

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2020-174

Council Meeting Date: 08-17-2020

Date Adopted: 08-17-2020

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE, IN THE COUNTY OF UNION, NEW JERSEY, AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT

Councilperson Cumiskey submitted the following resolution, which was duly seconded by Councilperson Matsikoudis.

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”) provides municipalities with broad powers to ameliorate blighted areas, including the powers to investigate whether a property constitutes an “area in need of redevelopment”, to prepare and adopt a redevelopment plan for such area, to contract with redevelopers for the planning, replanning, construction or undertaking of any project or redevelopment work, and arrange by contract for the provision of professional services for the carrying out of redevelopment projects; and

WHEREAS, Nokia of America Corporation is the owner, as successor-in-interest to Alcatel-Lucent USA, Inc. and LTI NJ Finance, LLC (the “Developer”), of Block 321, Lots 1-5, Block 310, Lot 2, Block 311, Lot 3, and Block 382, Lots 4-6 on the official tax maps of the Borough (the “Developer Parcels”); and

WHEREAS, Developer approached the Borough to discuss various development options for the Developer Parcels and further requested that such Developer Parcels be investigated as an area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, it is in the best interest of the Borough and its residents for the costs of any investigations, planning, studies, pre-development and development activities relating to the Developer Parcels to be borne by the Developer, and not by the Borough from its general municipal budget for which there is no appropriation; and

WHEREAS, Developer understands that the Borough makes no representation, warranty, assurance or guarantee: (i) as to the outcome of any investigation, study or determination as to whether the Developer Parcels meet the criteria pursuant to the Redevelopment Law as an area in need of redevelopment; (ii) if one or more Developer Parcels are designated as an area

in need of redevelopment, that a redevelopment plan will be adopted by the Borough Council; and/or (iii) that the Borough will enter into a financial agreement with the Developer; and

WHEREAS, Developer has agreed to deposit with the Borough the initial amount of Twenty Thousand Dollars (\$20,000.00) (the “Escrow Deposit”), to be deposited in an escrow account and disbursed in accordance with the provisions of the hereinafter defined Escrow Agreement to defray certain costs incurred by or on behalf of the Borough arising out of or in connection with any investigations, planning, studies, pre-development and development activities relating to the Developer Parcels, including but not limited to, an investigation and preparation of a report to determine whether the Developer Parcels constitute an area in need of redevelopment, the preparation of a redevelopment plan and the adoption of same by the applicable governing body(ies), the designation of a redeveloper, the review, negotiation and/or preparation of any necessary agreements, assistance to the Borough on any prospective project and due diligence and with the Borough’s efforts to assist Developer with project development, capital formation and implementation, and the preparation of any other documents or actions related to this project; and

WHEREAS, the Borough desires to authorize the execution of the Escrow Agreement to memorialize the terms of the Escrow Deposit.

NOW THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF NEW PROVIDENCE, IN THE COUNTY OF UNION, NEW JERSEY AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein as if set forth in full.

Section 2. The Mayor of the Borough is hereby authorized and directed to execute the Escrow Agreement, in the form attached hereto as Exhibit A (the “Escrow Agreement”), with such changes, omissions or amendments as the Mayor deems appropriate in consultation with the Borough's redevelopment counsel, planning consultant and other professionals. The Clerk of the Borough is hereby authorized and directed to attest to the Mayor’s signature and affix the seal of the Borough to the Escrow Agreement. Upon execution and attestation of same, the Mayor is hereby authorized to deliver the Escrow Agreement to the other party thereto.

Section 3. This Resolution shall take effect immediately.

APPROVED, this 17th day of August, 2020.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GEOFFROY	X			
MATSIKLOUDIS	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 17th day of August, 2020.

Wendi B. Barry, Borough Clerk

EXHIBIT A

Form of Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made as of the _____ day of _____, 2020 by and between **NOKIA OF AMERICA CORPORATION**, a Delaware corporation ("Developer"), with an address at 600 Mountain Avenue, Murray Hill, New Jersey 07974, and **THE BOROUGH OF NEW PROVIDENCE**, a body corporate and politic of the State of New Jersey (the "Borough"), with an address at 360 Elkwood Avenue, New Providence, New Jersey 07974.

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "Redevelopment Law") provides municipalities with broad powers to ameliorate blighted areas, including the powers to investigate whether a property constitutes an "area in need of redevelopment", to prepare and adopt a redevelopment plan for such area, to contract with redevelopers for the planning, replanning, construction or undertaking of any project or redevelopment work, and arrange, by contract, for the provision of professional services for the carrying out of redevelopment projects; and

WHEREAS, Developer is the owner, as successor-in-interest to Alcatel-Lucent USA, Inc. and LTI NJ Finance, LLC, of Block 321, Lots 1-5, Block 310, Lot 2, Block 311, Lot 3, and Block 382, Lots 4-6 on the official tax maps of the Borough (the "Developer Parcels"); and

WHEREAS, Developer approached the Borough to discuss various development options for the Developer Parcels and further requested that such Developer Parcels be investigated as an area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, it is in the best interest of the Borough and its residents for the costs of any investigations, planning, studies, pre-development and development activities relating to the Developer Parcels to be borne by Developer and not by the Borough from its general municipal budget, for which there is no appropriation; and

WHEREAS, Developer understands that the Borough makes no representation, warranty, assurance or guaranty (i) as to the outcome of any investigation, study or determination as to whether the Developer Parcels meet the criteria pursuant to the Redevelopment Law as an area in need of redevelopment, (ii) if one or more Developer Parcels are designated as an area in need of redevelopment, that a redevelopment plan will be adopted by the Borough Council, and/or (iii) if a redevelopment plan is adopted, that the Developer will be designated the "redeveloper" of said redevelopment area; and

WHEREAS, Developer has agreed to deposit with the Borough the initial amount of Twenty Thousand Dollars US (\$20,000.00 US) (the "Escrow Deposit"), to be deposited in the Escrow Account, as defined herein, and disbursed in accordance with the provisions of this Agreement to defray certain costs incurred by or on behalf of the Borough arising out of or in connection with any investigations, planning, studies, pre-development and development activities relating to the Developer Parcels including, but not limited to, an investigation and preparation of a report to determine whether the Developer Parcels constitute an area in need of redevelopment, the preparation of a redevelopment plan and the adoption of same by the applicable governing body(ies), the selection and designation of a redeveloper, the review, negotiation and/or preparation of any necessary agreements, assistance to the Borough on any prospective project and due diligence and, with the Borough's efforts, to assist Developer with project development, capital formation and implementation, and the preparation of any other documents or actions related to the Developer Parcels and any proposed development thereon (collectively, the "Municipal Undertakings").

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Escrow Deposit. The Escrow Deposit set forth herein is separate from and in addition to all other application fees and escrow deposits that may be required by the Borough pursuant to the terms of any future agreement, including any applications for land use approvals that may be needed for a proposed project at the Developer Parcels. Additions to the Escrow Deposit may subsequently become necessary to cover all Reimbursable Activities as hereinafter defined.

2. Scope of Reimbursable Activities. (a) The Borough and its professionals shall be entitled to be paid and/or reimbursed for all professional charges incurred in connection with the Municipal Undertakings; the preparation and review of all related documents and materials, including but not limited to correspondence, meetings and all communications (including by telephone and e-mail) with Developer, its professionals, Borough staff or retained professional(s) (collectively, the "Reimbursable Activities"). Payments or reimbursement hereunder may include charges incurred in connection with Reimbursable Activities prior to the date of this Agreement and is not contingent upon the outcome of the negotiations or execution of any or all agreements with Developer.

(b) Reimbursable expenses in relation to Reimbursable Activities shall be reasonable and necessary. The Borough shall select professionals to perform services for the Reimbursable Activities, the selection of which shall be made by the Borough in its reasonable discretion.

3. Deposit and Administration of Escrow Funds. The Escrow Deposit, and agreed upon additions thereto shall be held by the Borough in a

banking institution or savings and loan association in the State of New Jersey FDIC insured, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account (the "Escrow Account") referenced to this Agreement.

4. Payments from the Escrow Funds. (a) The Borough shall use such funds in the Escrow Account to pay costs related to Reimbursable Activities.

(b) Developer shall not be charged for any costs and expenses unrelated to Reimbursable Activities.

(c) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying Reimbursable Activities. All professionals shall submit the required vouchers or statements to the Borough on a monthly basis in accordance with the schedule and procedures established by the Borough. Each professional shall simultaneously send an informational copy of each voucher or statement submitted to the Borough to Developer; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters. For purposes of this Escrow Agreement, the fees and description of services provided as well as the individual and company providing such services shall not be confidential information and shall be included on the informational voucher.

5. Accounting and Additional Deposits. Upon the reasonable request of Developer, the Borough shall prepare and send to Developer a statement that will include an accounting of funds, listing all deposits, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account falls below Three Thousand Five Hundred Dollars (\$3,500.00), the Borough shall provide Developer with a notice of the insufficient escrow deposit balance. Developer shall replenish the Escrow Account with additional funds such that the amount on deposit therein is Ten Thousand Dollars (\$10,000.00) and such deposit shall be made within ten (10) business days of the Borough's notice, failing which the Borough may unilaterally cease the Reimbursable Activities without liability to Developer. The Borough agrees that, within three (3) business days after Developer replenishes the Escrow Account in the event of such deficiency, any unilateral cease work action by the Borough shall be lifted and work by the Borough and its professionals shall be permitted to recommence.

6. Close Out Procedures. Upon completion of the services set forth herein or upon Developer's determination, in its sole and absolute discretion, that it will not proceed with the activities described herein including, without limitation, redevelopment of the Developer Parcels, Developer shall send written notice by certified mail to the Borough, to the attention of the Borough Administrator,

requesting that the remaining balance of the Escrow Deposit be refunded. After receipt of such notice, the professional(s) shall render a final bill to the Borough within thirty (30) days, and shall send an informational copy simultaneously to Developer. Within thirty (30) days of receipt of the final bill, the Borough shall pay all outstanding bills in accordance with this Agreement and render a written final accounting to Developer, detailing Reimbursable Activities to which the escrow funds were put. Developer will not be responsible for any additional charges once the final accounting has been rendered by the Borough in accordance with this section.

7. Disputed Charges. (a) Developer may dispute the propriety or reasonableness of professional charges paid out of the Escrow Deposit by written notice to the Borough. A copy of such notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within sixty (60) days from Developer's receipt of the informational copy of the professional's voucher, except that if the professional has not supplied Developer with an informational copy of the voucher, then the Developer shall send notice within ninety (90) days from receipt of the statement of activity against the Escrow Account containing the disputed charge.

(b) If the Borough and Developer cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter with a retired judge, mutually agreeable to the parties, acting as arbitrator. During the pendency of a dispute, the Borough shall not pay the disputed charges out of the Escrow Account, but may continue to pay undisputed charges out of the Escrow Account.

8. Attorney Fees and Costs. In the event that either party institutes legal action against the other in connection with this Escrow Agreement, then, in addition to any other relief which the party may receive from the arbitrator or applicable court, the prevailing party shall be entitled to receive an award of reasonable attorney's fees and costs against the non-prevailing party. This provision does not apply to defaults and remedies under agreements other than this Escrow Agreement. Defaults and remedies under other agreements shall be in accordance with the terms of those agreements.

9. Governing Law. This Escrow Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case sitting in Union County, New Jersey, and Developer hereby waives all objections to such venue.

10. Successors and Assigns. This Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and upon each party's successors and assigns.

11. Review by Counsel. Interpretation of this Agreement shall be made without regard to or any presumption against or other rule requiring construction against Developer drawing or causing this Agreement to be drawn, as counsel for both Developer and the Borough have combined in their review and approval of same.

12. Entire Agreement; No Modification Unless in Writing. This Escrow Agreement contains the entire agreement of the parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the parties hereto.

13. Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14. Effective Date. This Agreement shall not become effective unless and until the initial Escrow Deposit is made.

15. Assignment. Developer may assign its rights under this Agreement, including, without limitation, its rights and interest in the Escrow Account set forth herein. Upon assignment of this Agreement to an assignee, the Escrow Account shall simultaneously be assigned to such assignee.

[The balance of this page intentionally left blank; signatures appear on next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

Witness or Attest:

BOROUGH OF NEW PROVIDENCE

By: _____
Allen Morgan, Mayor

NOKIA OF AMERICA CORPORATION

By: _____
Name

Title: _____