

**CONDITIONAL DESIGNATION AND ESCROW AGREEMENT**  
**BY AND BETWEEN THE BOROUGH OF FLEMINGTON AND**  
**CARDINAL CAPITAL MANAGEMENT, INC.**

**THIS CONDITIONAL DESIGNATION AND ESCROW AGREEMENT** (this “Agreement”) dated as of March , 2022, by and between the **BOROUGH OF FLEMINGTON** (the “Borough”), having municipal offices at 38 Park Avenue, Flemington New Jersey 08822, acting pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., and **CARDINAL CAPITAL MANAGEMENT, LLC** a limited liability company authorized to do business in the State of New Jersey, having offices at 901 S. 70<sup>th</sup> Street, West Allis, Wisconsin 53214, (“Cardinal”) (collectively, the “Parties”).

**WITNESSETH**

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

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

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

**WHEREAS**, the Borough desires that certain property located within the Global Agway Redevelopment Area be redeveloped in accordance with the Global Agway Redevelopment Plan,

as may be amended from time to time (the “Redevelopment Plan”), a complete copy of which is on file at Borough Hall:

- Block 14, Lot 1 –consisting of 2.27 acres and fronting on Main Street and Park Ave. (“Project Site”)

**WHEREAS**, the Borough has determined that the proposal submitted by Cardinal (the “Proposal”), a copy of which is attached hereto as **Exhibit A**, reflects a project that is consistent with the Borough’s Master Plan, and reflects the goals and objectives of the Redevelopment Plan; and

**WHEREAS**, the Borough has determined that Cardinal has demonstrated that they have the experience, expertise, financial capability and the vision to assist the Borough in the implementation of the Redevelopment Plan; and

**WHEREAS**, the Borough, and Cardinal desire to negotiate a Redevelopment Agreement (a “Redevelopment Agreement”) to set forth the detailed terms and conditions for the overall redevelopment of the Project Site based generally upon the Proposal as a starting point for negotiations, subject to the provisions herein, and further review and evaluation by the Borough; and

**WHEREAS**, the Borough shall, during the Interim Period, as that term is defined herein, negotiate exclusively with Cardinal for the redevelopment of the Project Site; and

**WHEREAS**, the Borough requires that Cardinal pay the reasonable costs incurred by the Borough associated with the engagement of such consultants and professionals as it may deem appropriate, in connection with the drafting and negotiation of a Redevelopment Agreement, and all other costs, fees and expenses related to this matter that are incurred from the Effective Date (as hereinafter defined) through the execution of any Redevelopment Agreement, all as further

set forth herein, in order to relieve the taxpayers of the burden of the expense of the negotiation process.

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

1. **Conditional Designation.** Upon the complete execution of this Agreement, Cardinal shall be designated as the conditional redeveloper of the Project Site, on the express and absolute condition that the Parties shall successfully negotiate the details and issues regarding the redevelopment project, including those items identified herein, and execute a Redevelopment Agreement within the time frame set forth herein. In the event that the Parties are unable to reach agreement on the terms and conditions of a Redevelopment Agreement and this Agreement is terminated as provided herein, the designation of Cardinal as the conditional redeveloper of the Project Site shall be automatically terminated without any further action being necessary and the Borough shall have no further obligation of any kind to Cardinal.

2. **Interim Period.** The term “Interim Period” shall mean the period of one hundred and eighty (180) calendar days commencing on the date of the full execution of this Agreement (the “Effective Date”); provided however, that the Parties may continue to negotiate with each other beyond the initial one hundred and eighty (180) calendar days of the Interim Period without the necessity for any formal amendment to this Agreement, and in the event that the Parties continue such negotiations beyond the Interim Period, any such timeframes shall be included within the definition of the term “Interim Period” for purposes of this Agreement, including with regard to Cardinal’s designation as the conditional redeveloper of the Project Site, and the applicability of the terms and conditions herein.

During the Interim Period, the Borough agrees to negotiate exclusively with Cardinal

toward the preparation and execution of a Redevelopment Agreement, which shall include all the project details, schedules, and financial arrangements between the Borough and Cardinal with respect to the redevelopment of the Project Site, and all such related terms and conditions.

3. **Termination.** During the Interim Period, either party may cease negotiations and terminate this Agreement if the other party is not diligently negotiating in good faith or it is determined by either party, in its sole discretion, that a Redevelopment Agreement cannot be successfully negotiated and executed for any reason, provided that the party making such determination notifies the other party accordingly, in writing as set forth herein, terminating the Agreement as of a date certain. In the event that this Agreement is terminated, then neither party hereto shall be bound by any further obligations hereunder to the other, except as may exist with regard to the payment or reimbursement of Costs, as that term is defined herein, incurred from the Effective Date through such termination.

4. **Payment or Reimbursement of Costs.** Cardinal shall pay or reimburse the Borough, as applicable, all reasonable Costs incurred by the Borough associated with any reasonable activities, tasks or work related to or arising out of the designation of Cardinal as the conditional redeveloper of the Project Site. The term “Costs” shall include, but not be limited to, all reasonable costs, fees and expenses incurred by the Borough in connection with, related to or arising out of the designation of Cardinal as the conditional redeveloper of the Project Site, the preparation or undertaking of any compliance reviews, the drafting and negotiation of any Redevelopment Agreement, the review of any future revised proposal(s) submitted, all professional fees charged by any legal, engineering, planning or financial consultant or contractor or vendor retained by the Borough in connection with same, including any such professional staff employed by the Borough (“Staff Time”), and all other such costs, fees and expenses incurred by the Borough in connection with the preparation of a Redevelopment

Agreement which shall be incurred prior to the execution of any Redevelopment Agreement or the termination of this Agreement, should that result occur.

Cardinal acknowledges and agrees that it shall fully reimburse Costs as aforesaid incurred by the Borough, even if this Agreement is terminated and a Redevelopment Agreement between the Borough and Cardinal is not executed for any reason. As further set forth in Paragraph 2 herein, Cardinal expressly agrees that in the event the Parties continue negotiations following the expiration of the initial one hundred and eighty (180) days of the Interim Period, all costs and fees incurred by the Borough during such timeframe shall be included in the definition of the term “Costs” and shall be paid or reimbursed by Cardinal in the same manner as set forth herein. Notwithstanding anything contained in this paragraph to the contrary, Staff Time for work related exclusively to the redevelopment of the Project Site by Cardinal shall be charged at the then-prevailing hourly rate of the professional staff person assigned to such work. The terms of this Agreement regarding the escrow shall be exclusively as set forth in this Agreement, notwithstanding the provisions of any law, statute, regulation or ordinance that may contain alternative provisions or procedures with respect to any kind of escrow or escrow arrangement.

Notwithstanding anything to the contrary set forth herein, the Parties acknowledge and agree that until execution of a Redevelopment Agreement, Cardinal shall only be obligated to pay and reimburse the portion of the Costs incurred from the Effective Date of this Agreement. In the event that this Agreement is terminated as provided herein, Cardinal’s total obligation to reimburse Costs shall be limited to those incurred by the Borough during the Interim Period.

5. **Deposit of Project Funds.** Within ten (10) days from the Effective Date of this Agreement, Cardinal shall deposit Twenty Five Thousand (\$25,000.00) Dollars (“Project Escrow”) with the Borough to be maintained in a separate escrow account by the Borough and to be drawn down upon by the Borough to cover the Costs. The Borough shall promptly provide

Cardinal with copies of invoice(s) setting forth the Costs incurred by the Borough after the Effective Date which invoices shall set forth the nature of the tasks undertaken, the amount of time expended and the hourly rate charged by each individual performing such tasks, which have been drawn from the Project Escrow. Cardinal shall have seven (7) business days following receipt of such invoice(s) to submit to the Borough, in writing, any question(s) and/or objection(s) to such invoice(s) and payment(s) thereof.. Notwithstanding, the receipt of any such written question(s) and/or objection(s) by the Borough shall not prevent the Borough from paying the invoices at issue in full and the Parties shall cooperate with each other in good faith to resolve the question(s) and/or objection(s). In the absence of the Borough receiving any such written question(s) and/or objection(s) as set forth herein, the invoices shall be deemed accepted.

Within fifteen (15) days of the receipt by Cardinal of written notice from the Borough that the amount of the Project Escrow has decreased to Five Thousand (\$5,000.00) Dollars or less, Cardinal shall promptly replenish the Project Escrow to the amount of Twenty-Five Thousand (\$25,000.00) Dollars. Cardinal expressly acknowledges and agrees that the Borough, including the Borough's legal, engineering, planning and financial consultants, reserves the right to stop or withhold any work or other such activities in connection with the redevelopment of the Project Site unless or until the Project Escrow is funded accordingly.

Subject to the terms herein, in the event that a Redevelopment Agreement is not ultimately executed by the Parties and this Agreement is terminated in accordance with the terms hereof, the Borough shall draw down upon the Project Escrow in order to pay all invoices for any Costs incurred after the Effective Date that are due and owing, through the termination. Within thirty (30) days from the date of any termination of this Agreement, the Borough shall return any remaining Project Escrow to Cardinal. In the event of a termination of this Agreement in the absence of the execution of a Redevelopment Agreement, Cardinal expressly acknowledges and

agrees that it shall not be entitled to a refund of any Costs incurred by the Borough after the Effective Date and paid or reimbursed to the Borough from the Project Escrow. In the event that a Redevelopment Agreement is ultimately executed, this Agreement shall terminate and the Project Escrow shall remain on deposit in escrow with the Borough to cover Costs incurred by the Borough after the execution of such Redevelopment Agreement, which Redevelopment Agreement shall contain a provision providing for the payment of such Costs and allowing any remainder of the Project Escrow to be so utilized.

6. **Scope of Project Negotiations.** The Parties have had preliminary discussions regarding the scope of the project to be covered by the Redevelopment Agreement. The Parties agree that the description of the project set forth in the Proposal shall provide the basis for the commencement of negotiations for the Redevelopment Agreement, subject to the provisions herein. The Parties further agree, however, that the Parties are not limited by the description of the project set forth in the Proposal, nor does the Proposal contain an exhaustive list of all terms, conditions and/or obligations to be included in a Redevelopment Agreement. The continuing negotiations between the Borough, and Cardinal shall consider a number of issues to refine the description of the overall project set forth in the Proposal and the terms of a Redevelopment Agreement, which may include, but are not limited to, the following:

- (a) building design and architecture, including with regard to façade materials to be utilized;
- (b) building sizes, including building height and bulk, setbacks;
- (c) streetscaping;
- (d) landscaping;
- (e) lighting;

- (f) signage;
- (g) infrastructure improvements necessitated by or related to the Project, both on and off the Project Site;
- (h) stormwater management;
- (i) provision of community benefits;
- (j) Construction Mitigation Plan to address potential impacts of construction on the operations of nearby businesses, including with regard to staging;
- (k) Affordable housing
- (l) any amendments to the Redevelopment Plan.

7. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter herein, and supersedes all prior negotiations, agreements and understandings with respect thereto.

8. **Assignment or Transferability.** This Agreement shall not be assigned or transferred by Cardinal to any entity without the express written authorization of the Borough, which shall be by Resolution.

9. **Exhibits.** All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

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

11. **Execution of Counterparts.** This Agreement may be executed in one or more counterparts.

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

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

14. **Notices.** Notices, demands or other such communications between the Borough and Cardinal shall be deemed sufficiently given if dispatched to the address set forth herein by certified mail, return receipt requested, or by recognized national overnight delivery service, where such notice shall be deemed delivered, as to the former upon mailing and as to the latter, upon delivery with receipt available.

15. **Severability.** If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable except to the extent that the invalidation of such terms or provisions shall deprive either Party of the essential rights granted by this Agreement.

**[Remainder of this Page Intentionally Left Blank; Signature Page to Follow]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed, all as of the date first above written.

**CARDINAL CAPITAL MANAGEMENT  
LLC**

Attest:

\_\_\_\_\_

By:

\_\_\_\_\_

Name:

Title:

**BOROUGH OF FLEMINGTON**

Attest:

\_\_\_\_\_

By:

\_\_\_\_\_

Betsy Driver

Mayor, Borough of Flemington

**[Signature Page for Conditional Designation and Escrow Agreement]**

{274685.DOCX.1}

**EXHIBIT A (to Conditional Designation Agreement)  
Project Site**



STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF )

I CERTIFY that on \_\_\_\_\_, 2022, \_\_\_\_\_  
personally came before me, and this person acknowledged under oath, to my satisfaction, that  
this person, Erich Schwenker is the President of CARDINAL CAPITAL MANAGEMENT LLC,  
a limited liability company, which is the company named in this document; and signed and  
delivered this document as his/her act and deed on behalf of the said entity.

\_\_\_\_\_

Signed and sworn to before me

on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

