

Escrow Agreement

This Agreement made this ____ day of _____, 2020 between Martucci Engineering, LLC, hereinafter referred to as “Martucci,” and Borough of Flemington, hereinafter referred to as the “Borough;”

WHEREAS, the Borough entered into a Second Amended and Restated Redevelopment Agreement (the “Redevelopment Agreement”) with Flemington Center Urban Renewal, LLC (“FCUR”) on or about _____ pertaining to the construction of a mixed-use redevelopment project on property identified on the Borough Tax Map as Block 22 Lots 4, 5, 6, 7, 8, 9, 10 and 12 and Block 23, Lots 1 and 7, which is commonly referred to as the “Union Hotel Redevelopment Project”; and

WHEREAS, pursuant to Section 4.4(c)(iii) of the Redevelopment Agreement, FCUR is contributing Three Million Dollars (\$3,000,000.00) to an escrow account to fund the construction of certain water and sewer infrastructure improvements associated with the Union Hotel Redevelopment Project (the “Infrastructure Improvements”); and

WHEREAS, pursuant to the Redevelopment Agreement, the Borough awarded the contract for design of the Infrastructure Improvements to Martucci; and

WHEREAS, the Redevelopment Agreement further provides in Section 4.4(c)(v) that the Borough must meet certain “Infrastructure Milestones;” and

WHEREAS, the Parties agree to enter into this Escrow Agreement to ensure that such milestones are met and proper disbursements made for engineering work are made; and

NOW, THEREFORE, it is mutually agreed upon among the parties as follows:

1. Escrow Account. Pursuant to the Redevelopment Agreement, FCUR shall deposit money into the escrow account maintained by the Borough in installments prior to the Borough’s

execution of every contract related to the design, development, or construction of said Infrastructure Improvements. Each installment shall equal the amount of the applicable contract.

2. Use of Funds in Escrow Account. The parties agree that the newly deposited funds in the established Escrow Account may be used only for the purpose of reimbursing the Borough, as invoiced by Martucci, for the engineering and design of the Infrastructure Improvements.

3. Engineering Costs Incurred Prior to Execution of this Agreement. The Parties acknowledge that Martucci began work on the design of the Infrastructure Improvements prior to the execution of this Escrow Agreement. Such work is noted in the invoice attached hereto as Exhibit B. By signing this Escrow Agreement, the Borough acknowledges that such invoice is due to be paid and may be paid from the Escrow Account contemplated herein. Such invoice has already been reviewed by the Borough and may be paid upon the first deposit by FCUR into the Escrow Account.

4. Review of invoices received from Martucci Engineering, LLC. Martucci shall submit invoices to the Borough on a monthly basis and at least one week prior to the Borough Council's first meeting of the month. Upon receipt of invoices from Martucci, the Borough shall review said invoices to assure that services have actually been performed in accordance with the received invoice. Such invoices shall be approved for payment at the first monthly meeting of the Borough Council, provided such invoices are timely provided. Payment shall not be made to Martucci from the Escrow Account if the Borough reasonably determines that the work indicated on the invoice has not actually been performed. The Borough shall have no liability to FCUR if it is subsequently determined the work described in an invoice was not, in fact, performed.

Martucci shall also provide FCUR with a copy of all invoices submitted by Martucci to the Borough for the engineering work contemplated herein, within a reasonable time after receipt of

said documents and/or report, letters and other correspondence as well as all invoices by the Borough. The Borough shall also provide statements of account with respect to the Escrow Account established pursuant to this escrow agreement consistent with the requirements of N.J.S.A. 40:55D-53.2.

5. Infrastructure Milestones. Martucci shall meet the Infrastructure Milestones indicated in the Redevelopment Agreement, which are further outlined in the Schedule attached hereto as Exhibit A. If Martucci fails to meet such deadlines, Martucci shall indemnify and hold harmless the Borough from and against any and all demands, suits, causes of action, recoveries, judgments, losses, and costs and expenses (including reasonable attorneys' fees and expenses and experts' fees and expenses) asserted by FCUR arising from the failure to meet such deadlines. Martucci's liability shall be limited to the amount of design and engineering costs related to the Infrastructure Improvements. The Borough shall provide notice to Martucci if such claim is made by FCUR as soon as reasonably possible, but in any case within ten (10) Days of the Borough receiving actual notice of such a claim, provided, however, that in the event such notice is not timely received, Martucci shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

Martucci shall not be held responsible for failure to meet Infrastructure Milestones as a result of: delays in outside agencies issuing permits, delays caused by the need to remediate contaminated soil, delays caused by FCUR's failure to provide information or deposits into the Escrow Account, delays proximately caused by contractors hired by FCUR or the Borough, delays caused by a state of emergency or public health emergency, delays caused by the Borough's failure to timely receive funding required to pay for its portion of the Infrastructure Improvements, delays caused by contractors outside the control of Martucci or the Borough.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals first above written.

MARTUCCI ENGINEERING, LLC

By: Robert Martucci
Robert Martucci, Managing Member

FLEMINGTON BOROUGH

By: _____
BETSY DRIVER, MAYOR

		Timeline																																					
		Aug				Sep				Oct				Nov				Dec				Jan				Feb				Mar				Apr				May	
	USDA/NO	3	10	17	24	1	8	15	22	29	6	13	20	27	4	11	18	25	1	8	15	22	29	5	12	19	26	3	10	17	24	31							
	Description of Task																																						
	Receive Engineering Plan																																						
	Apply Ocean Funding from USCA/USACE																																						
	Detailed Survey																																						
	Final Drawing																																						
	Condition Plan																																						
	Preliminary Design																																						
	Design Review																																						
	Detailed Design and Specifications																																						
	Construction and Ocean																																						
	Complete and Obtain																																						
	Waterwall Extension																																						
	Complete Ocean																																						
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**Martucci Engineering, LLC**

Consulting Civil and Municipal Engineering

49 East Main St
Flemington, NJ 08822

908-297-2422

rmartucci@martucciengllc.com

Invoice

Date	Invoice #
9/11/2020	4

Bill To
Borough of Flemington Attn: Sallie Graziano, Clerk 38 Park Ave. Flemington, NJ 08822

Invoice No.	Project Name
4396.019-1	Hotel Redevelopment

Date	Description	Name	Rate	Hours	Amount
	For Services Rendered July 2020				
8/7/2020	Work on Draw Schedule and Concept Plan	Robert Martucci	115.00	4	460.00
8/14/2020	Utility Meeting, Work Plans Specs Estimate	Robert Martucci	115.00	3	345.00
8/17/2020	Work on Revised Schedule and Cost Estimate/Breakdown	Robert Martucci	0.00		0.00
8/24/2020	Send Bond Ordinance Request to Council and CFO	Robert Martucci	115.00	1	115.00
8/27/2020	Meet with RTMUA and Sewer Superintendent to Review Concept Plan	Robert Martucci	115.00	2	230.00

Authorized Signature:

Total**\$1,150.00**