

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2013-050

Council Meeting Date: 01-14-2013

Date Adopted: 01-14-2013

**TITLE: RESOLUTION APPROVING THREE PARTY AGREEMENT
AMONG INVERSTORS BANK, NEW PROVIDENCE
AFFORDABLE SENIOR HOUSING & URBAN RENEWAL
ASSOCIATES ASSOCIATES, L.P., AND THE BOROUGH OF
NEW PROVIDENCE**

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Muñoz.

WHEREAS, the Borough of New Providence has previously leased premises known as Lot 14, Block 50 on the Tax Map of the Borough of New Providence, to the Church Coalition for New Providence Affordable Housing Corporation (CCNPAH Corp.) for the purpose of developing a senior citizen housing project within the Borough of New Providence; and

WHEREAS, the CCNPAH has assigned, with the permission of the Borough, its leasehold interest to New Providence Affordable Senior Housing Associates & Urban Renewal Associates, L.P., a New Jersey Limited Partnership, in order to facilitate the construction, operation and maintenance of such project; and

WHEREAS, the Investors Bank, a New Jersey state-chartered bank, is about to provide a permanent leasehold mortgage loan to the New Providence Affordable Senior Housing & Urban Renewal Associates, L.P., for the purpose of providing permanent financing for said senior citizen housing project; and

WHEREAS, as part of the provision of said permanent leasehold mortgage loan, it is necessary for the Borough of New Providence to enter into a Three Party Agreement with Investors Bank and the New Providence Affordable Senior Housing & Urban Renewal Associates, L.P. in order to provide certain rights, remedies and protections regarding the Bank's interest in the lease; and

WHEREAS, the proposed Three Party Agreement has been reviewed by the Mayor and Council and whereas they are satisfied that the Three Party Agreement will advance the permanent financing and maintenance of senior citizen affordable housing within the Borough of New Providence; and

WHEREAS, the Mayor and Council are authorized under N.J.S.A. 40A:60-1, et seq., to adopt resolutions for any purpose required for the government of the Municipality or for the accomplishment of any public purpose for which the Municipality is authorized to act under general law; and

WHEREAS, the Mayor and Council are satisfied that entering into the said aforesaid Three Party Agreement will advance the public interest.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey as follows:

1. The Borough agrees to enter into the above described Three Party Agreement and hereby authorizes the appropriate Borough Officials, employees and attorney to take any and all steps necessary to implement the terms and conditions of this Resolution.

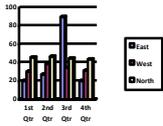
APPROVED, this 14th day of January, 2013.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
LESNEWICH	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 14th day of January, 2013.

Wendi B. Barry, Borough Clerk



THREE PARTY AGREEMENT

(Ground Lease)

THREE PARTY AGREEMENT, dated as of this ____ of ____, ____, among INVESTORS BANK, a New Jersey state-chartered savings bank, having its office at 101 JFK Parkway, Short Hills, New Jersey 07078 (the "Bank"), NEW PROVIDENCE AFFORDABLE SENIOR HOUSING & URBAN RENEWAL ASSOCIATES, L.P., a New Jersey limited partnership, having its office at 101 Academy Street, New Providence, New Jersey 07974 (the "Tenant") and the BOROUGH OF NEW PROVIDENCE, a municipal corporation of the State of New Jersey, having its office at 360 Elkwood Avenue, New Providence, New Jersey 07974-1844 (the "Landlord").

WITNESSETH:

WHEREAS, the Bank is about to make a permanent leasehold mortgage loan to the Tenant in the amount of \$550,000.00 (the "Loan"), secured by, among other things, an assignment and leasehold mortgage of that certain Agreement of Lease, dated June 27, 1994, as amended, between the Landlord, as lessor, and Church Coalition for New Providence Affordable Housing Corporation, as lessee ("CCNPAH"), as same has been assigned to Tenant (the "Lease"), which Lease is for the land described in Exhibit A annexed hereto and all improvements now or hereafter located thereon (the "Leased Premises"); and

WHEREAS, the Loan is evidenced by a certain Note, dated _____, 2012, in the original principal amount of \$550,000 (the "Note") made by the Tenant to the Bank, and secured by a certain Leasehold Loan Mortgage and Security Agreement, dated _____, 2012, in said principal amount made by the Tenant to the Bank (the "Mortgage"), which Mortgage covers, inter alia, the Tenant's entire leasehold interest in the Leased Premises created under the Lease;

WHEREAS, as a condition to the Bank's making the Loan, the Bank has requested that the Landlord and the Tenant enter into this Agreement in order to provide certain rights, remedies and protections regarding the Bank's interest in the Lease; and

WHEREAS, Tenant and the Landlord have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Landlord hereby consents to the mortgaging and assignment of the Lease and all right, title and interest in the Lease, and the leasehold estates created thereby, by the Tenant to the Bank, its successors and assigns. The Tenant's execution and delivery of the Mortgage shall not be deemed to constitute a default under any of the provisions of the Lease. Without limiting the generality of the foregoing, the Landlord consents to:
 - (a) The mortgaging and assignment of all Tenant's right, title and interest in and to the Lease and the lease-hold estates created thereby, as security for the Loan;
 - (b) The assignment to the Bank of all of Tenant's rights to extend, modify, amend, supplement, alter, cancel or terminate the Lease;
 - (c) The assignment to the Bank of each and every sublease of the Lease whether now existing or hereinafter entered into;
 - (d) The right of the Bank without the consent of Landlord to foreclose its assignment and mortgage of the Lease after the occurrence of an uncured Event of Default under the Mortgage by judicial proceedings or other lawful means, or accept an assignment in lieu of foreclosure, and the subsequent sale of the leasehold estate to any affiliate or subsidiary of the Bank, or any other person or entity, unless otherwise prohibited by the terms of this Agreement;
 - (e) After the occurrence of an uncured Event of Default under the Mortgage, the Bank's appointment of a receiver and the right of the Bank to enter onto the Leased Premises and collect the subrentals, issues and profits therefrom.

The Landlord acknowledges that the assignment by the Tenant of its interest in the Lease is security for the Tenant's payment and performance of its obligations with respect to the Loan, and the Bank shall not be liable for the performance of any of the covenants or other obligations of the Tenant under the Lease by reason of such assignment.

2. (a) Landlord shall send a copy of each notice from Landlord to Tenant of a default by Tenant under the Lease in accordance with the notice provisions of paragraph 10 below. No such notice shall be deemed to have been given to the Tenant until said copy of such notice has been given to the Bank. The Landlord agrees to accept performance and compliance by the Bank, or any nominee of the Bank, under the Lease with the same force and effect as though kept,

observed or performed by the Tenant, and the Tenant hereby agrees that the Bank may perform or comply after the occurrence of an uncured default under the Lease. Nothing in this Agreement shall obligate the Bank to cure any such default.

(b) The Bank shall have a period of not less than thirty (30) days after the period which Tenant has under the Lease for curing any default by Tenant under the Lease, which period shall commence upon the later of the giving of notice of such default to the Bank by the Landlord or the expiration of the Tenant's cure period, except that with respect to any default that may not be cured by the payment of money, the Bank shall have an additional period of time reasonably necessary to cure such default not to exceed 180 days, including, without limitation, the period of time reasonably necessary to acquire the Tenant's interest in the Lease, in which event the Bank or its nominee or successor shall diligently pursue such cure and/or acquisition. As a condition to the Bank's right to cure such nonmonetary default, the Bank shall pay all rent and additional rent, as same becomes due during such cure period, net in either case of any subrent received by the Landlord and not delivered to the Bank. Notwithstanding anything in this paragraph to the contrary, prior to the Bank, or any nominee of or successor to the Bank, succeeding to Tenant's interest under the Lease or becoming the tenant under a new lease pursuant to Paragraph 3 below, neither the Bank, nor any nominee of or successor to the Bank, shall be obligated to cure any default under the Lease which is not susceptible of being cured by the exercise of commercially reasonable efforts or which requires the expenditure of an extraordinary sum of money, such as, without limitation, the cost of a substantial capital improvement.

3. (a) In the case of any termination of the Lease, by the happening of any default thereunder or for any other reason, the Landlord shall give written notice thereof to the Bank. The Landlord will, promptly upon demand by the Bank within ninety (90) days after the Bank receives notice of such termination from the Landlord, enter into a new lease directly with the Bank or any nominee of the Bank, for a term equal to the remaining term of the Lease, immediately prior to such termination and otherwise on the same terms and conditions as the Lease (including, without limitation the rent and additional rent payable thereunder and the permitted use of the Leased Premises). Said new lease shall have the same priority in time and right as the Lease with respect to any fee mortgage and any other encumbrance created by the Landlord. Any subleases of the Lease shall continue in effect and shall be deemed to be subleases of the new lease.

(b) As a condition to Landlord's entering into such new lease, the Bank shall pay any outstanding past due rent, net of any subrent received by the Landlord and not delivered to the Bank.

(c) Notwithstanding anything in this paragraph to the contrary, the Landlord shall not take any action to cancel or terminate the Lease without first (i) giving prior notice thereof to the Bank and affording the Bank an opportunity to cure same as required by paragraph 2 hereof and

(ii) if requested by the Bank, entering into any new lease with the Bank, its nominee, successor or purchaser in accordance with the terms of this Agreement.

(d) In the event that at the time of the Landlord's entry into such new lease, the Tenant shall be in possession of the Leased Premises, or any part thereof, Landlord, at the request and expense of the Bank, its nominee or successor, as the case may be, will fully cooperate with the Bank in removing the Tenant from the Leased Premises.

(e) The provisions of this paragraph shall survive any termination of the Lease.

4. If the Bank shall be entitled to foreclose or otherwise acquire the Tenant's interest in the Lease, or if the Bank shall be entitled to a new lease from the Landlord, the Bank may, except as otherwise provided in this paragraph 4, without the Landlord's consent: (i) acquire the Tenant's interest in the Lease either directly or in the name of a nominee of the Bank, (ii) enter into any such new lease either directly or in the name of a nominee of the Bank, (iii) transfer the interest of Tenant in the Lease to any purchaser or assignee of the Bank, or (iv) require the Landlord to enter into such new lease directly with any purchaser or assignee of the Bank. Tenant agrees that no such transfer shall relieve the Tenant of its obligations under the Lease, nor shall the Bank become liable under any of the provisions of the Lease, it being understood that if, after the Bank shall succeed to the ownership of the Lease and the leasehold estate created thereby, there shall occur a default under the Lease, the sole recourse of the Landlord in connection with such default shall be to terminate the Lease in accordance with its terms.

5. The Landlord agrees that at all times while the Loan or any part thereof is outstanding:

(a) no other party (other than the nominee or successor of the Bank, as provided herein) shall be entitled to an assignment or mortgage of the Tenant's interest in the Lease or to acquire any of the Tenant's interest in the Lease, and the Landlord will not consent to any further encumbrances, subletting (except to residents of the premises in accordance with the Lease), termination, cancellation, surrender or modification of the Lease by the Tenant without the prior written approval of the Bank; and

(b) the Landlord shall not be entitled to any of the rents under any sublease of the Lease, nor shall Landlord make any demand for rent under such subleases, unless: (i) the rent under the Lease is more than sixty (60) days past due; and (ii) the Landlord has notified the Bank of such default; and (iii) the Bank has failed to commence to exercise its right to receive payment of the rents from the subleases either by appointment of a receiver or in accordance with its rights as assignee thereof; and (iv) the Bank has failed to cure existing monetary defaults under the Lease in accordance with this Agreement, or, as to nonmonetary defaults, has failed to commence curing those that are curable in accordance with this Agreement.

6. The Landlord and the Tenant each hereby represent and warrant to the Bank that:

(a) The Lease covers only the Leased Premises. The annual base rent under the Lease as of the date hereof is \$1.00. There is no escalation provision in the Lease with respect to the base rent. All additional rent is as set forth in the Lease;

(b) The Lease has commenced and the term of the Lease expires on February 28, 2025;

(c) The Lease is in full force and effect and has not been modified or amended, except for the amendments listed on Schedule A hereto;

(d) To the actual knowledge of the Landlord and the Tenant, neither of them is in default under any of its obligations under the Lease.

7. The Landlord hereby agrees for the benefit of the Bank that the fee interest of the Landlord in and to the Leased Premises shall not be pledged, mortgaged or encumbered without the prior written consent of the Bank. Any such pledge, mortgage or encumbrance granted or received in violation of this paragraph shall be subject and subordinate to the Mortgage in all respects.

8. The Landlord agrees that while the Loan or any part thereof is outstanding, no surrender, cancellation or voluntary termination of the Lease shall be effective without the prior written consent of the Bank except as otherwise provided in this Agreement.

9. If any of the terms of this Agreement shall conflict with any of the terms of the Lease, the terms of this Agreement shall be controlling.

10. Any notices required herein shall be given to all parties to this Agreement, shall be in writing, and shall be deemed to have been sufficiently given or served for all purposes when sent by certified or registered mail or commercial courier service, to any party hereto at the following address:

(a) If to the Bank:

Investors Bank
101 JFK Parkway
Commercial Loan Department
Short Hills, NJ 07078

(b) If to the Tenant:

New Providence Affordable Service Housing & Urban Renewal Associates, L.P.
101 Academy Street
New Providence, New Jersey 07974
Attention: _____

(c) If to the Landlord:

Borough of New Providence
360 Elkwood Avenue
New Providence, New Jersey 07974
Attention: Douglas R. Marvin
Borough Administrator

or at such other address as any of the parties may from time to time designate by written notice given as herein required. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier service, notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

11. The Landlord hereby consents to the granting to the Bank of a lien on and security interest in all personal property of the Tenant located on or attached to the Leased Premises as more fully described in the Mortgage (the "Personal Property"), as collateral security for the repayment of all of the indebtedness, liabilities and obligations, whether now existing or hereafter arising, of the Tenant to the Bank. The Landlord disclaims and waives any and all security interest, lien, claim or other similar right in or to the Personal Property, whether arising by agreement or law, and consents that the Bank, in connection with any foreclosure or other similar action relating to the Personal Property, may enter upon the Leased Premises, or permit others to do so on its behalf, in order to implement such-action, without liability to the Landlord.

12. Notwithstanding anything to the contrary in this Agreement or the Lease, the Landlord confirms and agrees in accordance with the "Seventh" paragraph of the Lease as modified herein, that whether or not the Lease is terminated, Landlord shall use any rent received for the Leased Premises less operating expenses (except that operating expenses shall not include any taxes, fees, expenses or other sums payable to the Landlord) to pay to the Bank all sums due under the Note and Mortgage.

13. The Bank agrees to give notice and a right to cure for 30 days after such notice to the Landlord in the event that an Event of Default occurs under the Mortgage, The Landlord acknowledges, however, that the giving of such notice and right to cure shall not affect the Bank's right to exercise any rights or remedies under the Mortgage or other Loan documents.

14. This Agreement may not be modified, waived or amended in any respect, except in writing, signed by the Landlord and the Bank, and shall be binding upon, and inure to the benefit of, the successors, heirs, executors, administrators and assigns of the respective parties hereto.

15. This Agreement and the rights and indebtedness hereby secured shall, without regard to place of contract or payment, be construed and enforced according to the laws of the State of New Jersey, without giving effect to its principles of conflicts of laws.

16. This Agreement may be executed in one or more counterparts. Each of the executed several counterparts of this Agreement shall be an original. All such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

The Bank:

INVESTORS BANK

By: _____
Albert T. Owens
Vice President

The Tenant:

NEW PROVIDENCE AFFORDABLE
SENIOR HOUSING & URBAN
RENEWAL ASSOCIATES, L.P

By: Church Coalition for New Providence
Affordable Housing Corporation

By: _____

The Landlord:

BOROUGH OF NEW PROVIDENCE

By: _____
Name
Title: