

Record and return to:

William W. Northgrave, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Floor 2
Roseland, New Jersey 07068

Financial Agreement

By and Between

City of Linden

and

SAMTD Acquisitions Linden Urban Renewal, LLC

THIS FINANCIAL AGREEMENT (hereinafter “**Agreement**” or “**Financial Agreement**”), made this [] day of [], 2016, by and between SAMTD Acquisitions Linden Urban Renewal, LLC (the “**Urban Renewal Entity**” or “**Redeveloper**”), a New Jersey limited liability company qualified to do business under the provisions of the *Long Term Tax Exemption Law of 1992*, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the “**Exemption Law**”), with offices at 317 Route 34, Suite 201, Colts Neck, New Jersey 07722, along with its permitted successors and/or assigns, and the City of Linden, a municipal corporation in the County of Union and the State of New Jersey (the “**City**”; together with the Urban Renewal Entity, the “**Parties**”).

WITNESSETH:

WHEREAS, pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), the municipal council (the “**City Council**”) of the City of Linden (the “**City**”) on February 16, 2016, adopted Resolution 2016-90, which designated an area consisting of certain properties identified on the tax map of the City as Block 288, Lots 1, 2, 13, 14, and 15, and Block 254, Lots 12, 13, and 16 (together, the “**Property**”) as an area in need of redevelopment; and

WHEREAS, the City Council designated the City as the redevelopment entity responsible for implementing and carrying out redevelopment plans pursuant to the Redevelopment Law; and

WHEREAS, Ricci Planning has prepared, and the City Council has adopted, the redevelopment plan entitled “Redevelopment Plan Block 288, Lots 1, 2, 13, 14, and 15; Block 254, Lots 12, 13, and 16,” dated April 15, 2016 (the “**Redevelopment Plan**”), providing the development standards for the Property; and

WHEREAS, on the City Council referred the Redevelopment Plan to the City planning board (the “**Planning Board**”) for comments and recommendations; and

WHEREAS, on December 8, 2015, the Planning Board held a public hearing and provided findings with respect to the proposed Redevelopment Plan; and

WHEREAS, on May 17, 2016, the City Council adopted an ordinance adopting the Redevelopment Plan; and

WHEREAS, the Redeveloper submitted to the City a proposal to undertake the acquisition and construction of a mixed-use building with residential and retail uses and associated on-site and off-site parking, as further described in the Redevelopment Agreement (the “**Project**”); and

WHEREAS, on _____, 2016, the City adopted Resolution _____, designating the Redeveloper as “redeveloper” (as such term is defined in the Redevelopment Law) of the Property and authorizing the execution of a redevelopment agreement; and

WHEREAS, the City and the Redeveloper executed a redevelopment agreement, dated _____, 2016 (the “**Redevelopment Agreement**”), that set forth the terms and conditions upon which the Property is to be redeveloped; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the City now enters into this Financial Agreement with the Urban Renewal Entity, which Agreement shall govern payments made to the City in lieu of real estate taxes on the Project pursuant to the Exemption Law; and

WHEREAS, the Urban Renewal Entity has filed an application (the “**Application**,” as further defined herein), with the Mayor of the City for approval of a long term tax exemption for the Improvements (as defined herein) to the extent permitted by the Exemption Law; and

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

- A. Relative benefits of the Project:
 - i. The Project will provide additional housing and retail space in the City, along with the renewal and revitalization of the Redevelopment Area.
 - ii. [The City will benefit from the creation of approximately eight (8) permanent new jobs.]
 - iii. Without the tax exemption granted herein, it is highly unlikely that the Urban Renewal Entity would have proceeded with the Project.
 - iv. It is anticipated that the general contractor hired to build this Project will employ approximately one hundred (100) construction workers which will consist of minorities, women, and the local residents of the City.

- B. Assessment of the importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:
 - i. Tax Exemption permits better use of the Land through:
 - a. Revitalizing the neighborhood, reducing crime, and increasing the quality of life for the residents of the community. It will also offer market rate housing and retail spaces to generate additional tax revenue for the City.

WHEREAS, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to *N.J.S.A.* 40A:20-8, the City Council, on [●] [●], 2016, adopted Ordinance No. [●] (the “**Ordinance**”), authorizing the execution of this Agreement and granting a tax exemption in accordance with the terms hereof; and

WHEREAS, in order to satisfy requirements of the Exemption Law and to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the Annual Service Charge (as such term is defined herein), the Parties have determined to execute this Financial Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I
GENERAL PROVISIONS

Section 1.01 Governing Law – THIS FINANCIAL AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE EXEMPTION LAW, THE REDEVELOPMENT LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT EACH AND EVERY PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING WITHOUT LIMITATION, ANY UNIT, AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS FINANCIAL AGREEMENT.

Section 1.02 General Definitions. The following terms shall have the meaning assigned to such term in the preambles hereof:

Agreement	Property
Application	Redeveloper
Exemption Law	Redevelopment Agreement
Financial Agreement	Redevelopment Area
Ordinance	Redevelopment Law
Parties	Redevelopment Plan
Planning Board	City
Planning Consultant	City Council
Project	Urban Renewal Entity

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Administrative Fee – shall be as defined in Section 14.08 herein.

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

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

Annual Gross Revenue or **Gross Revenue** – shall have the meaning applied to such term in, and shall be construed in accordance with, the Exemption Law, specifically *N.J.S.A. 40A:20-3(a)* and Section 6.07 hereof.

Annual Service Charge – shall mean the payment pursuant to Article IV herein.

Annual Service Charge Payment Dates – shall mean February 1, May 1, August 1 and November 1 of each year commencing on the first such date following the Annual Service Charge Start Date and continuing in accordance with the term of this Financial Agreement.

Annual Service Charge Start Date – shall mean, with respect to the Project or any portion thereof, including any Unit, the earlier of Substantial Completion or the date that the Project or any portion thereof, as applicable, including any Unit, receives a Certificate of Occupancy, and shall be the date upon which the Annual Service Charge begins to accrue.

Applicable Law – shall mean all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Ordinance, the Redevelopment Law, the Exemption Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Application – shall mean collectively, the applications, as supplemented, filed by the Urban Renewal Entity pursuant to *N.J.S.A. 40A:20-8* with the Mayor of the City for a long-term tax exemption for the Project, attached hereto as **Exhibit 2**.

Auditor's Report – shall mean a complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)(2)*. The contents of the Auditor's Report shall have been prepared in conformity with Generally Accepted Auditing Standards. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice that profession in the State.

Certificate of Occupancy – shall mean a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, as issued by the City authorizing occupancy of a building, in whole or in part, pursuant to *N.J.S.A. 52:27D-133*.

Change in Law – shall mean the enactment, promulgation, modification or repeal of or with respect to Applicable Law, including without limitation, the Exemption Law, the Redevelopment Law or other similar statute with respect to the matters addressed by the terms of this Financial Agreement and/or the transactions contemplated hereby.

Chief Financial Officer – shall mean the City's chief financial officer.

Completion, Complete or Completed – shall mean, with respect to the Project, (a) all work related to the Project in its entirety or any other work or actions to which such term is applied

has been completed, acquired and/or installed in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project in its entirety may, in all respects, be used and operated under the applicable provisions of the Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed; (b) all permits, licenses and approvals that are required can be issued for the Project in its entirety or such other work or action to which such term is applied are in full force and effect; and (c) such “completion” has been evidenced by a written notice provided by the Urban Renewal Entity with respect to the Project, which determination is reasonably acceptable to the City.

County – shall mean the County of Union.

County Share – shall mean five percent (5%) of the Annual Service Charge received by the City, which shall be payable to the County as provided herein.

Default – shall mean a breach of or the failure of any Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods.

Disclosure Statement – shall be as defined in Section 6.02(b).

Exhibit(s) – shall mean any exhibit attached hereto, which shall be deemed to be a part of this Financial Agreement, as if set forth in full in the text hereof.

Improvements – shall mean any building, structure or fixtures which are permanently affixed to the Land as part of the Project and become incorporated therein, which improvements are recognized and exempted from taxation under this Agreement.

In Rem Tax Foreclosure – shall mean a summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by *N.J.S.A. 54:5-1 et seq.*

Land – shall mean the real property, but not the Improvements, known as Block 288, Lots 1, , 13, 14, and 15; and Block 254, Lots 12, 13, and 16 all as set forth on the tax maps of the City, and more particularly described by the metes and bounds description set forth as **Exhibit 1** to this Agreement.

Land Taxes – shall mean the amount of taxes assessed on the value of the Land upon which the Project is located.

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

Material Conditions – shall be as defined in Section 4.05 herein.

Minimum Annual Service Charge – shall be the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation.

Net Profit – shall mean the Gross Revenue of the Urban Renewal Entity pertaining to the Project less all operating and non-operating expenses of the Urban Renewal Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*. Without limiting the foregoing, included in expenses shall be payments of principal and interest made by the Urban Renewal Entity in an amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Agreement as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Residential Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately [234] residential rental units, and uses attendant and necessary thereto as required, or otherwise permitted, under the Redevelopment Plan, the Redevelopment Agreement and Applicable Law.

Residential Unit – shall mean one of the residential rental units to be built as a part of the Residential Project.

Retail Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately [4,418] square feet of commercial retail space and uses attendant and necessary thereto as required under the Redevelopment Plan, the Redevelopment Agreement, and Applicable Law.

Retail Unit – shall mean one or more units to be built as part of the Retail Project.

State – shall mean the State of New Jersey.

Substantial Completion – shall mean the date the work related to the Project, or any portion thereof, including any Unit, is sufficiently complete in accordance with the Redevelopment Plan and the Redevelopment Agreement so that the Project, or any portion thereof, including any Unit, may be occupied or utilized for the use for which it is intended. The issuance of a temporary Certificate of Occupancy shall be conclusive proof that the Project, or any portion thereof, including any Unit, has reached Substantial Completion.

Tax Assessor – shall mean the City tax assessor.

Tax Collector – shall mean the City tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as the same may be amended or supplemented from time to time.

Term – shall be as defined in Section 3.01 of this Agreement.

Termination – shall mean the expiration of the term of this Agreement in accordance with Section 3.01 hereof which by operation of the terms of this Financial Agreement shall cause the relinquishment of the tax exemption applicable to any Improvement, including any Unit.

Total Project Cost – shall have the meaning applied to such term in, and shall be construed in accordance with, the Exemption Law, specifically *N.J.S.A. 40A:20-3(h)*.

City Clerk – shall mean the Clerk of the City.

Unit – shall mean one of the Residential Units or Retail Units to be built as part of the Project.

Section 1.03 Interpretation and Construction. In this Financial Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Financial Agreement, refer to this Financial Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Financial Agreement.

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

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, in writing and within a reasonable time, which shall not be less than fifteen (15) days nor more than thirty (30) days, unless the context dictates otherwise.

(g) This Financial Agreement shall become effective upon its execution and delivery by the parties hereto.

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

ARTICLE II **BASIS OF AGREEMENT**

Section 2.01 Covenant of Tax Exemption. The City hereby grants its approval for a tax exemption for the Improvements, including, without limitation, any Unit, to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed and/or renovated on the Land. Land Taxes and Land Tax Payments shall continue to be paid on the Land at all times during the term of this Agreement.

Section 2.02 Representations of Urban Renewal Entity. The Urban Renewal Entity represents that its Certificate of Formation, attached hereto as **Exhibit 3**, contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the State Department of Community Affairs, and has been filed with, as appropriate, the State Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

Section 2.03 Construction of the Project. The Urban Renewal Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application attached hereto as **Exhibit 2**.

Section 2.04 Construction Schedule. The Urban Renewal Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the construction schedule set forth in the Redevelopment Agreement, as such schedule may be amended from time to time in accordance with the terms of the Redevelopment Agreement.

Section 2.05 Ownership, Management and Control.

(a) The Urban Renewal Entity hereby represents that Gated Investments Linde, LLC Avery is a managing member.

(b) The Urban Renewal Entity hereby represents that it is the fee title owner of the Property.

Section 2.06 Financial Plan. The Urban Renewal Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as **Exhibit 4**. The Plan sets forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Section 2.07 Statement of Rental Schedules. The Urban Renewal Entity represents that its good faith projections of the initial rental schedules are set forth in **Exhibit 5** attached hereto.

ARTICLE III **DURATION OF AGREEMENT**

Section 3.01 Term. It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall, with respect to the Project or any portion thereof, including any Unit, remain in full force and effect for thirty (30) years from the Annual Service Charge Start Date, but in no event longer than thirty-five (35) years from the date of execution hereof. Upon Termination, the tax exemption for the Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City. Upon Termination, all restrictions and limitations upon the Urban Renewal Entity shall terminate upon the Urban Renewal Entity's rendering and the City's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-13*.

Section 3.02 Date of Termination. Upon any Termination of the tax exemption described in Section 2.01 hereof, the date of such Termination shall be deemed to coincide with the end of the fiscal year of the Urban Renewal Entity.

ARTICLE IV **ANNUAL SERVICE CHARGE**

Section 4.01 Payment of Conventional Taxes Prior to Commencement of Annual Service Charge. During the period between execution of this Agreement and the Substantial Completion of the Project, the Urban Renewal Entity shall make payment of conventional real estate taxes with respect to the Land and the improvements currently existing thereon, at the time and to the extent due in accordance with generally applicable law.

Section 4.02 Commencement of Annual Service Charge. The Urban Renewal Entity shall make payment of an annual service charge (the “**Annual Service Charge**”) commencing on the Annual Service Charge Start Date.

Section 4.03 Payment of Annual Service Charge.

(a) The Annual Service Charge shall be due and payable to the City on the Annual Service Charge Payment Dates, commencing to accrue as of the Annual Service Charge Start Date. In the event that the Urban Renewal Entity fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear until paid the highest rate of interest permitted under applicable State law then being assessed against other delinquent taxpayers in the case of unpaid taxes or tax liens.

(b) Each installment payment of the Annual Service Charge is to be made to the City and shall be clearly identified as “Annual Service Charge Payment for the Project.”

Section 4.04 Annual Service Charge. In consideration of the exemption from taxation for the Improvements, including the Units, the Urban Renewal Entity shall pay the Annual Service Charge to the City on the Annual Service Charge Payment Dates in the amounts set forth below.

(a) The Annual Service Charge shall be equal to an amount calculated as follows:

(i) For each of the first ten (10) years from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) eleven

- percent (11%) of the Annual Gross Revenue or (B) the Minimum Annual Service Charge, to the extent applicable;
- (ii) For each of the years 11 through 20 from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) thirteen percent (13%) of the Annual Gross Revenue, (B) the Minimum Annual Service Charge, or (C) a percentage of the real property taxes otherwise due on the value of the Land and the Improvements to the extent applicable as more fully set forth in (b) below; and
 - (iii) For each of the years 21 through 30 from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) fifteen percent (15%) of the Annual Gross Revenue, (B) the Minimum Annual Service Charge, or (C) a percentage of the real property taxes otherwise due on the value of the Land and the Improvements to the extent applicable as more fully set forth in (b) below.

(b) Notwithstanding the foregoing, in any given year the Annual Service Charge shall be subject to the staged increases required under N.J.S.A. 40A:20-12(b)(2) as described herein, the Annual Service Charge shall be the greater of (a)(i)-(iii) above or:

- (i) For years 1 through 15 zero percent (0%) of the real property taxes otherwise due on the value of the Land and the Improvements;
- (ii) For years 16 through 21 twenty percent (20%) of the real property taxes otherwise due on the value of the Land and the Improvements;
- (iii) For years 22 through 27 forty percent (40%) of the real property taxes otherwise due on the value of the Land and the Improvements;
- (iv) For years 28 through 29 sixty percent (60%) of the real property taxes otherwise due on the value of the Land and the Improvements; and
- (v) For year 30 eighty percent (80%) of the real property taxes otherwise due on the value of the Land and the Improvements.

(c) In accordance with the Exemption Law, including without limitation, N.J.S.A. 40A:20-12, the Urban Renewal Entity shall be entitled to a credit against the Annual Service Charge equal to the amount, without interest, of the Land Taxes paid by it in the last four preceding quarterly installments.

Section 4.05 Material Conditions. It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

ARTICLE V

CERTIFICATE OF OCCUPANCY

Section 5.01 Certificate of Occupancy. It is understood and agreed that it shall be the obligation of the Urban Renewal Entity to obtain all Certificates of Occupancy in a timely manner after the Urban Renewal Entity has satisfied all requirements to secure such Certificate of Occupancy.

Section 5.02 Filing of Certificate of Occupancy. It shall be the responsibility of the Urban Renewal Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the City, including, if appropriate, retroactive billing with interest to collect any charges hereunder to be due.

ARTICLE VI **ACCOUNTING, REPORTS, CALCULATIONS**

Section 6.01 Accounting System. The Urban Renewal Entity agrees to calculate its Net Profit pursuant to *N.J.S.A. 40A:20-3(c)*. The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles or in accordance with cash basis accounting principles and as otherwise prescribed by applicable law.

Section 6.02 Periodic Reports.

(a) Auditor's Report. Within ninety (90) days after the close of each fiscal or calendar year (depending on the Urban Renewal Entity's accounting basis) that this Agreement shall continue in effect, the Urban Renewal Entity shall submit to the City Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The report shall clearly identify and calculate the Net Profit for the Urban Renewal Entity during the previous year. The Urban Renewal Entity assumes all costs associated with preparation of the periodic reports.

(b) Disclosure Statement. On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest in the Project from the prior year's filing, the Urban Renewal Entity shall submit to the City Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time (the "**Disclosure Statement**").

Section 6.03 Inspection. The Urban Renewal Entity shall, upon reasonable request and notice, permit inspection of its property, equipment, buildings and other facilities of the Project and also permit examination of audit of its books, contracts, records, documents and papers with respect to the Project, by authorized officers of the City, and the Division of Local Government

Services in the State Department of Community Affairs pursuant to *N.J.S.A.* 40A:20-9(e). To the extent reasonably possible, the inspection will not materially interfere with the construction or operation of the Project.

Section 6.04 Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Urban Renewal Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15. Pursuant to *N.J.S.A.* 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

The Urban Renewal Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to 10 percent of the Annual Gross Revenues of the Urban Renewal Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in *N.J.S.A.* 40A:20-15.

Section 6.05 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Urban Renewal Entity shall exceed the Allowable Net Profits for such period, then the Urban Renewal Entity, within one hundred and twenty (120) days after the end of the accounting period established by the Exemption Law, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Urban Renewal Entity may maintain a reserve as determined pursuant to aforementioned Section 6.04. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A.* 40A:20-3(c) and -15.

Section 6.06 Calculation of Gross Revenue and Net Profit. There is expressly excluded from calculation of Gross Revenue and from Net Profit as set forth in *N.J.S.A.* 40A:20-3 for the purpose of determining compliance with *N.J.S.A.* 40A:20-15 or -16, any gain realized by the Urban Renewal Entity on the sale of any Unit, whether or not taxable under federal or State law.

ARTICLE VII

ASSIGNMENT AND/OR ASSUMPTION

Section 7.01 Approval to Sale of Project by Urban Renewal Entity Formed and Eligible to Operate Under Law. As permitted by *N.J.S.A.* 40A:20-10, it is understood and agreed that the City, on written application by the Urban Renewal Entity, will consent to a sale of the Project (or a portion thereof) and the transfer of this Agreement (as pertaining to a portion of the Project) to another urban renewal entity, provided that (a) the transferee urban renewal entity shall have demonstrated to the reasonable satisfaction of the City that it possesses the experience and capitalization necessary to complete and/or operate the Project or relevant portion thereof, which determination shall not be unreasonably withheld; (b) the transferee urban renewal entity does not own any other project subject to long term tax exemption at the time of transfer; (c) the transferee urban renewal entity is formed and eligible to operate under the Exemption Law; (d) the Urban Renewal Entity is not then in Default of this Agreement or in violation of Applicable Law; (e) the Urban Renewal Entity's obligations under this Agreement are fully assumed by the transferee urban renewal entity; and (f) the transferee urban renewal entity abides by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to *N.J.S.A.* 40A:20-8. Notwithstanding the foregoing, a transfer pursuant to this Section 7.01 is also subject

to the transfer prohibitions and exemptions specified in Article 11 of the Redevelopment Agreement.

Section 7.02 Severability. It is an express condition of the granting of this tax exemption that during its duration, the Urban Renewal Entity shall not, without the prior consent of the City Council by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which is basic to, embraced in, or underlying the exempted Improvements.

Section 7.03 Subordination of Fee Title. It is expressly understood and agreed that the Urban Renewal Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for the purpose of financing the design, development and construction of the Project and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement. Notwithstanding the foregoing, a transfer pursuant to this Section 7.03 is also subject to the transfer prohibitions and exemptions specified in Article 11 of the Redevelopment Agreement.

ARTICLE VIII **RESERVATION OF CITY RIGHTS AND REMEDIES**

Section 8.01 Reservation of Rights and Remedies. Except as expressly provided herein, nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Urban Renewal Entity of any rights and remedies provided by Applicable Law. Unless otherwise expressly stated, nothing herein shall be deemed to limit any right of recovery that the City or the Urban Renewal Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE IX **NOTICES**

Section 9.01 Notice. Formal notices, demands and communications between and among the City and the Urban Renewal Entity shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the City:

City of Linden
301 North Wood Avenue
Linden, New Jersey 07036
Attn: City Clerk
Fax: (908) 474-8452

with copies to:

William W. Northgrave, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Fax: (973) 712-1431

If to the Urban Renewal Entity:

Charles Avery
Gated Investments Linden, LLC 317 Route 34, Suite 201
Colts Neck, New Jersey 07722
Fax: (732) 577-8426

AND

William Greenberg
Gated Investments Linden, LLC
317 Route 34, Suite 201
Colts Neck, New Jersey 07722
Fax: (732) 577-8426

with copies to:

Elnardo J. Wester, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Fax: (973) 887-2700

ARTICLE X
COMPLIANCE BY ENTITY WITH LAW

Section 10.01 Statutes and Ordinances. The Urban Renewal Entity hereby agrees at all times prior to the expiration or other Termination of this Financial Agreement to remain bound by the provisions of Applicable Law, including, but not limited to, the Exemption Law. The Urban Renewal Entity's failure to comply with such statutes or ordinances shall constitute a violation and breach of the Financial Agreement.

ARTICLE XI
CONSTRUCTION

Section 11.01 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other

rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Urban Renewal Entity and the City have combined in their review and approval of same.

ARTICLE XII **INDEMNIFICATION**

Section 12.01 Indemnification. It is understood and agreed that in the event the City shall be named as party defendant in any action brought against the City by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Urban Renewal Entity shall indemnify and hold the City harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Urban Renewal Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, including without limitation, *N.J.S.A. 40A:20-1 et seq.*, except for the willful misconduct by the City or its officers, officials, employees or agents and the Urban Renewal Entity shall defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Urban Renewal Entity hereby consents, the reasonable expense thereof to be borne by the Urban Renewal Entity. To the extent practical and ethically permissible, the Urban Renewal Entity's attorneys shall jointly defend and represent the interest of the City and the Urban Renewal Entity as to all claims indemnified in connection with this Agreement.

ARTICLE XIII **DEFAULT**

Section 13.01 Default. Default shall be the failure of any party to conform to the terms of this Agreement, and/or the failure of any party to perform any obligation imposed upon such party by Applicable Law beyond any applicable notice, cure or grace period.

Section 13.02 Cure Upon Default. Should any party be in Default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee, if applicable, in writing of said Default. If the defaulting party is the Urban Renewal Entity, the City, shall provide such notice. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting party shall have sixty (60) days to cure any Default, other than a Default in payment of any installment of the Annual Service Charge, in which case the defaulting party shall have fifteen (15) days to cure.

Section 13.03 Arbitration. In the event of an uncured Default by any party or a dispute arising between any parties in reference to the terms and provisions as set forth herein, then the parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Exemption Law. Costs for said arbitration shall be paid by the non-prevailing party.

Section 13.04 Default in the Payment of Annual Service Charge.

(a) Upon any Default by the Urban Renewal Entity in payment of any installment of the Annual Service Charge, the City, in addition to its other remedies, reserves the right to proceed against the applicable Land, and any Improvements related thereto, in the manner provided by Applicable Law and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Law.

(b) Whenever the word “Taxes” appears, or is applied, directly or implied, to mean taxes or municipal liens on Land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on Land.

Section 13.05 Remedies Upon Default Cumulative; No Waiver. Subject to the provisions of this Article XIII and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to any party, and all rights and remedies granted by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Urban Renewal Entity because of the Urban Renewal Entity’s failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

Section 13.06 Final Accounting. Within one hundred and twenty (120) days after the date of Termination, the Urban Renewal Entity shall provide a final accounting and pay to the City any excess Net Profits. For purposes of rendering a final accounting the Termination of the Agreement shall be deemed to coincide with the end of the fiscal year of the City.

Section 13.07 Conventional Taxes. Upon Termination or expiration of this Agreement, the Tax Exemption for the Improvements shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

ARTICLE XIV **MISCELLANEOUS**

Section 14.01 Financial Agreement Controlling. The Parties agree that in the event of a conflict between (i) the Application and this Financial Agreement or (ii) the Redevelopment Agreement and this Financial Agreement, the provisions of this Financial Agreement shall govern and prevail.

Section 14.02 Oral Representations. There have been no oral representations made by either of the Parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Redevelopment Agreement, the Ordinance and the Application constitute the entire agreement between the Parties with respect to the Project and there shall be no modifications thereto other than by a written instrument executed by the Parties and delivered to each of them.

Section 14.03 Entire Document. All conditions in the Ordinance are incorporated in this Agreement and made a part hereof.

Section 14.04 Good Faith. In their dealings with each other, the Parties agree that they shall act in good faith.

Section 14.05 Recording. Upon the execution and delivery of this Financial Agreement, the entire Financial Agreement and the Ordinance shall be filed and recorded with the Union County Clerk by the City, at the Urban Renewal Entity's expense, such that this Financial Agreement and the Ordinance shall be reflected upon the land records of the County of Union.

Section 14.06 Municipal Services. The Urban Renewal Entity shall make payments for municipal services, including water and sewer charges and any services, to the extent that such water and sewer charges, and other services, are not otherwise included in the real property taxes generally assessed upon property within the City, that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law. These charges are not included in the Annual Service Charge and shall be billed separately. Nothing herein is intended to release any Owner from its obligation to make such payments.

Section 14.07 Portion of Annual Service Charge Paid to County. Pursuant to *N.J.S.A.* 40A:20-12, the City shall remit the County Share to the County upon the receipt thereof.

Section 14.08 Administrative Fee. In accordance with *N.J.S.A.* 40A:20-9(h), the City shall collect an administrative fee equal to two percent (2%) of the Annual Service Charge due in any year (the "**Administrative Fee**"), which shall be payable on November 1 of each such year.

Section 14.09 Financing Matters. The financial information required by the final paragraph of *N.J.S.A.* 40A:20-9 is set forth in the Application.

Section 14.10 Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.11 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

Section 14.12 Certification. The City Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-12, that a Financial Agreement with the Urban Renewal Entity, for the development of the Land, has been entered into and is in effect as required by *N.J.S.A.* 40A:20-1, *et seq.* Delivery by the City Clerk to the Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the City Clerk.

In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of the Ordinance or the execution of this Financial Agreement by the Urban Renewal Entity, the City Clerk also shall transmit a certified copy of the Ordinance and this

Financial Agreement to the chief financial officer of Union County and to the Union County Counsel for informational purposes.

Section 14.13 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void, and this Agreement shall be reformed to reflect the respective expectations of the Parties at the time of the execution hereof.

EXHIBITS AND SCHEDULES

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

Exhibit 1 – Metes and Bounds Description of the Property

Exhibit 2 – The Application

Exhibit 3 – Certificate of Formation for Urban Renewal Entity

Exhibit 4 – The Financial Plan for the Undertaking of the Project

Exhibit 5 – Initial Estimated Rental Schedules

Exhibit 6 – Certification of Estimated Construction Costs

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

ATTEST:

CITY OF LINDEN

Joseph C. Bodek
City Clerk

By: _____
Hon. Derek Armstead, Mayor

SAMTD Acquisitions Linden Urban Renewal, LLC

By: _____

STATE OF NEW JERSEY,
COUNTY OF UNION

SS:

I CERTIFY that on _____, 2016, _____ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as authorized officer of SAMTD Acquisitions Linden Urban Renewal, LLC; and
- (c) executed the instrument as the act of SAMTD Acquisitions Linden Urban Renewal, LLC.

Notary Public

STATE OF NEW JERSEY,
COUNTY OF UNION

SS:

I CERTIFY that on _____, 2016, _____ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as the Mayor of the City of Linden; and
- (c) executed the instrument as the act of the City of Linden.

Notary Public

EXHIBIT 1

Metes and Bounds Description of the Property

EXHIBIT 2

Application with Exhibits

EXHIBIT 3

Certificate of Formation of Urban Renewal Entity

EXHIBIT 4

The Financial Plan for the Undertaking of the Project

EXHIBIT 5

Initial Rental Schedules

EXHIBIT 6

Certification of Estimated Construction Costs

TOTAL PROJECT COST - N.J.S.A. 40A:20-3h

A.	Land	\$
B.	Architects, engineers and attorneys fees paid or payable in connection with the planning, construction and financing of the project	\$
C.	Surveying and testing	\$
D.	Construction cost (to be certified by the architect)	\$
E.	Insurance, interest and finance costs during construction	\$
F.	Cost of obtaining initial permanent financing	\$
G.	Commissions and other expenses payable in connection with initial leasing/sale	\$
H.	Real estate taxes and assessments during the construction period	\$
I.	Developer's overhead based on a percentage of (d) above, to be computed in accordance with percentage given in law (<u>N.J.S.A.</u> 40A:20-3h) (for projects over \$10,000,000 - 5%)	\$
	Total	\$

The undersigned hereby certifies that the foregoing is the projected total project cost in regard to the Project referenced in this Financial Agreement.

By: _____