training or career training.
8. Pedestrian plaza connecting Main Street and Spring Street.
9. Visual landmark at the plaza terminus at Spring Street on Block 24, Lot 5. Block 24, Lot 3 may also contribute land toward the visual landmark.

The following are permitted uses within this zoning district:

1. Hotel in excess of 50 hotel rooms and associated hotel operations. Hotel operations may include, but may not be limited to, a lobby, office, lounge, fitness facility, conference space, etc.
2. Multi-family housing in excess of 200 units, up to a maximum of 260 units.
3. Commercial use in excess of 20,000 square feet composed of the following uses:
  - a. Retail sales and services,

- b. Personal services,
- c. Restaurant,
- d. Brewery,
- e. Fitness uses,
- f. Museum,
- g. Art studio (painting, sculpture, music, dance, etc.), and/or
- h. Art gallery.
- 4. Medical and professional offices.
- 5. Parking structures.
- 6. Live/work housing units.
- 7. Parks and plazas.

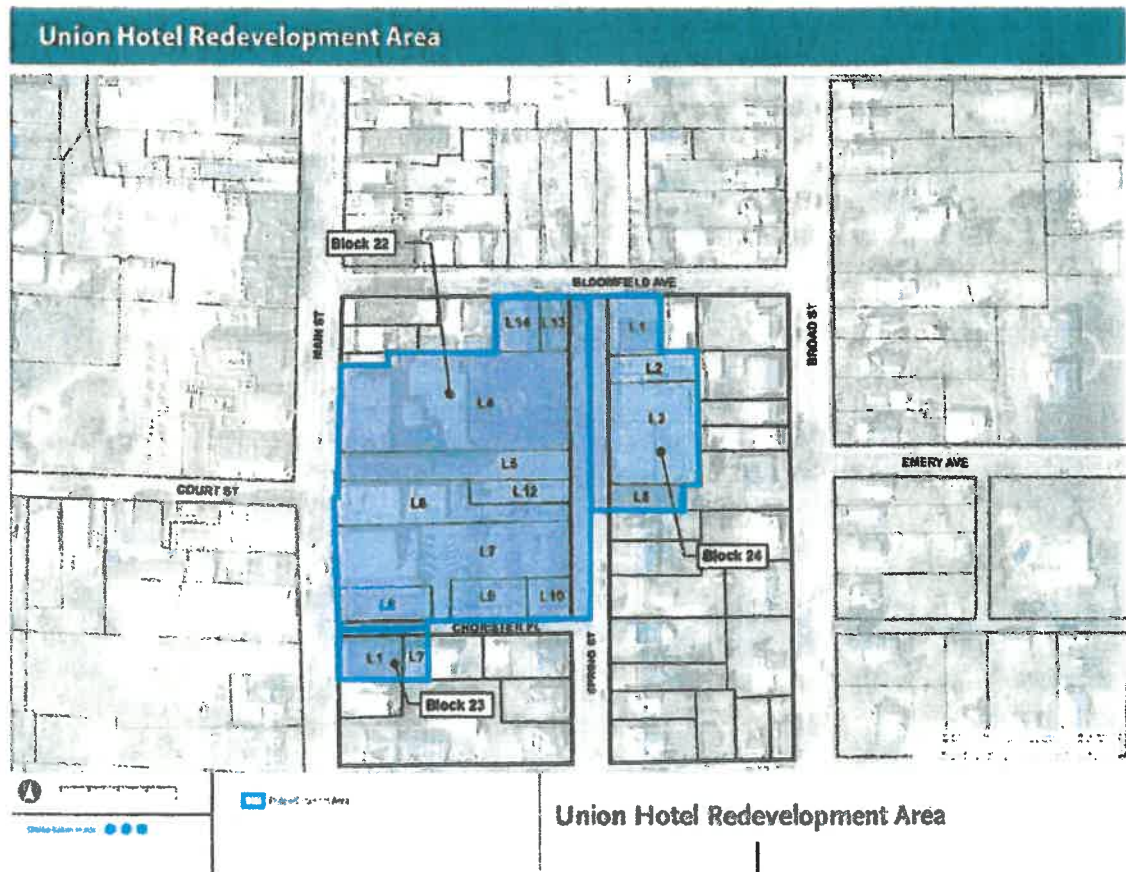
The following are the area and yard requirements within this zoning district:

Minimum Lot Size	30,000 square feet
Minimum Lot Width	150 feet
Minimum Front Yard	0 feet on Main Street 7 feet on Bloomfield Avenue 2 feet on Spring Street 16 feet on Chorister Place
Minimum Side Yard	0 feet on lot lines interior to the Redevelopment Area 0 feet on lot lines abutting lots outside the Redevelopment Area on Block 22 10 feet on lot lines abutting lots outside the Redevelopment Area on Block 24
Impervious Surface Ratio	1.0
Maximum Building Height	7 stories or 100 feet on Block 22, not including garages 4 stories or 55 feet on Main Street 4 stories or 50 feet on Block 24

For a detailed description of the requirements for this zoning district, the reader is referred to the Union Hotel Redevelopment Plan and the Zoning Ordinance of the subject municipality. The subject property is considered a **permitted** use on a **conforming** lot as proposed. Flemington Center Urban Renewal, LLC is negotiating a 35-year **financial agreement** for a proposed 30-year PILOT with the Borough of Flemington, whereby the borough has named the entity as the redevelopment for the area in need of redevelopment.



## Subject Property Zoning Map



**Site Analysis**

The following site description is based on the physical inspection of the subject, tax map, flood maps, survey and other public records.

General Data	
MSA/Census Tract:	35084 / 5015.0114.00
Block/Lot:	22 / 4-10, 12-14; 23 / 1 & 7; 24 / 1, 3, 5

Physical Description	
Site Area:	4.28 acres / 186,419 square feet
Frontage and Dimensions:	365' on Main Street 259.14' on Spring Street N 456.55' Spring Street S 95' on Bloomfield Avenue 325.52' on Chorister Place
Shape:	Assemblage of Irregular, Interior & Corner Parcels
Topography:	Mostly Level, Slightly negative sloping on Chorister Place
Vegetation:	Proposed Professional landscaping

Site Improvements	
On Site Improvements:	Paved parking lot, curbing, sidewalks, irrigation system, signage, fencing, subject building
Off Site Improvements:	Public paved roadway, curbing, sidewalks and street lighting
Utilities:	Public Water, Public Sewer
Parking:	Proposed Garage & Surface Parking
Parking Rating:	Adequate for the subject's proposed use

Flood Zone	
Flood Zone Panel:	34019C0263F / Dated September 25, 2009
Flood Zone:	X

Site Conditions	
Easements:	Sight Easements, Parking Area Easement, Vehicular and Pedestrian Access Easement, Alley Way Easements, Public Right-of-Ways – The easements are not anticipated to have any negative effect on the subject's marketability or value.
Soils:	Assumed adequate based on existing and surrounding improvements.
Environmental:	An environmental assessment was not provided for review. Therefore, this report assumes no environmental issues exist.

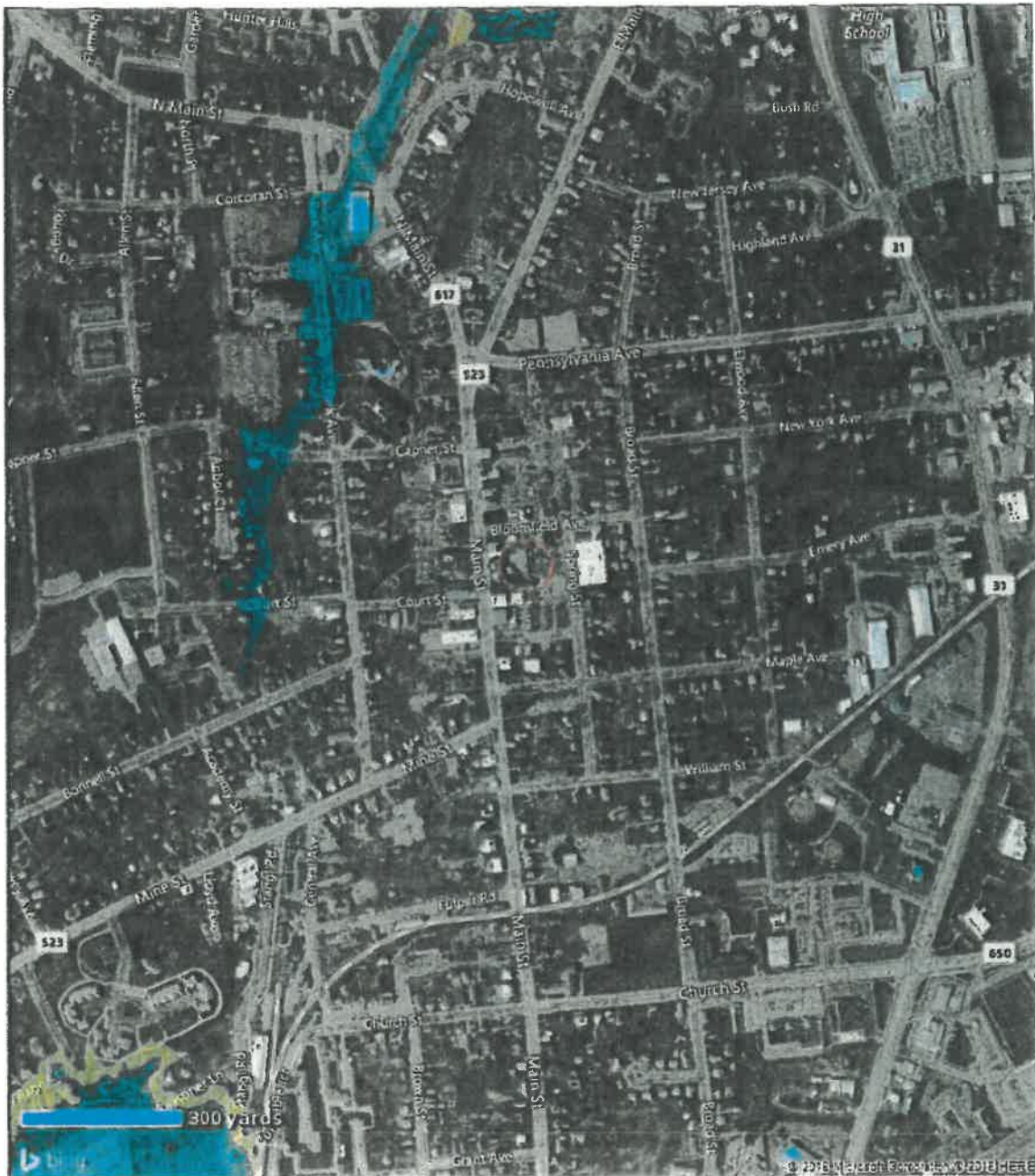
Site Ratings	
Location:	Average
Access:	Average
Exposure:	Average
Site Improvement:	N/A – Improvements will be demolished for redevelopment

Comments	
The site is considered well suited for its proposed use.	





### Subject Property Flood Map



#### MAP DATA

FEMA Special Flood Hazard Area: No  
 Map Number: 34019C0263F  
 Zone: X  
 Map Date: September 25, 2009  
 FIPS: 34019

#### MAP LEGEND

- |                                      |                 |
|--------------------------------------|-----------------|
| Areas inundated by 500-year flooding | Protected Areas |
| Areas inundated by 100-year flooding | Floodway        |
| Velocity Hazard                      | Subject Area    |

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### ***Proposed Improvement Analysis***

The subject property represents the proposed mixed-use development known as Courthouse Square in Flemington Borough, New Jersey, consisting of 222-unit multifamily units, of which 14 units will be affordable housing units. The property will also contain 100-room hotel, 45,000 square feet of educational/medical space, 32,250 square feet of retail space, 4,800 square feet of amenity space, 760 parking spaces, which include 565 structured parking, 159 podium parking, and 26 surface parking spaces. The property is approximately 4.92 acres, or 186,419 square feet, located along Main Street, Bloomfield Avenue, Chorister Place and Spring Street in the Union Hotel Redevelopment Area. Presently, the subject property consists of several structures and a parking lot. Several buildings will be razed while the exteriors of the Union Hotel and Bank Building will be preserved to facilitate the redevelopment of the site.

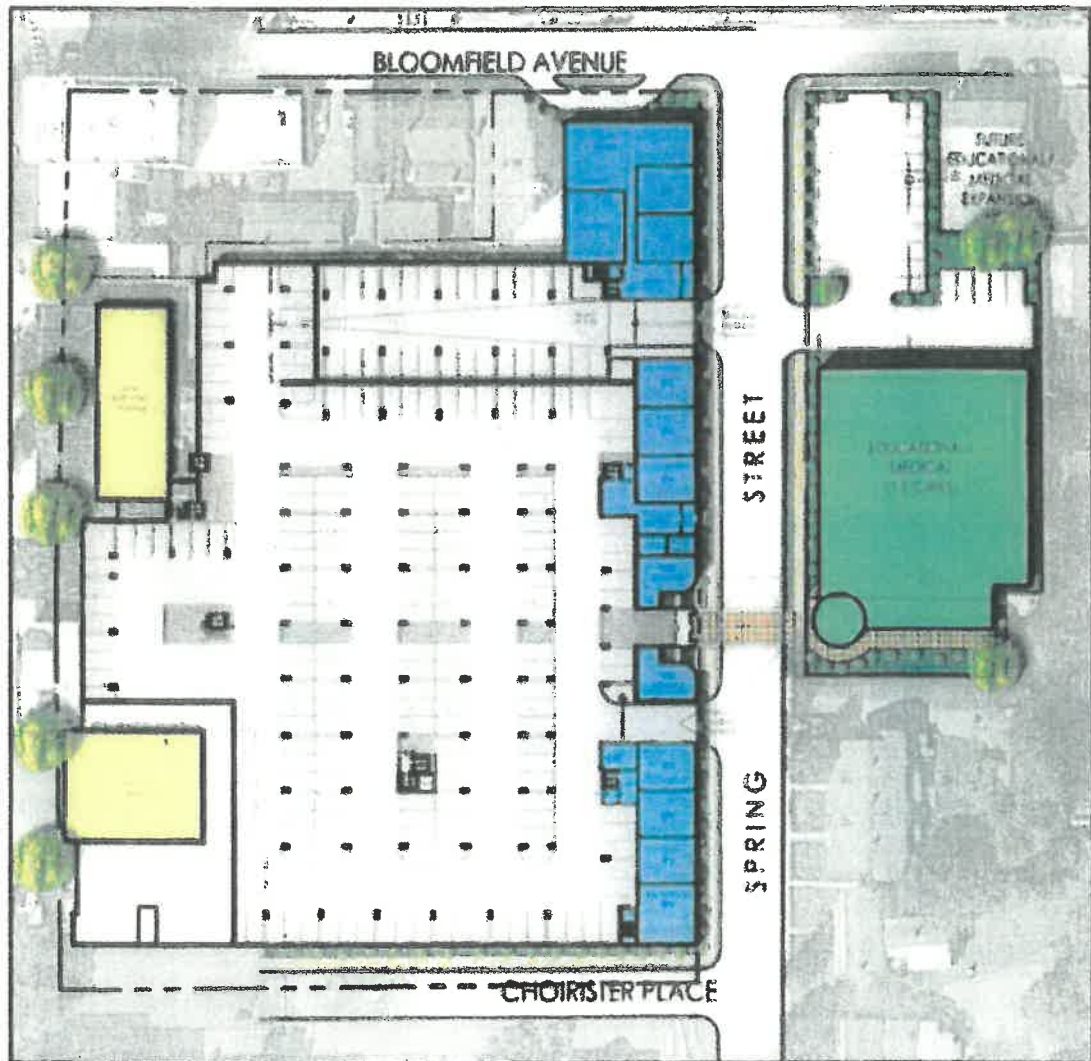
The conceptual plans for the project will include 222 Rental Apartments (208 Market-Rate & 14 Affordable-Rate) as follows:

- (6) Studio/1 Bath units with an average unit size of 600 Ft<sup>2</sup>
- (82) 1-Bedroom/1 Bath units with an average unit size of 750 Ft<sup>2</sup>
- (125) 2-Bedroom/2 Bath units with an average unit size of 1,100 Ft<sup>2</sup>
- (9) 2-Bedroom/Duplex units with an average unit size of 1,400 Ft<sup>2</sup>

At the present time, construction plans and architectural specifications for the project have not been prepared as the purpose of this market study is to provide early reconnaissance to assess market demand. They are subject to change. Therefore, the analysis and conclusions set forth herein are based upon the extraordinary assumption that the eventual construction of the project would reflect construction designs, materials and finishing commensurate with development standards in the general submarket area. We have included recommendations for these design standards in this report for reference.

Various exhibits depicting initial conceptual plans for the project appear on the following pages:

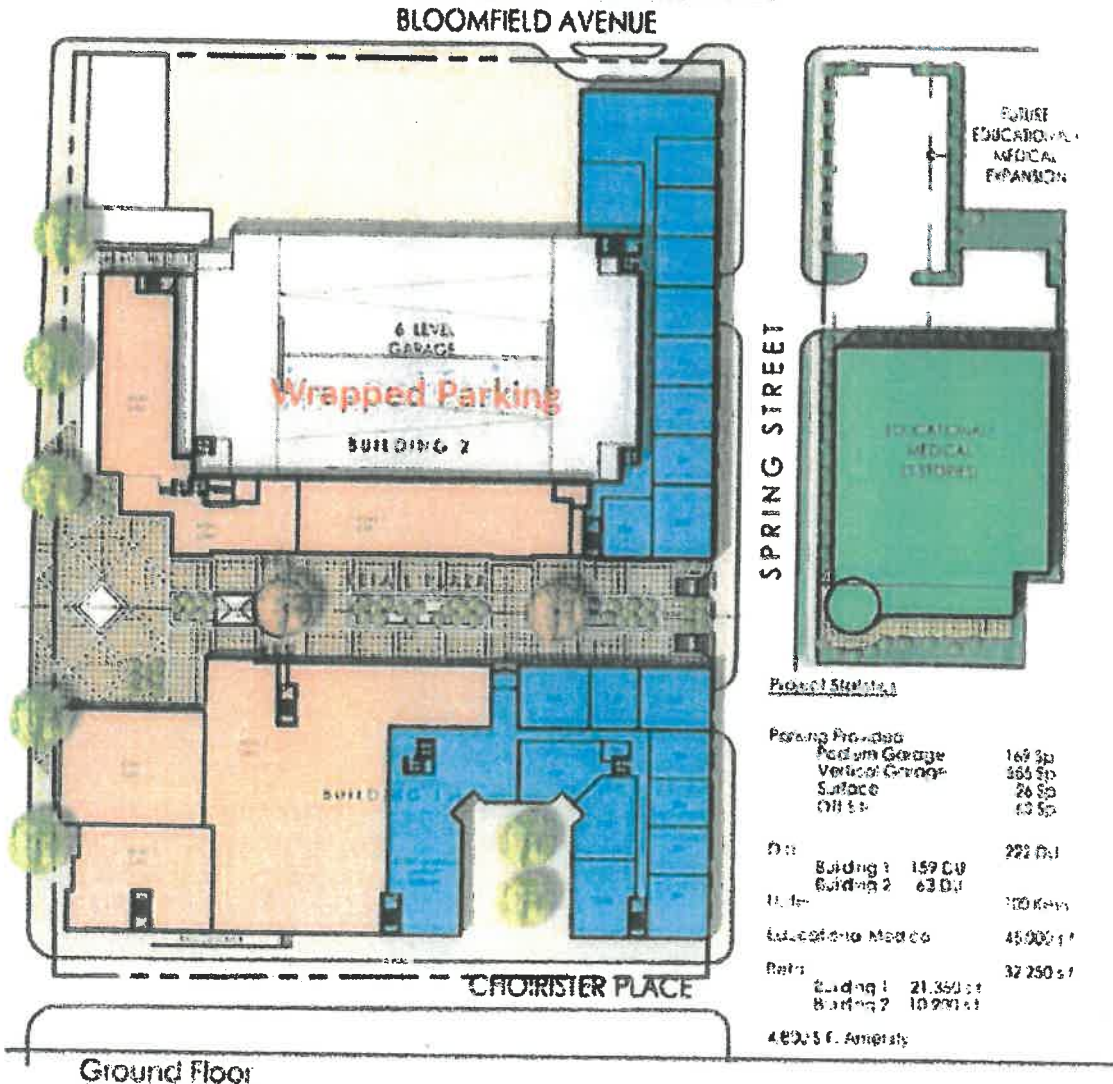
# Basement Level



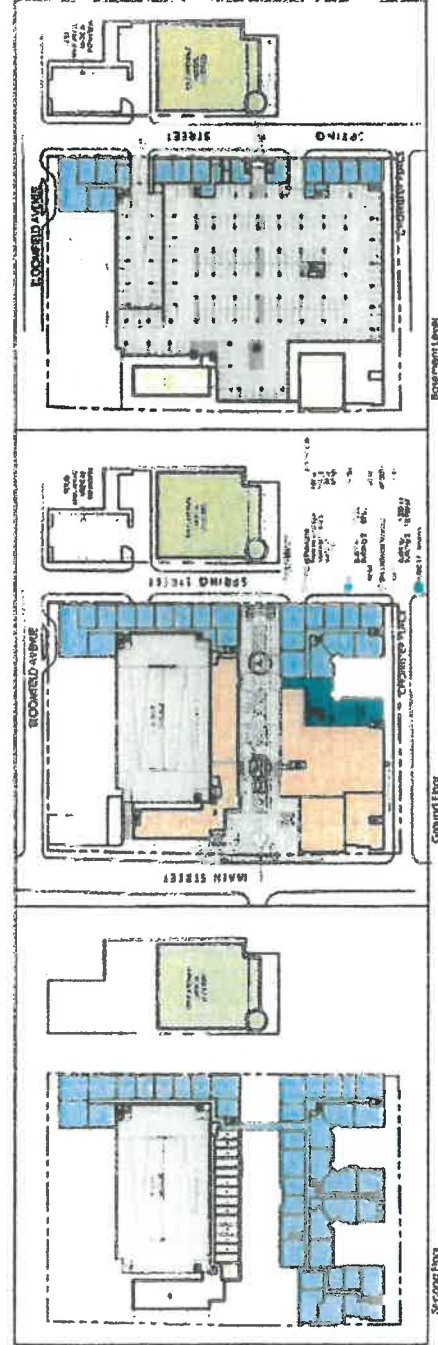
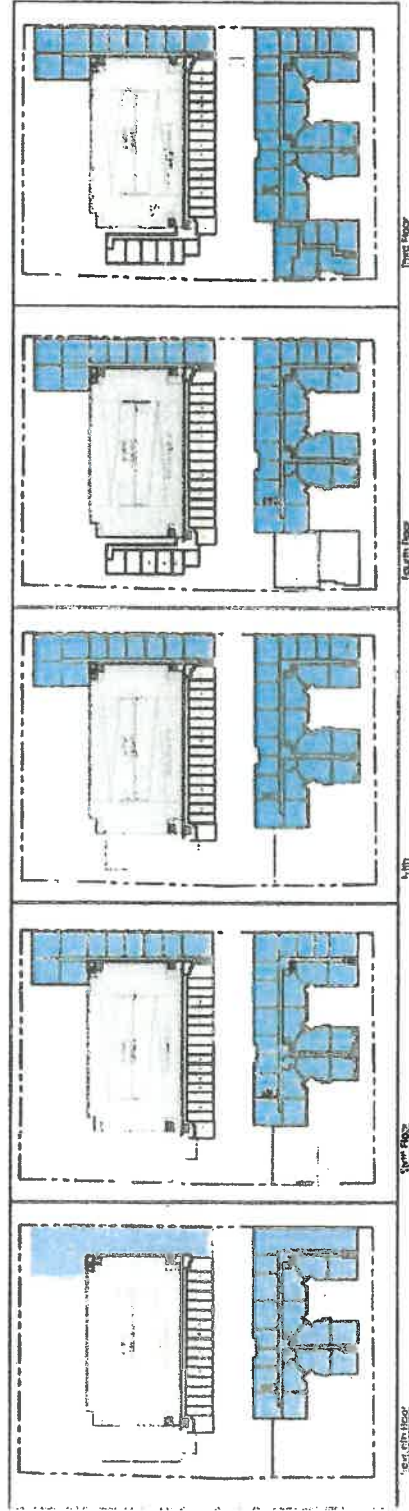
Basement Level



# Plaza Level



*Note: The project statistics have been updated since this architectural rendering.*



MINNO WASKO

### ALTERNATIVE IV - ADAPTIVE REUSE

**FLEMINGTON CENTER  
URBAN RENEWAL LLC.**

**COURTHOUSE SQUARE**  
ALEXANDRIA, VA

[illegible]

**Renderings**





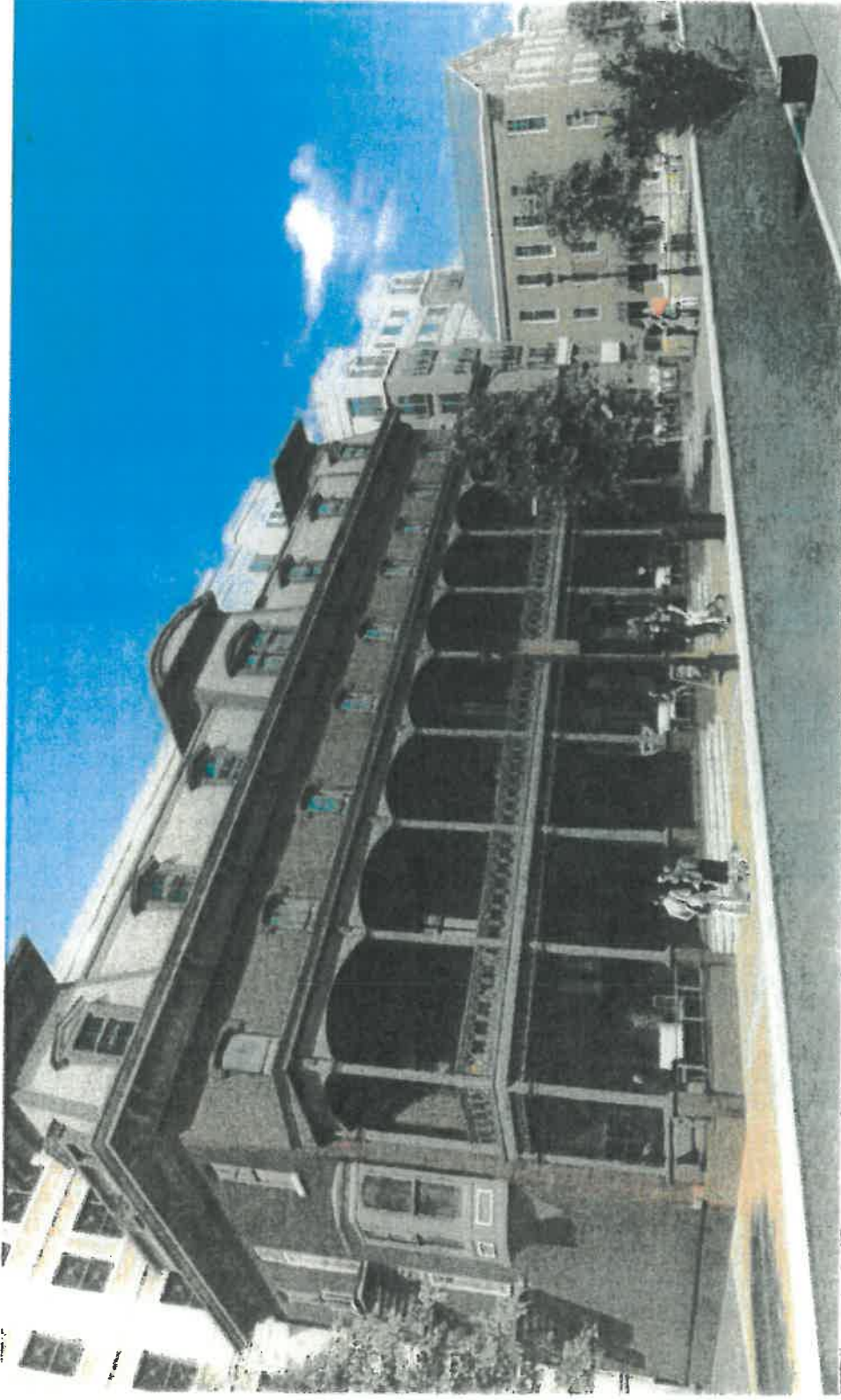


MAIN STREET LOOKING DOWN PLAZA PERSPECTIVE

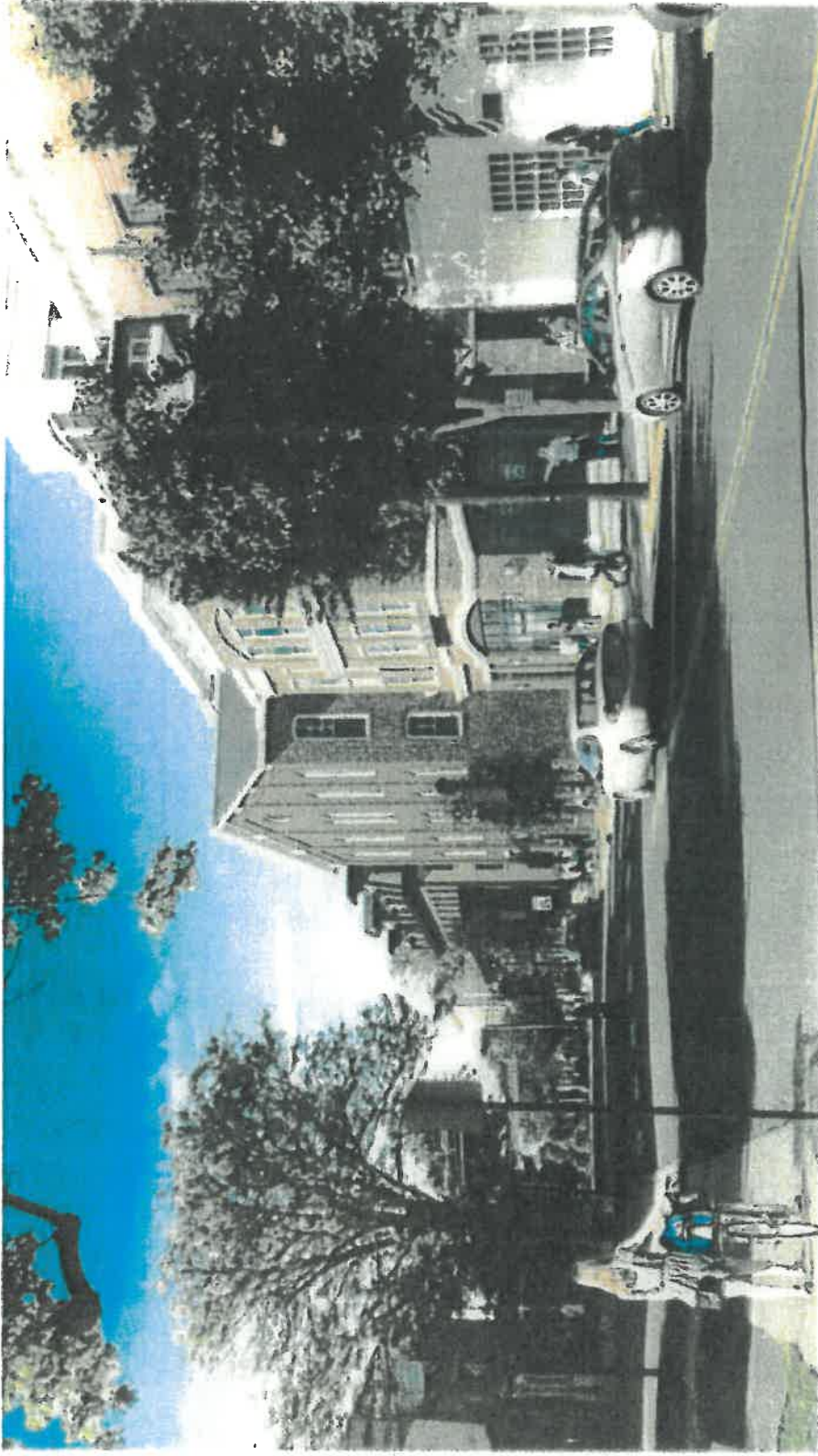




VIEW DOWN PLAZA



MAIN STREET VIEW OF HISTORIC HOTEL



VIEW SOUTH OF CHOIRSTER PL.





MAIN STREET VIEW OF BANK



VIEW OF COLLEGE FROM PLAZA



SPRING STREET & CHORISTER PLACE PERSPECTIVE





SPRING STREET & BLOOMFIELD AVE. PERSPECTIVE



### ***PART III – PERFORMANCE PROJECTIONS***

#### ***Competing Apartment Set***

In developing our analysis, we have identified a competitive set of multi-family rental properties offering market-rate rental apartments as a basis for developing design recommendations and to forecast project performance. These projections are based upon the Principle of Substitution which holds that an informed purchaser would pay no more for a property than the cost of acquiring an alternative existing property offering the same utility.

In applying this approach, we have investigated competing projects within the local and regional submarket area which would represent direct competition to the subject study area. Accordingly, they are not all-inclusive listing of competing properties but rather reflect a subset that are relevant to the projection of market positioning for any housing product to be developed within the subject project.

This competitive set is described on the following pages:

# COMPETING APARTMENT COMPLEX

## HUNTERDON MEWS

Flemington Borough - Hunterdon County



Proximity to Subject	1 Mile
Approx. Complex Age	53 Years
Proximity to Public Transportation	9 miles to Annandale Train Station & 1 mile to Flemington Park & Ride
Walk Score	47 - Car Dependent
Apartment Type	Garden Apartment
Total Units	60
Current Vacancy (units)	6
Current Vacancy (%)	10.0%
Marketing Period	Not Available
Lease-up Period (Months)	Not Available
Leases / Month	Not Available
Average Apt Size (SF)	767
Average Base Rent	\$1,179
Average Rent/SF	\$1.54
Minimum Lease Term	12 Months
On-Site Management	On-site
On-Site Maintenance	On-site
Utilities Included in Rent	Gas & Electric
Elevator	No
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	Yes
Laundry Facilities	On-site Laundry Facilities/Personal washer/dryer available
Parking Type	Surface Parking
Parking Fee	Included in rent
Current Incentives	None
RECREATIONAL AMENITIES:	Laundry facilities, balcony, patio, deck, trails for biking, hiking, and jogging
AMENITIES FEE:	None

### PRICING MATRIX

Apartment Type	1BR	2BR
Unit Mix	40	20
Sq. Ft.	700	900
Monthly Rent	\$1,103	\$1,333
Monthly Rent / SF	\$1.58	\$1.48

Weighted Avg. base rent:	\$1,179
Weighted Avg. apt size:	767
Weighted Avg. rent per sq. ft.:	\$1.54

# COMPETING APARTMENT COMPLEX

## PRESIDENTIAL PLACE

Lebanon Borough - Hunterdon County

Proximity to Subject	9 miles
Approx. Complex Age	8 Years
Proximity to Public Transportation	1 miles to Lebanon Train Station
Walk Score	37 - Car Dependent
Apartment Type	Low Rise Loft-Style & Townhouse-Style Apartments
Total Units	120
Current Vacancy (units)	0
Current Vacancy (%)	0.0%
Marketing Period	Not available
Lease-up Period (Months)	Not available
Leases / Month	1,801
Average Apt Size (SF)	\$2,835
Average Base Rent	\$1.77
Average Rent/SF	Annual
Minimum Lease Term	On-site
On-Site Management	On-site
On-Site Maintenance	None
Utilities Included in Rent	Yes
Elevator	Yes
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	None
Laundry Facilities	Washer & Dryer in Unit
Parking Type	Garage & Surface Parking
Parking Fee	Included in rent
Current Incentives	None
RECREATIONAL AMENITIES:	Clubhouse with fitness center and swimming pool, private balcony/patio

### AMENITIES FEE:

None

### PRICING MATRIX

Apartment Type	2BR
Unit Mix	120
Sq. Ft.	1,801
Monthly Rent	\$2,835
Monthly Rent / SF	\$1.77

Weighted Avg. base rent: \$2,835  
 Weighted Avg. apt size: 1,801  
 Weighted Avg. rent per sq. ft.: \$1.77



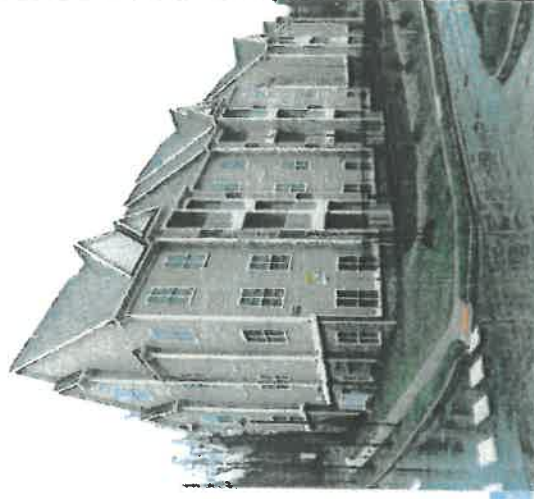
# COMPETING APARTMENT COMPLEX TWIN PONDS AT CLINTON

Town of Clinton - Hunterdon County

Proximity to Subject	9.3 miles
Proximity to Public Transportation	2.70 miles to Annandale Train Station
Walk Score	27 - Car Dependent
Apartment Type	Low-Rise Apartments
Approx. Complex Age	3 Years
Total Units	47
Current Vacancy (units)	0
Current Vacancy (%)	0.0%
Marketing Period	December 2015 - Summer 2017
Lease-up Period (Months)	Not available
Leases / Month	Not available
Weighted Avg. Apt Size (SF)	888
Weighted Avg. Base Rent	\$1,721
Weighted Avg. Rent/SF	\$1.82
Minimum Lease Term	Annual
On-Site Management	On-site
On-Site Maintenance	On-site
Utilities Included in Rent	None
Elevator	None
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	On-Site Storage Units Available
Laundry Facilities	Washer & Dryer in each unit
Parking Type	Surface Parking
Parking Fee	Included in rent
Current Incentives	None
RECREATIONAL AMENITIES:	Non-smoking, pet-friendly
AMENITIES FEE:	Not applicable

## PRICING MATRIX

Apartment Type	1 BR	2 BR
Unit Mix	22	26
Sq. Ft.	729	1,007
Monthly Rent	\$1,550	\$1,800
Monthly Rent / SF	\$2.13	\$1.79
Weighted Avg. Base Rent:	\$1,721	
Weighted Avg. Apt. Size:	888	
Weighted Avg. Rent per SF:	\$1.92	





# COMPETING APARTMENT COMPLEX HALSTEAD PLACE

Town of Clinton - Hunterdon County

Proximity to Subject	9.5 miles
Proximity to Public Transportation	1.73 miles to Ammandale Train Station
Walk Score	45 - Car Dependent
Apartment Type	Low-Rise Apartments
Approx. Complex Age	1 Year
Total Units	28
Current Vacancy (units)	0
Current Vacancy (%)	0.0%
Marketing Period	October 2017 - December 2017
Lease-up Period (Months)	2
Leases / Month	14.0
Weighted Avg. Apt Size (SF)	1,158
Weighted Avg. Base Rent	\$1,846
Weighted Avg. Rent/SF	\$1.59
Minimum Lease Term	Annual
On-Site Management	On-site
On-Site Maintenance	On-site
Utilities Included In Rent	None
Elevator	Yes
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	None
Laundry Facilities	Washer & Dryer in each unit
Parking Type	Surface Parking
Parking Fee	Included in rent
Current Incentives	None
RECREATIONAL AMENITIES:	Fitness center, yoga room
AMENITIES FEE:	Included in rent

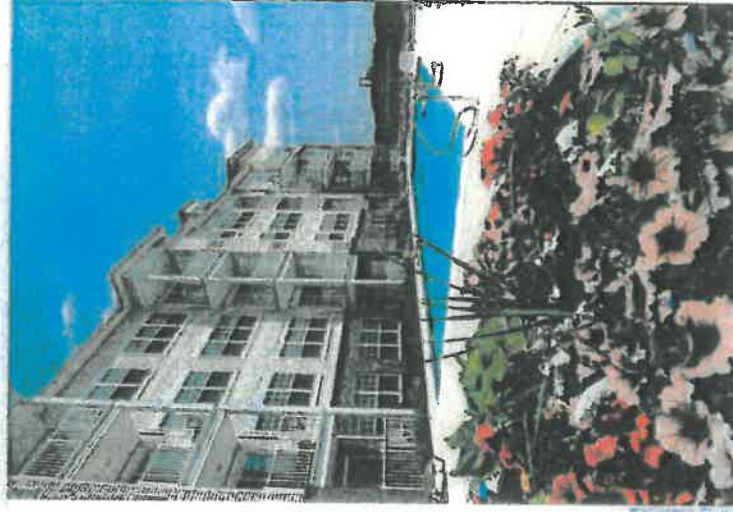
## PRICING MATRIX

Apartment Type	1 BR	2 BR
Unit Mix	11	17
Sq. Ft.	927	1,308
Monthly Rent	\$1,654	\$1,970
Monthly Rent / SF	\$1.78	\$1.51
Weighted Avg. Base Rent:	\$1,846	
Weighted Avg. Apt. Size:	1,158	
Weighted Avg. Rent per SF:	\$1.59	



# **COMPETING APARTMENT COMPLEX** **THE LENA**

Raritan Borough - Somerset County



Proximity to Subject	12 miles
Approx. Complex Age	10 Years
Proximity to Public Transportation	0.25 miles to Raritan Train Station & 0.5 miles to Somerset St. & First Ave
Walk Score	37 - Car Dependent
Apartment Type	Mid-Rise & Apartments w/ Lofts
Total Units	220
Current Vacancy (units)	1
Current Vacancy (%)	0.5%
Marketing Period	June 2007 - December 2008
Lease-up Period (Months)	18
Leases / Month	12.44 / leases monthly
Average Apt Size (SF)	1,202
Average Base Rent	\$2,081
Average Rent/SF	\$1.74
Minimum Lease Term	12 Months
On-Site Management	On-site
On-Site Maintenance	On-site
Utilities Included in Rent	None
Elevator	None
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	None
Laundry Facilities	Washer & dryer in each unit
Parking Type	Assigned Garage & Surface Parking
Parking Fee	Garage: \$75/monthly; Surface: \$45/monthly
Current Incentives	None
RECREATIONAL AMENITIES:	Clubhouse with billiards room & piano, heated swimming pool w/ sundeck, fitness/cardio center, business & conference centers, tennis & basketball courts, clubroom w/ billiards, concierge & pet spa
AMENITIES FEE:	None

## **PRICING MATRIX**

Apartment Type	1BR	2BR	3BR
Unit Mix	69	147	4
Sq. Ft.	903	1,343	1,164
Monthly Rent	\$1,825	\$2,213	\$2,213
Monthly Rent / SF	\$2.02	\$1.65	\$1.90
Weighted Avg. base rent:	\$2,081		
Weighted Avg. apt size:	1,202		
Weighted Avg. rent per sf:	\$1.74		

# COMPETING APARTMENT COMPLEX THE EDGE AT MAIN

Somerville Borough - Somerset County



Proximity to Subject	13 miles
Approx. Complex Age	4 Years
Proximity to Public Transportation	1,500 feet from Somerville Train Station & to W. Main St. at Dougherty Ave Bus Stop
Walk Score	88 - Very Walkable
Apartment Type	Mid-Rise/Mixed-Use
Total Units	108
Current Vacancy (units)	1
Current Vacancy (%)	0.9%
Marketing Period	Not Available
Lease-up Period (Months)	Not Available
Leases / Month	1,044
Average Apt Size (SF)	\$2,056
Average Base Rent	\$1.97
Average Rent/SF	12 Months
Minimum Lease Term	On-site
On-Site Management	On-site
On-Site Maintenance	None
Utilities Included in Rent	Yes
Elevator	Yes
Air Conditioning	Yes
Dishwasher	None
Extra Storage	Washer & dryer in unit
Laundry Facilities	Surface Parking
Parking Type	Included in rent
Parking Fee	None
Current Incentives	Fitness center, concierge services, ground-floor retail
RECREATIONAL AMENITIES:	\$200/annually
AMENITIES FEE:	

PRICING MATRIX	
Apartment Type	1BR 2BR
Unit Mix	63 45
Sq. Ft.	919 1,218
Monthly Rent	\$1,910 \$2,280
Monthly Rent / SF	\$2.08 \$1.88
Weighted Avg. base rent:	\$2,056
Weighted Avg. apt size:	1,044
Weighted Avg. rent per sf:	\$1.97

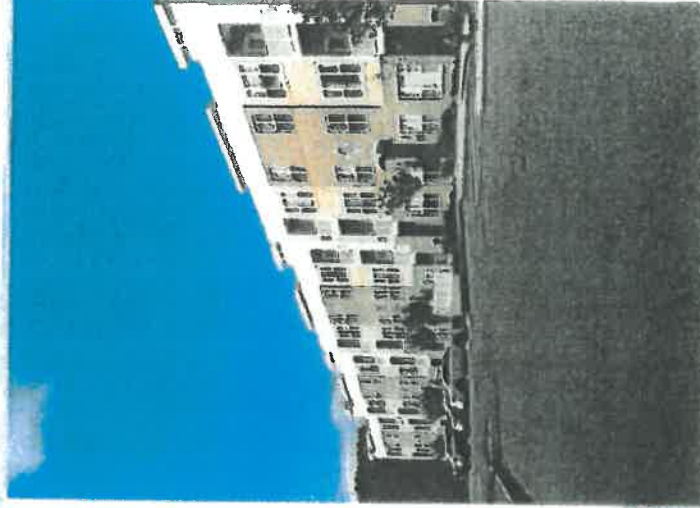


**COMPETING APARTMENT COMPLEX**  
**WOODMONT SQUARE AT BRIDGEWATER**  
 Bridgewater Township - Somerset County

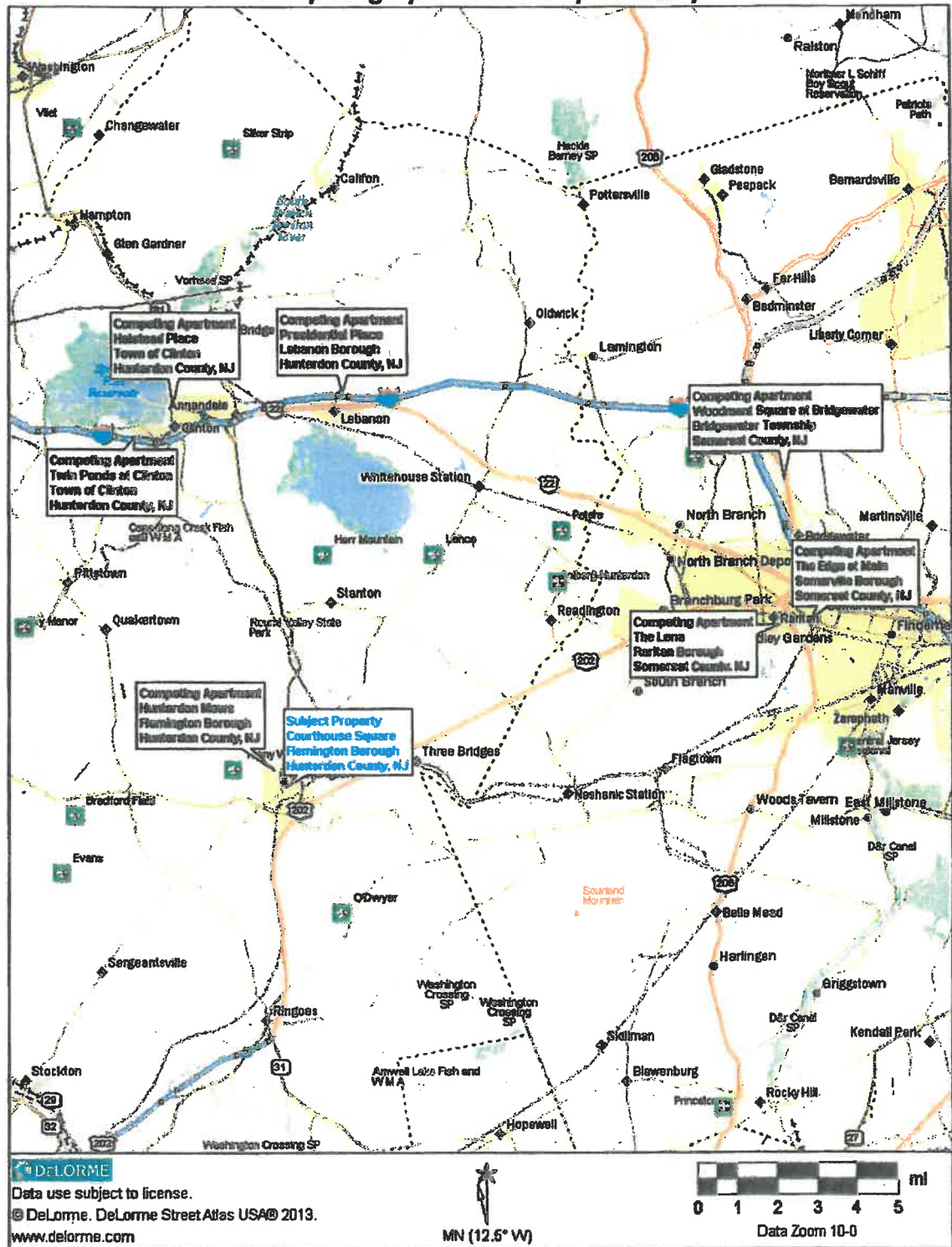
Proximity to Subject	13 miles
Approx. Complex Age	6 Years
Proximity to Public Transportation	4 miles from Somerville Train Station & to W. Main St. at Doughty Ave Bus Stop
Walk Score	15 - Car Dependent
Apartment Type	Mid-Rise
Total Units	100
Current Vacancy (Units)	2
Current Vacancy (%)	2.0%
Marketing Period	Not Available
Lease-up Period (Months)	Not Available
Leases / Month	Not Available
Average Apt Size (SF)	1,156
Average Base Rent	\$2,299
Average Rent/SF	\$1.99
Minimum Lease Term	12 Months
On-Site Management	On-site
On-Site Maintenance	On-site
Utilities Included in Rent	None
Elevator	Yes
Air Conditioning	Yes
Dishwasher	Yes
Extra Storage	None
Laundry Facilities	Washer & dryer in unit
Parking Type	Surface Parking
Parking Fee	Included in rent
Current Incentives	Reduced \$1000 Security Deposit on All Apartments for Qualified Applicants
RECREATIONAL AMENITIES:	Clubhouse with fitness center, game room, business center, club room, playground, walking paths & half-court basketball court
AMENITIES FEE:	\$200/annually

**PRICING MATRIX**

Apartment Type	2BR
Unit Mix	102
Sq. Ft.	1,133
Monthly Rent	\$2,254
Monthly Rent / SF	\$1.99
Weighted Avg. base rent:	\$2,299
Weighted Avg. apt size:	1,156
Weighted Avg. rent per sf:	\$1.99



### Competing Apartment Complexes Map



**OTTEAU GROUP**

VALUATION | RESEARCH | CONSULTING | BROKERAGE

### Apartment Rent Conclusion

Careful consideration has been given to the above market rents with respect to their physical and locational components.

Downtown Flemington Redevelopment									
Recommended Projection of Average Market Rent for Market-Rate Units									
Unit Type	Apartment Type	Baths	Mix		Apt Size (avg. SF)	Base Area (Median Deviation)	Base Rent (\$ per SF)	2nd Bath	Base Monthly Rent
									2018    2020
Mid-Rise Apartment	Studio	0	3%	6	600	-38%	\$2.28	\$0.00	\$1,356    \$1,411
Mid-Rise Apartment	1-Bedroom	1	37%	82	750	-23%	\$2.15	\$0.00	\$1,613    \$1,678
Mid-Rise Apartment	2-Bedroom	1	56%	125	1,100	13%	\$1.90	\$0.00	\$2,090    \$2,174
Mid-Rise Apartment	2-Bedroom	2	4%	9	1,400	44%	\$1.68	\$0.05	\$2,423    \$2,521
Total Apartments								222	
Average Unit Size (weighted)								969	
Average Base Monthly Rent (weighted)								\$1,907	\$1,985
Average Base Rent-Per-Square Foot (weighted)								\$1.97	\$2.05

The base monthly rental price for the subject property is concluded by the consultant at a weighted average of **\$1,907 per month or \$1.97/Ft<sup>2</sup> in 2018 dollars**. Next, the consultant projected the rent for affordable rate units.

**COAH** - The Council on Affordable Housing (COAH), an agency of the state government within the Department of Community Affairs (DCA) has historically been responsible for ensuring that all 565 New Jersey municipalities provide their fair share of low and moderate-income housing. The COAH was created by the New Jersey Legislature in response to the Fair Housing Act of 1985 and a series of New Jersey Supreme Court rulings known as the Mount Laurel decisions. The council is made up of 12 members appointed by the Governor of New Jersey and approved by the New Jersey Senate. COAH defines housing regions, estimates the needs for low/moderate income housing, allocates fair share numbers by municipality and reviews plans to fulfill these obligations.

A recent decision by the New Jersey Supreme Court in March of 2015 declared the state's affordable housing process 'non-functioning' and transferred jurisdiction over low-income and moderate-income housing from the executive branch back to the courts. While the implications from this decision are not yet fully understood, most development projects are continuing to apply COAH guidelines in determining the allocation and rental rates for any affordable-rate housing units that are set aside within a project.



Those COAH guidelines, where were designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), were intended to assure that low- and moderate-income units created under the Act were occupied by low- and moderate-income households for an appropriate period of time. According to COAH guidelines, the inclusion of affordable rate apartments in a project was required to adhere to the following requirements:

- Median income limits for qualifying households are determined by the New Jersey Department of Community Affairs according to region. The Borough of Flemington is in DCA Region 3, which includes Hunterdon, Middlesex, and Somerset counties.
- In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate income units.
- Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;
  - At least 30 percent of all low- and moderate-income units are two-bedroom units;
  - At least 20 percent of all low- and moderate-income units are three-bedroom units;
  - And the remainder, if any, may be allocated at the discretion of the developer.
- Municipalities shall establish by ordinance that the maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income. The municipal ordinance shall require that the average rent for low- and moderate-income units are affordable to households earning no more than 52 percent of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income and moderate-income units, if at least 10 percent of all low- and moderate-income units shall be affordable to households earning no more than 35 percent of median income.
- Municipal ordinances regulating owner-occupied and rental units shall require that affordable units utilize the same type of heating source as market units within the affordable development.
- In determining the initial rents and initial sales prices for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - A studio shall be affordable to a one-person household;
  - A one-bedroom unit shall be affordable to a one and one-half person household;
  - A two-bedroom unit shall be affordable to a three-person household;
  - A three-bedroom unit shall be affordable to a four and one-half person household;
  - And a four-bedroom unit shall be affordable to a six-person household.
- Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income rental units

shall be reserved for households with a gross household income less than 80 percent of median income.

- The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce its housing costs;
  - The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - The household is currently in substandard or overcrowded living conditions;
  - The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
  - The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) above with the administrative agent, who shall counsel the household on budgeting.

Based upon COAH guidelines for the mix of apartment types coupled with the 2018 HUD Utility allowance and 2018 income guidelines published by the Affordable Housing Professionals of New Jersey (AHPNJ), we have calculated the required mix of apartments and allowable rents as follows:

Calculation of Maximum Net Rent					
% of Median Unit Priced at	Efficiency	1BR	2BR	3BR	4BR
30%	N/A	\$ 475	\$ 561	\$ 637	N/A
50%	N/A	\$ 880	\$ 1,047	\$ 1,198	N/A
60%	N/A	\$ 1,082	\$ 1,290	\$ 1,478	N/A

The calculations resulted in 2 of the units being 1-bedroom, 5 being two-bedroom, and 7 3-bedroom units. Of the 14 units, 2 would be in tier 1 and 6 in tier 2 of the low income category and finally 6 in tier 1 of moderate income category. Therefore, the consultant has projected the average rent for the affordable housing units at \$1,000/month. The consultant will project the office and retail market rents next.

### Office Market:

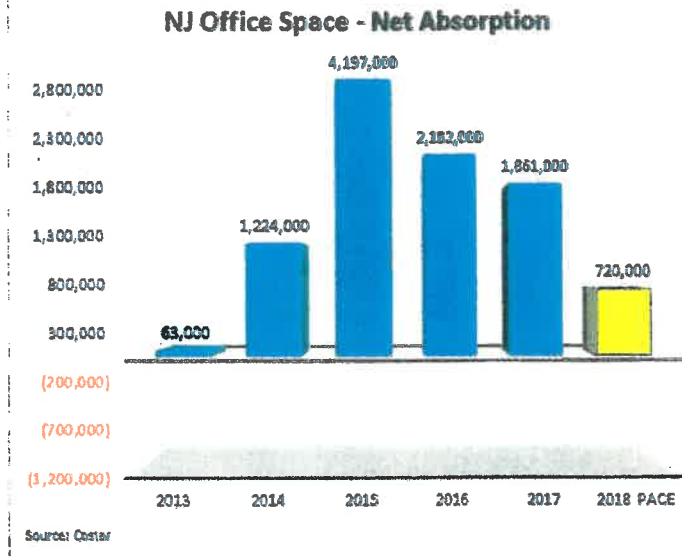
Demand for office space in New Jersey has weakened significantly with positive net absorption of just 294,000 Ft<sup>2</sup> year-to-date (January-May). Due to this reduced demand, occupancy in New Jersey's office buildings is on pace to increase by only 720,000 Ft<sup>2</sup> by year end, or about 39% of last year's 1.9-Million Ft<sup>2</sup> gain.

Regionally, the gain in occupancy has been exclusively concentrated in the northern part of the state, as the southern part of the state has experienced a decline. Vacancy in both the northern and southern regions declined by 10 basis points from the prior quarter, falling to 12.3% and 8.0%, respectively.

Despite reduced demand for office space, average asking rents in the state of \$22.11/Ft<sup>2</sup> are higher than one year ago when they were \$21.66/Ft<sup>2</sup>.

### Office Rent Conclusion

The office space located within the Courthouse Square Mixed-Use Development has a letter of intent already in place for a tenant with a stated negotiated rent. The rent begins at \$20/square foot Net.



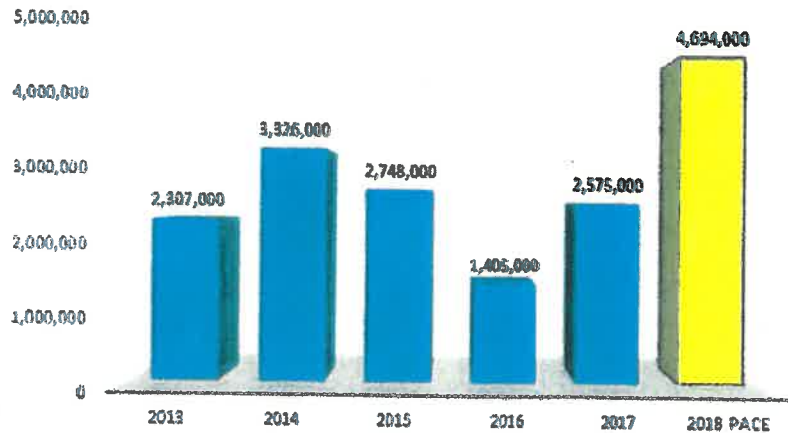
### **Retail Market Rent:**

Leasing activity for retail space in New Jersey continues to occur at a rapid pace in 2018, with more than 1.9-Million Ft<sup>2</sup> of positive net absorption year-to-date. Should this pace continue, this sector is projected to see positive net absorption of 4.7-Million Ft<sup>2</sup>, the largest gain of the past five years. As a

result of this increased demand, retail vacancy declined by 40 basis points from the prior year in both regions, falling to 4.5% in the northern part of the state and to 5.6% in the south. Statewide asking rents are also accelerating, rising to \$20.47/Ft<sup>2</sup>, compared to \$19.34/Ft<sup>2</sup> one year ago.

Despite the recent growth in demand for retail space in New Jersey, the rising popularity of online shopping, which accounted for \$465-Billion or 9.4% of retail sales nationally in the first quarter, is fueling store closures at an accelerating rate. There have been 3,992 major US store closure announcements nationwide, representing a 21% increase over last year. Among those retailers, Toys "R" Us and Walgreens account for the largest share, with 1,481 store closings, or 37%.

**NJ Retail Space - Net Absorption**



Source: Costar

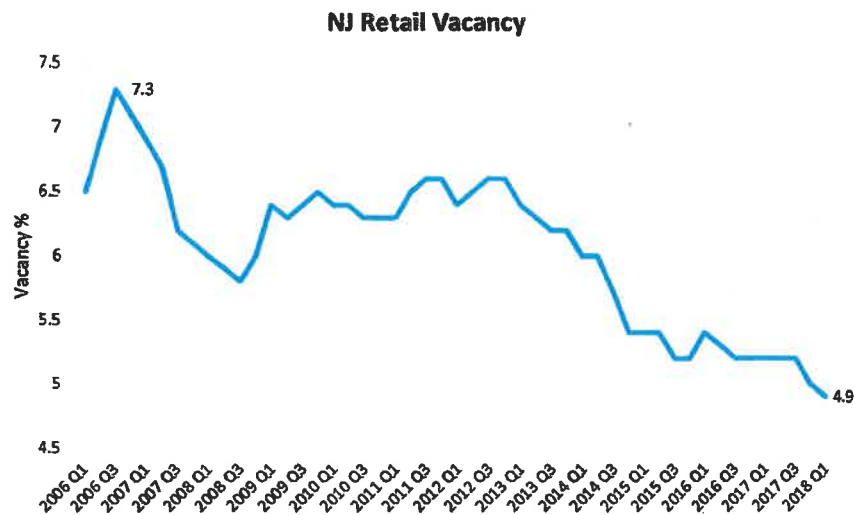


Presently, there is 23.2-Million ft<sup>2</sup> of vacant retail space and 35.2-Million ft<sup>2</sup> of available space currently being marketed.



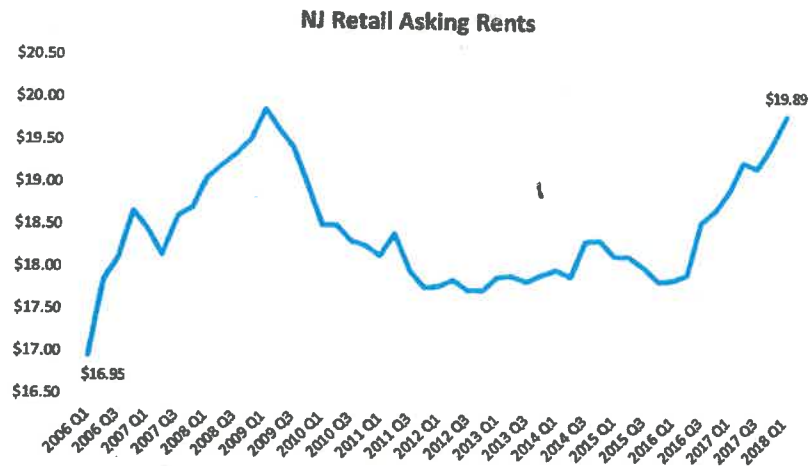
*Source: Costar Group, Otteau Group, Inc.*

As a result, retail vacancy in New Jersey has declined by 240 basis points from a cyclical high of 7.3% in Q3 2006 to 4.9% Q1 2018, the lowest over the past 12 years.



*Source: Costar Group, Otteau Group, Inc.*

At the same time that vacancy and availability have been declining, asking rents have been trending higher, reaching \$19.89/ft<sup>2</sup> overall.



*Source: Costar Group, Otteau Group, Inc.*

Based upon these trends, we anticipate that retail sector construction spending in the State of New Jersey will increase in the current year and remain stable through 2022.

Hunterdon County Retail Trends - Focusing on Hunterdon County, both the vacancy and availability of retail space has been steady over the past year. Retail vacancy in the county currently stands at 5% based upon 6.7-Million Ft<sup>2</sup> while availability is 6.3% reflecting 420,652 Ft<sup>2</sup> being offered for lease. Both measurements reflect relatively stable market conditions in Hunterdon County with supply and demand being in balance.



*Source: Costar Group, Otteau Group, Inc.*

**Local Submarket Retail Trends** - Because demand for retail space is closely linked to local economic and demographic factors, we will next compare retail market conditions within the following geographic areas:

- **Raritan Township & Flemington** - defined by its municipal boundaries (given that Flemington Borough is completely surrounded by the township)
- **5-Mile Radius** - with the subject study area at the center.
- **10-Mile Radius** - with the subject study area at the center.
- **15-Mile Radius** - with the subject study area at the center.
- **Hunterdon County** - defined by its county boundaries.
- **New Jersey** - defined by the state's boundaries.

The analysis presented in the table below provides a comparative analysis of retail market metrics, the most significant findings of which are:

- **Average Asking Rents** - the average retail rental rate for the local trade area is significantly higher than the other survey areas, which is favorable to underwriting the cost of new construction.
- **Concentration of Existing Retail Space** - the ratio of existing retail space in the local trade area is less than all of the other survey areas, suggesting an undersupply of existing retail space.
- **Vacancy & Availability** - vacancy & availability in the local trade area is the lowest of all survey areas, indicating a tight supply of available retail space, which is supportive of new construction.

Retail Market Analysis							
		Raritan Township	Radius (miles)			Hunterdon County	New Jersey
			5	10	15		
Average Asking Rent	\$/Ft <sup>2</sup>	\$24.21	\$19.67	\$18.47	\$20.41	\$18.83	\$19.89
Existing Retail Space	Ft <sup>2</sup>	2,028,856	3,668,466	5,884,685	16,452,600	6,724,494	473,167,381
Retail Space per-square-mile	Ft <sup>2</sup>	53,830	46,708	18,732	23,276	15,372	54,246
Retail Space per-household	Ft <sup>2</sup>	252	283	147	137	145	144
Vacant Retail Space	Ft <sup>2</sup>	85,212	179,755	317,773	740,363	336,225	23,185,202
Vacancy Rate	%	4.2%	4.9%	5.4%	4.5%	5.0%	4.9%
Available Retail Space	Ft <sup>2</sup>	97,512	222,923	370,322	1,143,825	420,652	34,455,558
Availability Rate	%	4.8%	6.1%	6.3%	7.0%	6.3%	7.3%
Occupied Retail Space	Ft <sup>2</sup>	1,943,644	3,488,711	5,566,912	15,712,138	6,388,269	449,982,179
Occupancy Rate	%	95.8%	95.1%	94.6%	95.5%	95.0%	95.1%
Occupied Retail Space per-household	Ft <sup>2</sup>	241	269	139	131	137	137

These market conditions indicate the local trade area is experiencing a healthy supply/demand balance which is supportive of constructing additional retail capacity.

The following lease data has been carefully considered and compared so as to provide an indication of the subject property's potential annual rent. A description of this data is as follows:

Market Rental Comparison Analysis											
Item	Subject	Comparable 1		Comparable 2		Comparable 3		Comparable 4		Comparable 5	
Property Address	Courthouse Square Flamington Borough Huron County	440 Elizabeth Avenue Franklin Township Somerset County	127 Main Street Flamington Borough Huron County	264 US Route 206 Hillsborough Township Somerset County	48-58 East Main Street Somerville Borough Somerset County	27 Carter Street Clifton Town Huron County	7 North Main Street Lambertville City Huron County				
Block/Lot	See Report	523.03 / 33.07	38 / 16	152.02 / 13	63 / 34	14 / 2	1038 / 4				
Tenant	To Be Determined	Fruitables	Confidential	Tied Expressions	Turf, Surf & Earth	Nearly Realities	Center for the Arts/Music				
Annual Lease Price	Solve For	\$45,000	\$9,000	\$33,420	\$71,280	\$12,058	\$19,787				
Leased Area (Square Feet)	32,250	1,875	500	1,600	2,700	585	780				
Leasing Concessions	Not Applicable	None Discovers	None Discovers	None Discovers	None Discovers	None Discovers	None Discovers				
Leasing Terms	Net	Net	-15% Modified Gross	-18% Net	Net	0% Modified Gross	-15% Modified Gross				
Lease Date / Time Adjustment	11/2016	10/1/2017	11/2017	1/1/2018	3/1/2018	5/1/2018	5/1/2018				
Lease Price Per Square Foot	Average	\$24.00	\$13.30	\$18.94	\$26.40	\$17.54	\$21.30				
Location	Average	Average	Average	Average	Average	Average	Average				
Leased Area (Square Feet)	32,250	1,875	500	1,500	2,700	585	780				
Unit Type	Retail	Retail	Retail	Retail	Retail	Retail	Retail				
Property Condition	Average	Average	Average	Average	Average	Average	Average				
Functional Utility	Average	Average	Average	Average	Average	Average	Average				
Other											
Net Adj. (Bldg)		0%	0%	0%	0%	0%	0%				
Net Adj. (Building)		0%	0%	0%	0%	0%	0%				
Net Adj. (Total)		0%	0%	0%	0%	0%	0%				
Indicated Unit Value		\$24	\$15	\$19	\$28	\$18	\$21				

### ***Explanation of Market Rent Adjustments***

#### **Transaction**

**Leasing Commissions:** No leasing commissions were found to present therefore no adjustment was warranted.

**Leasing Terms:** The structure of leases has a significant impact on rental rates. Generally, there are three types of leases in the market place: a full-service (Gross) lease, a partial net (Modified Gross) lease and a triple net (Net) lease. Within these lease structures, there are various modifications that can be made. A typical Gross lease is structured so that the landlord incurs all of the operating expenses for the term of the lease. A typical Modified Gross lease is structured so that the tenant is required only a portion of the operating expenses. Lastly, a Net lease is structured so that the tenant is required to pay all of the property's operating expenses, such as real estate taxes, insurance, maintenance and repairs, contract services/janitorial, utilities, administrative, and management. In the case of the subject comparable rents 2, 3, 5, & 6 were adjusted due to the subject's proposed Net rent.

**Market Change:** Due to stable economic conditions for retail use in this submarket, the comparable rents did not require adjustments for market change.

#### **Site**

**Location:** All comparable rents are located within the subject's general market area and considered comparable locations compared to the subject property therefore no adjustments were warranted.

#### **Building**

**Leased Area:** All comparable rents are considered relatively similar in leased area and therefore no adjustments were warranted.

**Unit Type:** This category addresses the physical design (use) and exterior appeal. In this case the comparable rents were considered similar enough that an adjustment was not warranted.

**Condition:** These categories address physical condition and quality of the comparable rental compared to the subject property. Since superior condition and quality typically command higher rents and lower maintenance expenses, this item of comparison can have a significant impact on value. In this case the comparable rents were considered similar enough that an adjustment was not warranted.

**Functional Utility:** The comparable rents were considered similar enough that an adjustment was not warranted.



***Rent 1 Photo***



***Rent 2 Photo***





***Rent 3 Photo***



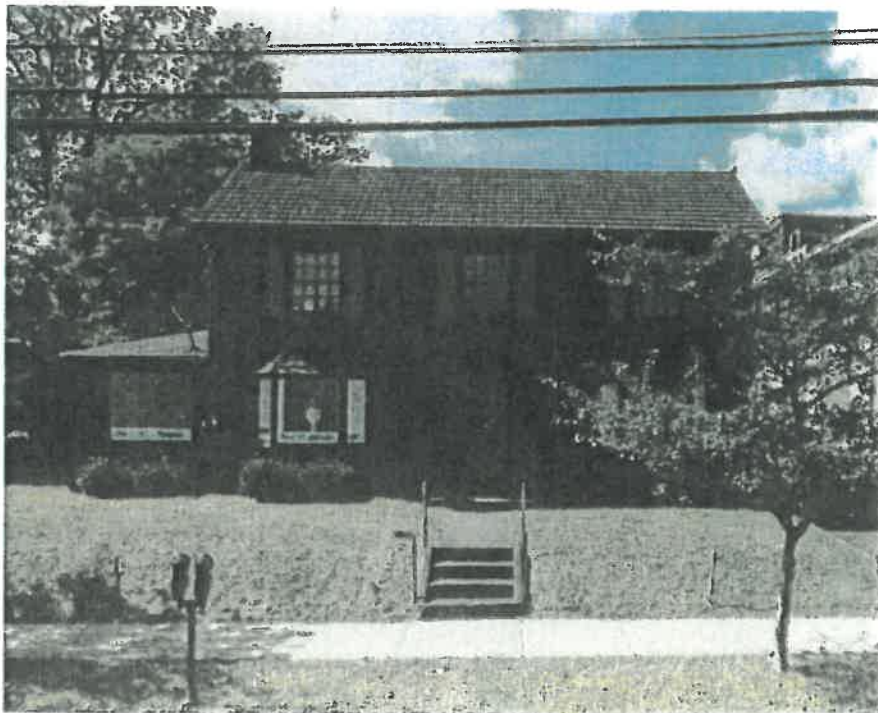
***Rent 4 Photo***



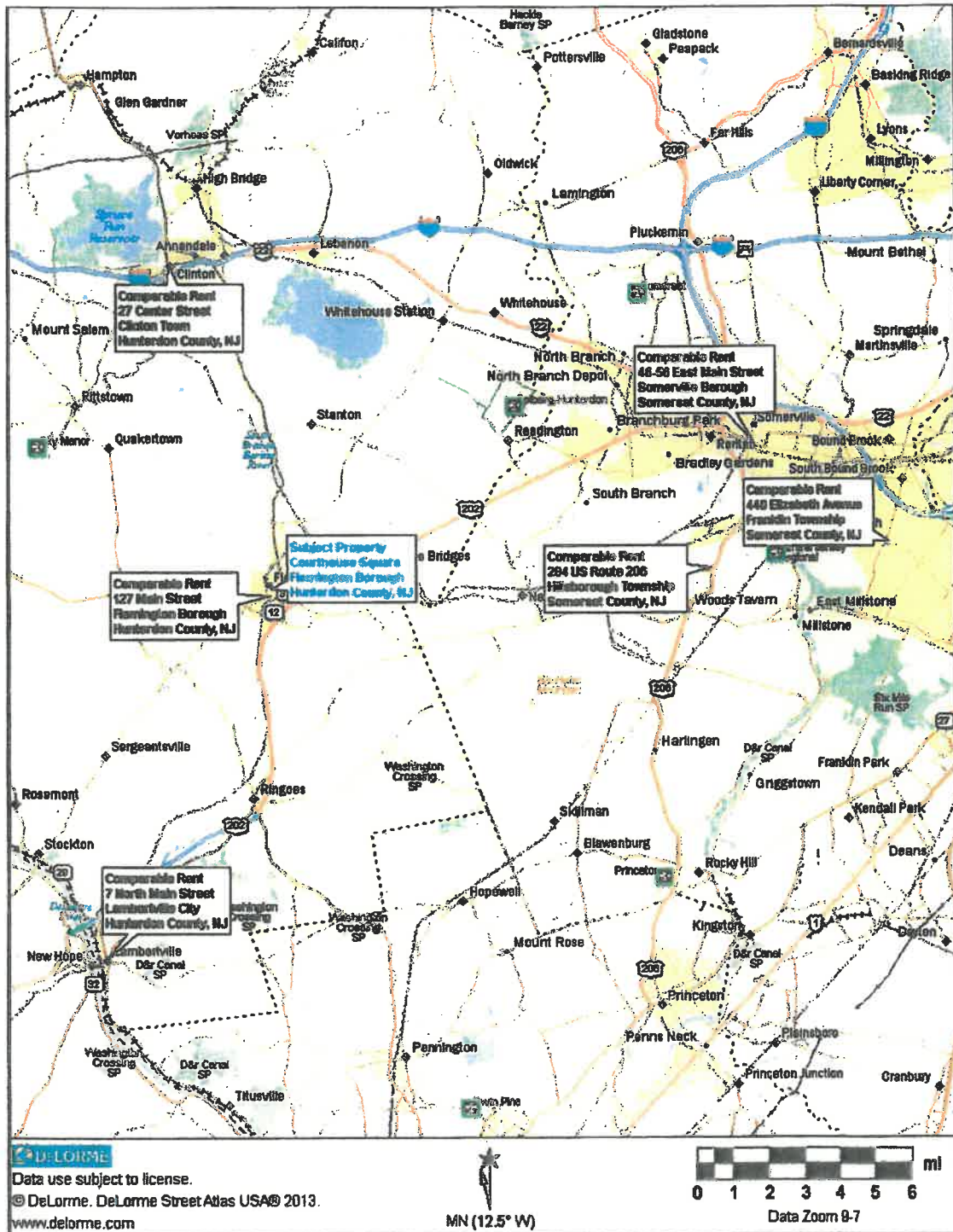
***Rent 5 Photo***



***Rent 6 Photo***



### Comparable Rental Location Map





### **Commercial Retail Market Rent Conclusion**

Careful consideration has been given to the above market rents with respect to their physical/locational components and market conditions at the time of their lease. An analysis of this data yields the following value ranges:

	Market Rental Value Indication Range			
	Low	High	Average	Median
<b>Unadjusted</b>	\$15	\$26	\$21	\$20
<b>Adjusted</b>	\$15	\$26	\$21	\$20

Within this range, the appraiser has selected **\$20/square foot Net** as the best indicator of rental value for the subject property.

### **Capitalization Conclusion**

In order to determine an annual internal rate of return for the subject property, the appraiser has looked at competitive yield rates for various types of investments, as well as the national market indicators published by the Appraisal Institute in its quarterly magazine *Valuation Insights and Perspectives*.

Market conditions for commercial real estate are currently considered to be fair. Stalled transaction activity is inhibiting the market's ability to establish reliable property values, and vice versa. Occupancies, absorption, rents and other property fundamentals are weakening in tandem with the declining job market and shaky consumer confidence.

There has been literature written and empirical evidence developed relating returns in the bond market to real estate returns. The closest relationship with real estate has been found to be long-term bonds.<sup>1</sup> Returns being received in various segments of the capital markets are shown below.

<b>AVERAGE BOND YIELDS</b>			
<b>May 2018</b>			
	<b>Prior Year</b>	<b>Prior Month</b>	<b>Current Month</b>
<b>U.S. 5-Year Bonds – Taxable</b>	1.84%	2.70%	2.82%
<b>U.S. 10-Year Bonds – Taxable</b>	2.30%	2.87%	2.98%
<b>U.S. 30-Year Bonds – Taxable</b>	2.96%	3.07%	3.13%

The returns on the investments vary due to factors like differing degrees of risk, term to maturity, the coupon interest rate, and the current level of interest rates. Since funds for real estate investment are competing with these alternative investments, it is believed that real estate investors desire at least a return in this range, and usually higher due to the greater liquidity of real estate investments.

In some instances, rates of return desired by lenders can provide a benchmark for desired yields in the real estate market. However, it must be remembered that lenders have a different risk position than the equity investor.

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<sup>1</sup>For a discussions and analysis of the correlation between these yields, see C.F. Simans and J.R. Webb, "Yields for Selected Types of Real Property vs. the Money and Capital Markets," *The Appraisal Journal*, April 1982, p. 241.

The best source of current yield expectations of typical equity investors is based on surveys of these investors. One such survey, which provides a broad indication of investor yield expectations, is the PwC Real Estate Investor Survey, a summary of which appears below indicating a broad range of national overall capitalization rates for apartment properties ranging from 3.75% to 8.50% averaging 5.33%, office properties in central business districts at 3% to 7.50% averaging 5.48%, and retail properties power center at 5.25% to 9.0% averaging at 6.66%. These rates reflect the annualized yield rate or rate of return on capital that is generated or capable of being generated within an investment or portfolio over a period of ownership.

MARKET CAPITALIZATION RATES									
	Discount (IRR)			Overall Cap Rate (OAR)			Residual Cap Rate		
	Low	High	Average	Low	High	Average	Low	High	Average
Apartment	5.25%	10.00%	7.23%	3.75%	8.50%	5.33%	4.00%	8.50%	5.66%
Student Housing	6.00%	10.00%	8.05%	4.50%	7.50%	5.86%	4.75%	7.50%	6.30%
Industrial-Flex/R&D	6.75%	10.00%	8.08%	5.50%	9.50%	7.10%	6.00%	9.50%	7.38%
Industrial-Self Storage	5.00%	9.00%	6.91%	4.50%	7.00%	5.65%	5.00%	7.50%	6.04%
Industrial-Warehouse	5.50%	9.00%	6.55%	3.00%	6.50%	4.95%	4.60%	7.25%	5.83%
Lodging-Full-Service	8.00%	13.50%	10.33%	6.00%	10.00%	7.73%	7.00%	10.00%	8.35%
Lodging-Limited-Service Midscale & Economy	8.50%	13.00%	11.00%	7.75%	11.00%	9.15%	7.75%	11.00%	9.78%
Lodging-Luxury/Upper-Upscale	6.50%	12.00%	9.50%	4.00%	9.00%	7.05%	5.50%	9.50%	7.23%
Lodging-Select Service	7.50%	12.00%	9.90%	6.50%	10.00%	8.56%	7.00%	10.75%	8.93%
Net Lease	6.00%	10.00%	8.13%	5.00%	8.50%	6.60%	6.00%	9.00%	7.53%
Office-CBD	5.25%	9.00%	6.95%	3.00%	7.50%	5.48%	4.75%	8.00%	6.13%
Office-Medical	5.50%	11.00%	7.73%	4.50%	10.00%	6.69%	5.00%	10.25%	6.84%
Office-Secondary	6.50%	13.00%	9.05%	5.00%	9.50%	7.51%	6.50%	9.50%	7.80%
Office-Suburban	6.00%	12.00%	8.32%	4.35%	10.00%	6.61%	6.00%	11.50%	7.59%
Retail-Power Center	6.00%	10.00%	7.45%	5.25%	9.00%	6.66%	5.50%	9.00%	6.91%
Retail-Regional Mall	5.00%	11.50%	7.60%	4.00%	10.00%	6.25%	4.25%	10.00%	6.70%
Retail-Strip Shopping Center	5.50%	10.50%	7.46%	4.00%	9.50%	6.36%	4.75%	9.75%	6.84%

Since the subject property is considered an institutional grade property these rates are very applicable. Therefore, utilizing this survey a 6.40% overall capitalization rate is considered applicable.



**INSTITUTIONAL-GRADE VS. NONINSTITUTIONAL-GRADE PROPERTY RATES: OFFICE MARKETS**  
**First Quarter 2018**

MARKET	INSTITUTIONAL RATE			OFFICE			NONINSTITUTIONAL (BASIS POINT SPREAD TO INSTITUTIONAL RATES) RISK		
	RANGE	AVERAGE	RANGE	RANGE	AVERAGE	RANGE	RANGE	AVERAGE	RANGE
National CBD Office	5.25% - 6.00%	5.65%	5.00% - 7.00%	5.18%	5.18%	(a)	(a)	(a)	(a)
National Suburban Office	5.00% - 12.00%	8.34%	4.50% - 16.00%	8.51%	8.51%	(a)	(a)	(a)	(a)
National Secondary Office	5.25% - 13.00%	9.05%	5.00% - 8.50%	7.61%	7.61%	50 - 100	50 - 100	127	127
Atlanta Office	6.00% - 10.75%	8.25%	5.00% - 11.75%	7.25%	7.25%	(a)	(a)	(a)	(a)
Austin Office	5.50% - 10.00%	7.80%	4.50% - 11.50%	5.94%	5.94%	(a)	(a)	(a)	(a)
Boston Office	5.75% - 10.00%	7.44%	4.00% - 10.50%	6.05%	6.05%	100 - 200	100 - 200	134	134
Charlotte Office	5.50% - 11.50%	8.05%	5.00% - 11.00%	6.55%	6.55%	50 - 100	50 - 100	167	167
Chicago Office	6.00% - 12.00%	8.65%	4.50% - 16.00%	7.54%	7.54%	50 - 100	50 - 100	136	136
Dallas Office	6.00% - 9.00%	7.71%	5.00% - 11.50%	6.58%	6.58%	(a)	(a)	(a)	(a)
Denver Office	6.50% - 11.00%	8.25%	5.00% - 12.00%	6.45%	6.45%	(a)	(a)	(a)	(a)
Houston Office	6.50% - 13.00%	8.65%	5.50% - 10.00%	7.25%	7.25%	75 - 100	75 - 100	116	116
Los Angeles Office	5.00% - 11.00%	7.70%	4.00% - 11.00%	6.88%	6.88%	25 - 50	25 - 50	85	85
Manhattan Office	5.50% - 9.00%	6.81%	5.00% - 6.00%	4.60%	4.60%	(a)	(a)	(a)	(a)
Midwestern Virginia Office	5.125% - 9.50%	7.71%	5.00% - 11.50%	6.77%	6.77%	(a)	(a)	(a)	(a)
Pacific Northwest Office	5.25% - 10.00%	7.55%	4.50% - 11.00%	5.95%	5.95%	75 - 100	75 - 100	121	121
Philadelphia Office	7.00% - 11.00%	8.05%	5.00% - 10.50%	7.15%	7.15%	(a)	(a)	(a)	(a)
Phoenix Office	7.00% - 11.00%	8.05%	5.00% - 11.00%	6.45%	6.45%	(a)	(a)	(a)	(a)
San Diego Office	5.50% - 12.00%	8.25%	5.00% - 11.00%	6.55%	6.55%	(a)	(a)	(a)	(a)
San Francisco Office	5.00% - 9.50%	6.85%	5.00% - 11.00%	5.45%	5.45%	(a)	(a)	(a)	(a)
Seattle Office	5.25% - 10.00%	7.04%	4.50% - 11.00%	5.75%	5.75%	(a)	(a)	(a)	(a)
Southeast Florida Office	5.00% - 10.00%	6.95%	5.00% - 9.50%	6.95%	6.95%	(a)	(a)	(a)	(a)
Washington, DC Office	5.00% - 11.00%	6.15%	4.25% - 11.50%	5.25%	5.25%	75 - 100	75 - 100	125	125

**INSTITUTIONAL-GRADE VS. NONINSTITUTIONAL-GRADE PROPERTY RATES: NATIONAL AND REGIONAL MARKETS**  
**First Quarter 2018**

MARKET	INSTITUTIONAL		QARs		NONINSTITUTIONAL BASIS-POINT SPREAD TO INSTITUTIONAL RATED		
	RANGE	AVERAGE	RANGE	AVERAGE	RANGE	AVERAGE	
National Regional Mkt	5.00% - 11.00%	7.60%	4.00% - 10.00%	6.25%	(a)	(a)	
National Power Center	6.00% - 10.50%	7.45%	3.25% - 9.00%	6.60%	50 - 500	50 - 150	
National Sun Shopping Center	8.50% - 10.00%	7.40%	4.00% - 9.00%	6.45%	30 - 800	25 - 900	
Warehouse (National)	5.50% - 9.00%	6.35%	4.00% - 6.50%	4.95%	50 - 100	50 - 250	
Warehouse (ERC Region)	5.50% - 7.25%	6.38%	4.25% - 6.25%	5.44%	(a)	(a)	
Warehouse (Pacific Region)	8.00% - 8.50%	6.48%	5.50% - 7.50%	6.50%	(a)	(a)	
National Apartment	8.00% - 10.00%	7.25%	6.50% - 9.00%	7.75%	25 - 300	25 - 250	
Apartment (Mid-Atlantic Region)	5.25% - 10.00%	7.13%	3.00% - 6.75%	5.48%	25 - 400	25 - 400	
Apartment (Pacific Region)	8.00% - 10.00%	6.65%	5.00% - 8.00%	6.48%	(a)	(a)	
Apartment (Southeast Region)	5.00% - 10.00%	7.30%	5.00% - 10.00%	6.30%	(a)	(a)	
National Medical Office Buildings	5.50% - 11.00%	7.75%	4.00% - 10.00%	7.00%	(a)	(a)	

**Capitalization Rate Development:**

The appraiser will utilize the Band of Investment technique to develop a capitalization rate for the subject property. This technique is primarily used to calculate the value of an investment, where some of the funds used to acquire the investment are borrowed; taking into consideration the investor's required return on investment and the cost of the borrowed funds. In developing a capitalization rate for the subject property, the appraiser has developed the following assumptions:

**Interest Rate:** Based upon the RealtyRates.com 2<sup>nd</sup> quarter 2018 survey, Interest Rates ranged from 3.61% to 8.79% averaging 5.52% for apartments, 3.75% to 8.50% averaging 5.63% for office, 3.66% to 9.87% averaging 5.96% for retail properties. Considering the appraiser's knowledge of local financing trends coupled with the previously described location and physical components a 5.50% is considered applicable.

**Loan-to-Value Ratio:** Based upon the RealtyRates.com 2<sup>nd</sup> quarter 2018 survey, Loan-To-Value Ratios ranged from 50% to 90% averaging 73% for apartments, 50% to 90% averaging 73% for office, 50% to 90% averaging 71% for retail properties. Considering the appraiser's knowledge of local financing trends coupled with the previously described location and physical components a 65% is considered applicable.

**Amortization:** Based upon the RealtyRates.com 2<sup>nd</sup> quarter 2018 survey, Amortization ranged from 15 to 40 averaging 26 years for apartments, 15 to 40 averaging 30 years for office, 15 to 40 averaging 25 years for retail properties. Considering the appraiser's knowledge of local financing trends coupled with the previously described location and physical components a 30-year Amortization is considered applicable.

**Term:** Based upon the RealtyRates.com 2<sup>nd</sup> quarter 2018 survey, the Term ranged from 3 to 40 averaging 20.50 years for apartments, 3 to 30 averaging 8 years for office, 3 to 10 averaging 6.20 years for retail properties. Considering the appraiser's knowledge of local financing trends coupled with the previously described location and physical components a 10-year Term is considered applicable.

Equity Dividend Rate: An Equity Dividend Rates is considered the annual rate investors expect to receive on their equity investment. Based upon the RealtyRates.com 2<sup>nd</sup> quarter 2018 survey Equity Dividend Rates ranged 6.41% to 15.59% averaging 11.46% for apartments, 7.56% to 16.04% averaging 12.22% for office, 7.95% to 17.97% averaging 13.46% for retail properties. Considering the appraiser's knowledge of local financing trends coupled with the previously described location and physical components an 8% is considered applicable.

RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2018*											
PERMANENT FINANCING											
	Apt.	Golf	Health Senior Housing	Ind.	Lodging	RV/Camp Mfg Hsg MH Park	Office	Restaurant	Retail	Self Storage	Special Purpose
Debt Service Ratio											
Minimum	0.70%	0.84%	0.84%	0.84%	0.84%	0.84%	0.84%	0.84%	0.75%	0.84%	1.24%
Maximum	5.68%	11.95%	6.96%	5.85%	11.58%	8.80%	5.59%	11.04%	6.96%	5.86%	12.00%
Average	2.61%	5.15%	3.22%	2.93%	3.52%	3.88%	2.72%	4.33%	3.05%	4.03%	4.73%
Interest Rate											
Minimum	3.61%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.66%	3.75%	4.15%
Maximum	8.79%	14.86%	9.87%	8.76%	14.49%	11.71%	8.50%	13.95%	9.87%	8.87%	14.90%
Average	5.52%	8.06%	6.13%	5.84%	6.43%	6.79%	5.63%	7.24%	5.96%	6.94%	7.64%
Debt Coverage Ratio											
Minimum	1.10	1.20	1.10	1.15	1.00	1.10	1.15	1.10	1.05	1.15	1.15
Maximum	1.66	2.15	2.25	2.05	2.85	2.05	2.15	2.15	2.15	2.50	2.15
Average	1.43	1.56	1.50	1.46	1.53	1.36	1.65	1.58	1.39	1.62	1.70
Loan-to-Value Ratio											
Minimum	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Maximum	90%	80%	90%	90%	80%	90%	90%	80%	90%	50%	80%
Average	73%	67%	71%	70%	67%	70%	73%	66%	71%	70%	67%
Cap Rate (Year 1)											
Minimum	15	15	15	15	15	15	15	15	15	40	15
Maximum	40	40	40	40	40	40	40	30	40	15	40
Average	26	22	25	25	22	25	30	22	25	28	22
Payback (Years)											
Minimum	3	5	3	3	5	5	3	3	3	3	3
Maximum	40	30	25	30	30	30	30	15	10	10	20
Average	20.50	9.00	13.65	11.46	7.80	9.15	8.00	7.45	6.20	6.10	7.85
-- 10-Year Treasury											

\*1st Quarter 2018 Data

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RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2018\*

EQUITY DIVIDEND RATES

Property Type	Min.	Max.	Avg.
<b>Apartments</b>	6.41%	15.59%	11.46%
Garden/Suburban TH	6.41%	14.39%	10.00%
Hi-Rise/Urban TH	6.41%	15.59%	10.54%
Student Housing	6.41%	14.99%	10.27%
<b>Golf</b>	9.40%	22.06%	16.36%
Public/Daily Fee Courses	9.40%	21.46%	14.83%
Semi-Private Clubs	9.40%	22.06%	15.10%
Private Clubs	9.40%	20.86%	14.56%
<b>Health Care/Senior Housing</b>	7.60%	17.52%	13.06%
Acute Care Facilities	7.60%	17.52%	12.10%
Out-Patient Care Facilities	7.60%	16.32%	11.53%
Congregate Care Facilities	7.70%	16.92%	11.85%
Assisted Living Facilities	7.65%	16.62%	11.63%
<b>Industrial</b>	7.33%	16.49%	12.37%
Warehouse/Distribution	7.33%	15.29%	10.91%
Rt/D/Fls	7.53%	16.49%	11.56%
Climate Controlled/Manufacturing	7.43%	15.89%	11.24%
<b>Lodging</b>	8.10%	19.91%	14.59%
Full Service Facilities	8.10%	18.71%	12.87%
Limited Service Facilities	8.30%	19.91%	13.52%
Golf/Gaming/Resort	8.20%	19.31%	13.20%
<b>Mobile Home/RV Park/Camping</b>	7.92%	18.42%	13.69%
Manufactured Housing	7.92%	17.22%	12.10%
Mobile Home Parks	8.02%	17.82%	12.43%
RV Parks/Campgrounds	8.12%	18.42%	12.75%
<b>Office</b>	7.56%	16.04%	12.22%
Suburban	7.56%	14.84%	10.84%
CBD	7.76%	16.04%	11.49%
Medical	7.66%	15.44%	11.16%
<b>Restaurants</b>	10.33%	20.16%	15.74%
Full Service	10.53%	20.16%	14.87%
Fast Food	10.33%	19.96%	14.22%
<b>Retail</b>	7.95%	17.97%	13.46%
Anchored	7.95%	16.77%	11.92%
Un-Anchored	8.15%	17.97%	12.57%
Convenience/Gas	8.05%	17.37%	12.26%
Free Standing	7.90%	17.22%	12.10%
<b>Self-Storage</b>	7.97%	15.53%	12.13%
Climate Controlled	8.17%	15.53%	11.56%
Mini Storage	7.97%	14.33%	10.83%
<b>Special Purpose</b>	9.58%	20.95%	15.04%
Schools/Day Care Centers	9.58%	19.75%	14.16%
Churches/Temples/Synagogues	9.78%	20.95%	14.81%
<b>All Properties</b>	6.41%	22.06%	12.72%

\*1st Quarter 2018 Data

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Therefore, the following capitalization rate for the subject property was developed accordingly:

Band of Investment Capitalization Rate Development									
Investor Variables									
Holding Period		10							
Equity Dividend		8.0%							
Equity Ratio		35%							
Loan Variables									
Loan Ratio		65%							
Interest Rate		5.5%							
Amortization (yrs)		30							
Basic Rate Calculation by Band of Investment									
Equity Ratio	X	Required Yield (	35%	X	0.080000	)	2.80000%		
Loan Ratio	X	Annual Constant (	65%	X	0.068135	)	4.42875%		
Basic Overall Rate							7.22875%		
Less Credit Adjustment for Equity Build-Up									
Term (yrs)		Annual Constant	-	Int Rate	=	Amortization Rate			
30		0.068135	-	0.0550	=	0.013135			
10		0.130232	-	0.0550	=	0.075232			
Percent Paid Off									
0.013135	/	0.075232	=	0.174590					
Sinking Fund Factor									
8.00%	@	10 Years	=	0.069029					
Final Adjustment for Equity Build-Up									
0.174590	x	0.069029	x	65%	=	-0.78337%			
Final Overall Rate							6.44538%		
OVERALL CAPITALIZATION RATE (rounded) 6.40%									



## **PART IV – PILOT PROFORMA & ROI**

Given the conclusions set forth so far, there were additional assumptions that were needed to complete the analysis, some of which that were provided by the developer as well as the financial agreement.

### ▪ PILOT Agreement and Approvals

- Our analysis presumed the negotiated financial agreement with the municipality is finalized and signed by both parties, with approvals for the project.
- The project will consist of 222-unit multifamily units, of which 14 units will be affordable housing units. The property will also contain 100-room hotel, 45,000 square feet of educational/medical/office space, 32,250 square feet of retail space, 4,800 square feet of amenity space, 760 parking spaces, which will include 565 structured parking, 159 podium parking, and 26 surface parking spaces.
- This agreement includes the annual service charges, which have been determined to be \$1,200 per hotel room, \$1,600 per apartment, \$1.50 per square foot of retail space, and \$1.50 per square foot of educational/medical/office. The annual service charges will increase by 5% every 5 years beginning in year 6. Note, the county receives 5% of the annual service charge. Additionally, there will be a 2% municipal administrative fee due to the agreement and a 3% municipal hotel tax (after vacancy factor) on the project. Finally, the project is subject to the BID tax rate in accordance with the local ordinance.
- Furthermore, the subject property has obtained a Redevelopment Area Bond (RAB), which eliminates any regulation on minimal service charges as percentage of total project costs or a percentage of gross income.
- The Municipal Matrix shows the current tax payments to the Borough of Flemington. Additionally, it calculates the annual and cumulative tax revenues to the Borough over the 30-year period.

### ▪ Income

- Leasing Revenue & Potential Gross Income – These projections reflect leasing revenue and absorption pace for the project based upon our preceding conclusions which analyzed the performance of competing properties in the submarket area. These revenues have been inflated at a rate of 2.0% annually. We project average monthly rents of \$1,907 with an average size of 969 square feet and affordable housing rates at an average rent of \$1,000 per month with an average size of 1,000 square feet. Note, there are no garage rents or miscellaneous income for the project. Next, there is 45,000 square feet of educational/medical/office space as well as 32,250 square feet of retail space available to rent, which has been determined by the consultant to be \$20 per square foot net. The educational/medical/office space is projected to have 10% increases every 5 years starting year 6. The provided hotel rent of \$125 per night for 100 rooms, or 36,500 room night, will be utilized for the 100 rooms within the project. Finally, there is 4,360 square feet of hotel conference space determined to collect approximately \$26,000 annually.

- Less Vacancy & Credit Loss – These numbers reflect current and forecasted vacancy rates in this subject area. We have allowed for a project vacancy rates of 5% over the life of the project for retail and office space. Based upon the leasing velocity of similar hotel properties, we have projected a stabilized occupancy level of 70% (30% vacancy) can be achieved for the hotel portion. We have therefore applied a factor of 100% vacancy during the construction phase in year 1 and 2 vacancy. Construction completion is projected to require 2 years.

■ Expenses

- Operating & Leasing Expenses – The consultant utilized analyses published by the Institute for Real Estate Management (IREM) for retail, office, and apartments and Smith Travel Research (STR) for hotel market data. Given the efficiencies attributable to newly constructed properties which benefit from lower operating expenses, multi-family apartment projects served by elevators have a median overall operating expense equivalent to 23% of Potential Gross Income (PGI) exclusive of property taxes. These analyses also indicated that existing office/retail projects have a median overall operating expense equivalent to 30% of PGI exclusive of property taxes. Additionally, data from STR shows that hotel projects have a higher median overall operating expense of 45% of PGI. Finally, the reimbursements are calculated on a pass-through basis, in which the tenants will pay their proportionate share of the operating expenses. The reimbursement is made to the owner for expenses paid by the owner, charged back to the tenant, and results in additional rent for the tenant and income to the owner.
- Reserves for Replacement – These reserves represent funds that provide for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced during the building's economic life such as heating/cooling systems, appliances, carpeting, or roofing. Costs have been applied at a rate of \$300 per hotel room and apartment and inflated at a rate of 2% annually. Additionally, reserves for replacement for the retail and office space is estimated to be \$0.15 per square foot.
- Property Taxes – In years 1 & 2, property taxes will be based upon the current land tax of \$107,332 using the BID tax rate of \$3.246. The projected taxes are not calculated as they will be paid and credited with the borough.

■ Capital Investment

- A budget has been prepared by the developer at this time. The hard and soft costs should be updated however once proposals have been obtained from the respective professionals.
- Land Value Allocation – \$7,233,830 is the provided acquisition cost budget. Our analysis presumes that the land allocation will be incurred in year 1 of the project, subsequent to securing development approvals and prior to commencement of site development and construction.
- Hard, Soft, & Related Costs – Represents the estimated cost to construct site infrastructure for the project to include, but are not limited to demolition, rubbish removal, fill, grading, roadways, surface parking sidewalks, curbing, bringing utilities to the site, off-site improvements and recreational amenities as well as hotel furniture, fixtures, and equipment. This is estimated to be \$82,109,110, which was provided. The costs are split over the two years during construction.

- Cumulative Capital Investment – This represents the total hard, soft, and related costs as well as the acquisition of the existing building, which is \$89,342,940.
- Return on Investment
  - Net Cash Flow Before Debt Service & Reversion – represents the mathematical result of subtracting Total Expenses from Effective Gross Revenue over the life of the project. This figure does not include the lump sum income from the sale of the property or debt servicing expenses.
  - Capitalization Rate – The consultant has determined the capitalization rate to be 6.40%.
  - Reversionary Value – The lump sum benefit to be realized by the investor when the property is sold at the end of the holding period. The projected selling price has been based upon the net operating income in the final year before sale, which has been capitalized at a terminal cap rate of 6.65%.
  - Less Selling Expense – This 4% cost represents a deduction from the reversionary value attributable to legal and brokerage expenses.
  - Net Cash Flow After Reversion but Before Debt Service – The net cash flow represents the adjusted net cash flow after adding in the net proceeds from the sale of the property at the end of the holding period, but prior to debt servicing costs.



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## RETURN ON INVESTMENT ANALYSIS – Courthouse Square Mixed-Use Redevelopment Project

71

[illegible]



## RETURN ON INVESTMENT ANALYSIS – (continued)

72

[illegible]

The last portion of the report will analyze the project without a PILOT using a loaded capitalization rate.

A loaded capitalization rate is based on the effective tax rate, property's net operating income, the reconciled overall capitalization rate, and projected market value. After the loaded rate is calculated, the projected market taxes (without a PILOT) are applied to the cash flows.

The projected market value and taxes based on the loaded capitalization rate is below:

LOADED Tax Calculations	
Subject's Expenses (less taxes)	
Calculated NOI Less Hotel Tax	\$6,560,842
Municipal Tax Rate	3.246%
Municipal Equalization Ratio	100.00%
Effective Tax Rate	0.032460%
Loaded Cap Rate	0.09646
Value	\$68,016,197
Equalized value	\$68,016,197
Projected Taxes	\$2,208,000

The projected taxes are based upon the market value of the completed project are \$2,208,000. The borough collects \$861,229, or approximately 34.4% of these total projected taxes as well as the 3% municipal hotel tax. Now, these taxes will be inflated by 2% each year and used to calculate the profit rate and unlevered internal rate of return for the project.

**Note: The following analysis is for demonstrative purposes only and results in a profit rate and internal rate of return that is not considered financially feasible without the proposed PILOT plan.**

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## **PART V – ADDENDUM**

### ***Limiting Conditions, Assumptions and Hypothetical Conditions***

This study is subject to the following Limiting Conditions

- All statements in this market study that are not historical facts should be considered as forward-looking projections. Although we believe that the expectations reflected in or suggested by such forward-looking projections are reasonable, we can give no assurance that they will be achieved. Known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements expressed or implied by these forward-looking projections to be different from these projections. Such risks, uncertainties and other factors include, but are not limited to, changes in general and local economic and industry and business conditions; adverse weather and other environmental conditions and natural disasters; changes in market conditions; changes in market pricing; government regulation, including regulations concerning development of land, tax laws and the environment; fluctuations in interest rates and the availability of mortgage financing; shortages in and price fluctuations of raw materials and labor; levels of competition; utility shortages and outages or rate fluctuations; changes in tax laws; and geopolitical risks, terrorist acts and other acts of war. We undertake no obligation to update or revise any forward-looking projections, whether as a result of new information, future events, changed circumstances or any other reason.
- The legal description furnished to us is assumed to be correct. I assume no responsibility for the matters legal in character nor do I render any opinion as to the title, which is assumed to be held in fee simple. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear under responsible ownership and competent management.
- Title is assumed to be held in fee simple, unless otherwise noted, and no liens or encumbrances, except those noted, were considered.
- I have made no survey of the property and any sketches in this report are for illustrative purposes only.
- I believe to be reliable the information which was furnished to us by others, but I assume no responsibility for its accuracy.

- Unless otherwise noted herein, it is assumed that there are no detrimental encroachments, easements, zoning violations, use restrictions, or other conditions not evident upon surface inspection of the property. Description of the physical condition of the improvements is based on a visual inspection only. No liability is assumed for the soundness of structural members since no engineering tests were made by the appraiser.
- Testimony and court appearances in connection with this appraisal are limited to those situations for which prior arrangements have been made.
- I reserve the right to recall this report and make any amendments, corrections, or changes that I deem necessary.
- This report must not be used in conjunction with any other valuation analysis or report.
- On January 26, 1992, federal legislation entitled, The Americans with Disabilities Act (ADA) became effective. The appraiser has not been provided with a compliance survey nor has any analysis been made to determine whether or not the subject is in conformity with the requirements of the ADA. It is possible that compliance with the act will require expenditures for barrier removal construction. Such expense, if required, could have a negative impact on the value of the subject. This study is expressly made under the assumption that the subject is in compliance with ADA, or that there are no significant measurable required expenditures for compliance with ADA that would have a negative impact on the value or marketability of the subject.
- The appraiser is not qualified to test for the presence of Hazardous substances. The presence of such hazardous substances or environmental conditions may affect the value of the property. The valuation contained in this appraisal assumed that the property is not polluted or otherwise contaminated and does not reflect any diminution of value as a result of environmental conditions. This study is subject to change depending on the availability of information concerning the environmental condition of the property in question.
- The Freshwater Wetlands Protection Act restricts the use and development of freshwater wetlands. Effective July 1, 1988 the DEP was established as the reviewing and approving authority for all development within or adjacent to freshwater wetlands. This legislation established certain development criteria including, but not limited to, variable buffers around authorized development adjacent to freshwater wetlands. The

identification and delineation of freshwater wetlands on the subject property, if any, has not been brought to our attention nor did we become aware of any such delineations during our inspection of the subject nor during our investigations for this report; however, the appraisers are not qualified to render a professional opinion as to the presence or extent of freshwater wetlands. The reader is advised to seek competent, professional advice in identifying any such potential freshwater wetlands since identification and delineation of any freshwater wetlands within the subject boundaries could have significant impact upon values thereby requiring study revision.

- The subject site may have underground fuel storage tank(s). The underground tank(s) could be a liability. Neither the composition nor the conditions of such tanks, to the extent they exist, are known to the appraiser. The typical life expectancy of an underground tank is 15 to 20 years; (federal guidelines suggest a 10-year life span). Soil contamination could occur if a tank leaks and would be costly to clean up. Without a detailed physical inspection of the tanks and the surrounding soil, it is impossible to estimate potential clean-up costs. Therefore, this analysis does not cover such contingencies.

## Professional Qualifications

### Curriculum Vitae for Christopher J. Otteau, MAI, AI-GRS, SCGRE



#### PROFESSIONAL EXPERIENCE & LICENSING

Actively engaged in real estate valuation and consultation since 2001 with broad based experience in all property types including residential, commercial, industrial, land, subdivision development analysis, hospitality and special purpose properties. He also has extensive experience in urban redevelopment, abstraction analysis, feasibility study and stigma analysis. Christopher is a Rutgers University graduate, holds the State Certified General Real Estate Appraiser license, the MAI and AI-GRS Designation from the Appraisal Institute and has obtained a Graduate Certificate in Hotel Real Estate Investments and Asset Management from Cornell University. Christopher was recently appointed by the New Jersey Supreme Court to serve on the Office of Attorneys Ethics District VIII Committee and is an Adjunct Professor at Monmouth University in Real Estate & Analysis. Christopher has been quoted and featured in publications such as the New York Times and BBC World News.



Adjunct Professor at Monmouth University of Real Estate Valuation & Analysis

MAI Designated Appraiser – Appraisal Institute

AI-GRS Designated Appraiser – Appraisal Institute

State Certified General Real Estate Appraiser in the State of NJ (#42RG00219400)

State Certified General Real Estate Appraiser in the State of NY (#46000049674)

State Certified General Real Estate Appraiser in the State of PA (#GA003794)

Principal - Otteau Group, Inc.

Principal - Otteau Realty Advisors, Inc.

Licensed Real Estate Sales Person in the State of New Jersey

#### PRIMARY EDUCATION

 Rutgers University, 2002  
Public Relations, Communications  
Bachelor of Arts Degree



Cornell University, 2017  
Hotel Real Estate Investments & Asset Management  
Graduate Certificate

#### AFFILIATIONS & HONORS

Monmouth University Adjunct Professor – Real Estate Valuation & Analysis, Fall 2017, Fall 2018  
Monmouth University Real Estate Academic Competition – Co-Chair Fall 2018  
Monmouth University Guest Lecturer – Real Estate Valuation & Analysis, Fall 2016  
NJ Supreme Court Appointed Member Office of Attorney Ethics District VIII, 2016 -2020  
Hightstown Borough Appraiser, 2016 – Present  
Hightstown Borough Redevelopment Expert Consultant, 2016  
Appraisal Institute (AI) Washington DC, Leadership Development and Advisory Council, 2016 & 2018  
Appraisal Institute (AI) Metro Chapter, Executive Board, 2018  
Appraisal Institute (AI) Metro Chapter, Board of Directors, 2015 – 2017  
Appraisal Institute (AI) Metro Chapter, Government Relations Committee, 2014 – Present  
Appraisal Institute (AI) Metro Chapter, Fall Conference, Committee, 2014 & 2015  
Appraisal Institute (AI) Metro Chapter, Princeton Conference Co-Chair, 2016, 2017 & 2018  
Featured in the New York Times Article "A Buyers Market, A Sellers Pair"  
Interviewed in BBC World News Television  
National Association of Realtors (NAR) Member, 2004 – Present  
New Jersey Multifamily Summit CAPRE – Speaker on the Multifamily Real Estate Trends, 2017 & 2018  
Jersey City New Jersey Multifamily Summit CAPRE – Speaker on the Multifamily Real Estate Trends, 2018  
Newark New Jersey CRE Real Estate Summit CAPRE – Speaker on the Multifamily Real Estate Trends, 2019  
Institute of Real Estate Management (IREM) – Speaker on Commercial Real Estate Trends, 2014  
Marcus and Millichap – Speaker on Multifamily Taxation, 2013  
NJ League of Municipalities –Speaker on Transit Oriented Redevelopment, 2010  
Member, Editorial Advisory Committee, Mobility Magazine, 2009-2010

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**PROFESSIONAL QUALIFICATIONS : Christopher J. Otteau, MAI, AI-GRS, SCGREa (continued)**

**PROFESSIONAL EDUCATION**

Introduction to Real Estate Appraisal	Mortgage Fraud
Residential Income Property Valuation	General Appraiser Income Approach Part 2
Condominium/PUD Valuation	Demonstrative Report Writing
Uniform Standards of Professional Appraisal Practice	Advanced Income Capitalization
Relocation Valuation	Advanced Market Analysis & Highest and Best Use
Real Estate Market Analysis and Highest and Best Use	Advanced Concepts and Case Studies
Property Inspection	Capstone Demonstrative Appraisal Report
Federal Housing Administration (FHA) Valuation	Business Practice and Ethics
Residential Sales Comparison and Income Approaches	Hotel & Motel Valuation
Residential Report Writing and Case Studies	Apartment Property Valuation
Pennsylvania Appraisal State Mandatory Laws	Expert Witness Testimony
Green Building Valuation	General Appraisal Report Writing & Case Studies
Workwide ERC Appraisals	Retail Property Valuation
Financial Analysis of Hotel Investment	Control of Hotel Real Estate
Valuing Hotel Investments	Hotel Asset Management Strategy
Valuing Hotel Intellectual Property	Hotel Asset Management Objectives
General Review Theory	

**EXPERT TESTIMONY SAMPLING**

Riverdale Borough Planning Board	Middlesex County Board of Taxation
Middlesex County Superior Court	Franklin Township Board of Adjustment
Essex County Board of Taxation	Hightstown Borough Town Council
Hightstown Borough Planning Board	Old Bridge Township Town Council
Howell Township Board of Adjustment	Harrison Town Planning Board
Somerset County Board of Taxation	Robbinsville Township Board of Ed
Harrison Town Redev Agency	New Jersey State Tax Court
Monmouth County Board of Taxation	Federal Bankruptcy Court
Ocean County Superior Court	Flemington Borough Redevelopment Committee

**APPRAISAL INSTRUCTION SAMPLING**

Monmouth University  
Affinity Federal Credit Union  
Bank of New Jersey  
Magyar Bank

**APPRAISAL SERVICES PERFORMED FOR THE FOLLOWING CLIENTS:**

**FORTUNE 500**

Anheuser Busch  
Honeywell International

**FINANCIAL INSTITUTIONS**

Affinity Federal Credit Union  
Allegiance Bank Of North America  
Amboy Bank  
AmeriCorp, Inc.  
America's MoneyLine, Inc.  
Associated Mortgage Company, Inc.  
Atlantic Stewardship Bank  
Bank of New Jersey  
BNB Bank  
Boiling Springs Savings Bank  
Brunswick Bank & Trust  
Capital First Mortgage

Capital One  
Central Jersey Bank, N.A.  
Chase Home Finance  
Chase Manhattan Mortgage Corp.  
Chesapeake Appraisal & Settlement  
Christian Community Credit Union  
City National Bank  
Columbia Bank  
ConnectOne Bank  
Continental Bank  
Countrywide Home Loans, Inc.  
CTX National Lending Center  
Eastern Savings Bank  
Empire Equity Group  
Enterprise National Bank  
Fannie Mae  
Fidelity National Financial, Inc.

Finance America  
First Bank  
First Choice Bank  
First Commerce Bank  
First Investors  
First Metropolitan Mortgage  
First National Community Bank  
First Savings Bank  
First Washington State Bank  
Fulton Financial Corporation  
Founders Mortgage  
Goldman Sachs  
Greater Alliance Federal Credit Union  
Hopewell Valley Community

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**OTTEAU GROUP**

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**PROFESSIONAL QUALIFICATIONS : Christopher J. Otteau, MAI, AI-GRS, SCGREA (continued)**

**FINANCIAL INSTITUTIONS**

Huntington Mortgage Company  
 Investors Savings Bank  
 John Manville Corporation  
 JP Morgan Chase & Co.  
 Kearny Bank  
 Lakeland Bank  
 Madison Community Bank  
 Magyar BankMariner's Bank  
 Market Intelligence, Inc.  
 Metuchen Savings Bank  
 Millington Savings Bank  
 Mortgage Loan Solutions, LLC  
 National Bank of Kansas City  
 National Equity, Inc.  
 NJ Community Bank  
 National Property Advisors  
 New Century Mortgage  
 New Jersey Community Bank  
 New Jersey Community Capital  
 New Jersey Mortgage Lending  
 New Millennium Bank  
 New York Community Bank  
 North American Savings Bank  
 North Fork Bank  
 Northern State Bank  
 Nova Bank  
 OceanFirst Bank  
 Oritani Bank  
 Pennsylvania Business Bank  
 Pinnacle  
 PNB Financial  
 PNC Advisors  
 Porch Light Mortgage, LLC.  
 Provident Capital Mortgage Corporation  
 Prudential Financial  
 Shore Community Bank  
 Sovereign Bank  
 State Bank of Texas  
 Summit Mobility  
 Sunbelt First Financial  
 Susquehanna Bank  
 TFS Mortgage  
 The Bank  
 The Bank of Princeton  
 The Huntington National Bank  
 The Lending Source  
 The Manhattan Mortgage Company  
 TICIC, Inc.  
 Two River Community Bank  
 United Roosevelt Bank  
 Unity Bank  
 Wachovia Bank  
 Washington Mutual Bank  
 Wells Fargo Home Mortgage  
 Wilmington Trust

Yardville National Bank

**BUILDERS & DEVELOPERS**

551 Park Avenue, LLC  
 Albert Garlatti Construction Co  
 Capodagli Property Company  
 Clover LLP  
 D.R. Mon Group, Inc.  
 Falcone Properties  
 Flatrock 3, LLC  
 Fields Development Group Co.  
 Heartstone Development, LLC  
 Hub Realty  
 K. Hovnanian  
 Kaplan Companies  
 Lexington Partners, LLC  
 M. Gordon Construction Co.  
 Marble Arch Homes  
 Matrix Development Group  
 Matzel Development Group  
 Matzel & Mumford  
 MDK Development, LLC  
 Millennium Homes  
 NK Architects  
 Northeast Housing LLC  
 Paramount Homes  
 Parkwood Development  
 Phoenix Realty Group  
 Pugliese Invesco LLC  
 Robertson Douglas Group  
 Russo Development  
 Secaucus Brownfields  
 Redevelopment  
 Sterling Properties  
 Trammell Crow Residential  
 White Oak Properties  
 Woodmont Properties  
 McKinney Properties, Inc.  
 Lennar Corporation  
 BROCO Development  
 Heiter Construction

**LAWYERS**

Avelino Nitekewicz, LLP  
 Becker Meisel, Attorneys at Law  
 Borus, Goldin, Foley, et al  
 Connell Foley  
 Copeland, Shimalia & Wechsler  
 Eckert Seamans Cherin & Mellott  
 Ferrara & Associates  
 Flaster Greenberg, P.C.  
 Frizell & Samuels  
 Greenbaum, Rowe, Smith & Davis  
 Hill Wallack  
 Indik & McNamara, P.C.  
 Joseph Fund Law Firm  
 Levine DeSantis, LLC  
 Mehr, LaFrance & Williams

Morgan Methuish Abrutyn  
 Norris, McLaughlin & Marcus  
 Porzio, Bromberg & Newman PC  
 Shamy, Shapers & Lonski, P.C.  
 Stark & Stark  
 Sterns & Weinroth, P.C.  
 The Rotolo Law Firm  
 The Ulrich Law Firm  
 Trombadoro & Wilson  
 Wilentz, Goldman & Spitzer  
 Wolff & Samson PC

**GOVERNMENTAL**

Hoboken City  
 Metuchen Borough  
 NJ Transit  
 Robbinsville Public Schools  
 Manasquan River Regional  
 Sewage  
 State of New Jersey  
 Hightstown Borough  
 Flemington Borough

**MISCELLANEOUS**

Cerebral Palsy Assoc. of Middlesex  
 Clarke Caton Hintz  
 Franklin Mutual Insurance  
 Company  
 Kaylan Realty Corporation  
 Make a Wish Foundation  
 Management Planning, Inc.  
 North Jersey Oral & Maxillofacial  
 NY/NJ Baykeeper  
 Perez Real Estate  
 Procidia Advisors, LLC  
 SIB Corp.  
 Saint Peters University Hospital  
 New Jersey Carpenter Pension  
 Farber Company  
 Bristol-Myers Squibb  
 Somerset Valley YMCA

**OTTEAU GROUP, INC.**

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**State Of New Jersey  
New Jersey Office of the Attorney General  
Division of Consumer Affairs**

THIS IS TO CERTIFY THAT THE  
Real Estate Appraisers Board

HAS CERTIFIED

**Christopher J. Otteau**

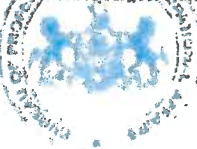
FOR PRACTICE IN NEW JERSEY AS A(n): Certified General Appraiser

12/20/2017 TO 12/20/2019  
VALID

42RG00219400  
LICENSE/REGISTRATION CERTIFICATION

Signature of Licensed/Registered/Registered Holder

ACTING DIRECTOR

<p>Commonwealth of Pennsylvania Department of State Bureau of Professional and Occupational Affairs PO Box 1499 Harrisburg PA 17103-2649</p>		17 0357899
<p>Certificate Type Certified General Appraiser</p>		<p>Certificate Status Active</p>
<p>CHRISTOPHER JEFFREY OTTEAU</p>	<p>Certificate Number GA008794</p>	<p>Initial Certification Date 12/14/2009</p>
<p>Signature of Licensee</p>	<p>Signature of Director</p>	<p>Expiration Date 12/20/2019</p>

**Department of State  
Division of Licensing Services  
Licensee Information**

ID Number: 46000049674

Name: OTTEAU CHRISTOPHER J

Business Name: OTTEAU VALUATION GROUP INC

Business Address: 15 BRUNSWICK WOODS DR

County: OUT OF STATE COUNTY

License Type: CERTIFIED GENERAL REAL ESTATE APPRAISER

Expires: 12 20 2019

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