

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-066

Council Meeting Date: 02-11-2019

Date Adopted: 02-11-2019

TITLE: RESOLUTION APPROVING EXTENSION OF ACCESS AGREEMENT FOR 1378 SPRINGFIELD AVENUE BETWEEN THE BOROUGH OF NEW PROVIDENCE AND PHILIPS NORTH AMERICA, LLC THROUGH DECEMBER 11, 2022.

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

WHEREAS, the Borough of New Providence and Philips North America, LLC jointly entered into an Access Agreement for the period of December 11, 2013 through December 11, 2018 for access to the property known as 1378 Springfield Avenue; and

WHEREAS, The Borough of New Providence and Philips North America, LLC agree to continue said agreement through December 11, 2022 to allow Philips North America, LLC its employees, agents, and contractors, the right to enter upon the property for the sole purpose of performing environmental investigations in accordance with the requirements of the 1988 Administrative Order on Consent with the New Jersey Department of Environmental Protection (NJDEP) pursuant to New Jersey Industrial Site Recover Act (ISRA) regulations (designated ISRA Case No. 88717).

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 approve and authorize the extension of the attached Access Agreement with Philips North America LLC through December 11, 2022.

APPROVED, this 11<sup>th</sup> day of February, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO				X
GENNARO	X			
GEOFFROY	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 11<sup>th</sup> day of February, 2019.

Wendi B. Barry, Borough Clerk

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2013-333

Council Meeting Date: 10-28-2013

Date Adopted: 10-28-2013

TITLE: RESOLUTION APPROVING AND AUTHORIZING ACCESS AGREEMENT  
FOR 1378 SPRINGFIELD AVENUE

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

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 approve and  
authorize an access agreement for 1378 Springfield Avenue from Phillips Electronics  
North American Corporation, in the form attached hereto, and they do further authorize  
and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of  
New Providence.

APPROVED, this 28<sup>th</sup> day of October, 2013.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	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 28<sup>th</sup> day of October, 2013.

Wendi B. Barry, Borough Clerk

## ACCESS AGREEMENT

Borough of New Providence (hereinafter "Owner"), as owner of the real property located at 1378 Springfield Avenue in New Providence, New Jersey (the "Property"), hereby grants to Phillips Electronics North America Corporation (PENAC), its employees, agents, and contractors, the right to, at PENAC's sole cost and expense, enter upon the Property for the sole purpose of performing environmental investigations in accordance with the requirements of the 1988 Administrative Order on Consent with the New Jersey Department of Environmental Protection (NJDEP) pursuant to New Jersey Industrial Site Recover Act (ISRA) regulations (designated ISRA Case No. 88717).

In consideration of the mutual promises, covenants, and conditions contained herein and other good and valuable considerations, and intending to be legally bound, the Owner and PENAC agree as follows:

1. PENAC is obligated by the NJDEP to conduct a remedial investigation related to the investigation of trichloroethylene (TCE) impacted groundwater associated with the former Electrical Industries Site located at 675 – 691 Central Avenue in New Providence which includes the testing of the existing inactive supply well located at the New Providence Community Pool property and retro-fitting of this well to use as a monitor well. PENAC shall be responsible for the costs associated with the testing and retro-fitting of the existing supply well on the Property.
2. PENAC will need to periodically access the proposed retro-fitted monitor well to be installed in the existing inactive supply well to conduct groundwater sampling. PENAC will be responsible for the costs associated with the periodic sampling of the well.
3. PENAC will be responsible for sealing the well once the need for the well is deemed not necessary.

Field activities associated with the environmental investigation will be consistent with the industry standards, and to the extent reasonably possible will be conducted as not to interfere with the operations currently conducted at the Property. Reasonable efforts will be made to minimize interferences with ongoing operations. Following completion of the field activities, PENAC will restore the Property to its original condition, to the extent reasonably possible.

**Owner's Responsibility** – As consideration for undertakings of PENAC as set forth in the Agreement, Owner agrees to assume and accept responsibility for the following obligation:

1. Owner agrees to provide full cooperation and support for the investigation work conducted at the Property by PENAC, PENAC's employees, agents, or contractors.

**Indemnification** – PENAC shall defend, indemnify and hold harmless Owner from any and all claims, losses, liabilities, actions, injuries, or damages caused in connection with PENAC’s exercise of the rights herein granted by any wrongful, grossly negligent or negligent act or omission of PENAC, its employees, agents or contractors.

**Governing Law** – This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

**Amendment** – This Agreement shall not be amended, modified or supplemented without the written agreement of the parties hereto at the time of such amendment, modification or supplement.

**Insurance** – PENACs’ agents shall acquire and maintain insurance for protection against, construction, general liability and worker compensation claims arising out of the performance of this Agreement. This insurance shall be in a minimum amount of \$1,000,000 for construction and general liability claims and shall include an endorsement from the insurance agent naming the Owner as additional insured. A copy of the insurance with the Owner as named insured is included as Attachment I of this agreement.

**Binding Effect** – This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, executors, designees and permitted assigns.

**Legal Authority** –

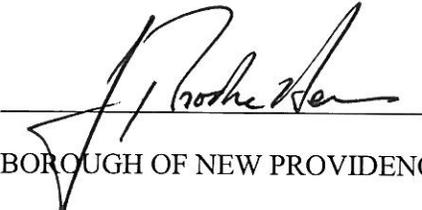
- a. PENAC represents and warrants that the undersigned is authorized by PENAC to execute and deliver this Agreement and to undertake and perform their obligations hereunder; that this Agreement is a valid, binding and enforceable obligation of PENAC.
- b. Owner represents and warrants that the undersigned is authorized to execute and deliver this Agreement and to undertake and perform their obligations hereunder; that this Agreement is a valid, binding and enforceable obligation of the Owner.

**No Admissions** – It is expressly agreed by the parties that neither the entry into this Agreement, the undertakings by PENAC, nor compliance with any environmental or other legal requirement by the parties to this Agreement shall be deemed to be, nor shall it be construed as, an admission or any liability or responsibility for existing conditions which may be encountered during the activities undertaken by PENAC or its agents. Further, entry into this Agreement and the Agreement itself may not be offered as evidence for any purpose except to enforce the terms of the Agreement.

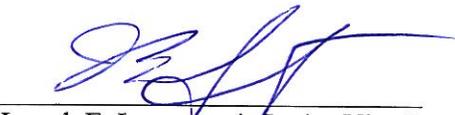
**No Waiver** – The entry into this Agreement by either of the parties is not intended to be, nor shall be construed as, a waiver or release of any rights or remedies or defenses any of the parties may have against each other or any other entity of person not a party to this Agreement, and the parties hereby specifically and expressly reserve any and all rights and remedies at law or in equity and defenses that the may have against each other and/or against any other entity or person not a party to this Agreement.

**Termination** – This agreement shall terminate upon the first of either the completion of the testing and investigations or five (5) years. If the sampling activities have not yet been completed within (5) years from the date of this agreement, the parties agree to extend the agreement as needed. Such extension shall be by letter signed by both parties.

**Effective Date** – This Agreement shall become effective upon the date of execution hereof by all parties.

By:   
BOROUGH OF NEW PROVIDENCE (“Owner”)

Dated: DEC. 11, 2013

By:   
Joseph E. Innamorati, Senior Vice President  
PHILIPS ELECTRONIC NORTH AMERICAN CORPORATION (“PENAC”)

Dated: September 26, 2013



HALEY & ALDRICH, INC.  
6500 Rockside Road  
Suite 200  
Cleveland, OH 44131  
216.739.0555

06 February 2019  
File No. 128502

Borough of New Providence  
360 Elkwood Avenue  
New Providence, New Jersey

Attention: Douglas Marvin  
Borough Administrator

Subject: New Providence Community Pool Access Agreement Extension

Dear Mr. Marvin:

Haley & Aldrich, Inc. has prepared this letter on behalf of Philips North America, LLC, pursuant to the access agreement executed December 11, 2013 between the Borough of New Providence and Philips Electronic North America Corporation (PENAC). As per the agreement, an extension of the existing Access Agreement shall be granted by letter signed by both parties. This letter will serve to extend the current access agreement by four years to December 11, 2022. This extension will be effective upon the execution by both parties.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
PHILIPS NORTH AMERICA LLC

Dated: \_\_\_\_\_

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