

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2017-131

Council Meeting Date: 05-08-2017

Date Adopted: 05-08-2017

TITLE: RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE
GUARANTEE IN THE AMOUNT OF \$172,140.64 755 CENTRAL AVENUE,
LLC

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

WHEREAS, the 755 Central Avenue, LLC came before the Planning Board and received approval in 2014; and

WHEREAS, the Construction Official of the Borough of New Providence has reported that 755 Central Avenue, LLC, tenant of Block 185, Lots 22.01-22.09, posted a Performance Guarantee, in the amount of \$172,140.64, as required by the Planning board approval; and

WHEREAS, to comply with the Performance Guarantee requirements, 755 Central Avenue, LLC, posted a performance bond in the amount of \$155,607.48 and a cash guarantee of \$16,533.16; and

WHEREAS, the Construction Official advises that work has been completed to the satisfaction of the Planning and Development Department and recommends the return of the posted Performance Guarantees; and

WHEREAS, 755 Central Avenue, LLC, has posted a two year maintenance bond in the amount of \$20,666.45.

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 Guarantees in the amount of \$172,155.84, performance bond \$155,607.48 and cash \$16,548.36 including interest, to 755 Central Avenue, LLC.

APPROVED, this 8th day of May, 2017.

RECORD OF VOTE

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

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 8th day of May, 2017.

Wendi B. Barry, Borough Clerk

B O R O U G H O F
NEW PROVIDENCE

SETTLED IN 1720

Al Morgan, Mayor
PLANNING BOARD
Robert Lesnewich, Chairman
Margaret Koontz, Secretary

To: Wendi Barry, Borough Clerk
Borough Council

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

Re: Planning Board Application 2014-04
755 Central Avenue – Sproutlings Day Care Center
755 Central Avenue
Block 185, Lots 22.01 – 22.09

Date: April 20, 2017

The above applicant came before the Planning Board on July 1 and August 2, 2014, for preliminary and final site plan approval with variances to occupy a portion of multi-tenant building at 755 Central for use as a day care center. This was approved per Resolution 2014-10. The applicant posted a Performance Guaranty of which \$16,533.16 was cash. The applicant has requested the release of the guaranty. The Borough Engineer has reviewed the request and takes no exception to releasing the guaranty and cash portion of the guaranty. The applicant has posted a two-year Maintenance Bond in the amount of \$ 20,666.45. At this time, the Performance Bond and the cash portion of the Performance Guaranty in the amount of \$16,548.36 can be released.

APPROVED:



Keith J. Lynch, Construction Official



Margaret Koontz, Secretary



investors Bank

Escrow Disbursement Transfer Request

Fax Request to 732.321.5140

Date of Request: 12/21/15 Phone Number: 908-665-1400 x233
Escrow Manager: Kathy Herrigel FAX Number: 908-665-9272

Customer Information:

Company Name: Borough of New Providence
Transfer funds to the Master Disbursement Account: 500359903870
Authorization Code: PROV
Sub Account Title: 755 Central Ave Sproutlings-Performance
Sub Account Address: 87 West Passaic St., Rochelle Park NJ Bond
Sub Account Number: 0868416635 07662

Check one of the following Options:

- Close Out Amount \$ 16548.36
- Partial Withdrawal Amount \$ _____

Special Instructions:

Please provide closeout balance.

AK 12/21

Investors Bank Employee Signature for Confirmation

(FAX FORM BACK TO CUSTOMER)

1999010

1006001815

45
92

Account No: T-70-56-850-885-000001
Description: 755 CENTRAL AVE/SPROUTLINGS DAYCARE/PERF Type: Line Control Account
Starting Date: 10/01/16 Ending Date: 04/20/17 Po Transactions: Summarized
* Transaction is included in Previous and/or Opening Balance ** Transaction is not included in Balance
En = PO Line Item First Encumbrance Date BC = Blanket Control BS = Blanket Sub

Date	Description	Trans Amount	Balance
	OPENING BALANCE		16,548.36
10/31/16	Add Acct New: 0.00 Temporary Budget	0.00	16,548.36

70 DEVELOPERS ESCROW

002 APPRN EXCLUDED FROM CAPS
02085 755 Central Ave/Sproutlings Daycare/Performance Bond

Date	Vendor ID	Transaction	Description	Reference	Modified Budget	Encumbrance	Payment	Balance
01/31/15		Budget Offsets	755 Cent/Sproutlings/Perf Bond	1152	16,533.16			16,533.16
12/10/15		Budget Offsets	YTD INTEREST	1310	14.28			16,547.44
12/21/15		Budget Offsets	close out interest	1317	0.92			16,548.36
12/31/15		Balance transferred		70--002-02085-	(16,548.36)			0.00
01/01/16		Balance transferred		70--002-02085-	16,548.36			16,548.36
Total					16,548.36	0.00	0.00	16,548.36
Total					16,548.36	0.00	0.00	16,548.36
Total		755 Central Ave/Sproutlings Daycare/Performance Bond			16,548.36	0.00	0.00	16,548.36
Total		APPRN EXCLUDED FROM CAPS			16,548.36	0.00	0.00	16,548.36
Total					16,548.36	0.00	0.00	16,548.36
Total		DEVELOPERS ESCROW			16,548.36	0.00	0.00	16,548.36
Total		Report			16,548.36	0.00	0.00	16,548.36

**FIRST INDEMNITY OF AMERICA
INSURANCE COMPANY
119 Littleton Road
Parsippany, New Jersey 07054
(973) 402-1200**

Block: 185
Lots: 22

Bond No. FP0021728

**STANDARD NEW JERSEY
PERFORMANCE SURETY BOND**

We, 755 Central Avenue, LLC , having offices at 87 West Passaic Street, Rochelle Park, NJ 07662 as principal and S. Lloyd Tulp and Salvatore V. Frassetto as co-principals and **FIRST INDEMNITY OF AMERICA INSURANCE COMPANY** having offices at **119 Littleton Road Parsippany, New Jersey 07054**, a corporation duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the municipality of Borough of New Providence in the County of Union, obligee in the sum of One hundred fifty five thousand six hundred and seven dollars and forty eight cents (\$155,607.48), Dollars for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On November 25, 2014 , applicant 755 Central Avenue, LLC , principal, was granted approval by the planning board of for final site plan approval to build proposed child care center . The estimate by the municipal engineer of the cost of this work and the resolution of approval are attached hereto and made a part hereof.

Pursuant to municipal ordinance, adopted under authority of the Municipal Land Use Law (*N.J.S.A. 40:55D-1, et seq.*), the principal hereby furnishes a performance surety bond in the amount of One hundred fifty five thousand six hundred and seven dollars and forty eight cents (\$155,607.48), Dollars (not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer), written by **FIRST INDEMNITY OF AMERICA INSURANCE COMPANY**, a surety licensed in the State of New Jersey, guarantying full and faithful completion of improvements approved by the approving authority, in lieu of completing the required improvements prior to the granting of final approval. This bond shall remain in full force and effect until such time as all improvements covered by the bond have been approved or accepted by resolution of the municipal governing body, except that in those instances where some of the improvements are approved or accepted by resolution of the governing body upon certification by the municipal engineer, partial release from the bond shall be granted in accordance with *N.J.S.A. 40:55D-53*. The amount of the bond remaining shall be sufficient to secure provision of the improvements not yet approved; provided, however, that the municipality may require that 30 percent of the amount of the bond be retained to ensure completion of all improvements.

This bond shall remain in full force and effect until released by resolution of the municipal governing body.

This bond is issued subject to the following expressed conditions:

1. This bond shall not be subject to cancellation either by the principal or by the surety for any reason until such time as all improvements subject to the bond have been accepted by the municipality, in accordance with the applicable provisions of the Municipal Land Use Law.
2. This bond shall be deemed to be continuous in form and shall remain in full force and effect until the improvements are accepted by the municipality and the bond is released, or until default is declared, or until the bond is replaced by another bond meeting applicable legal requirements. Upon approval or acceptance of all improvements by the municipality, or upon replacement of this bond by another bond, liability under this bond shall cease. Upon approval or acceptance of some, but not all, of the required improvements by the municipality, partial release from the bond shall be granted in accordance with *N.J.S.A. 40:55D-53*; provided, however, that the portion of the bond amount sufficient to secure completion of the improvements shall continue in effect and the municipality may retain 30 percent of the bond amount posted in order to ensure such completion.
3. The aggregate liability of the surety shall not exceed the sum set forth above.
4. In the event that the improvements subject to this bond are not completed within the time allowed under the conditions of the final approval issued pursuant to the Municipal Land Use Law, including such extensions as may be allowed by the approving authority, the municipal governing body may, at its option, and upon at least 30 days prior written notice to the principal and to the surety by personal delivery or by certified or registered mail or courier, declare the principal to be in default and, in the event that the surety fails or refuses to complete the work in accordance with the terms and conditions of the original approval, claim payment under this bond for the cost of completion of work. In the event that any action is brought against the principal under this bond, written notice of such action shall be given to the surety by the municipality by personal delivery or by registered or certified mail or courier at the same time.
5. The surety shall have the right to complete the work in accordance with the terms and conditions of the original approval, either with its own employees or in conjunction with the principal or another contractor; provided, however, that the surety, in its sole discretion, may make a monetary settlement with the municipality as an alternative to completing the work.
6. In the event that the principal and the approving authority agree to changes in the scope of work, the obligations of the surety under this bond shall not be affected so long as the cost of the work does not exceed 120 percent of the municipal engineer's certified estimate, attached hereto and made a part hereof, which 120 percent of the estimate shall be the limit of the surety's obligation under this bond in any case. If the cost of the work exceeds 120 percent of the certified estimate, the principal shall secure a rider from a surety for the additional amount; provided, however, that this provision shall not be construed as requiring a surety to provide additional coverage.
7. This bond shall inure to the benefit of the municipality only and no other party shall acquire any rights hereunder.
8. In the event that this bond shall for any reason cease to be effective prior to the approval or acceptance of all improvements, a cease and desist order may be issued by the governing body, in which case all work shall stop until such time as replacement guarantee acceptable to the approving authority becomes effective.

Bond No. FP0021728

9. This bond shall not be transferable or assigned to any other individual or entity and especially where the Municipality has acknowledged the transfer or assignment of the subject property. In the event such a transfer or assignment shall take place, then this bond shall no longer be effective and in force.

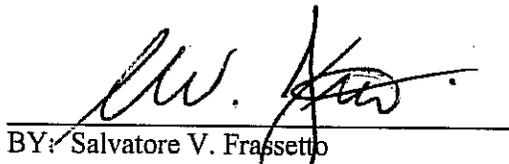
Date: This 20th day of January , 2015 .

SEAL:

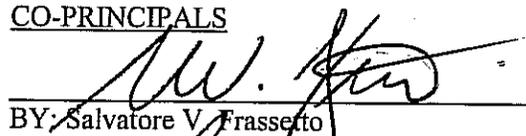

Witness:

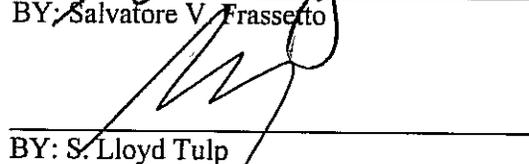


755 Central Avenue, LLC


BY: Salvatore V. Frassetto

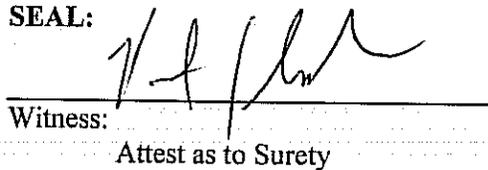
CO-PRINCIPALS


BY: Salvatore V. Frassetto

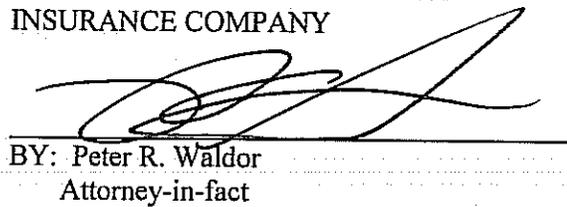

BY: S. Lloyd Tulp

BY:

SEAL:


Witness:
Attest as to Surety

FIRST INDEMNITY OF AMERICA
INSURANCE COMPANY


BY: Peter R. Waldor
Attorney-in-fact

* New Jersey Development of Community Affairs Standard Performance Bond Form
** DCA Approved 7/01

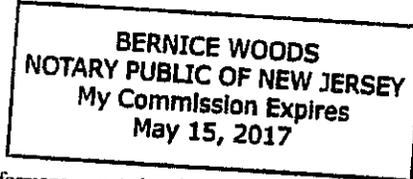
Bond No. FP0021728

State of New Jersey
County of Morris

On this 20th day of January, 2015, personally came before me, Peter R. Waldor to me known, who being by me duly sworn did depose and say that s/he is an attorney-in-fact of **FIRST INDEMNITY OF AMERICA INSURANCE COMPANY**, the corporation described in and which executed the within instrument; that s/he knows the corporate seal of said corporation; that the seal affixed to the within instrument is such corporate seal and that s/he signed the said instrument and affixed the said seal as attorney-in-fact by authority of the Board of Directors of said corporation and by authority of this office under the standing resolutions thereof.

Signed and sworn to before me
This 20th day of Jan, 2015.

Bernice Woods
(Notary)

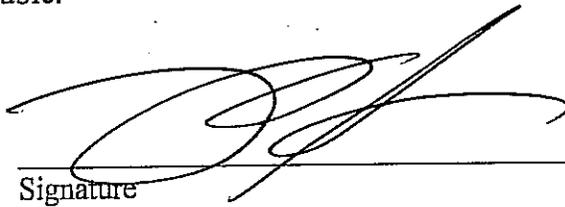


2001/Deed & Guarantee Forms H7809 (I) performance surety bond
Bond No. FP0021728

CERTIFICATION

(To be completed by an authorized certifying agent for each surety on the bond.)

I, Roger R. Walden as ATTORNEY-IN-FACT for First Indemnity of America Insurance Company, a corporation domiciled in New Jersey, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true and acknowledge that if any of those statements are false, this bond is voidable.



Signature

Roger R. Walden
Print Name

ATTORNEY-IN-FACT
Title

FIRST INDEMNITY OF AMERICA INSURANCE COMPANY

119 Littleton Road

Parsippany, New Jersey 07054

(973) 402-1200 Fax (973) 402-0770

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

First Indemnity of America Insurance Company ("the Surety"), on the attached bond, hereby certifies the following:

1. The Surety meets the applicable capital and surplus requirements of R.S. 17.17-6 or R.S. 17.17-7 as of the Surety's most current annual filing with the New Jersey Department of Insurance.
2. The capital and surplus, as determined in accordance with the applicable laws of the State of New Jersey, is in the amount set forth on the annexed sheet, which said amount has been certified and is on file with the New Jersey Department of Insurance as required by law. Copies of the Annual Statement reflecting such information are on file with the New Jersey Department of Insurance and may be obtained from that agency.
3. The amount of the bond to which this statement and certification is attached is \$ 155,808.48.
4. The bond annexed hereto may be reinsured pursuant to treaties of reinsurance between First Indemnity of America Insurance Company and any of the reinsurers set forth in Schedule F, Parts (1) (2) (3) and (4) of the Annual Statement for First Indemnity of America Insurance Company for the year ended December 31, 2012, as on file with the New Jersey Department of Insurance.
5. The Surety certifies that each reinsurer referred to in Item (5) satisfies the credit for reinsurance requirement established by law as of the date on which the bond to which this statement and certification is attached shall have been issued.

ENGINEER'S ESTIMATE
 755 CENTRAL AVENUE
 BLOCK 185, LOT 22
 BOROUGH OF NEW PROVIDENCE, UNION COUNTY, NJ
 07/29/147
 Revised 11/19/14
 OEA Project No. 110108



ENGINEERING ASSOCIATES, INC.
 54 Horsehill Road
 Cedar Knolls, NJ 07927
 Phone: 973-359-8400
 Fax: 973-359-8455

ESTIMATE IS BASED ON PLANS PREPARED BY OMLAND ENGINEERING ASSOCIATES ENTITLED:
 "PREL. & FINAL SITE PLANS FOR 755 CENTRAL AVENUE", DATED 05/02/14 AND REV. THROUGH 07/23/14

ESTIMATE FOR SITE IMPROVEMENTS

<u>ITEM No.</u>	<u>ITEM DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>ITEM TOTAL</u>
1. PAVEMENT					
1.1	6" THICK. PERVIOUS CONC. PAVEMENT W/ 12" THICK AGGREGATE	S.F.	7000	\$10.00	\$70,000.00
					SUB-TOTAL \$70,000.00
2. CURB & SIDEWALK					
2.1	GRANITE BLOCK CURB	L.F.	563	\$12.00	\$6,756.00
2.2	CONCRETE SIDEWALK	S.Y.	200	\$45.00	\$9,000.00
					SUB-TOTAL \$15,756.00
3. STORM					
3.1	8" PVC PIPE	L.F.	100	\$25.00	\$2,500.00
3.2	FLARED END SECTION	EACH	2	\$500.00	\$1,000.00
3.3	ADDITIONAL STORM SYSTEM PER BOR. ENG	L.S.	1	\$30,000.00	\$30,000.00
					SUB-TOTAL \$33,500.00
4. MISCELLANEOUS					
4.1	SHADE TREES	EACH	7	\$200.00	\$1,400.00
4.2	SHRUBS	EACH	75	\$35.00	\$2,625.00
4.3	TRAFFIC SIGNAGE	EACH	7	\$200.00	\$1,400.00
4.4	PAVEMENT STRIPING	L.S.	1	\$1,000.00	\$1,000.00
4.5	POLE & LIGHT FIXTURE (SINGLE MOUNT)	EACH	2	\$2,500.00	\$5,000.00
4.6	BLDG. MTD. LIGHT FIXTURE	EACH	2	\$1,800.00	\$3,600.00
4.7	6' HIGH WOOD FENCE	L.F.	136	\$50.00	\$6,800.00
4.8	SOIL EROSION & SEDIMENT CONTROL	L.S.	1	\$3,000.00	\$3,000.00
					SUB-TOTAL \$24,825.00
TOTAL =					\$144,081.00
120% M.L.U.L.					\$172,897.20
90% BOND					\$155,607.48
10% CASH					\$17,289.72
5% ENGINEERING INSPECTION FEE =					\$8,644.86

Stanley T. Omland, P.E., New Jersey License No.30696

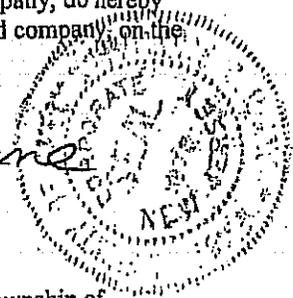
Estimate does not include building improvements & play area equipment.
 Additional storm system may be required upon review of plans from Borough Engineer.

FIRST INDEMNITY OF AMERICA INSURANCE COMPANY
 119 Littleton Road
 Parsippany, NJ 07054
STATEMENT OF FINANCIAL CONDITION AS OF DECEMBER 31, 2013

Assets:	
Bonds	\$ 2,093,231
Preferred & Common Stocks	1,808,857
Cash and Short Term Investments	1,779,645
Investment Income Due and Accrued	23,438
Premiums in the Course of Collection (under 90 days)	301,918
Reinsurance Recoverable on Loss and LAE Payments	39,442
Funds Held by Reinsured Companies	-
Deferred Tax Asset	437,126
Receivable from Affiliate	-
Other Assets	-
	\$ 6,483,657
 Liabilities and Surplus:	
Reserve for Loss and Loss Adjustment Expenses	(2,493,629)
Other Expenses	276,594
Taxes Licenses and Fees	110,342
Unearned Premium	2,114,164
Funds Held Under Reinsurance Treaties	-
Amounts Withheld or Retained for Others	777,424
Ceded Reinsurance Balances Payable	186,198
Liability for Unauthorized Reinsurers	11,879
	982,972
 Capital & Surplus:	
Common Stock, Paid Up	3,500,000
Paid in and Contributed Surplus	480,945
Unassigned Surplus	1,519,740
	5,500,685
Surplus as Regards to Policyholders	5,500,685
	\$ 6,483,657

I, Glenn A. Runne, Chief Financial Officer of First Indemnity of America Insurance Company, do hereby certify that the foregoing statement is a correct exhibit of the assets and surplus of the said company on the 31st day of December, 2013, according to the best information, knowledge, and belief.

Glenn A. Runne
 Glenn A. Runne
 Chief Financial Officer



State of New Jersey
 County of Morris) SS:

Subscribed and sworn to, before me, a Notary Public of the State of New Jersey in the Township of Parsippany, Troy Hills, this 31st day of December, 2013.



KATHLEEN FOCHESTO
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires 3/16/2015

Kathleen Fochesto
 Kathleen Fochesto, Notary Public
 My Commission Expires March 16, 2015

FIRST INDEMNITY OF AMERICA
INSURANCE COMPANY

119 Littleton Road Parsippany, New Jersey 07054
Telephone: (973) 402-1200

POWER OF ATTORNEY FOR BONDS AND UNDERTAKINGS

Know All Men By These Presents: That First Indemnity of America Insurance Company, a Corporation of the State of New Jersey does hereby appoint: Peter R. Waldor, Helene Wenger, its true and lawful Attorneys-in-Fact: to make, execute, sign, acknowledge, affix the Company Seal to, deliver any and all surety bonds, undertakings, recognizances, and other contracts of indemnity and writings obligatory in the nature of a bond, for and on behalf of said Company and as an act and deed of said Company, NOT TO EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS FOR ANY BOND OR CONTRACT PRICE.

IN WITNESS WHEREOF, First Indemnity of America Insurance Company of the State of New Jersey has executed these presents this 20th day of March, 2012.



Patrick J. Lynch
Patrick J. Lynch, President

STATE OF NEW JERSEY)
COUNTY OF MORRIS) ss:

On this 20th day of March, 2012, before me came the above named officer of First Indemnity of America Insurance Company of New Jersey, to me personally known to be the individual and officer described herein, and acknowledge that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of this office.



Frances A. Frazzano
Frances A. Frazzano
Notary Public, State of New Jersey
My term expires on May 10, 2017

CERTIFICATE

Excerpts of Resolutions (Article V, Paragraph 5, of the By-Laws of said Company) adopted by the Board of Directors of the First Indemnity of America Insurance Company of the State of New Jersey, March 20, 2012.

RESOLVED, that the President, or any one of the Vice Presidents specially authorized to do so by the Board of Directors, or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Attorneys-in-Fact as the business of the company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and release and assignment of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require and to affix the Seal of the Company thereto.

RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating to the Power of Attorney by facsimile and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking, recognizances or other contract of indemnity of writing obligatory in the nature thereof.

I, Jane E. Lynch, Secretary of First Indemnity of America Insurance Company of New Jersey, do hereby certify that the foregoing excerpts of the Resolution adopted by the Board of Directors of the Corporation and the Powers of Attorney issued pursuant thereto, are true and correct and that both the Resolution and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have herewith set my hand and affixed the seal of said Corporation this 20 day of March, 2012.



Jane E. Lynch
Jane E. Lynch, Secretary