



Mayor and Common Council Borough of Flemington

July 25, 2022

Council Meeting Room and Online

Call to Order (7:00 P.M.)

1. Statement regarding OPMA

Work Session (7:00 PM)

Regular Meeting (7:30 PM)

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

Flag Salute

Roll Call:

Betsy Driver	Mayor
Jessica Hand	Council Vice President
Malik Johnston	Council Member
Jeremy Long	Council President
Tony Parker	Council Member
Elizabeth Rosetti	Council Member
Kimberly Tilly	Council Member

- I. Mayor's Report
- II. Council Members' Reports
- III. Public Comments - Session I (up to 3 minutes each, for a maximum of 30 minutes)
- IV. Approval of Minutes

Motion To: **Approve Minutes: July 11, 2022 Regular Council Meeting**

Consent Agenda

1. RESOLUTION 2022-166: APPOINTING JOSHUA PARKS AS THE BOROUGH OF FLEMINGTON'S ALTERNATE MEMBER TO THE HUNTERDON COUNTY SOLID WASTE ADVISORY COUNCIL
 2. RESOLUTION 2022-167: URGING THE STATE OF NEW JERSEY TO HOLD FOSSIL FUEL COMPANIES ACCOUNTABLE FOR CLIMATE CHANGE ADAPTATION AND RESILIENCE CCOSTS
 3. RESOLUTION 2022-168: AUTHORIZING THE INSTALLATION OF A TEMPORARY CROSSWALK ON STANGL AVENUE
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Regular Agenda

1. SECOND READING, ORDINANCE 2022-8: ORDINANCE AMENDING SECTION 1404 OF THE BOROUGH CODE REGARDING THE HISTORIC PRESERVATION COMMISSION
 2. SECOND READING, ORDINANCE 2022-10: AN ORDINANCE AUTHORIZING THE PURCHASE OF PROPERTY DESIGNATED AS BLOCK 42, LOT 9 (200 MAIN STREET)
 3. SECOND READING, ORDINANCE 2022-11: AN ORDINANCE AUTHORIZING THE CONSUMPTION OF ALCOHOLIC BEVERAGES IN CERTAIN AREAS OF THE BOROUGH OF FLEMINGTON
 4. RESOLUTION 2022-169: AUTHORIZING A SHARED SERVICE AGREEMENT WITH FRENCHTOWN BOROUGH REGARDING STREET SWEEPING
 5. RESOLUTION 2022-170: AMENDING RESOLUTION 2022-143 AND APPROVING THE APPOINTMENT AND HIRING OF MICHAEL HUMPHREY AS BUSINESS ADMINISTRATOR AS OF JULY 5, 2022, AND ACTING BOROUGH CLERK AS OF AUGUST 1, 2022
 6. RESOLUTION 2022-171: RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT
 7. RESOLUTION 2022-172: AUTHORIZING THE BOROUGH OF FLEMINGTON TO CHARGE CREDIT CARD AND ONLINE PROCESSING FEES AND AUTHORIZING AN ADDENDUM TO THE SERVICE AGREEMENT WITH MUNICIPALPAY
 - V. Public Comments - Session II (up to 3 minutes each, for a maximum of 30 minutes)
 - VI. Attorney's Report
 - VII. Payment of the Bills
Motion To: **Pay the Bills in the Amount of \$227,406.65**
 - VIII. Executive Session for Any Other Applicable Matter Identified During the Regular Meeting (Action May Be Taken)
 - IX. Adjournment
-

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Appointments
Prepared By: Sallie Graziano
Initiator: Sallie Graziano
Sponsors:

SCHEDULED

RESOLUTION 2022-166

DOC ID: 3854

**Appointing Joshua Parks as the Borough of Flemington's
Alternate Member to the Hunterdon County Solid Waste
Advisory Council**

WHEREAS, Flemington Borough is a member of the Hunterdon County Solid Waste Advisory Council; and

WHEREAS, the Hunterdon County Solid Waste Advisory Council meets on Tuesdays; and

WHEREAS, Flemington Borough's representative to the Solid Waste Advisory Council is also a member of the Borough's Planning Board, which also meets on Tuesdays; and

WHEREAS, attendance at a minimum of two Solid Waste Advisory Council meetings is a requirement of a grant the Borough of Flemington receives; and

WHEREAS, Flemington Water Superintendent Joshua Parks is able to attend meetings on Tuesdays;

NOW, THEREFORE, BE IT RESOLVED that the Council of the Borough of Flemington appoints Joshua Parks as the Borough's alternate member to the Hunterdon County Solid Waste Advisory Council.

BE IT FURTHER RESOLVED that the Mayor is authorized to submit a letter to the Hunterdon County Board of County Commissioners requesting this arrangement.

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano
Initiator: Sallie Graziano
Sponsors:

SCHEDULED

RESOLUTION 2022-167

DOC ID: 3853

Urging the State of New Jersey to Hold Fossil Fuel Companies Accountable for Climate Change Adaptation and Resilience Costs

WHEREAS, the Borough of Flemington, in Hunterdon County, New Jersey, is home to many businesses, parks, recreational facilities, schools and other institutions; and

WHEREAS, the Borough of Flemington and communities across the State of New Jersey are experiencing the increasingly severe impacts of climate change, including flooding and urban heat. In New Jersey, average temperatures are increasing by roughly twice the global average, with an average of 5 to 8 degrees Fahrenheit above preindustrial levels predicted by the end of the century, and 2021 was the state's third warmest year on record; and

WHEREAS, global warming causes sea-level rise and annual precipitation to accelerate in New Jersey, with sea levels projected to increase 4 to 6.3 feet by 2100 above the year 2000 mean sea level, and annual rainfall projected to increase 5 to 8% by the end of the century; and

WHEREAS, Hurricane Ida is estimated to have caused \$16 billion to \$24 billion in damages in the Northeast U.S. and 30 deaths in the state of New Jersey; and

WHEREAS, the Borough of Flemington must plan for flood resilience and stormwater management. Required upgrades to New Jersey's stormwater, drinking water and wastewater infrastructure systems will cost \$40 billion over the next 20 years statewide; and

WHEREAS, in the United States, carbon dioxide (CO₂) emissions from burning fossil fuels amounted to 76% of total human-caused greenhouse gases (GHGs) and NASA explains the "greenhouse effect" as when carbon dioxide, methane and nitrous oxides trap heat in the atmosphere and cause temperatures to rise, known as "global warming"; and

WHEREAS, oil and gas companies have produced, marketed, promoted, and sold fossil fuels over the last 50 years, without protecting or warning consumers about the dangers they knew their products would cause, and have spent millions of dollars on campaigns to obscure the truth to stall climate action and protect their profits; and

NOW THEREFORE BE IT RESOLVED that the Council of Flemington Borough, Hunterdon County, New Jersey, does hereby urge Governor Murphy to take legal action against the fossil fuel industry for its role in creating and perpetuating the climate crisis to ensure that the cost of adaptation and resilience does not fall solely on the shoulders of taxpayers; and

BE IT FURTHER RESOLVED, that copies of this Resolution shall be forwarded to our representatives in Congress, the members of the New Jersey General Assembly and the State Senate, the Lieutenant Governor, the Governor of the State of New Jersey, and to the Attorney General of the State of New Jersey.

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

SCHEDULED

RESOLUTION 2022-168

DOC ID: 3856

**Authorizing the Installation of a Temporary Crosswalk on
Stangl Avenue**

WHEREAS, the Borough of Flemington Police Department (the "Police Department") has recommended the installation of a temporary crosswalk on Stangl Avenue to manage pedestrian traffic and provide a safe crossing for pedestrians patronizing the businesses and restaurants on Stangl Avenue; and

WHEREAS, the Police Department will install said temporary cross walk on weekends (Friday evenings through Sunday evenings) and during special events as needed; and

WHEREAS, the Police Department will work with the Borough Engineer as needed to determine the best location for the temporary crosswalk; and

NOW THEREFORE BE IT RESOLVED, by the Mayor and Common Council by the Borough of Flemington, County of Hunterdon, State of New Jersey that the Borough Police Department is authorized to install a temporary cross walk as set forth above.

Adopted: July 25, 2022

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Sallie Graziano

Initiator: Betsy Driver
Sponsors:

SCHEDULED

RESOLUTION 2022-169

DOC ID: 3852

**Authorizing a Shared Service Agreement with Frenchtown
Borough Regarding Street Sweeping**

WHEREAS, the "Uniform Shared Services and Consolidation Act" N.J.S.A. 40A:65-1 through 40A:65-35 (the "Act"), authorizes local units of this State to enter into a contract with any other local unit or units for the joint provision within their several jurisdictions of any service which any party to the agreement is empowered to render within its own jurisdiction; and,

WHEREAS, The Borough of Flemington is desirous of sharing Borough Equipment and Borough DPW personnel with the Borough of Frenchtown, according to the following terms:

The Borough of Frenchtown will reimburse the Borough of Flemington at a rate of \$250 per hour, portal to portal, which fee covers all labor, vehicle and fuel costs.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Borough of Flemington authorizes the above-stated shared service agreement, in substantially the same form, with the Borough of Frenchtown, for the use of Flemington Borough equipment and DPW personnel.

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Appointments
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

SCHEDULED

RESOLUTION 2022-170

DOC ID: 3851

Amending Resolution 2022-143 and Approving the Appointment and Hiring of Michael Humphrey as Business Administrator as of July 5, 2022, and Acting Borough Clerk as of August 1, 2022

WHEREAS, Borough Clerk Sallie Graziano is retiring effective August 1, 2022, leaving a vacancy in the position of Borough Clerk; and

WHEREAS, N.J.S.A. 40A:9-133 states that the term of office of the Municipal Clerk shall be three years and that the term shall be deemed to have begun as of the actual date upon which a person serving as municipal clerk is appointed; and

WHEREAS, the position of Business Administrator, authorized by the adoption of Ordinance 2020-19 on November 9, 2020, is currently vacant; and

WHEREAS, Borough Code Section 2-29.3 states that the term of Business Administrator is one year with a six-month probationary period; and

WHEREAS, the Borough is interesting in hiring someone as a full-time Borough Clerk and Business Administrator; and

WHEREAS, the position of Borough Clerk and Business Administrator was advertised; and

WHEREAS, Michael Humphrey was interviewed by the Council and determined to be qualified for the position of Acting Borough Clerk and Business Administrator; and

WHEREAS, pursuant to N.J.S.A. 40A:9-133, municipalities are allowed to appoint a person who does not hold a Registered Municipal Clerk certificate to serve as Acting Municipal Clerk for a period not to exceed one year and commencing on the date of the vacancy; and

WHEREAS, the person appointed as Acting Municipal Clerk pursuant to N.J.S.A. 40A:9-133(c) may be appointed for two (2) additional years with the approval of the Director of the Division of Local Government Services in the Department of Community Affairs; and

WHEREAS, Mr. Humphrey does not hold a Registered Municipal Clerk Certificate (“RMC Certificate”), but intends on obtaining an RMC Certificate and is currently enrolled in Rutgers University's Registered Municipal Clerk certification program; and

WHEREAS, the position of Acting Municipal Clerk and Business Administrator carries with it an initial salary of \$80,000, with future salary as specified in the annual salary ordinance; and

WHEREAS, once Mr. Humphrey attains his certification as a Registered Municipal Clerk, his annual salary will increase to \$90,000 retroactive to the date he received his certification;

WHEREAS, pursuant to Resolution No. 142-2022 adopted on June 13, 2022, Mr. Humphrey was appointed to the positions of Acting Clerk and Administrator; and

WHEREAS, the intent was to appoint Mr. Humphrey to the position of Acting Clerk for a one-year term in compliance with applicable statute; and

WHEREAS, the purpose of this amended resolution is to clarify that Mr. Humphrey is appointed to the position of Acting Clerk for a one-year term and the position of Administrator for a one-year term and that it is the intention of the Council to appoint him to a three-year term as Clerk once he receives the proper certification; and

WHEREAS, it is the intention of the parties to appoint Mr. Humphrey to the position of Clerk for a three-year term (upon receipt of the proper certification) and the position of Business Administrator for a one-year term with a six-month probationary period;

NOW, THEREFORE, BE IT RESOLVED that Council approves the full-time appointment of Mr. Humphrey as Borough Business Administrator effective July 5, 2022, and Acting Borough Clerk effective August 1, 2022, at an annual salary of \$80,000 (each for one-year terms), with substantially the same terms as reflected in the attached agreement; and

BE IT FURTHER RESOLVED that Mr. Humphrey's salary will increase to \$90,000 once he has attained certification as a Registered Municipal Clerk and it is the intent of Council that Mr. Humphrey will be appointed to a 3-year term upon receipt of the proper certification.

Adopted: July 25, 2022

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Governing Body
Category: Board Policy
Prepared By: Michael J. Humphrey
Initiator: Michael J. Humphrey
Sponsors:

SCHEDULED

RESOLUTION 2022-171

DOC ID: 3855

Resolution Authorizing Execution of an Easement

WHEREAS, Flemington Apts., LLC (the “Grantor”) and Elizabethtown Gas Company are entering into a certain easement agreement (attached hereto) in order to locate a natural gas pipeline across a portion of property known as Block 50, Lot 7 (Raritan Township) and Block 15, Lot 1 (Flemington Borough) (collectively, the “Property”); and

WHEREAS, the subject gas line is required to service certain water supply infrastructure owned and maintained by the Borough of Flemington; and

WHEREAS, the Borough is required to be a signatory on the Easement to document certain maintenance responsibilities only and the Borough is not acquiring any interest in the Property; and

WHEREAS, pursuant to the Easement Agreement, the Borough will be responsible for restoring any pavement disturbed by the installation of the gas line and the cutting and removal of grass and vegetation from the easement area; and

WHEREAS, because the Borough is not acquiring any interest in the Property, the Borough is not required to adopt an ordinance pursuant to N.J.S.A. 40A:12-5

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

1. The Mayor and Clerk are hereby authorized to execute the Easement for purposes of documenting the Borough’s maintenance responsibilities, substantially in the form attached hereto.

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Financial Approval
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

SCHEDULED

RESOLUTION 2022-172

DOC ID: 3857

Authorizing the Borough of Flemington to Charge Credit Card and Online Processing Fees and Authorizing an Addendum to the Service Agreement with Municipay

WHEREAS, the Borough of Flemington accepts credit cards and online payments for the payment of certain fees and charges, including construction permit fees, inspection fees, pet license fees, landlord registration fees, food license fees, vendor license fees, utility payments, and tax payments; and

WHEREAS, the Borough's electronic payment processing vendor, Municipay, charges a convenience fee in the amount of 2.65% of the payment (with a \$1.50 minimum), which fee is retained by the vendor and not paid to the Borough; and

WHEREAS, the charging of such processing fees is permitted by N.J.A.C. 5:30-9.9, but must be authorized by ordinance or resolution.

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

1. The Borough is authorized to charge the above-referenced processing fee for credit card payments, which fee shall be retained by the Borough's electronic payment processing vendor.
2. The Mayor and Clerk are authorized to execute the Addendum to the Service Agreement attached hereto in substantially the same form.

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Council Ordinance
Prepared By: Sallie Graziano

Initiator: Sallie Graziano

Sponsors:

INTRODUCED

ORDINANCE 2022-8

DOC ID: 3834

**Ordinance Amending Section 1404 of the Borough Code
Regarding the Historic Preservation Commission**

WHEREAS, the Borough of Flemington Historic Preservation Commission (the "Commission") has suggested the following amendments to the ordinances regarding the Commission's establishment, powers, and review procedures.

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

SECTION 1. Section 1404 of the Borough Code, entitled "Establishment of the Historic Preservation Commission" is hereby amended as follows (Additions noted in bold italics *thus* and deletions noted with a strikethrough ~~thus~~):

(See attached document)

Introduced: June 27, 2022

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

Ordinance 2022-8

ORDINANCE AMENDING SECTIONS 1404 OF THE BOROUGH CODE REGARDING THE HISTOIC PRESERVATION COMMISSION

WHEREAS, the Borough of Flemington Historic Preservation Commission (the "Commission") has suggested the following amendments to the ordinances regarding the Commission's establishment, powers, and review procedures.

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

SECTION 1. Section 1404 of the Borough Code, entitled "Establishment of the Historic Preservation Commission" is hereby amended as follows (Additions noted in bold italics *thus* and deletions noted with a strikethrough ~~thus~~):

- A. A Historic Preservation Commission (HPC) is hereby established consisting of 5 regular members and 2 alternate members, each of whom shall be appointed by the Mayor, of the following 3 classes:
 1. Class A - Persons who are knowledgeable in building design and construction or in architectural history;
 2. Class B - Persons who are knowledgeable or have a demonstrated interest in local history.
 3. Class C - Persons who are residents of the municipality and who hold no other municipal office, position or employment except for membership on the Planning Board.
 4. There shall be at least one regular member from each class. ***A majority of members shall be Class C. Class A and Class B members need not be residents of the municipality.***
 5. Alternate members shall meet the qualifications of Class C members and shall be designated "Alternate No. 1" and "Alternate No. 2" at the time of appointment.
- B. Terms of Membership.
 1. The term of each regular member shall be 4 years and the term of each alternate member shall be 2 years.
 2. Alternate Members. Alternate members shall be designated at the time of their appointment as "Alternate No. 1" and "Alternate No. 2."
 3. The term of any member in common with the Planning Board shall be for the term of membership on such Board.
- C. Role of Alternate Members. Alternate members may participate

in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any Class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, "Alternate No. 1" shall vote.

- D. Vacancies. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term, only. **All vacancies shall be filled within 60 days.**
- E. Compensation. Members of the HPC shall serve without compensation except that reimbursement of reasonable expenses in the execution of official duties may be made by the municipality.
- F. Removal. Any member may be removed by the governing body for cause but only after public hearing and other due process proceedings.
- G. Conflict. No member or alternate member of the HPC shall be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest. No member who is so disqualified may act on that particular matter, shall not continue to sit with the Commission on the hearing of such matter, nor shall participate in any discussion or decision.
- H. Organization. The HPC shall elect from its members a chairman and vice-chairman and select a secretary who may or may not be a member of the HPC or a municipal employee.
- I. Funding. The governing body shall make provisions in its budget and appropriate funds for the expenses of the Historic Preservation Commission.
- J. Rules and Procedures. The HPC shall adopt and may amend internal rules and procedures for the transaction of its business subject to the following:
 - 1. A quorum for any action by the HPC shall be 3 members.
 - 2. All HPC minutes and records shall be public records.
 - 3. All HPC meetings shall comply with the Open Public Meetings Act (N.J.S.A. 10:4-7 et seq.).
 - 4. HPC meetings shall be scheduled at least once every month or as often as required to fulfill its obligations to advise the Planning Board, governing body, or construction official.
- K. Role of the HPC.

1. For applications that would otherwise not require Planning Board review, the Zoning Officer shall refer the application to the HPC for a written report on the application *in accordance with ordinance §1631* and its compliance with the Borough's Historic District regulations. This report shall be submitted to the Zoning Officer, who shall issue a written approval or denial based on the HPC report, pursuant to N.J.S.A. 40:55D-111. The report of the HPC shall also be provided to the applicant and the Planning Board. The report shall be sent to the Zoning Officer within 45 days of the referral to the HPC. Failure of HPC to report within the forty-five-day period shall constitute a determination that the application is consistent with the Historic District regulations and that no condition on the issuance of the permit shall be imposed.

2. For applications that require Planning Board review based on provisions of the Borough Land Development Ordinance, the application shall be referred ~~shall be referred to~~ the HPC for a written report on the application in *accordance with ordinance §1631* and its compliance with the Borough's Historic District regulations. This report shall be submitted to the Planning Board which *shall issue a written approval or denial based on taking into account the HPC report and recommendations, pursuant to N.J.S.A. 40:55D*~~shall make a final decision on the matter.~~ The report of the HPC shall be sent to Planning Board, *Zoning Officer* and applicant within 45 days of the referral to the HPC or prior to the scheduled public hearing before the Board on the matter, whichever is sooner ~~or prior to the scheduled public hearing before the Board on the matter, whichever is sooner.~~ Failure of the HPC to report shall constitute a determination that the application is consistent with the Historic District regulations and that no condition shall be imposed on the issuance of any approval.

3. An applicant may appeal any determination of the Zoning Officer to the Borough Planning Board. Said appeal shall occur within 45 days of the final determination by the Zoning Officer.

- L. The HPC shall advise the Planning Board from time to time through the process of amending the Historic Preservation Element of the Master Plan.

- M. The HPC shall recommend to the Planning Board for their approval ~~recommend to the Planning Board guidelines for review to be utilized in~~ determinations of historic landmark status and undertake ~~for~~ reviews of ~~of~~ development applications or permits affecting historic landmarks or improvements within historic districts *in accordance with ordinance §1631*. ~~The Planning Board may~~

~~recommend modifications of the guidelines.~~

SECTION 2. Section 1405 of the Borough Code, entitled "Powers and Responsibilities of the Historic Preservation Commission" is hereby amended as follows (Additions noted in bold italics **thus** and deletions noted with a strikethrough ~~thus~~):

The Historic Preservation Commission shall have the following duties and responsibilities:

- A. To prepare a survey or surveys of historic sites and districts pursuant to criteria established in such survey;
- B. To make recommendations to the Planning Board on the Historic Preservation Element of the Master Plan and on the implications of any other Element on the preservation of historic sites and districts;
- C. To advise the Planning Board on the inclusion of historic sites in the recommended capital improvement program;
- D. To advise the Planning Board on applications for development;
- E. Provide written reports on the application of the zoning provisions of this Ordinance or other land development regulations on historic sites and districts;
- F. Provide technical assistance upon request to property owners on the preservation, restoration, and rehabilitation of historic structures;
- G. To carry out such other advisory, educational, and informational functions as will promote historic preservation in the municipality.
- H. To review applications in accordance with and for compliance with the Historic District Review Ordinance (Ordinance §1631) and Ordinance §1404.**
- I. To review and recommend to the Planning Board the designation of landmark and historic districts in accordance with Ordinance §1404.**

SECTION 3. Section 1631 of the Borough Code, entitled "Historic District Review Ordinance" is hereby amended as follows (Additions noted in bold italics **thus** and deletions noted with a strikethrough ~~thus~~):

- A. Introduction.** The requirements of this Historic District Review Ordinance shall apply to all development, including new construction, repair, renovation, alteration, reconstruction, demolition, relocation, and additions to existing buildings, structures, real property, natural objects or configurations or any portion or group of the foregoing which are located in the Flemington Borough Historic District, or specifically identified as historic sites within the Historic Preservation Plan of the Master Plan pursuant to N.J.S.A. 40:55D-28b(10). These requirements do not apply to normal maintenance

(including in-kind repair of existing building features, repainting of existing color schemes, in-kind repair of an existing roof, etc.). Prior to construction or alteration of buildings or structures in the Historic District, an Application for Review by the Flemington Historic Preservation Commission must be submitted to the Flemington **Historic Preservation Commission** Borough Clerk, and the project must be reviewed at one of the Commission's regularly scheduled meetings. See Chapter 14 of the Flemington Borough Land Development Ordinance for additional information regarding project review.

- 1. Definitions. In addition to the definitions set forth in Ordinance 1201, the following definitions apply in Ordinances 1404, 1405 and 1631:**

Addition shall mean an extension or increase in the size, floor area or height of any building, structure, site, object, or improvement added at some time after the completion of the original.

Alteration shall mean any change in the exterior features of any building, structure, site, object or improvement.

Application shall mean a request to the Commission made pursuant to this ordinance for the purposes of obtaining approval or other action by the Commission hereunder specified.

Building shall mean any man-made structure created principally to shelter any form of human activity as well as its functionally related appurtenances such as a house and a barn.

Commission shall mean the Historic Preservation Commission established pursuant to the provisions of Ordinance Sections 1404 and 1405.

Construction Official shall mean the officer in charge of granting building or construction permits in the Borough.

Contemporary shall mean any buildings, structures, sites, objects, or improvements in a historic district which date from a later period but possess some architectural importance and/or visually contribute to the cohesiveness of the district's streetscapes.

Contributing shall mean any buildings, structures, sites, objects or improvements which are integral components of a historic district either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant.

Demolition shall mean the partial or total razing, dismantling or

destruction, whether entirely or in significant part, of any building, structure, site, object or improvement. Demolition includes the removal of a building, structure, site, object or improvement from its location or the removal or destruction of its facade or surface.

Designated historic landmark or historic district shall mean an individual building, structure, site, object, landscape, park, viewshed, improvement or district which has been determined to have historical significance pursuant to the provisions of this ordinance.

Emergency repairs shall mean immediate repairs to preserve the continued habitability and/or the health and safety of occupants or others, performed in accordance with Borough codes without first submitting an application. A consultation with the Commission or its staff is still required.

Encroaching shall mean any buildings, structures, sites, objects or improvements in a historic district which date from a later period and do not visually contribute to the cohesiveness of the district's streetscapes.

Facade shall mean the face or front of a structure or any vertical surface thereof adjacent to a public way.

Historic shall mean having historical, cultural, architectural, archaeological, economic, social, or other significance as defined by the provisions of this ordinance.

Historical shall mean of, relating to, or having the character of history. Historic district shall mean a significant concentration, linkage or continuity of buildings, structures, sites, objects, or improvements united historically by plan or physical development which qualifies for designation under this ordinance including those which were formerly designated.

Historic district resources shall mean those resources classified as either significant, contributing, or noncontributing, which are defined as follows:

- a. Significant shall mean any buildings, structures, sites, objects or improvements which, due to their significance, would individually qualify for historic landmark status;***
- b. Contributing shall mean any buildings, structures, sites, objects or improvements on the site which are integral components either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is***

historically significant:

- c. Noncontributing shall mean any building, structure, site, object or improvement on the site which do not have significant historical value because they neither date from a time period nor represent an architectural type, period or method which is historically significant***

Historic landmark shall mean any building, structure, site, object or improvement which qualifies for designation under this ordinance.

Historic site shall mean any building, structure, site, landscape, object or improvement determined to be of historical, archeological, cultural, scenic or architectural significance in accordance with the provisions of this ordinance.

Improvement shall mean a building or other structure, or any work constituting a manmade alteration of, or addition to, any building, structure, site or object.

In-kind shall mean construction or construction materials that match construction or construction materials being replaced on a designated structure or object, thereby maintaining historic composition, design, color, texture and other visual qualities.

Integrity shall mean the authenticity of a building, structure, site, object, improvement or district evidenced by the survival of the physical characteristics that existed during its historic or prehistoric period.

Inventory shall mean a list of historic properties determined to meet criteria of significance specified herein.

Landscape shall mean the visual character of the land, including but not limited to architecture, building setbacks and height, fences, hedgerows, plantings, lawns trees as well as man-made features including, but not limited to, sculptures, patterned walks, fountains, reflecting pools and vistas.

Lot shall mean any designated parcel, tract, or area of land established by a plat or otherwise, as permitted by law and to be used, developed, or built upon as a unit.

Master plan shall mean the master plan of the Borough of Flemington, as amended from time to time, compiled pursuant to the Municipal Land Use Law.

Municipal Land Use Law shall mean the Municipal Land Use Law of the State of New Jersey, P.L. 1975, c. 291 (N.J.S.A. 40:55D-1, et seq.), as amended from time to time.

National Register Criteria shall mean the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places, as set forth in 36 C.F.R. 60.4, et seq.

Non-contributing shall mean any buildings, structures, sites, objects or improvements in a historic district which do not have significant historical value because they neither date from a period of significance nor represent an architectural type, period or method which is historically significant, or due to alterations, disturbances, additions, or other changes, no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period.

Object shall be used as a term to distinguish from buildings and structures those constructions or features that are primarily artistic in nature or are relatively small in scale and simply constructed. Examples include, but are not limited to, fountains, sculptures, statuary and similar items. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment.

Ordinary maintenance and repair shall mean the repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly as practicable to its condition prior to the occurrence of such deterioration, wear, or damage with in-kind material and quality workmanship.

Owner shall mean the owner of record as shown on the current tax list of the borough tax collector; the mortgage holder of record, if any, as shown in the mortgage records of the borough; and any purchaser under a land contract.

Partial Demolition shall mean the pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

Permit shall mean any required approval issued by the construction official pursuant to applicable building or construction codes for exterior work to be performed on any historic landmark or on any building, structure, object or site located within a historic district, which exterior work will be subject to public view. Said permit shall include but not be limited to a building permit, a demolition permit or a permit to move, convert, relocate or remodel or to change the use or occupancy of any landmark or any building, structure, object or site located within an historic district. "Permit" shall also include all exterior work to be performed on windows, doors, roofing, fences, signs, awnings, porches, railings, steps, lighting and sidewalks and any other work subject to public view which would alter the exterior appearance of historic landmarks or properties

located within a historic district or their sites.

Person shall mean any individual, natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, firms, companies, corporations, entities or unincorporated groups; or any officers, agents, employees, servants, factors or any kind of personal representatives of any thereof in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.

Preservation shall mean the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic landmark. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

Protection shall mean the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.

Reconstruction shall mean the act or process of reproducing, by means of new construction, the form, features and detailing of a non-surviving building, structure, site, object, improvement or landscape for the purpose of replicating its appearance at a specific period of time and in its historic location when documentary and physical evidence is available.

Rehabilitation shall mean the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historic values.

Replacement shall mean the act or process of replicating any exterior architectural feature that is used to substitute for an existing deteriorated or extensively damaged architectural feature. Restoration shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time. It may sometimes mean the removal of later work or the replacement of missing earlier work.

Secretary of the Interior's Standards shall mean the publication issued by the U.S. Department of the Interior, National Park Service, entitled: "The Secretary of the Interior's Standards for the Treatment

of Historic Properties," 36 C.F.R. 68, revised and supplemented from time to time.

Site shall mean the location of a significant event, a prehistoric or historic occupation or activity, a building or structure, or a burial ground or cemetery, whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure.

Significant shall mean any buildings, structures, sites, objects or improvements in a historic district which, due to their extraordinary significance, would individually qualify for historic landmark status.

Staff means the Historic Preservation Consultant, the Zoning Officer and such other consultants or officials as may from time to time be retained and/or employed to provide application review services to the Commission.

Streetscape shall mean the visual character of the street including, but not limited to, the architecture, building setbacks and height, fences, storefronts, signs, lighting, parking areas, materials, sidewalks, curbing and landscaping.

Structure shall be used as a term to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter, such as a bridge, a walkway, driveway and sometimes referred to as a type of improvement, meaning a combination of materials that becomes a part of, is placed upon, or is affixed to real estate.

Survey shall mean the inventory of buildings, structures, sites, objects, improvements and districts located within the Borough of Flemington which is conducted by the Commission for the ascertainment of their historical significance pursuant to the provisions of this ordinance.

Survey data shall mean the raw data produced by the survey; that is, all the information gathered on each property and area investigated.

View, vista or viewshed shall mean the view by the public of a building, structure, site, object, improvement or landscape from any point on a street, road or walkway which is used as a public thoroughfare, either vehicular and/or pedestrian.

B. The purposes of the Historic District Review Ordinance include:

1. Safeguarding the heritage of Flemington Borough by preserving its historical, cultural, social, economic and architectural resources;
2. Encouraging the continued use of historic buildings, structures and sites and to facilitate their appropriate re-use;
3. Maintaining and developing a harmonious setting for the historically significant buildings, structures, sites, objects and District;
4. Preventing the unnecessary demolition or relocation of historic resources;
5. Preventing new construction or development which is not in keeping with or that negatively impacts the ambience and character of the Historic District;
6. Encouraging the proper maintenance, per the Borough's existing Property Maintenance Code Chapter 9B, and preservation of buildings, structures and sites within the Historic District so as to promote Flemington Borough as an attractive area to live, work and visit;
7. Protecting and enhancing property values;
8. Promoting civic pride in and appreciation of Flemington Borough's historic resources for the education, pleasure and welfare of its citizens and visitors; and
9. Fostering beautification and private reinvestment.

C. General Guidelines.

1. **Building Design.** All development that is situated within the Flemington Borough Historic District and all development that affects individual historic sites shall be designed to reflect the design vocabulary, massing, proportion, directional expression, height, width, scale, orientation, windows, roof, details and materials of vernacular 18th and 19th and early 20th-century styles found in the Borough of Flemington. These styles include Georgian, Federal, Greek Revival, Gothic Revival, Italianate, Second Empire, Queen Anne, Shingle, Romanesque Revival, Colonial Revival, Neoclassical and Tudor Revival styles. Acceptable styles and examples from the relevant periods can be found within the following references, which are maintained for review in the Borough Hall and the Public Library:

- a. Historic District Guidelines; Flemington Historic Preservation Commission (~~McCormick Taylor, 2006~~); See for definitions of general architectural, style and building terminology, as well as more detailed design recommendations.
 - b. What Style Is It? A Guide to American Architecture (Poppeliers, John C., John Wiley & Sons, Inc., ~~1983~~)
 - c. A Field Guide to American Houses (McAlester, Knopf ~~1984~~)
 - d. Identifying American Architecture (Blumenson, Norton)
 - e. The Secretary of the Interior's Standards for the Treatment of Historic Properties (www.nps.gov/history/hps/tps/standards_guidelines.htm): See for definitions regarding historic preservation terminology including "preservation," "restoration," "rehabilitation," "reconstruction," "renovation," etc.
2. Procedures for review by the Flemington Historic Preservation Commission are contained within Chapter 14 of the Flemington Borough Land Development Ordinance.
 3. New buildings are not required to copy historic examples. Individual architectural expressions that incorporate the stylistic tenets of historical buildings are acceptable, provided that the design principles in the above references are adhered to. New buildings shall show a harmony of design with their surroundings, and any shapes, massing, materials, signs, lighting, colors and other characteristics which might cause a new building to call excessive attention to itself and create disharmony within the historic district, shall be avoided.
 4. All buildings shall be related harmoniously to the context of the site, the neighborhood as a whole and to existing buildings and other structures in the vicinity that have a visual relationship to the proposed building or buildings. The achievement of such relationship may include the enclosure of space in conjunction with other existing/proposed buildings or the creation of focal points. With respect to public spaces, building design/orientation may have to be adjusted in order to maintain a positive spatial relationship or to preserve visual access to community focal points, either natural or man-made.
 5. The selection of building design elements, for example in the

use of materials, windows, color, texture, and other design considerations, should ensure that such treatment is generally consistent with traditional and vernacular 18th and 19th and early 20th- century architectural styles. If the applicant is an existing building, the design elements shall be consistent with the existing building's style and configuration.

6. Building additions and renovations should be designed to reflect the existing building in terms of scale, materials, massing, window and door configuration and color.
7. Appearance of the side and rear elevations of buildings shall receive architectural treatments comparable to that of any proposed front façade only if said elevations are generally within the public view.
8. Buildings should, where appropriate, strengthen the particular design features of their neighborhood by, for example, reinforcing the "street wall", or continuing a particular design feature or statement. Such construction should complement the existing historic building designs in the Borough.
9. Buildings deemed to be "Significant" and indicated as such on the Flemington Historic District Map, shall be reviewed with particular care and have special requirements that are described later in this section (see Subsection C17). These are buildings that have been determined to be particularly important to the character of the Historic District.
10. Buildings located on Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, are also considered to be particularly important to the character of Flemington and the Historic District, partly through their location along the busiest thoroughfare and partly from the quality of buildings along this route. Many of these structures are indicated to be "Significant" on the Flemington Historic District Map. Because of the importance of this area to the character of the Borough, all of these buildings will be reviewed **for strict compliance with the Historic Guidelines** with particular care. ~~Some Buildings~~ that are deemed particularly prominent or visible **by the Historic Preservation Commission** shall be reviewed using the same criteria as "Significant" structures, even if they are not listed as such on the Historic District Map.
11. Contemporary designs for new buildings and for additions to existing buildings or landscaping in the Historic District are not

discouraged if such designs are compatible with the character, scale and materials of the neighborhood and its environment.

12. New additions or alterations to buildings should be done in such a manner that they reflect the materials, massing and scale of the existing building. In addition, alterations and additions should be designed such that they are reversible, i.e. that if they were to be removed in the future, the essential form and integrity of the original building would be unimpaired.
13. Exterior alterations should not destroy the distinguishing qualities or character of the property and its environment, and the removal or alteration of any historical material or architectural features is not permitted.
14. Deteriorated architectural features should be repaired rather than replaced wherever possible, and in the event, replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities.
15. Repair or replacement of missing architectural features should be based on accurate duplication of original features, substantiated by physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings.
16. Wherever possible, there should be compliance with the standards set forth in the "Secretary of the Interior's Standards for the Treatment of Historic Properties", as periodically amended and available through the National Park Service.
17. **Alternative Materials.** The use of nonhistoric, alternative materials may be considered under certain circumstances. These materials include, but are not limited to: vinyl or composite siding (smooth finish only); vinyl, fiberglass or composite railings and porch columns, particularly when these materials are paintable; fiberglass or composite trim, brackets or moldings; composite porch floor decks; vinyl, clad, or aluminum windows and doors; fiberglass/asphalt shingle roofing; etc. The use of these materials will be limited on all buildings or structures deemed to be "Significant" on the Flemington Historic District Map, or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, as indicated in Subsection C10 above. Specifically, the use of vinyl siding or windows and doors of alternative materials will

be prohibited on the public sides of "Significant" structures. Where visible roofs need to be replaced on "Significant" structures, using replacement materials and methods that match the historic materials is preferable. If the use of historic materials is not feasible, particular care will be taken in selecting alternative materials that match the historic appearance as closely as possible. Composite materials that are painted and that match the configuration of the historic materials are considered to be more acceptable than other replacement materials. Buildings in other parts of the Historic District that are considered to be "Contributing", "Non-Contributing" or "Encroaching" will be permitted to use alternative materials, provided that the following conditions are met:

- a. Vinyl or composite siding shall be smooth (i.e. not textured) and shall be of a scale and color compatible with the buildings in the immediate vicinity of the applicant property. Existing decorative trim shall not be removed or covered by new vinyl siding or trim casing. This trim shall be retained and repaired so that the building's distinguishing historic features shall remain.
- b. Replacement windows and doors shall fit the existing openings exactly and shall be configured to match the historic appearance and detail. Existing window and door openings shall not be "infilled" or made smaller to accommodate standard window or door sizes.
- c. Alternative materials may only be used to replace existing porches if the historic porch is not repairable, if the new porch configuration and appearance closely matches the original, and if the new materials that are clearly visible from a public way are painted. The Commission will consider additional new materials as they become available.
- d. Alternative materials may be considered for visible roofs when existing slate, copper, wood shakes, etc., are shown to be beyond repair. The alternative materials on the visible facades shall match the existing appearance as closely as possible. Alternative materials are acceptable to be used on roofs that are not visible from public streets.

18. Sustainable Energy Sources and Energy Efficiency. This Ordinance is not intended to discourage the installation and use of sustainable energy sources, including solar panels, geothermal wells and wind turbines, provided that the installations meet all required building, zoning and safety codes, etc., and that they are installed to have as minimal an impact on the visible portions of the historic property as possible. Particular care shall be taken to reduce the impact on buildings listed as "Significant" on the Flemington Historic District Map or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue.
19. This Ordinance is not intended to discourage the improvement of the energy efficiency characteristics of the historic structures in Flemington. However, where energy efficiency improvements are being considered, care should be taken to reduce negative impacts on the historic character of the building. In particular on all buildings or structures deemed to be "Significant" on the Flemington Historic District Map, or that are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, it is important to keep, repair or restore existing character-defining features that affect energy efficiency, including original doors and windows. Energy efficiency improvements for these features can be achieved through weather-stripping, interior storm windows, appropriate exterior storm windows or doors and other appropriate measures. See the Borough's "Historic District Guidelines" for suggestions.
20. Additional Matters Considered. In regard to all applications, additional pertinent matters may be considered, but in no instance shall interior arrangements be considered except as it may result in exterior changes important to the integrity of the historic structure, such as additions, chimneys, roof design, blocking of windows or similar changes.
21. ***Emergency reviews of applications to the Historic Preservation Commission may be requested for construction or repair work that is required to be undertaken before the next scheduled meeting of the Historic Preservation Commission. The applicant shall notify the Historic Preservation Commission and request an emergency review and the Historic***

Preservation Commission shall determine if an emergency review is required and the format of the review. Any work done by the applicant prior to formal approval by the Historic Preservation Commission shall be at the sole risk of the applicant.

a. In the event an applicant requires an emergency review, the applicant shall pay all fees incurred by the Commission to properly advertise an emergency meeting of the Commission.

D. Building Massing and Scale of New Buildings and Additions.

1. Scale of Building. The size of a proposed building or addition and the mass of a proposed building or addition in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings and built features to which it is visually related.
2. On proposed buildings and additions, long, horizontal facades should be broken down into segments having vertical orientation and tall vertically oriented facades shall be broken down into horizontal components through use of appropriate design features in proportions complementary to the overall architecture and design.
3. New buildings or additions with expansive blank walls are prohibited, particularly on sides of the building facing public ways.
4. New buildings and additions should be designed so that facades are the prominent architectural feature and the roofs are visually less dominant in the total design. Architecturally accurate roof styles shall be consistent with the surrounding historic context.
5. A pedestrian scale should be achieved at ground level and along street frontages and entryways through the use of such scale elements as windows, doors, columns, plazas, awnings, canopies, and site furnishings.
6. In new infill construction, the alignments of proposed facades shall be consistent with the existing setback of nearby buildings to the extent permitted by this Ordinance.
7. Height. The height of any proposed structure and landscaping shall be visually compatible with adjacent structures.

8. Proportion of Building's Front Façade. The relationship of the width of any new building or addition to the height of the front elevation shall be visually compatible with the nearby buildings and structures.
9. Proportion of Openings. The relationship of the width of windows to the height of windows in a new building or addition shall be visually compatible with the nearby buildings and structures.
10. Rhythm of Solids to Voids on Facades Fronting on Public Places. The relationship of solids to voids in facades of new or altered buildings shall be visually compatible with the nearby buildings and structures.
11. Rhythm of Spacing of Structures on Streets. The relationship of any new structure to the open space between it and adjoining structures shall be visually compatible with the nearby buildings and structures.
12. Rhythm of Entrance and/or Porch Projection. The relationship of new or renovated entrances and porch projections to the street shall be visually compatible with the nearby buildings and structures.
13. Roof Shapes. The roof shape of a new building or addition shall be visually compatible with nearby buildings and structures.
14. Walls of Continuity. Features of a proposed building or addition, such as walls, open-type fencing, evergreen landscape masses, shall form cohesive walls of enclosure along a street, to the extent necessary to maintain visual compatibility of any structure with the nearby buildings and structures.
15. Directional Expression of Front Elevation. A new or altered building shall be visually compatible with nearby buildings and structures, whether this is a vertical, horizontal or nondirectional character.

E. Facade Treatment.

1. The Flemington Historic Preservation Commission is particularly concerned with elevations of buildings that are visible from public ways. Rear and side elevations that are not visible will have greater flexibility in terms of design and materials.

2. Multi-tenant buildings shall provide uniform store fronts, doorways, windows, awnings and other design features for all ground floor tenants. Upper floors of said buildings shall at a minimum be coordinated with the ground floor through common materials and colors.
3. New buildings should use windows of similar sizes and shapes or incorporate other façade elements that establish the same pattern as other buildings in the immediate area.
4. Design elements that carry through a block such as store front patterns, window spacing, entrances, canopies or awnings, etc., should be incorporated into new or renovated facades.
5. Exterior mounted mechanical and electrical equipment (e.g. air conditioning units, satellite dishes, etc.) shall be located so that they are not visible from public ways, or shall be completely screened from public view with opaque architectural elements that are unobtrusive and visually compatible with the character of the Historic District and the nearby structures.
6. Facade renovations should be consistent with the original architectural style of the building. Original details should be retained; when it becomes necessary to introduce new features, they should harmonize with existing features. If windows and doors must be replaced, new windows and doors that match the original design should be used. Window and door sizes and shapes should not be altered by any building renovation. Changes to window and door sizes and configurations may be considered if a building is being restored to an earlier, documented, historic appearance. In buildings that are listed as Significant or which are located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, replacement doors, windows and trim on the visible facades should match the original materials. On other buildings, alternative materials may be used. See Subsection C10 for more information.
7. The use of overly dramatic and/or intrusive lighting designs and fixtures is not permitted.

F. Building Materials, Colors and Texture.

1. On existing buildings, original materials shall be retained

wherever possible. No existing brick or stone shall be covered for cosmetic reasons, and the repair and restoration of existing materials deemed of architectural value is strongly encouraged. Great care shall be taken in the cleaning and repair of existing materials. The gentlest, effective means shall be used in all cases. "Sandblasting" and other abrasive cleaning techniques, as well as harsh chemical cleaning methods are not to be used under any circumstances.

2. Where appropriate, building renovations shall incorporate elements of the original structure into the renovation design.
3. The use of brick, stone, clapboard, shakes and other façade materials of a traditional and vernacular nature is strongly encouraged. In general, a maximum of 2 principal facade materials shall be permitted for new structures.
4. Flat, metal panels and mirrored glass surfaces are prohibited on all existing, historic buildings, as are flush metal, composite or wood doors on visible facades. On buildings indicated as "Significant" on the map of the Flemington Historic District or buildings located along Main Street, from the Traffic Circle to the Monument, along East Main Street to Hopewell Avenue, as well as North Main Street from the Monument to Hopewell Avenue, the use of vinyl or aluminum siding on facades visible from public ways shall also be prohibited.
5. The painting of buildings in patterns, checks, stripes or overly bold colors is not permitted.
6. The use of colors generally associated with traditional building design is required on all buildings. Accent or complementary colors which harmonize with the main façade colors shall be permitted for trim, awning and other building details. Acceptable paint colors from the relevant periods can be found within the following reference, which is maintained for review in the Planning Office: *Paint in America, the Colors of Historic Buildings* (Moss, Roger, John Wiley & Sons, Inc., 1994)
7. Relationship of Materials, Texture and Color. The relationship of materials, texture and color of the facade and roof of a building shall be visually compatible with the predominant materials used in the buildings to which it is visually related, especially those immediately adjacent.

G. Demolition.

1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. The demolition or partial demolition of any structure deemed Contributing or Significant in the Historic District is generally not permitted, except when public health or safety is at risk, as certified by a licensed structural engineer, or there are other reasons deemed to be crucial for the future development and prosperity of the Borough.
2. Applications to demolish any structure within the Historic District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
 - a. The structure's historic, architectural and aesthetic significance;
 - b. Its current and potential uses;
 - c. Its overall condition, including a report from a structural engineer licensed in the State of New Jersey and with experience dealing with historic structures indicating its condition and suitability for preservation and re-use.
 - d. Its importance to the municipality and the extent to which its historical or architectural value is such that its removal would be detrimental to the public interest;
 - e. The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty;
 - f. The extent to which its retention would promote the general welfare;
 - g. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage, or make the municipality a more attractive and desirable place in which to live; and
 - h. The probable impact of its removal upon the character and ambience of the Historic District.

- i. The impact of its removal upon future development or redevelopment.

H. Relocation of Structures Out of the Flemington Historic District.

1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. Therefore, the review of applications for the relocation of any structure currently located within the Flemington Historic District to a location outside of the District will be undertaken with the greatest care. The relocation of any structure deemed Contributing or Significant in the Historic District is generally not permitted, except when public health and safety is at risk.
2. Applications to relocate any structure currently located within the Flemington Historic District to a location outside of the District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
 - a. The structure's historic, architectural and aesthetic significance;
 - b. Its current use;
 - c. Its condition, including a report from a structural engineer licensed in the state of New Jersey and with experience dealing with historic structures indicating its condition and suitability for relocation and re-use.;
 - d. The extent of the historic and architectural loss to the site and District that results from moving the structure from its original location;
 - e. The reasons for not retaining the structure at its present site;
 - f. The proximity of the proposed new location to Flemington Borough, including the accessibility by the residents of Flemington Borough and other citizens;
 - g. The probability of significant damage to the structure during the relocation.
 - h. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in

American culture and heritage, or make the municipality a more attractive and desirable place in which to live; and

- i. The probable impact of its relocation upon the character and ambience of the Historic District.
- j. The impact of its relocation upon future development or redevelopment.
- k.

I. Relocation within Flemington Borough.

1. The integrity of historic districts depends on the preservation and retention in situ of the original historic structures. Therefore, the review of applications for the relocation of any structure currently within the Flemington Historic District to another location within the District will be undertaken with the greatest care. The relocation of any structure deemed Contributing or Significant in the Historic District is not permitted.
2. Applications to relocate any structure currently located within the Flemington Historic District to another location within the District must be presented to the Flemington Historic Preservation Commission and must address the following issues, as well as any other factors the Historic Preservation Commission considers to be relevant:
 - a. The structure's historic, architectural and aesthetic significance;
 - b. Its current use;
 - c. Its condition;
 - d. The extent of the historic and architectural loss to the site and District that results from moving the structure from its original location;
 - e. The reasons for not retaining the structure at its present site;
 - f. The probability of significant damage to the structure during the relocation;
 - g. The extent to which its retention would encourage study and interest in Flemington's history, stimulate interest and study in architecture and design, educate citizens in

American culture and heritage, or make the municipality a more attractive and desirable place in which to live;

- h. The probable impact of its relocation upon the character and ambience of the Historic District; and
- i. The compatibility, nature and character of the current and of the proposed surrounding areas as they relate to the intent and purposes of this Ordinance.
- j. The impact of its relocation upon future development or redevelopment.

J. Other Requirements.

1. Signage. Appropriately designed signage can be an important design feature in the Historic District. A member of the Historic Preservation Commission is appointed by the HPC Chair to the SRC (Sign Review Committee) and participates in the review of proposed signage on properties within the Historic District, whether or not they will be attached to a structure. Relatively small, painted signage either mounted to the face of the building as part of the storefront design, or perpendicular to the face of the building, is encouraged. Large, contemporary, neon or neon-like, or plastic internally illuminated signs are not permitted, as are signs that conceal important architectural features. All signs must also meet the requirements of the Flemington Land Development Ordinance, Chapter 26, Zoning.
2. Awnings. Appropriately designed awnings may be acceptable on residential and nonresidential buildings. All awnings shall be constructed and installed so that the frame and fabric of the awning is integrated into the overall building design. Awnings shall not extend beyond a dimension appropriate with the size and scale of the subject building. Awnings shall not be placed so as to conceal or disfigure any architectural feature or detail. Awning materials shall be limited to cloth, canvas and similar materials; metal and aluminum awnings are prohibited. Plastic and/or internally illuminated awnings are also prohibited. Awnings may be solid or striped, but colors shall complement the façade colors. If the building has several tenants, the overall awning design should be consistent and compatible across the entire façade.

3. **Public Art.** All art visible from public ways, including murals, outdoor sculpture, etc., that is being permanently attached or applied to structures in the Historic District shall be reviewed by the Flemington Historic Preservation Commission for compatibility with the design of the building and neighboring structures.
4. **Street Furniture.** The installation of all street furniture, including benches, fencing, trash cans, lighting, planters, etc., that is visible from public ways must be reviewed by the Flemington Historic Preservation Commission. The items should be selected to fit the scale, materials and character of the Historic District.
5. **Building and Accessibility Codes.** The Flemington Historic Preservation Commission does not review applications for compliance with relevant building or accessibility codes. Compliance with these codes is the responsibility of the applicant. The Flemington HPC review in no way supersedes or alters building code or accessibility requirements, although these codes, including the Rehabilitation Subcode and Barrier Free Subcode of the Uniform Construction Code of the State of New Jersey, take into account existing conditions and the special characteristics of historic buildings. Any changes to the exterior of a building in the Flemington Historic District that are necessitated by requirements of building and handicapped accessibility codes should be designed to complement the character and style of the existing building to the greatest degree possible.

K. Violations and Penalties.

1. Any person who undertakes an activity which would cause a change in the exterior architectural appearance of any improvement within the Flemington Historic District or on any individually listed structure by addition, alteration, relocation, demolition or replacement without obtaining the approval of the Flemington Historic Preservation Commission shall be deemed to be in violation of this Ordinance.
2. Upon learning of the violation, the Construction Official for Flemington Borough shall personally serve upon the owner of the lot or property whereon the violation is occurring a notice describing the violation in detail and giving the owner 10 days to abate the violation by restoring the property, structure or improvement to the condition it was in prior to the violation

occurring. If the owner cannot be personally served within the municipality with this notice, a copy shall be posted on the site and a copy sent to the owner at his or her last known address as it appears on the municipal tax rolls.

3. In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the Construction Official shall cause to be issued a summons and complaint, returnable in the Municipal Court, charging violation of this Ordinance and specifying the wrongful conduct of the violator. Each separate day the violation exists past the initial 10-day abatement period shall be deemed to be a new and separate violation of this Ordinance.
4. The penalty for violation past the initial 10-day abatement period shall be as follows:
 - a. For each day up to 15 days, not more than \$50.00 per day.
 - b. For each day 16 to 30, not more than \$75.00 per day.
 - c. For each day beyond 30 days, not more than \$100.00 per day.
5. If any person undertakes activity which would cause a change to the exterior architectural appearance of any structure within the historic district or of any structure individually listed as historically significant within the Borough of Flemington by addition, alteration or replacement without first having obtained the approval of the Historic Preservation Commission, he or she shall be required to immediately stop the activity, apply for approval and take any necessary measures to preserve the historic structure affected, pending a decision. If the proposed project is denied, the historic structure shall be immediately restored to its pre-activity condition. The Construction Official is authorized to seek injunctive relief regarding a "stop action" on the activity in the Superior Court, Chancery Division, not less than 10 days after the delivery of notice pursuant to Subsection K2 above. Such injunctive relief shall be in addition to the penalties authorized in Subsection K4 above.

L. Designation of Historic Landmarks and Historic Districts

1. ***The Commission shall maintain and expand, when appropriate, a comprehensive survey of the Borough of Flemington to identify historic landmarks and historic districts that are worthy of protection and preservation.***
2. ***Criteria for Designation. The criteria for evaluation and***

designating historic landmarks and historic districts shall be guided by the National Register Criteria as currently published and amended from time to time. The Commission or any person may recommend designation of historic landmarks or historic districts that are in accordance with the National Register Criteria or that possess one or more of the following attributes:

- a. Character, interest, or value as part of the development, heritage or cultural characteristics of the borough, State or Nation; or**
 - b. Association with events that have made a significant contribution to the broad patterns of our history; or**
 - c. Association with the lives of persons significant in our past; or**
 - d. Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or**
 - e. Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the borough, State or Nation; or**
 - f. Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or**
 - g. Unique location or singular physical characteristics that make a district or landmark an established or familiar visual feature; or**
 - h. Ability or potential ability to yield information important in prehistory or history.**
- 3. Procedures for Designation. Proposals to designate a property as historic pursuant to this ordinance may be made by the governing body, the Commission, or the planning board, in accordance with the following procedures:**
- a. Nomination report for historic landmark. A**

nomination to propose an historic landmark shall include the following information which addresses the criteria for designation as set forth herein:

- i. A photograph of the proposed landmark; and***
 - ii. A copy of the municipal tax map showing the property on which the proposed landmark is located; and***
 - iii. A physical description of the proposed landmark; and***
 - iv. A statement of significance.***
- b. Nomination report for historic district. A nomination to propose an historic district shall include the following information which addresses the criteria for designation as set forth herein:***
- i. A building-by-building inventory of all properties within the district identifying significant, contributing, non-contributing, or encroaching; and***
 - ii. A photograph of each property and building within the district; and***
 - iii. A copy of the municipal tax map of the district showing boundaries; and***
 - iv. A physical description of the proposed district; and***
 - v. A statement of significance.***
- c. Schedule a hearing. Following receipt of a nomination to propose an historic landmark or historic district, the Commission shall schedule a public hearing on the proposed designation.***
- d. Notification requirements. At least 20 days prior to the public hearing, the Commission shall, by personal service or certified mail, perform the following:***
- i. Notify the owner(s) of record of a property that has been proposed for historic landmark designation, or the owner(s) of record all properties located within a district that has been proposed for historic district designation, that the property or district, as***

applicable, is being considered for such designation and the reasons therefor;

- ii. Advise the owner(s) of record of the significance and consequences of such designation, and of the rights of the owner(s) of record to contest such designation under the provisions of this ordinance;**
- iii. Notify the owner(s) of record of the date, time and location of the hearing concerning the proposed designation of the property or district; and**
- iv. Serve any further notices as may be required under the provisions of the Municipal Land Use Law.**
- e. Public notice of hearing. At least 20 days prior to the public hearing, the Commission shall also cause public notice of the hearing to be published in the official newspaper of the borough.**
- f. Public report. At least 20 days prior to the public hearing, a copy of the nomination report shall also be made available for public inspection in the municipal offices of the borough.**
- g. Public hearing. At the public hearing scheduled in accordance with this ordinance, the Commission shall review the nomination report and accompanying documents. Interested persons shall be given the opportunity to be heard and to comment on the proposed nomination for designation.**
- h. Commission report. If the proposed nomination is approved by the Commission, then the Commission shall forward a report to the Planning Board for review, which shall contain a statement of the Commission's recommendations and the reasons therefor with regard to proposed designations considered at the hearing, including a list and map of properties approved for designation.**
- i. Report to governing body. The Planning Board shall review and provide a report with recommendations to the governing body as soon as possible, but within 60 days.**
- j. Final designation. As soon as possible after its receipt of the report of the planning board, the**

governing body shall act upon the proposed designation list and map and may approve, reject or modify by ordinance the designation recommendations made by the planning board. In the event that the governing body votes to reject or modify any planning board recommendations for a proposed designation, the governing body shall record in its minutes the reasons for not following such recommendation.

- k. Public notice of designation. Notice of designation shall be made public by publication in the official newspaper of the borough and by distribution to all municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to the owner(s) of record.**

- l. Incorporation of designated landmarks into Borough records. Upon adoption of a resolution by the governing body designating an historic landmark or an historic district, the said designation shall supplement, rather than supersede, the existing zoning district in which the affected historic landmark or historic district is located. At that time, the designation list and map shall be incorporated into the master plan and zoning ordinance of the borough as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Designated properties shall also be noted as such on the records for those properties as maintained by the engineering and zoning offices, as well as the offices of the construction official, the borough tax assessor and the borough clerk. In addition to the requirement for notation in the foregoing borough records upon the designation of a landmark or historic district by the governing body, within 90 days of the adoption of this Ordinance, there shall be entered upon the property records in the offices of the Tax Assessor, the Construction Code Official, the Borough Engineer, the Zoning Officer and the Borough Clerk a notation which identifies the designation of each property located within or historic district as constituted on the date of adoption hereof.**

Each tax/assessment search requested for a property located within an historic district shall

note thereon the subject property is so located. Similarly, all forms maintained and issued by the Construction Code Official, Borough Engineer, Zoning Officer and Borough Clerk responsive to requests for information, permits, and like documents, shall contain a notation which identifies, as applicable, the designation of a property within an historic district as constituted on the date of the adoption hereof and as new landmarks as historic district designations occur hereafter.

- m. Amendments. Amendments to historic landmark or historic district designations may be made in the same manner as they were adopted in accordance with the provisions of this ordinance.***

M. Appeals.

Whenever the Commission shall make a final decision regarding the grant or denial of a permit, the decision shall be subject to appeal to the Planning Board operating as the Zoning Board of Adjustment as provided under N.J.S.A. 40:55D-70. An appeal from the decision of the Planning Board operating as the Zoning Board of Adjustment shall be made in the same manner as permitted and prescribed by law for appeals from any other decisions made by such Boards in accordance with applicable law.

N. Escrow Review Fees

The Commission may require an applicant for a demolition or relocation permit to post a review escrow fee in an amount not to exceed \$1,000.00 if the review of said application will be complicated and require consultation with a professional engineer or architect. Such escrow account will be managed consistent with the Municipal Land Use Law (N.J.S.A. 40:55D-53.1 et seq.) and Ordinance Section 2800.

SECTION 4. All ordinances of the Borough of Flemington, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 6. This Ordinance shall take effect upon final passage and publication as

required by law.

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Land Development
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

INTRODUCED

ORDINANCE 2022-10

DOC ID: 3846

**An Ordinance Authorizing the Purchase of Property
Designated as Block 42, Lot 9 (200 Main Street)**

WHEREAS, Main 200, LLC (the “Property Owner”) is the owner of Block 42, Lot 9 (the “Property”); and

WHEREAS, the Borough wishes to acquire the Property for public purposes, specifically to establish a new Police Department headquarters and develop a drinking water well; and

WHEREAS, Borough and the Property Owner agreed on a purchase price of \$1,500,000.00; and

WHEREAS, the Borough will be funding the purchase through a bond; and

WHEREAS, the New Jersey Local Land and Buildings Law, N.J.S.A. 40A:12-3, *et seq.*, requires adoption of an ordinance to authorize the acquisition of the Property.

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

SECTION 1.

Subject to the availability of funds described herein, the Borough is hereby authorized to acquire the Property as referenced hereinabove for the amount of \$1,500,000.00

SECTION 2.

The Mayor and Clerk are hereby authorized and directed to take all necessary actions and execute all necessary documents, including but not limited to a Contract of Sale (in a form substantially similar to that attached hereto as Exhibit “A”), a deed of conveyance, HUD-1 settlement statement, affidavit of title, and such other closing documents in order to authorize both the acquisition and conveyance of the Property.

SECTION 3.

This Ordinance shall take effect after final passage and publication as prescribed by law.

Introduced: July 11, 2022

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT is made on _____, 2022 (the "Effective Date")

BETWEEN

Main 200, LLC, a New Jersey limited liability company, whose address is c/o Dr. Daniel Cassell, 830 Callowhill Road, Perkasio, PA 18944, or its permitted assignee, referred to as "Seller,"

AND

BOROUGH OF FLEMINGTON, a municipal corporation and body politic of the County of Hunterdon in the State of New Jersey, and having an address at 38 Park Avenue, Flemington, New Jersey 08822, hereinafter referred to as "Purchaser",

WITNESSETH:

WHEREAS, Seller is the owner of certain real property having a common address of 200 Main Street, Flemington, New Jersey, and shown on the Tax Map of the Borough of Flemington, County of Hunterdon, as Block 42, Lot 9, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the same from Seller.

NOW, THEREFORE, in consideration of the covenants, agreements, and promises herein contained, and in consideration of the payment of the Earnest Money, the parties hereto do hereby covenant and agree as follows:

1. **Purchase and Sale**. Seller agrees to sell, transfer, assign and convey to Purchaser, and Purchaser agrees to purchase, accept and assume, subject to the terms and conditions stated herein, all of Seller's right, title and interest in and to the Property. As more specifically set forth in Paragraph 6 hereunder, the Purchaser agrees to use the property in accordance with applicable zoning laws.

2. **Purchase Price**. The "Purchase Price" of the Property shall be **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND &00/100 (\$1,500,000.00)**.

3. **Escrow of Purchase Price**. The State of New Jersey filed a Notice of Lis Pendens against the Property, which is recorded in the Hunterdon County Clerk's Office in Deed Book 2024, Page 910. Such Lis Pendens was filed in connection with an Order Authorizing the Seizure and Restraint of Property Subject to Forfeiture entered by the Honorable Lisa Miralles Walsh, A.J.S.C., seeking forfeiture in rem of the Property, pursuant to N.J.S.A. 2C:64-1 et seq.; which is recorded in the Hunterdon County Clerk's Office in Deed Book 2465, Page 169. Therefore, the

Purchase price shall be paid by Purchaser at closing to the "Treasurer of the State of New Jersey" and held in escrow by the State of New Jersey.

The Borough's obligations hereunder shall cease with the deposit of the full purchase price as set forth in this Paragraph. Seller shall hold the Borough harmless and release the Borough of all claims associated with the payment or deposit of the purchase price once such is deposited with the State of New Jersey.

4. **Borough's Contingencies.** The Borough's obligation to close is contingent upon the following:

(a) passage of an ordinance by the Borough governing body approving the transaction contemplated herein;

(b) filing of a Consent Order signed by Seller and the State of New Jersey acknowledging that the closing proceeds can be paid into escrow held by the State of New Jersey and that Seller's closing costs may be paid out of the purchase price;

(c) discharge of the Notice of Lis Pendens noted in Paragraph 3 hereunder; and

(d) amendment of the Order Authorizing the Seizure and Restraint of Property Subject to Forfeiture noted in Paragraph 3 hereunder to delete reference to the Property;

(e) passage of a bond ordinance by the Borough to fund the purchase of the Property and the running of any applicable appeal period.

5. In the event that these contingencies are not satisfied within six (6) months of the date of this Contract, each party may cancel this Contract upon written notice to the other.

6. **Condition of Title.**

(a) **Condition of Title.** Title to the Property shall be conveyed by Seller to Purchaser by Bargain and Sale Deed (the "Deed"), with covenants against grantor's acts, which shall be recordable under the laws of New Jersey subject only to real estate taxes and assessments, both general and special, which are a lien but not yet due and payable as of the Closing Date and to such additional exceptions noted in the Title Commitment, if any, that do not constitute "Unpermitted Encumbrances" within the meaning of *Section 6(b)* (collectively, the "Permitted Encumbrances).

(b) **Title Insurance Commitment and Survey.** For a period of thirty (30) days after the Effective Date (the "Title Review Period"), Purchaser shall have the right, but not the obligation, to review the condition of title to the Property. Purchaser, at its sole cost and expense, may obtain a commitment (the "Title Commitment") for an Owner's Policy of Title Insurance to be issued for the Property by a title agent selected by Purchaser and satisfactory to Seller in its reasonable discretion. Purchaser also may obtain a survey of the Property (the "Survey") at its sole cost and expense. In the event the Title Commitment discloses exceptions to title, other than standard or general exceptions, to which Purchaser objects, Purchaser shall so notify Seller and

shall deliver to Seller legible copies of all documents cited, raised as exceptions or noted in the Title Commitment (collectively, the "Title Documents"). Purchaser shall have until the end of the Title Review Period to notify Seller in writing of any such exceptions that Purchaser finds objectionable (the "Unpermitted Encumbrances"). Upon receipt of a notice of Unpermitted Encumbrances with respect to the Property from Purchaser, Seller may either (i) provide written notice that Seller shall not undertake any efforts to have the Unpermitted Encumbrances removed, or (ii) provide written notice that it intends to have the Unpermitted Encumbrances removed from the Title Commitment or have the title insurer commit to insure against loss or damage occasioned thereby. If Seller elects option (ii), Seller shall have thirty (30) days to have the Unpermitted Encumbrances corrected, removed from the Title Commitment, or, if Purchaser so agrees, to have the title insurer commit to insure against loss or damage occasioned thereby. If Seller informs Purchaser that it will not take any actions to have such Unpermitted Encumbrances removed from the title commitment or fails to have said Unpermitted Encumbrances so removed or insured over within the period allowed to Seller set forth above, then Purchaser, at Purchaser's option, may, within five (5) days thereafter, elect any one (1) of the following: (i) terminate this Agreement, in which event neither Party shall have any further liability hereunder other than for those provisions which expressly survive the termination of this Agreement; (ii) consummate the transaction contemplated herein, and take title to the Property as same can be conveyed; or (iii) extend the time period allowed to Seller to have said exceptions removed or insured over as set forth above (and to extend the scheduled Closing Date, if necessary) for a period of thirty (30) days (in which case the elections set forth in clauses (i) and (ii) above shall apply at the expiration of such five (5) day period). If Purchaser does not elect clause (i), (ii), or (iii) above within the requisite five (5) day period, Purchaser shall be deemed to have elected clause (ii) above.

7. Closing.

(a) Time and Place. The consummation of the transaction contemplated hereby (the "Closing") considers that the closing is anticipated to take place within sixty (60) days from the execution of this Contract, or on such earlier date agreed upon by the Parties, at the Borough Hall. Such date can be extended upon mutual agreement of the Parties. All parties will proceed diligently to meet the above date.

(b) Closing Costs. Purchaser shall pay the Realty Transfer Fee required by the State of New Jersey, and Purchaser shall pay all other recording fees with respect to the Deed. Purchaser shall pay for the title searches, the premium on the title insurance policy, and the cost of any endorsements required by Purchaser. Each party shall pay its own attorney's fees. Seller and Purchaser further agree that any closing costs not otherwise provided for herein shall be paid according to the prevailing customs for commercial property transactions in the county and the state where the Property is located.

(c) Closing Prorations. At Closing, all items customarily prorated (with the exception of ad valorem taxes and assessments, and assessments for utilities, including sewer and water) shall be prorated between Seller and Purchaser as of 12:01 a.m. on the date of Closing based upon the actual number of days in each month and year applicable to such calculation. Neither party shall be entitled to additional funds based upon re-prorations or adjustments after Closing. All prorations shall be subject to approval of the State of New Jersey, Office of Attorney General.

8. **Closing Deliveries.**

(a) At Closing, Seller shall deliver or cause to be delivered the following:

(i) A Bargain and Sale Deed with Covenants Against Grantor's Acts in substantially the same form as the deed attached hereto as Exhibit B and by reference made a part hereof (the "Deed");

(ii) an executed owner's affidavit in a form acceptable to Purchaser's Title Company, if Purchaser elects to obtain Title Insurance;

(iii) an executed affidavit or certificate in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations promulgated thereunder, stating under penalty of perjury Seller's United States identification number and that Seller is not a "foreign person" as that term is defined in Section 1445;

(iv) the amount, if any, due from Seller to Purchaser in respect of prorations, as provided in Section 4(c) hereof; and

(v) such other items reasonably necessary for consummating the transaction contemplated hereby.

(b) At Closing, Purchaser shall deliver the following:

(i) the Purchase Price, as adjusted by prorations and costs as provided in this Agreement;

(ii) a settlement statement;

(iii) such other items reasonably necessary for consummating the transaction contemplated hereby.

(c) All documents listed in *Section 5(a)* and *Section 5(b)* above must be duly and properly executed by the respective parties thereto.

9. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as follows:

(a) Status. Seller is a limited liability company duly formed and validly existing under the laws of the State of New Jersey.

(b) Authority. The execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been or will be duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller, subject to equitable principles and principles governing creditors' rights generally.

(c) Non-Foreign Entity. Seller is not a “foreign person” or “foreign corporation” as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(d) Environmental Condition. Seller represents that it has no actual knowledge or belief of environmental contamination on or in the Property and that it has no actual knowledge of past industrial use of the Property.

(e) No Other Representations or Warranties. Except as expressly set forth in this *Section 6*, Seller makes no representation or warranty, express or implied, in respect of any of the Property or the liabilities or operations of Seller, including, without limitation, with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed.

10. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as follows:

(a) Authority. The execution and delivery of this Agreement and the performance of Purchaser’s obligations hereunder have been or will be duly authorized by all necessary action on the part of Purchaser and this Agreement constitutes the legal, valid and binding obligation of Purchaser, subject to equitable principles and principles governing creditors’ rights generally.

(b) Consents. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby, except for any required agreement of the State of New Jersey, Office of Attorney General, and the providing of required documentation by said Office.

11. **Default; Remedies.** In the event of either party’s default hereunder, the non-defaulting party agrees to provide the defaulting party with written notice of such default specifying the nature of such default. The defaulting party shall have a five (5) day period after the date of receipt of said notice in which to cure said default. In the event Seller does not cure any default of which it has received notice within said five (5) day period and Purchaser is ready, willing and able to perform all obligations imposed upon Purchaser hereby, Purchaser shall be entitled to terminate this Agreement and receive an immediate refund of all Earnest Money paid hereunder (and the parties shall have no further rights or obligations hereunder except for those that expressly survive a termination of this Agreement) or to pursue an action for specific performance of this Agreement within thirty (30) days after the expiration of the five (5) day period within which Seller has not cured a default for which it has received notice. In no event shall Purchaser be entitled to pursue a claim for damages against Seller. In the event Purchaser does not cure any default of which it has received notice within said five (5) day period and the transaction contemplated hereby is not closed by reason of Purchaser’s default (and Seller has performed all of its obligations hereunder) then the Earnest Money shall be paid to Seller as full liquidated damages, this Agreement shall be null and void, and none of the Parties hereto shall have any further rights or obligations hereunder, except for such rights or obligations that survive a termination of this Agreement.

12. **Broker.** There is no real estate Broker involved with no real estate commission owed.

13. **Notices.** Except as may otherwise be provided for in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be sufficient if delivered to the party being given such notice at the respective address set forth below by one of the following methods: (a) in person, (b) by overnight delivery service prepaid, (c) by U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, or (d) by facsimile or email transmission with either a confirmation of receipt by the receiving party or a copy sent no later than the next Business Day by method (a), (b) or (c).

As to Purchaser: Borough of Flemington
38 Park Ave.
Flemington, NJ 08822
mhumphrey@historicflemington.com

with a copy to: Tara St. Angelo, Esq
Gebhardt & Kiefer, PC
1318 Route 31 North
Annandale, NJ 08801
908-735-5161
tstangelo@gklegal.com

As to Seller: Dr. Daniel Cassell
830 Callowhill Road
Perkasie, PA 18944

with a copy to: Elliot Scher, Esq.
Benenson & Scher, P.A.
159 Millburn Avenue
Millburn, NJ 07041

Such notices shall be deemed to have been given when sent. Any party may change said address by giving the other parties hereto notice of such change of address.

14. **Bulk Sale Notification.** Pursuant to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, Purchaser may be required to notify the Division of Taxation in the Department of the Treasury of the State of New Jersey (the "Department"), at least ten (10) days prior to the transfer of title, of the proposed sale and of the price, terms, and conditions of the transaction (the "Bulk Sale Notification"). Seller agrees to fully cooperate with Purchaser, and provide any such necessary information, in connection with Purchaser's filing of a Bulk Sale Notification. If Purchaser files a Bulk Sale Notification and the Department determines that any or all of Seller's proceeds are to be held in escrow following the Closing, then such funds as determined by the Department shall be held in escrow by Purchaser's Title Company until such time as the parties are in receipt of a tax clearance letter from the Department authorizing the release of the escrow. Purchaser shall be responsible for submitting the required notification of the pending sale to the Department, to the extent it is required in connection with this transaction, and Seller agrees to fully cooperate with

any such submissions. Seller shall be solely responsible for all taxes, interest, and penalties due and owing to the State of New Jersey by Seller, and hereby agrees to indemnify and hold Purchaser harmless against any and all taxes, interest, and penalties that may be due to the State of New Jersey by Seller. Upon receipt of notice of the sums owed to the State of New Jersey, Purchaser's Title Company is authorized to disburse such amounts from the escrow in satisfaction of such outstanding obligation. The escrow established shall not terminate until the requirements of the Division of Taxation in establishing the escrow have been satisfied as evidenced by a clearance letter. This Section shall survive the Closing.

15. **Due Diligence and Inspection Period.**

(a) Purchaser shall have thirty (30) calendar days from the Effective Date (the "**Inspection Period**"), at its sole cost and expense to conduct non-invasive environmental and physical condition inspections. by a qualified professional or consultant, all at the sole expense of the Buyer. Such inspections shall be conducted on reasonable advance notice, but in no event less than twenty-four (24) hours, to the Seller, during regular business hours, in a good and workmanlike manner, in compliance with all applicable legal requirements, and in a manner so as not to interfere with the conduct of any business at the Property.

(b) Seller shall permit Purchaser to have such access to the Property as Purchaser may reasonably require for itself, its representatives, and consultants to inspect the condition of the Property. All such inspections and access to the Property will be upon at least 48 hours advance notice to Seller. Purchaser acknowledges and agrees that any inspections conducted by Purchaser, its employees, contractors or agents shall be solely at the risk of Purchaser. As a condition precedent to any such entry, Purchaser shall deliver to Seller evidence of general liability insurance from Purchaser or the applicable consultants issued by a reputable insurer for Seller's benefit protecting Seller against damage to the Property, third-party property damage and personal injury from such risks, in such amounts (not to be less than \$1,000,000 combined single limits) and in form reasonably satisfactory to Seller and naming Seller and any additional parties requested by Seller as an additional insured. Purchaser shall restore the Property, at Purchaser's sole cost and expense, after any such inspection to the pre-existing condition thereof. This provision shall survive the Closing or termination of this Agreement.

(c) Purchaser shall indemnify, defend, hold and save Seller harmless from and against any and all suits, proceedings, claims, loss, cost, damage, injury or expense, including without limitation, reasonable counsel fees, arising out of or in any way related to the acts of Purchaser, its agents, contractors, consultants or employees in connection with the exercise by Purchaser of its rights under this *Section 15*. This provision shall survive the Closing or termination of this Agreement.

16. **Miscellaneous.**

(a) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns (to the extent assignment is permitted hereunder).

(b) Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with the laws of the State of New Jersey. In the event that any dispute hereunder results in the filing of legal action, the parties agree that such action will be maintained only in a court of competent jurisdiction in Hunterdon County, New Jersey.

(c) Headings; References. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Wherever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

(d) Counterparts. This Agreement may be executed in two or more counterparts and by facsimile or emailed PDF, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(e) Entire Agreement; Amendment. This Agreement is intended by the parties hereto to be the final expression of their agreement with respect to the subject matter hereof and is the complete and exclusive statement of the terms thereof notwithstanding any representations, statements or agreements to the contrary heretofore made. This Agreement may be modified only by a written instrument signed by each of the parties hereto.

(f) Time. Time is of the essence of this Agreement. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline that is set forth in this Agreement falls on a day that is not a Business Day, then such date shall be automatically extended to the next Business Day. For purposes of this Agreement, a "Business Day" is any day that is not a Saturday, Sunday or federal legal holiday.

(g) Possession. Possession of the Property shall be delivered to Purchaser at Closing.

(h) Risk of Loss. The Seller shall use reasonable efforts to preserve the Property in the same condition as of the date of this Contract, except for normal wear and tear, until the closing. If there is damage to the Property and the cost of repair is more than \$100,000.00 the Purchaser may cancel this Contract. If Purchaser chooses not to cancel the Contract, Seller shall assign to Purchaser any insurance proceeds that are payable with respect to the damage to the Property. Otherwise, the Purchaser shall take the Property in its AS-IS, WHERE-IS condition.

(i) Survival; Representations and Warranties. Except as expressly provided herein, the representations, warranties and agreements of the parties contained herein, if any, shall merge into the Deed and shall not survive Closing. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto.

(j) Drafting of Agreement; Severability. The parties each acknowledge and agree that none of the terms or provisions of this Agreement shall be construed against any of the parties merely because of who may have drafted such term or provision and that, if any of the terms or provisions of this Agreement are or should be void or unenforceable, all of the remaining

terms and provisions of this Agreement are and shall be applicable to the fullest extent permitted by law.

(k) Prevailing Party. In any litigation, arbitration or other legal proceeding that may arise between the parties hereto, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

(l) Waiver of Jury Trial. In any civil action, counterclaim, or proceeding, whether at law or in equity, that arises out of, concerns, or relates to this Agreement, any and all transactions contemplated by this Agreement, the performance of this Agreement or the relationship created by this Agreement, whether sounding in contract, tort, strict liability, or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. Each party hereby irrevocably waives any right it may have to a trial by jury. Any party may file an original counterpart or a copy of this Agreement with any court, as written evidence of the consent of the parties to this Agreement of the waiver of their right to trial by jury. Neither party has made or relied upon any oral representations to or by any other party regarding the enforceability of this provision. By execution of this Agreement, each party acknowledges that it has read and understands the effect of this jury waiver provision. Each party acknowledges that it has been advised by its own counsel with respect to the transaction governed by this Agreement and specifically with respect to the terms of this Section, or has waived such advice of counsel.

(m) Effective Date. The "Effective Date" of this Agreement shall be the date upon which the last of Seller or Purchaser has executed this Agreement with any changes thereto having been initialed by all parties.

IN WITNESS WHEREOF, each party hereto has executed this Agreement on the day and year indicated below.

PURCHASER:

THE BOROUGH OF FLEMINGTON

By: _____

Name:

Date of Execution:

SELLER:

Main 200, LLC

SELLER:

Main 200, LLC

~~By: _____~~

Name: Daniel Cassell

Title: Manager _____

Date of Execution: 7/13/2022

Exhibit A
(Description)

Exhibit B

BARGAIN AND SALE DEED
[see next page]

After Recording Return to:

Prepared By: Tara St. Angelo, Esq.

Bargain and Sale Deed

THIS DEED is made on _____, 2022
BETWEEN

Main 200, LLC, a New Jersey limited liability company, whose address is 830 Callowhill Road,
Perkasie, PA 18944

herein referred to as *Grantor*,

AND

THE BOROUGH OF FLEMINGTON, a public corporation of the State of New Jersey
whose address is 38 Park Avenue, Flemington, NJ 08822

herein referred to as *Grantee*.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants, conveys, and transfers ownership of the property described below to the Grantee. This transfer is made for the sum of **One Million Five Hundred Thousand (\$1,500,000.00) Dollars**. The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-1.1) Municipality of **Flemington Borough**
Block No. 42 Lot No. 9

Property. The Property consists of the land and all buildings and structures on the land in the Borough of Flemington, County of Hunterdon, and State of New Jersey. The legal description of the property is:

All that (those) certain lot(s), tract(s) or parcel(s) of land, with the buildings and improvements thereon erected, situate, lying and being in Flemington Borough, County of Hunterdon and State of New Jersey, and is bounded and described as follows:

See Exhibit A.

Being the property conveyed to Grantor by Deed of _____, dated _____, and recorded on _____, in the Hunterdon County Clerk's Office in Book _____ of Deeds, at page _____.

This conveyance is made subject to all restrictions, easements and rights of way of record and to all zoning laws and ordinances of the Borough of Flemington and subject further to such facts as an accurate survey may disclose.

GRANTOR'S COVENANTS. (N.J.S.A. 46:4-6) Grantor covenants that the Grantor has not allowed anyone else to obtain any legal rights which affect the property. Grantor further covenants that the Grantor has done no act to encumber the property.

Signatures. The Grantor signs this Deed as of the date at the top of the first page.

Witnessed By:

BY: _____

STATE OF NEW JERSEY,

SS.:

COUNTY OF HUNTERDON

I CERTIFY that on _____, 2022, _____ personally came before me and this person acknowledged under oath, to my satisfaction, that: (a) this person is the _____ of Main 200, LLC, the grantor named in the attached deed; (b) this person is attesting witness to the signing of this DEED by the proper officer who is _____ of 200 Main LLC; (c) this DEED was signed and delivered by Main 200, LLC as a voluntary act duly authorized by proper authorization of members of the limited liability company;; (d) the full and actual consideration paid for this Deed is \$ _____; and (e) this person signed this proof to attest to the truth of these facts.

Notary Public of the State of New Jersey
My Commission Expires:

DEED

Dated: _____ ,

=

Record and return to:

200 Main, LLC

Grantor

TO

The Borough of Flemington

Grantee

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 07/25/22 07:30 PM
Department: Clerk of the Borough
Category: Council Ordinance
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

INTRODUCED

ORDINANCE 2022-11

DOC ID: 3848

An Ordinance Authorizing the Consumption of Alcoholic Beverages in Certain Areas of the Borough of Flemington

WHEREAS, on January 18, 2022 Governor Murphy signed P.L.2021, c.395, which allows municipalities to designate outdoor areas upon which people may consume alcoholic beverages; and

WHEREAS, certain areas of the Village Artisan District of the Borough of Flemington (the “Borough”) have long been hubs of entertainment and activity, and there are a number of food and beverage establishments in those areas for the public to enjoy; and

WHEREAS, the success of permitting expanded outdoor dining as a result of the COVID-19 pandemic has made it apparent that Borough restaurants and other food and beverage establishments benefit from permitting patrons of such establishments to possess open containers of alcoholic beverages in certain areas; and

WHEREAS, permitting such outdoor consumption also benefits the public health by providing for open air social distancing; and

WHEREAS, it is apparent that the public desires these opportunities to enhance their enjoyment of the Borough’s food and beverage establishments; and

WHEREAS, those open container areas would help both visitors to the Borough and local residents safely enjoy the open spaces and food and beverage experiences that the Borough has to offer and would be consistent with the intent of the new legislation allowing consumers to purchase alcohol for individual consumption; and

WHEREAS, in addition to areas of the Village Artisan District of the Borough, there are other times and areas of the Borough in which the open consumption of alcoholic beverages should be formally permitted, such as during special Flemington Community Partnership-sponsored events.

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

SECTION I. Chapter 10 of the Borough Code, entitled “Streets and Sidewalks”, shall be and hereby is amended by adding a new section, 10-7, “Open Container Areas” as follows:

10-7. Establishment of Open Container Areas.

A. Pursuant to P.L.2021, c.395, it shall be lawful for any person who is at least 21 years of age to consume open containers of alcoholic beverages outdoors in the following areas:

1. Stangl Road between Church Street and Mine Street, but only in those areas that are delineated, designed and/or partitioned for use as outdoor seating or dining areas or for social activities (said areas commonly referred to and defined herein as “parklets”), or on the sidewalks abutting or immediately adjacent to said areas, as well as on the roadway or portions thereof which have been sufficiently closed to vehicular traffic and reserved exclusively for pedestrian use. Such permitted consumption of open containers shall be limited to Fridays between the hours of 4pm and 11pm, Saturdays between the hours of 1pm and 11pm, and Sundays between the hours of 1pm and 8pm.

B. A “Parklet” is defined as an area over parking spaces adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches, and other accessory components may be placed to create an enhanced pedestrian experience for the general public and patrons of retail businesses, offering an area where one might sit, rest, recreate, socialize and/or indulge in open air dining and beverage experience. No parklet shall exist within the Borough of Flemington without the permission of the Borough.

C. Notwithstanding the provisions of this Ordinance, the sale of alcoholic beverages for consumption in an open container area shall be subject to the provisions of Title 33 of the Revised Statutes of the State of New Jersey, rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and all other municipal ordinances.

D. This Ordinance does not, and is not intended to, confer any greater rights upon a holder of an ABC license or permit than that permitted by the Division of Alcoholic Beverage Control itself, or any law, rule, or regulation regarding alcoholic beverage licenses and permits.

SECTION II. Section 5-6.3 of the Borough Code, entitled “Permitted” Exceptions”, concerning the consumption of alcoholic beverages in public places, shall be amended as follows (additions noted in bold italics *thus*, and deletions noted in strikethrough ~~thus~~):

A. The Borough Council may, by motion and upon application being made therefor and for good cause, permit the possession and consumption of alcoholic beverages within premises not covered by a plenary retail consumption liquor licensee, for special functions or social events. The permission if granted, shall be consistent with the Alcoholic Beverage Control Law of the State of New Jersey and the regulations enacted pursuant thereto, and upon such further conditions as may be imposed by the Borough Council.

B. Consumption of alcoholic beverages is permitted in certain public areas during certain times consistent with Section 10-7, entitled “Open Container Areas.”

SECTION III. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION IV. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the

validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION V. This Ordinance shall take effect after passage and publication in the manner provided by law.

Introduced: July 11, 2022

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk