

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2018-325

Council Meeting Date: 01-03-2019

Date Adopted: 01-03-2019

TITLE: RESOLUTION AUTHORIZING THE RELEASE OF PERFORMANCE
GUARANTEE TO NICKAR d/b/a TIDE DRY CLEANERS, BLOCK 150 Lot 2

Councilperson Madden submitted the following resolution, which was duly seconded by
Councilperson Kapner.

WHEREAS, the Board of Adjustment approved the preliminary and final site plan approval application of Nickar d/b/a Tide Dry Cleaners, memorialized by resolution 2016-05; and

WHEREAS, Nickar d/b/a Tide Dry Cleaners posted an performance bond in the amount of \$202,597.74 for Board of Adjustment preliminary and final site plan approval; and

WHEREAS, Nickar d/b/a Tide Dry Cleaners has requested release of the performance guarantee, for the 2015 Board of Adjustment application for the property known as 50 South Street, in the amount of \$202,597.74; and

WHEREAS, the Construction Official advises that work has been completed to the satisfaction of the Planning and Development Department to allow for the return of the performance guarantee; and

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 in the total amount of \$202,597.74 to Nickar d/b/a Tide Cleaners.

APPROVED, this 3rd day of January, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GENNARO	X			
GEOFFROY	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 3rd day of January, 2019.

Wendi B. Barry, Borough Clerk

BOROUGH OF
NEW PROVIDENCE

SETTLED IN 1720

Al Morgan, Mayor
BOARD OF ADJUSTMENT
William Nadelberg, Chairman
Margaret Koontz, Secretary

To: Wendi Barry, Borough Clerk
Borough Council

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

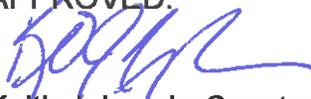
Re: Board of Adjustment Application #2015-36
Nickar d/b/a Tide Dry Cleaners
50 South Street
Block 150, Lot 2

Date: December 20, 2018

The above applicant came before the Board of Adjustment on November 16, 2015 and December 14, 2015 for preliminary and final site plan approval and use variance for the demolition of the existing building and construction of a new one-story building with canopy for Tide Dry Cleaners. This was approved per Resolution 2016-05. The applicant posted a Performance Guaranty of \$202,597.74. The project has been completed and inspected and the performance bond can be released.

A maintenance bond is not required, per Ordinance 2018-07 adopted to comply with changes to Municipal Land Use Law N.J.S.A 40:55D-1 et seq that implemented major reforms for the posting of performance and maintenance guarantees.

APPROVED:


Keith J. Lynch, Construction Official


Margaret Koontz, Secretary

Platte River Insurance Company

Mailing Address: P.O. Box 5900, Madison, WI 53705-0900
Phone: (800) 475-4450 Fax: (608) 829-7413

Contract Status

12/06/2018

Margaret Koontz Board of Adjustment Secretary
Borough of New Providence Municipal Center
360 Elkwood Avenue
New Providence, NJ 07974

RE: Nickar, LLC DBA Tide Dry Cleaners

Bond No. 41364143

Obligee: Margaret Koontz Board of Adjustment Secretary Borough of New Providence Municipal Center

Project Number / Contract Number: NPZ-547

Description: Bock 150, Lot 2. 50 South Street Borough of New Providence Union County, New Jersey.

Current Term of Bond:

From: 03/30/2017

To: 03/30/2018

Bond Amount:

\$202,598.00

Contract Price: \$202,598.00

Our company is the Surety on the above bond. In order to update our records and render service, it is necessary we receive the following information. Without prejudicing your rights or affecting our liability under our bond, we would appreciate as much of the following information as is available. This form can be returned by mail to the address above, faxed to the fax number above or emailed as an attachment to tribero@capspecialty.com

If the project/contract is complete:

Date Completed: May 7, 2018 Date Accepted: _____

Final contract price: \$ unknown

If the project/contract is not complete:

Estimated percentage of work completed: _____ As of: _____

Dollar amount of contract paid to date: \$ _____

What is the anticipated completion date? _____

Do you know of any, liens, claims or unpaid bills for labor or materials? Yes No

Is work progressing satisfactorily? (Comments) Yes No

Signature: 

Keith S Lynch - Director - Planning & Develop.
Print/Type Name and Title

Phone Number: 908-665-1124

Thank you for your assistance in updating our file.

PREMIUM IS FOR CONTRACT TERM
AND IS SUBJECT TO ADJUSTMENT
BASED ON FINAL CONTRACT AMOUNT.

BOND NUMBER: 41364143
PREMIUM: \$6,078.00 / YEAR

N.J.A.C. 5:36-4

Standardized Forms for Performance Guarantees

5:36-4

STANDARDIZED FORMS FOR PERFORMANCE GUARANTEES

5:36-4.1 Performance surety bonds

The standardized form of performance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) 150 Lot(s) 2

PERFORMANCE SURETY BOND

We, Nickar, LLC dba Tide Dry Cleaners, having offices at 50 South Street, New Jersey, CA, as principal, and Piella River Insurance Company having offices at P.O. Box 5900, Madison, WI 53705, 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 \$ 202,597.74, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On May 26, 2016 (date), principal was granted approval by the Board of Adjustment Secretary (approving authority) of the Borough of New Providence for File #NPZ-547 (include reference to specific job and resolution of approval). 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 \$ 202,597.74 (not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer), written by Piella River 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 the 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 a replacement guarantee acceptable to the approving authority becomes effective.

Nickar, LLC dba Tide Dry Cleaners

Date: April 27, 2017 Witness/Attest Principal _____
Platte River Insurance Company
[Signature] Witness/Attest: _____
Surety Ryan Tash, Attorney-In-Fact

5:36-4.2 Maintenance surety bond

The standardized form of maintenance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) 150 Lot(s) 2

MAINTENANCE SURETY BOND

We, Nickar, LLC dba Tide Dry Cleaners, having offices at 50 South Street, New Jersey, CA, as principal, and Platte River Insurance Company having offices at P.O. Box 5900, Madison, WI 53705, 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 \$ 202,597.74, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On May 28, 2016 (date), principal was granted approval by the Board of Adjustment Secretary (approving authority) of the Borough of New Providence for File #NPZ-547 (include reference to specific job and resolution of approval).

This bond shall become effective upon approval or acceptance of the improvements by the governing body, as certified by the resolution of the governing body, which is, or shall be, attached hereto and made a part hereof. The improvements subject to this bond are as follows: File #NPZ-547. The certification of the cost of such improvements by the municipal engineer is 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, as a condition of approval or acceptance of improvements, hereby furnishes this maintenance bond in the amount of \$ 28,138.58 (not to exceed 15 percent of the cost of the improvements as certified by the municipal engineer), written by Platte River Insurance Company, a surety licensed in the State of New Jersey, guarantying full and faithful compliance with all terms and conditions of the approval. The bond shall continue in effect for a period of (2) two (not to exceed two years) from the date of approval or acceptance of the said improvements.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento)

On April 27, 2017 before me, Susan Fournier, Notary Public
(insert name and title of the officer)

personally appeared Ryan Tash
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



PLATTE RIVER INSURANCE COMPANY
POWER OF ATTORNEY

41375070

KNOW ALL MEN BY THESE PRESENTS, That the PLATTE RIVER INSURANCE COMPANY, a corporation of the State of Nebraska, having its principal offices in the City of Middleton, Wisconsin, does make, constitute and appoint

JOHN T. PAGE; RYAN TASH; SUSAN FOURNIER; STEPHANIE RAQUEL ARREOLA; MICHAEL BORG

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship; provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED : \$20,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PLATTE RIVER INSURANCE COMPANY at a meeting duly called and held on the 8th day of January, 2002.

"RESOLVED, that the President, and Vice-President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointee to have the powers and duties usual to such offices to the business of the company; the signature of such officers and the seal of the Corporation may be affixed to such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

IN WITNESS WHEREOF, the PLATTE RIVER INSURANCE COMPANY has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested, this 27th day of July, 2015.

Attest:

Gary W. Stumper
Gary W. Stumper
President

Surety & Fidelity Operations



PLATTE RIVER INSURANCE COMPANY

Stephen J. Sills
Stephen J. Sills

CEO & President

STATE OF WISCONSIN } S.S.:
COUNTY OF DANE

On the 27th day of July, 2015 before me personally came Stephen J. Sills, to me known, who being by me duly sworn, did depose and say: that he resides in the County of New York, State of New York; that he is President of PLATTE RIVER INSURANCE COMPANY, the corporation described herein and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



CERTIFICATE

David J. Regele

David J. Regele
Notary Public, Dane Co., WI
My Commission Is Permanent

STATE OF WISCONSIN } S.S.:
COUNTY OF DANE

I, the undersigned, duly elected to the office stated below, now the incumbent in PLATTE RIVER INSURANCE COMPANY, a Nebraska Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Middleton, State of Wisconsin this 27 day of April, 2017.



Antonio Celii

Antonio Celii
Secretary