

UNION COUNTY IMPROVEMENT AUTHORITY

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 (732) 382-9400 (732) 382-5862 fax

Resolution No. 58-2016

Date: June 8, 2016

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
 AUTHORIZING SETTLEMENT OF VERGE PROPERTIES URBAN
 RENEWAL, LLC v. THE UNION COUNTY IMPROVEMENT AUTHORITY,
 DOCKET NO. UNN-L-2395-07**

APPROVED AS TO FORM:
 Lisa M. da Silva, RMC
 Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES [] NO [] NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

Lisa M. da Silva

Blw. B. 10

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad</i>	✓		✓				
<i>D'Elia</i>	✓		✓				
<i>Hockaday</i>	✓		✓			✓	
<i>Lattimore</i>	✓		✓				✓
<i>Salerno, Secretary</i>		✓					
<i>Szpond</i>	✓		✓				
<i>Tomko, Treasurer</i>	✓		✓				
<i>Rountree, Vice Chair</i>		✓					
<i>Scutari, Chairman</i>		✓					

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING SETTLEMENT OF VERGE PROPERTIES URBAN
RENEWAL, LLC v. THE UNION COUNTY IMPROVEMENT AUTHORITY,
DOCKET NO. UNN-L-2395-07**

WHEREAS, the Union County Improvement Authority (the “Authority”) has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44 et seq.; and

WHEREAS, in accordance with the criteria set forth in the Local Redevelopment and Housing Law, as amended and supplemented, N.J.S.A. 40A:12A-1 et seq. (the “Local Redevelopment and Housing Law”), the City of Linden, New Jersey (the “City”) by Resolution dated November 22, 2000 designated an area in need of redevelopment now known as the South Wood Avenue Redevelopment Area (the “Redevelopment Area”), and by Ordinance #44-20 approved on October 17, 2001, the City adopted a redevelopment plan for the area entitled the South Wood Avenue Redevelopment Plan; and

WHEREAS, by Resolution adopted on January 3, 2002, the City authorized the execution of an Interlocal Services Agreement wherein the City designated the Authority as the redevelopment agency for the Redevelopment Area for the purpose of selecting a redeveloper and negotiating a redevelopment agreement for the implementation of the Redevelopment Plan; and

WHEREAS, by Resolution adopted by the City on November 21, 2001, the City conditionally designated Verge Properties Urban Renewal, LLC (“Verge”), then known as Verge Properties, LLC, as the designated redeveloper for the Redevelopment Area; and

WHEREAS, by Resolution adopted by the Authority on May 22, 2002, the Authority reaffirmed and approved the City’s designation of Verge as the designated redeveloper for the Redevelopment Area; and

WHEREAS, by Resolution adopted by the Authority on August 27, 2003, the Authority approved the Redevelopment Agreement (the “RDA”) between and among the Authority, designated as the Redevelopment Entity for the South Wood Avenue Redevelopment Area by the City, and the City, and Verge, as Redeveloper, dated August 15, 2003; and

WHEREAS, during the course of the Project, disputes arose among the Parties with respect to various aspects of the development contemplated by the terms of the RDA; and

WHEREAS, in 2007, Verge initiated a lawsuit against the City and the Authority, in the Superior Court of New Jersey, Union County, Docket No. UNN-L-2395-07 (the “Lawsuit”), in which claims were raised alleging, among other things, that the terms of the RDA had been breached by the parties to the RDA; and

WHEREAS, following the dismissal of the City from the Lawsuit in 2011, a trial in December 2012, and subsequent appeals by Verge and the Authority, the matter has been scheduled for retrial to take place in September 2016; and

WHEREAS, the Authority and Verge have agreed that it is in their respective best interests to avoid uncertain, costly, and continued litigation, and have determined to amicably resolve, settle and compromise all outstanding issues, disputes and differences they have raised or may have raised in the Lawsuit or in any other forum; and

WHEREAS, the Authority and Verge have agreed to the terms of settlement of all claims pursuant to the Settlement Agreement and Release attached hereto and made a part hereof; and

WHEREAS, it is necessary for the Authority to approve the Settlement Agreement and Release so that the settlement of the Lawsuit by the Parties can be finalized;

NOW, THEREFORE, BE IT RESOLVED THAT THE UNION COUNTY IMPROVEMENT AUTHORITY hereby approves the Settlement Agreement and Release in substantially the form attached hereto; and

BE IT FURTHER RESOLVED that the Union County Improvement Authority hereby authorizes the Executive Director to execute the Settlement Agreement and Release in substantially the form attached hereto, and any other document the court may require in order to terminate the Lawsuit; and

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release, dated ~~May~~ ^{June} 8, 2016, is entered by and amongst Verge Properties Urban Renewal, LLC ("Verge"), and the Union County Improvement Authority (the "Authority") (Verge and the Authority collectively are referred to as the "Parties").

WHEREAS, the Parties had previously entered into a Redevelopment Agreement between and among the Authority, designated as the Redevelopment Entity for the South Wood Avenue Redevelopment Area by the City of Linden, New Jersey, and the City of Linden, New Jersey (the "City"), and Verge, as Redeveloper, dated August 15, 2003, with respect to the redevelopment of the South Wood Avenue Redevelopment Area ((the "South Wood Avenue Redevelopment Project"), and the referenced agreement hereafter the "RDA"); and

WHEREAS, over time, disputes arose amongst the Parties with respect to various aspects of the development contemplated by the terms of the RDA, which resulted in Verge initiating a lawsuit against the City and the Authority, in the Superior Court of New Jersey, Union County, Docket No. UNN-L-2395-07, which included claims by the Parties for, among other claims, breach of the RDA (the "Lawsuit"); and

WHEREAS, after ensuing discovery, motion practice, the dismissal of the City from the Lawsuit in 2011, a trial in December 2012, and subsequent appeals by Verge and the Authority, the matter has been scheduled for retrial to take place in

September 2016; and

WHEREAS, the Parties have agreed that it is in their respective, best interests to avoid unnecessary, uncertain and continued litigation and its attendant cost, by reaching an accommodation of the dispute amongst them; and

WHEREAS, the Parties desire to resolve all claims and disputes amongst them by the payment of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) from the Authority to Verge in exchange for a release of any claims Verge has or could have brought against the Authority (the "Verge Release") and a Stipulation of Dismissal With Prejudice, and without any admission of law or fact against or in favor of either party; and

WHEREAS, subject to the foregoing, the Parties have agreed to amicably resolve, settle and compromise all outstanding issues, disputes, claims and differences they have or may have existing as of the date of this Settlement Agreement and Release, known or unknown, including without limit those which are the subject of the Lawsuit and any claim that could have been raised in the Lawsuit, whether or not actually raised therein, in the manner as set forth below and as authorized by formal action of each the Parties as required by law;

NOW THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree:

1. RELEASE AS TO AUTHORITY BY VERGE. Verge hereby releases and gives up any and all claims and rights which it may have against the Authority. This Release applies to claims resulting from anything which has happened up to now including, but not limited to, claims known or unknown, including without limit those that are the subject of the Lawsuit and any claim that could have been raised in the Lawsuit, whether or not actually raised therein, and any and all rights that may have existed under the RDA.

Verge, intending to be legally bound for itself, and its members, agents, attorneys, and successors and assigns, hereby releases and forever discharges the Authority, as well as its respective agents, officers, directors, governing body and members, employees, representatives, commissioners, servants, attorneys and assigns, from any and all claims, debts, demands, damages, losses, covenants, contracts, promises, agreements, liabilities, costs, expenses, attorney's fees, actions or causes of action of any nature whatsoever, in law or equity, whether known or unknown, foreseen or unforeseen, accrued or not accrued, direct or indirect, which it ever had, now has, or can, shall or may have upon or by reason of any event, matter, cause or thing whatsoever against the Authority from the beginning of the world to the date of this general Release, including but not limited to all claims or causes of action in any way arising from, relating to, or based upon the claims that are the subject of the Lawsuit and any claim that could have been raised in the

Lawsuit, whether or not actually raised therein, and any and all rights that may have existed under the RDA.

2. CONSIDERATION. The Authority hereby agrees to pay ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) to Verge, in consideration of the Release above, and the execution by Verge of a Stipulation of Dismissal with Prejudice of all claims pending in the Lawsuit. The Stipulation of Dismissal with Prejudice shall be provided by Verge upon approval by the Authority of this Settlement Agreement and Release, and shall not be filed until such time as Verge has received the payment referenced above from the Authority. Said payment and the associated Release and Stipulation of Dismissal, represents full consideration amongst the Parties for the full resolution of all claims released herein (including but not limited to those raised in the Lawsuit), along with any other claims that could have been brought, as reflected in the Release. The Parties agree that they will not seek anything further, including any payment, from the other, other than the consideration set forth herein.

3. Subject to the foregoing condition(s) in the preceding paragraph or as otherwise set forth herein, it is expressly understood and agreed by the Parties that the acceptance of the said payment, and the resulting Release and Stipulation of Dismissal of the Lawsuit, are in full accord and satisfaction of and in compromise of all disputed claims released herein (including those raised in the Lawsuit), along with any other

claims that could have been brought, as reflected in the Release, and that the payment, Release, and Stipulation of Dismissal are not an admission of liability by Verge or the Authority, but are made for the purpose of terminating all disputes between the Parties, including the Lawsuit.

4. REPRESENTATION BY COUNSEL; NO PRESUMPTION OF AUTHORSHIP. The respective Parties represent that each has been represented in negotiations for, and the preparation of, this Settlement Agreement and Release, by counsel of their own choosing, and that they respectively understand all provisions of this Settlement Agreement and Release, and are fully aware of its content and of its legal effects. As this Settlement Agreement and Release was prepared through the drafting efforts of sophisticated counsel for the Parties, no presumption of authorship shall be ascribed to any Party.

5. ADEQUATE REVIEW. Each Party represents that it has consulted with an attorney of its choosing before signing this Settlement Agreement and Release, and has had adequate time to review same and to discuss same with counsel at length. Each Party's decision to accept these terms was its own, and each was not coerced but signed this Settlement Agreement and Release of its own free will.

6. SEVERABILITY. Each of the provisions of this Settlement Agreement and Release is a separate and distinct agreement and independent of the others, so that if any provision hereof shall be held to be invalid for any reason,

such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions hereof, which shall be construed so as to give them continued effect, to the degree it is possible to do so as a matter of law.

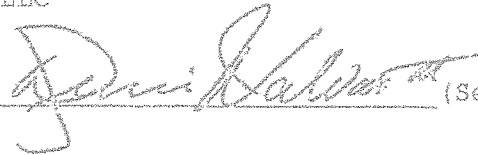
7. WHO IS BOUND. Verge and the Authority are bound by this Settlement Agreement and Release. Anyone who succeeds to their respective rights and responsibilities, including their successors in interest or heirs, are also so bound. This Settlement Agreement and Release is made for the mutual benefit of the respective Parties hereto and all who succeed to their rights and responsibilities, such as their respective heirs or successors in interest.

8. SIGNATURES. The respective Parties understand and agree to the terms of this Settlement Agreement and Release, and have executed same as authorized by applicable law on the date first set forth above.

[signature pages to follow]

Witnessed or Attested by:

Verge Properties Urban Renewal,
LLC

 (Seal)

STATE OF NEW JERSEY :

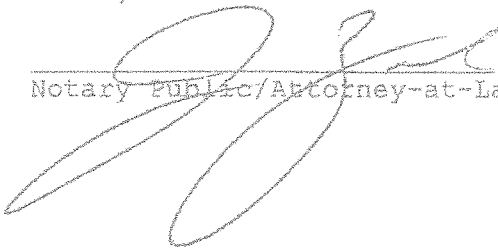
COUNTY OF : SS

I certify that on May 23, 2016,
Dennis Villaverde personally came before me and acknowledged under
oath, to my satisfaction, that:

He is the Managing Member of Verge Properties Urban Renewal,
LLC, one of the Parties to the above Settlement Agreement and
Release; and

He is authorized to sign and execute this Settlement
Agreement and Release on behalf of same, and in fact did so
freely, in its own name, and on its own behalf.

Signed and sworn to before
me this 27 day of
May, 2016.


Notary Public/Attorney-at-Law

