



UNION COUNTY IMPROVEMENT AUTHORITY

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Resolution No. 29-2020

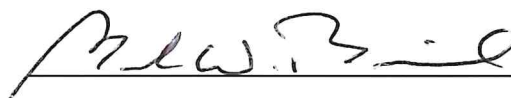
Date: April 4, 2020

**RESOLUTION AUTHORIZING VARIOUS ACTIONS IN CONNECTION
WITH A NEW SWAP AGREEMENT IN CONNECTION WITH THE
AUTHORITY'S \$44,499,000 RECOVERY ZONE FACILITY BONDS,
SERIES 2010 (ELBERON/WAKEFERN WAREHOUSE PROJECT)**

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





	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Barnett</i>	✓		✓				
<i>Hockaday</i>	✓		✓			✓	
<i>Kolibas</i>	✓		✓				
<i>Marshall</i>	✓		✓				
<i>Mojica, Secretary</i>	✓		✓				
<i>Salerno, Treasurer</i>	✓		✓				✓
<i>Huff, Vice Chairman</i>	✓		✓				
<i>D'Elia, Chairman</i>	✓		✓				
<i>Vacancy</i>							

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WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by an ordinance of the Board of Chosen Freeholders (the "Board of Chosen Freeholders") of the County of Union, New Jersey (the "County"), as a public body corporate and politic of the State of New Jersey (the "State") pursuant to and in accordance with the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended and supplemented from time to time (the "Act"); and

WHEREAS, on December 30, 2010, the Authority has previously issued its \$44,499,000 Recovery Zone Facility Bonds, Series 2010 (Elberon/Wakefern Warehouse Project) (the "Bonds") the proceeds of which were used to make a loan to Elberon Development Co., LLC and Elberon Elizabeth Urban Renewal, LLC (collectively, the "Borrowers") to finance a portion of the costs of a project which consisted of all site work (including, without limitation, all on-site and off-site work and demolition of a then existing 491,775 square foot building located at 539-649 York Street, Elizabeth and of a then existing 140,000 square foot warehouse building located at 36-572 Dowd Avenue, Elizabeth, New Jersey), and the construction of a 524,000 square foot warehouse, distribution/office building in the City of Elizabeth, New Jersey (the "Project"); and

WHEREAS, on January 25, 2011, the Borrowers and TD Bank, N.A. (the "Counterparty" or "Bank")) entered into an interest rate swap agreement (the "Hedge Contract") for the purpose of modifying the Borrowers' risk of interest rate changes with regard to a \$35,154,210 portion of the Bonds (the "Hedged Bonds"), pursuant to which (a) the Borrowers agreed to make fixed hedge rate payments to the Counterparty at the rate of 4.13% per annum, payable initially on the notional principal amount of \$35,154,210 of the Hedged Bonds, which notional principal amount reduces during the term of the Hedge Contract, which ends on December 30, 2020 and (b) the Counterparty agreed to make variable rate payments to the Borrowers at a rate equal to the sum of (i) 69% of 1 Month US LIBOR BBA (as defined in the Hedge Contract) plus (ii) a spread of 155.25 basis points, payable monthly, on an identical notional amount; and

WHEREAS, the Borrowers intend to enter into a new forward interest rate swap agreement (the "New Swap") with the Counterparty, to be treated as a "qualified hedge", as that term is defined in Section 1.148-4(h) of the Treasury Regulations with respect to the entire amount of the outstanding Bonds on December 30, 2020; and

WHEREAS, the Authority has been informed that the Borrowers desire that payments made or received by the Borrowers pursuant to the New Swap be taken into account in determining the yield on the Bonds for purposes of Federal income taxation; and

WHEREAS, nothing herein shall obligate the Authority in any manner whatsoever to the terms of the New Swap; and

WHEREAS, in connection with the New Swap, the Authority desires to enter into the Amendment to Bond Documents by and among the Bank, the Borrowers and the Authority (the "Amendment Agreement"), the Amendment to Leasehold Mortgage, Security Agreement, Absolute Assignment of Leases and Rents and Fixture Filing, by and among the Borrowers and the Authority (the "Amendment to Leasehold Mortgage"), and the Amendment to Fee and Leasehold Mortgage, Security Agreement, Absolute Assignment of Leases and Rents and Fixture Filing by and among the Borrowers and the Authority (the "Amendment to Fee Mortgage"), (collectively, the "Bond Documents").

NOW, THEREFORE, BE IT RESOLVED by the Union County Improvement Authority as follows:

Section 1. The Authority does hereby approve of the terms and condition of the Certificate of Identification of Interest Rate Swap (the "Certificate") with respect to the Bonds, and hereby authorize the Authority's Executive Director to execute the Certificate.

Section 2. The Bond Documents in substantially the form attached hereto as Exhibit "A" and all instruments attached as exhibits thereto in a form to be agreed upon by the Authority and the Borrower, are hereby approved. The Chairman, Vice-Chairman, Executive Director, or any other officer of the Authority who shall have power to execute contracts pursuant to the By-laws of the Authority and any resolutions adopted thereunder are hereby authorized to execute, acknowledge and deliver the Bond Documents and all instruments attached as exhibits thereto with any changes, insertions and omissions as may be approved by the Chairman, Vice-Chairman, Executive Director, or any other officer of the Authority who shall have power to execute contracts pursuant to the By-laws of the Authority and any resolutions adopted thereunder, and the Secretary or Assistant Secretary of the Authority or any other officer of the Authority who shall have power to do so under the By-laws of the Authority and any resolutions adopted thereunder is hereby authorized to affix the seal of the Authority on the Bond Documents and all instruments attached as exhibits thereto and attest the same. The execution of the Bond Documents shall be conclusive evidence of any approval required by this Section.

Section 3. The Chairman, Vice-Chairman and Executive Director are hereby authorized and directed to execute and deliver such other documents and to take such other action as may be necessary or appropriate in order to effectuate the execution and delivery of the Certificate and the Bond Documents, all in accordance with the foregoing Sections hereof.

Section 4. This resolution shall take effect immediately.