

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the “**Agreement**”) is effective as of the 11th day of June, 2021 (the “**Effective Date**”) by and between the **TOWNSHIP OF LIVINGSTON**, a municipal corporation of the State of New Jersey, having its offices at 357 South Livingston Avenue, Livingston, New Jersey 07039 (the “**Township**”) and **FRIEDMAN FIREHOUSE, LLC**, a New Jersey limited liability company, having its offices at 343 West Mount Pleasant Avenue, Livingston, New Jersey 07039 (and its successors and assigns, including an affiliated urban renewal entity, the “**Developer**” and, together with the Township, the “**Parties**”).

W I T N E S S E T H :

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

WHEREAS, on August 28, 2018, by Resolution No. 18-164, and in accordance with the provisions of the Redevelopment Law, the Township Council of the Township of Livingston (the “**Township Council**”) authorized and directed the Planning Board of the Township of Livingston (the “**Planning Board**”) to conduct an investigation of certain properties within Block 3700 of the Township, including those identified on the tax maps of the Township as Block 3700, Lots 28, 29 and 30 (collectively, the “**Property**”), and to determine whether all or a portion of the Property meets the criteria set forth in the Redevelopment Law, *N.J.S.A. 40A:12A-5*, to be designated as a non-condemnation redevelopment area in accordance with the Redevelopment Law, *N.J.S.A. 40A:12A-6*; and

WHEREAS, the Planning Board received a report setting forth the basis for the investigation and a map depicting the Property prepared by Preferred Planning Group LLC, entitled, “Area in Need of Redevelopment Investigation for Block 3700 Lots 1-8, 24, 25 and 27-30” dated October 28, 2020, concerning the determination of the Property as an area in need of redevelopment (the “**Report**”); and

WHEREAS, pursuant to the Redevelopment Law, on February 16, 2021 the Planning Board conducted a public hearing during which members of the general public were given an opportunity to be heard and to address questions to the Planning Board and its representatives, concerning the potential designation of the Property as an area in need of redevelopment; and

WHEREAS, on February 16, 2021, after conclusion of the public hearing described above, the Planning Board voted to adopt and accept the recommendation contained in the Report and recommended that the Property be declared a non-condemnation area in need of redevelopment, in accordance with the Redevelopment Law, for the reasons set forth in the Report; and

WHEREAS, the Township Council agreed with the conclusion of the Planning Board that the Property satisfied criteria for redevelopment area designation and, pursuant to the Redevelopment Law, on February 22, 2021 by Resolution No. 21-099 the Township Council

designated the Property as an area in need of redevelopment without the power of eminent domain (the “**Redevelopment Area**”); and

WHEREAS, the Parties have negotiated the terms of this Agreement to provide for the funding of redevelopment activities regarding the Property; and

WHEREAS, the Developer has agreed to fund certain Township costs, including but not limited to those relating to the adoption of a redevelopment plan for the Redevelopment Area, and negotiation and execution of a redevelopment agreement for the construction of a project on the Property (the “**Project**”); and

WHEREAS, the Township has authorized this Agreement to provide for the funding of redevelopment activities, including planning and legal costs incurred to date, costs to prepare the redevelopment plan for the Redevelopment Area, costs to negotiate a redevelopment agreement between the Parties and other costs associated with the redevelopment of the Property and construction of the Project thereon, in order to establish a mechanism for the provision of sufficient funds so that the undertaking of such work causes no financial hardship to the Township; and

WHEREAS, in consideration for such funding the Township shall enter into exclusive negotiations with the Developer for the aforementioned purposes,

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree each with the other as follows:

ARTICLE I

DEFINITIONS; PURPOSE OF THE AGREEMENT; EXCLUSIVITY

Section 1.01. Definitions. As used in this Agreement the following terms set forth in this Section shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation”. The words “agree,” “agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections or Articles shall refer to Sections or Articles in this Agreement. All Block and Lot references used in this Agreement shall refer to Blocks and Lots appearing on the official tax maps of the Township.

The following terms shall have the definitions ascribed to them below:

“**Agreement**” shall have the meaning specified in the preamble.

“**Developer**” shall have the meaning specified in the preamble.

“Effective Date” shall have the meaning specified in the preamble.

“Interim Costs” shall include reasonable costs incurred by the Township in connection with the Project (a) prior to the Effective Date, and (b) for the period starting on the Effective Date and lasting through execution of a Redevelopment Agreement or termination of this Agreement. Interim Costs shall include all reasonable fees, costs and disbursements charged by any professional, consultant, contractor or vendor retained by the Township in connection with the Project, including but not limited to planners, engineers, financial advisors and/or legal counsel, and shall include all reasonable third-party legal costs to obtain approvals in compliance with the Redevelopment Law, costs of compliance with this Agreement, costs of drafting of redevelopment reports and/or plans, including but not limited to the Report and a redevelopment plan in accordance with the Redevelopment Law, and costs of drafting and negotiating the Redevelopment Agreement with the Developer. Such professionals, consultants, contractors and vendors shall be compensated at the hourly rate(s) as approved by the Township, pursuant to contracts entered into with the Township.

“Party” or “Parties” shall have the meaning specified in the preamble.

“Planning Board” shall have the meaning specified in the recitals.

“Project” shall have the meaning specified in the recitals.

“Property” shall have the meaning specified in the recitals.

“Redevelopment Agreement” shall mean the redevelopment agreement to be entered into by and between the Township and the Developer, as same may be amended from time to time, for the development of the Project within the Redevelopment Area.

“Redevelopment Law” shall have the meaning specified in the recitals.

“Redevelopment Area” shall have the meaning specified in the recitals.

“Report” shall have the meaning specified in the recitals.

“Township” shall have the meaning specified in the preamble.

“Township Council” shall have the meaning specified in the recitals.

Section 1.02. Purpose of the Agreement. The purpose of this Agreement is to outline the nature of the arrangement by and between the Parties hereto and the scope of rights and responsibilities that each will acquire or undertake hereunder in order to redevelop the Redevelopment Area with the Project. The Parties agree to work with due diligence and in good faith for the consummation of the transaction contemplated in this Agreement.

Section 1.03. Exclusivity. For a period of one hundred and eighty (180) days from the Effective Date, the Developer shall be the sole and exclusive party with whom the Township shall negotiate the Redevelopment Agreement.

ARTICLE II
**ESTABLISHMENT OF ESCROW ACCOUNT; OBLIGATIONS OF THE PARTIES;
DISPUTED CHARGES**

Section 2.01. Establishment of Escrow Account. Upon the entering of this Agreement, the Developer shall pay to the Township the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), which the Township shall deposit into a non-interest bearing escrow account ("Escrow Account") established by it for the payment and/or reimbursement of its reasonable and necessary third-party Interim Costs. The Township shall draw upon the funds deposited in such escrow account to pay its reasonable and necessary third-party Interim Costs. If, when and as often as may occur that the Escrow Account is drawn down to Five Thousand and 00/100 Dollars (\$5,000.00), then the Developer, upon the Township's written request, shall within ten (10) business days thereafter, provide to the Township for deposit funds sufficient to replenish the Escrow Account to Fifteen Thousand and 00/100 Dollars (\$15,000) for use in accordance with these terms, unless such time period shall be extended for good reason by the Township in its sole discretion. In the event this Agreement either expires or is lawfully terminated by the Township, then all escrowed monies shall be returned to the Developer following the payment from the fund of the Interim Costs incurred up to the time of said expiration or cancellation. In the event that the Township and the Developer execute a Redevelopment Agreement, then any remaining escrowed funds shall be applied in accordance with the requirements of the Redevelopment Agreement.

Section 2.02. Developer Obligations. The Developer shall:

- (a) Cooperate with the Township in reasonable manner so as to enable the Township to meet its obligations hereunder, including but not limited to attendance at meetings and preparation and/or compilation of information; and
- (b) Collaborate with the Township and its consultants and professionals to develop a timeline, budget and plans for the Project, including a redevelopment plan; and
- (c) Negotiate and execute the Redevelopment Agreement with the Township; and
- (d) Fund and replenish the Escrow Account established pursuant to Section 2.01.

Section 2.03. Township Obligations. The Township shall, at the Developer's cost and expense, complete the following:

- (a) Cooperate with the Developer in reasonable manner so as to enable the Developer to meet its obligations hereunder, including but not limited to attendance at meetings and preparation and/or compilation of information; and

- (b) Provide the Developer with all reasonable information in its possession which may affect the Developer's ability to undertake and complete the Project; and
- (c) Submit a proposed redevelopment plan to the Township Council for consideration and adoption within 180 days of the Effective Date; and
- (d) Negotiate the Redevelopment Agreement with the Developer; and
- (e) Diligently review the Interim Costs incurred by its professionals and determine eligibility for payment of such costs from the Escrow Account. Copies of all invoices related to the Interim Costs shall be submitted to the Developer on a monthly basis; provided that each invoice may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters. For the purposes of this Agreement, the fees as well as the individual and company providing such services shall not be confidential information and shall be included on the invoices. The Developer shall have the right to review and comment on the Interim Costs. The Developer's comments on the Interim Costs shall be in writing and shall not prevent the Township from paying Interim Costs. However, if the Parties disagree on the Interim Costs, the Parties shall work diligently and in good faith to resolve any such disagreement, while maintaining the minimum balance in the escrow account prescribed hereunder.

ARTICLE III

MISCELLANEOUS

Section 3.01. Waivers. No waiver made by any Party with respect to any obligation of any other Party under this Agreement shall be considered a waiver of any rights of the Party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 3.02. Implementation of Agreement. The Parties agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions of this Agreement.

Section 3.03. Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States registered or certified mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the Parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section 3.03.

TOWNSHIP

Township of Livingston
357 South Livingston Avenue
Livingston, New Jersey 07039

Attn: Township Manager

With a copy to:

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

DEVELOPER

Friedman Firehouse, LLC
343 West Mount Pleasant Avenue
Livingston, New Jersey 07039

With a copy to:

Katharine A. Coffey, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, New Jersey 07054
kcoffey@daypitney.com

Section 3.04. Title of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 3.05. Severability. The validity of any Articles and Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

Section 3.06. Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

Section 3.07. Governing Law. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

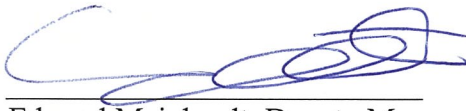
Section 3.08. Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument. Facsimile or PDF format signatures shall be deemed to be originals.

Section 3.09. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto, supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

TOWNSHIP OF LIVINGSTON

By: 
Edward Meinhardt, Deputy Mayor

FRIEDMAN FIREHOUSE, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

TOWNSHIP OF LIVINGSTON

By: _____
Edward Meinhardt, Deputy Mayor

FRIEDMAN FIREHOUSE, LLC

By:  _____
Name: *Andrew Friedman*
Title: *Manager*