

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2016-050

Council Meeting Date: 01-11-2016

Date Adopted: 01-11-2016

TITLE: RESOLUTION AUTHORIZING AGREEMENT BETWEEN THE BOROUGH OF NEW PROVIDENCE AND MURRAY HILL FARM CONDOMINIUM ASSOCIATION, INC. FOR REIMBURSEMENT OF MUNICIPAL SERVICES

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

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 agreement between the Murray Hill Farm Condominium Association, Inc. and the Borough of New Providence, 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 11<sup>th</sup> day of January, 2016.

## 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 11<sup>th</sup> day of January, 2016.

Wendi B. Barry, Borough Clerk

## **AGREEMENT**

**THIS AGREEMENT** is made this 10 day of December, 2015 by and between the Borough of New Providence (hereinafter "Borough") and MHF Condominium Association, Inc. (hereinafter "Association"), a corporation duly established under the laws of the State of New Jersey.

### **WITNESSETH**

**WHEREAS**, the Municipal Services Act, N.J.S.A. 40:67-23.2, et seq. (hereinafter "the Act"), and amendments thereto provides, in pertinent part, that qualified, private communities as defined in the Act are entitled to receive certain municipal services; and

**WHEREAS**, the Act further provides that in lieu of providing such municipal services to the Association, the municipality shall have the option to financially reimburse the Association in an amount not to exceed the cost that would be incurred by the municipality in providing said services directly; and

**WHEREAS**, the Borough and Association have mutually and freely agreed to providing of reimbursement as opposed to the providing of services in certain areas as more fully described herein below; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. **Purpose and Interpretation:** This Agreement is intended to implement N.J.S.A. 40:67-23.2 as amended. In the event of any subsequent amendment, repeal or other change to the statutory provisions, this Agreement shall be amended to conform to the statutory provisions.

2. **Reimbursement Limitation:** The Borough shall not be obligated to pay reimbursement to the Association to the extent that the costs incurred by the Association for

a service for which reimbursement is sought exceeds the cost that would have been incurred by the Borough in providing the particular service directly.

**3. Calculation of Reimbursable Removal Costs:** The formula/calculation for reimbursement for snow removal shall be as follows:

A. Prior to close of each fiscal year budget, the Borough will determine the total annual expense incurred by the Borough for snow and ice removal. Based upon that figure, the Borough will determine the Annual Unit Cost for snow removal as calculated in accordance with subparagraph B herein below. The Borough shall provide Association with the relevant calculations in determining the Annual Unit Cost.

B. The annual cost incurred by the Borough for snow removal shall be divided by the total qualified linear miles of all public streets and roads owned and maintained by the Borough to produce the Annual Unit Cost for snow removal.

C. The Annual Unit Cost for snow removal as adjusted shall be multiplied by two hundred sixty (260) linear feet for the Association's private roads and streets to produce the annual Reimbursement Cost Ceiling for the service of snow removal, which shall be utilized and applied as specified in paragraph 4.

**4. Reimbursement of Prior Years:** The Borough will reimburse the Association for snow removal costs incurred each year from January 1, 2010 to the present. The calculation of such costs and procedure for reimbursement as set forth in this Agreement shall be followed for reimbursement of such years.

**5. Reimbursement Procedure:** Requests by the Association for the payment of reimbursement under this Agreement shall be processed pursuant to the following procedure:

A. The Association shall submit a signed requisition (supplied by the Borough), along with pertinent documentation to the Borough with its request for payment.

B. The requisition shall be submitted on an annual basis for the fiscal year for which reimbursement is requested, but in no event later than May 1. Requisitions shall be accompanied by copies of invoices, payment receipts and other appropriate documentation which demonstrates to the satisfaction of the Borough that all costs constitute Reimbursable Costs and that Association Incurred all costs during the applicable reimbursement period.

C. The Borough will review the Association's documentation and determine whether the requested reimbursement is consistent with and authorized by this Agreement. The Borough will provide the Association with written notification of any intention to disallow any excess amount of unauthorized portion of the reimbursement request.

D. After making such determination, the reimbursement amount for removal of snow will be reduced by the Borough if it exceeds the applicable Reimbursement Cost Ceiling as calculated pursuant to paragraph 3 herein.

E. The Reimbursement Cost Ceiling shall be calculated by multiplying two hundred sixty (260) linear feet representing the total amount of private roads and streets within the development times the Annual Unit Cost calculated pursuant to paragraph 3 herein.

F. If the annual requisition amount exceeds the Reimbursement Cost Ceiling, the Association shall be reimbursed in the amount of Reimbursement Cost Ceiling. If the approved annual requisition amount is less than the Reimbursement Cost Ceiling, the Borough shall provide reimbursement as stated in the approved annual requisition amount.

G. Reimbursement shall be made no later than December 31 of each year.

6. **Borough Options:** The Borough in its sole discretion may, upon reasonable notice to the Association, provide the services required under the Act and in such case, reimbursement obligations will be terminated.

7. **Term:** This Agreement shall have an initial term which shall expire on December 31, 2017, and thereafter shall have annual automatic renewal unless terminated by either party within six months advance written notice.

8. **Notices:** All written notices required to be given to a party under this Agreement shall be sent by certified mail, return receipt requested, overnight delivery service, hand delivery or similar method providing a documentary record evidencing the receipt of notice by the party upon which it is serviced. All notices shall be addressed as follows:

To Association: Board of Trustees  
MHF Condominium Association, Inc.

To Borough: Borough of New Providence  
360 Oakwood Avenue  
New Providence, NJ 07974

9. **Amendment:** This Agreement, or any provision hereof, may not be amended orally, and no amendment shall be binding, enforceable, valid or admissible in evidence in any court action or proceeding unless same is in writing and duly executed by all parties with the same formality as this Agreement.

10. **Binding Effect:** This Agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

11. **Entire Agreement:** This Agreement and its provisions shall merge any prior agreements, if any, of the parties and contains the entire understanding of the parties. The

parties agree to be bound hereby and acknowledge that there are no representatives, warranties, covenants or undertaking other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Attest:

\_\_\_\_\_  
Wendi Barry, Clerk

Borough of New Providence

\_\_\_\_\_  
Allen Morgan, Mayor

Attest:

Ana Kirchberger

MHF Condominium Association, Inc.

Marcia Grunke

**ANA KIRCHBERGER**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 2/25/2018**

\_\_\_\_\_  
Hitoyuki Takenaga