

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2013-093

Council Meeting Date: 2-25-2013

Date Adopted: 2-25-2013

TITLE: RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE  
GUARANTEE IN THE AMOUNT OF \$386,491.00 TO TD BANK

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

WHEREAS, the td Bank (formerly Commerce Bank) came before the Planning Board and received approval in 2007; and

WHEREAS, the Borough Engineer of the Borough of New Providence has reported that TD Bank, owner of Block 150, Lots 3 and 4, posted a Performance Guarantee, an Irrevocable Standby Letter of Credit, in the amount of \$386,491.00 as required by the approving resolution; and

WHEREAS, the Borough Engineer advises that work has been completed to the satisfaction of the Engineering Department and all expert fees and expenses have been paid from the escrow account established for this applicant allowing for the return of the posted Performance Guarantee.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby authorize the release of the Performance Guarantee, an Irrevocable Standby Letter of Credit, in the amount of \$386,491.00 to TD Bank (formerly Commerce Bank).

BE IT FURTHER RESOLVED, by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that the Performance Guarantee, an Irrevocable Standby Letter of Credit, in the amount of \$386,491.00 be returned to said applicant.

APPROVED, this 25<sup>th</sup> day of February, 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 25<sup>th</sup> day of February, 2013.

Wendi B. Barry, Borough Clerk

B O R O U G H O F  
**NEW PROVIDENCE**

SETTLED IN 1720

J. Brooke Hern, Mayor  
PLANNING BOARD  
Robert Lesnewich, Chairman  
Margaret Koontz, Secretary

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To: Monica Marino, Finance Department  
Wendi Barry, Borough Clerk  
Borough Council

From: Keith J. Lynch, Construction Official  
Margaret Koontz, Secretary,

Re: Planning Board Application  
TD Bank (formerly Commerce Bank)  
80 South Street  
Block 150, Lots 3 and 4

Date: February 8, 2013

The above application came before the Planning Board in 2007 and was approved per Resolution 2007-09. The Borough Engineer advised that all required fees and expenses have been paid and Council approved the release of the escrow funds and site performance bond in Resolution 2012-147. The check for the cash component of the bond, \$43,212.56, was on the May 29, 2012, bill list.

TD Bank is now requesting the release of the posted Performance Guarantee, an Irrevocable Standby Letter of Credit, issued by Commerce Bank in the amount of \$386,491.00. As all expert fees and expenses have been paid from the escrow account established for this applicant and the Engineer has authorized release of the escrow and bond, the Performance Guarantee in the amount of \$386,491.00 can be released to the applicant.

APPROVED:

  
Keith J. Lynch, Construction Official

  
Margaret Koontz, Secretary

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2012-147

Council Meeting Date: 05-14-2012

Date Adopted: 05-14-2012

TITLE: RESOLUTION AUTHORIZING RETURN OF ESCROW FUNDS AND SITE PERFORMANCE BOND TO TD BANK

Councilperson Lesnewich submitted the following resolution, which was duly seconded by Councilperson Cucco.

WHEREAS, TD Bank (formally Commerce Bank) has requested return of their escrow funds and performance bond, for a 2007 Planning Board application for preliminary and final site plan approval, in the amounts of \$3,028.38 and \$43,212.56; and

WHEREAS, the Borough Engineer has advised that the applicant received Planning Board approval, confirmed by Resolution 2007-9; and

WHEREAS, the Borough Engineer advises all required fees and expenses have now been paid; and

WHEREAS, the Borough Engineer recommends the release of escrow funds and site performance bond for the 2007 Planning Board application for preliminary and final site plan approval.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of New Providence that escrow funds and site performance bond in the amounts of \$3,028.38 and \$43,212.56 posted by TD Bank (formally Commerce Bank), be returned to said applicant.

APPROVED, this 14<sup>th</sup> day of May, 2012.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO	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 14<sup>th</sup> day of May, 2012.

\_\_\_\_\_  
Wendi B. Barry, Borough Clerk

Borough Of New Providence  
County Of Union  
State Of New Jersey

\_\_\_\_\_  
J. Brooke Hern, Mayor



America's Most Convenient Bank®

February 7, 2013

Ms. Margaret Koontz  
Borough of New Providence  
360 Elkwood Avenue  
New Providence, NJ 07974

**RE: TD Bank – New Providence**  
80 South Street, New Providence, NJ  
Block: 150, Lot: 3 and 4, Borough File No. NPP-144

Dear Margaret:

Please accept this letter as a formal request for release of the posted Performance Guarantee as listed below. All bonded work has been completed and was approved by final Township inspections, and a two-year Maintenance bond has been posted.

We are therefore requesting the following:

- Release of TD Bank (formerly Commerce Bank) Letter of Credit (Performance) No. 136192070397 dated September 18, 2007 in the amount of \$386,491.00. (copy attached).

Please notify me when we will be placed on the council's agenda, and if there are any additional requirements for release.

A prompt reply would be greatly appreciated.

Sincerely,

**TD BANK, N.A.**

A handwritten signature in blue ink that reads 'Barbara A. Roth'.

Barbara A. Roth, Officer/Development Services Coordinator

TD Bank, N.A.  
U.S. Real Estate  
Development Svcs Dept  
12000 Horizon Way  
Mt. Laurel, NJ 05054  
856-470-3330



Block(s) 150

Lot(s) 3 & 4

INTERNATIONAL DEPARTMENT

**IRREVOCABLE STANDBY LETTER OF CREDIT (PERFORMANCE)**

**ISSUED BY:** COMMERCE BANK, N. A.  
6000 Atrium Way  
Mt. Laurel, NJ 08054  
Telephone: 856-751-9000  
Fax: 856-533-6545

**ISSUE DATE:** September 18, 2007

**EXPIRATION DATE AND TIME:** September 18, 2008

**LETTER OF CREDIT NO.** 136192070397

**BENEFICIARY:** Borough of New Providence  
360 Elkwood Avenue  
New Providence, NJ 07974

**APPLICANT:** Commerce Bank, N. A.  
6000 Atrium Way  
Mt. Laurel, NJ 08054

**AMOUNT:** Three Hundred Eighty-Six Thousand Four Hundred Ninety-One and 00/100 USD  
(\$386,491.00)

We hereby issue our Irrevocable Standby Letter of Credit in your favor, which is available by your draft at sight bearing our Letter of Credit No. 136192070397 on Commerce Bank, N. A..

Your draft must be presented at the office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by the following:

1. The original Standby Letter of Credit and any subsequent original amendments.
2. An original statement purportedly signed by the Engineer of the Borough of New Providence stating:

"The amount of this drawing under Irrevocable Standby Letter of Credit No. 136192070397, issued by Commerce Bank, N. A., represents the amount due us as a result of the failure of to complete, in whole or in part, the required site improvements as detailed in the municipal resolution of approval and in that certain Engineer's Estimate entitled "Preliminary Opinion of Probable Cost" prepared by Bohler Engineering, P.C. and dated September 5, 2007. I hereby certify that notice of the incomplections upon which this drawing is based was given to the applicant by registered or certified mail or by courier on \_\_\_\_\_".

This certification shall be accompanied by a resolution of the municipal governing body endorsing the findings of the engineer and stating that the improvements have not been approved or accepted.

6000 Atrium Way  
2nd Floor  
Mount Laurel, NJ 08054  
856/751-9000  
FAX: 856/533-6525  
SWIFT: CBNAUS33



INTERNATIONAL DEPARTMENT

September 18, 2007  
Irrevocable Letter of Credit No. 136192070397  
Page No. 2

This Letter of Credit shall be deemed to be automatically extended annually for periods of one year unless written notice is given by the banking institution by registered or certified mail or by courier to the applicant and the municipality at least sixty (60) days prior to the then-current expiration date.

In the event of the failure of the applicant to furnish another Letter of Credit meeting the requirements of N.J.S.A. 40:55D-53.5 and N.J.A.C. 5:39-1.3, or other acceptable security, at least thirty (30) days prior to the expiration date of this Letter of Credit, the municipality may, to the extent allowed by law, draw upon this Letter of Credit to pay the cost of any incompletions.

This Letter of Credit shall expire upon approval or acceptance by resolution of the municipal governing body of all improvements cited in the aforesaid Engineer's Estimate or upon replacement of this Letter of Credit by other security meeting applicable legal requirements. Upon approval or acceptance of some, but not all, of said improvements, a reduction in the amount of this Letter of Credit shall be granted in accordance with N.J.S.A. 40:55D-53, provided that the remaining amount shall be sufficient to secure provision of the improvements not yet approved and that the municipality may require that the remaining amount be thirty (30) percent of the original amount.

All correspondence to Commerce Bank, N. A. concerning this Letter of Credit shall be addressed to the office indicated above.

This Letter of Credit shall inure to the benefit of the beneficiary municipality only and no other party shall acquire any rights hereunder.

This Letter of Credit is subject to Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

We hereby agree with you that drawings under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation to us.

Very truly yours,

COMMERCE BANK

Darleen M. Strieffler  
Assistant Vice President

Commerce 136192070397  
DMS/jb

Witness/Attest:

William C. Battaglia  
Vice President

6000 Atrium Way  
2nd Floor  
Mount Laurel, NJ 08054  
888/751-9000  
FAX: 856/533-6525  
SWIFT: CBNAUS33