

**MAYOR AND COUNCIL  
BOROUGH OF DEMAREST  
REGULAR MEETING AGENDA  
March 25, 2024  
7:30 PM**

The notice requirements of the Open Public Meetings Act of the State of New Jersey, P.L. 1975, Chapter 231, have been satisfied by the inclusion of the date, time and place of this meeting in the annual schedule of meetings of this Governing Body. Such schedule of meetings is posted at Borough Hall, on the Borough website and was published in the Record and Star Ledger and was filed in the office of the Borough Clerk.

**Pledge of Allegiance**

Mayor Bernstein, Council President Slowikowski, Councilmember Collins, Councilmember Fox, Councilmember Jiang, Councilmember Marks, Councilmember Reiss

**Roll Call:**

Present:

Absent:

Also Present:

**Ordinance (Introduction): (none)**

**Ordinance No. 1130-24 AMENDING AND MODIFYING CHAPTER 27, ARTICLE II BOARD OF ADJUSTMENT, VARIANCE CHECKLIST**

Mayor Bernstein asks for a motion to introduce on first reading by title Ordinance No. 1130-24 and it published in the Bergen Record with notice of Public Hearing to be held on April 8, 2024.

A motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_

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**Roll Call:**

**Ordinance No. 1131-24 AMENDING AND MODIFYING CHAPTER 175 ZONING PROHIBITED USES**

Mayor Bernstein asks for a motion to introduce on first reading by title Ordinance No. 1131-24 and it published in the Bergen Record with notice of Public Hearing to be held on April 8, 2024.

A motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Roll Call:**

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**Ordinance No. 1132-24 AMENDING AND MODIFYING CHAPTER 32 OFFICERS AND EMPLOYEES**

Mayor Bernstein asks for a motion to introduce on first reading by title Ordinance No. 1132-24 and it published in the Bergen Record with notice of Public Hearing to be held on April 8, 2024.

A motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Roll Call:**

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**Ordinance No. 1133-24 AMENDING AND MODIFYING CHAPTER 176 RAFFLE AND BINGO LICENSES**

Mayor Bernstein asks for a motion to introduce on first reading by title Ordinance No. 1133-24 and it published in the Bergen Record with notice of Public Hearing to be held on April 8, 2024.

A motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Roll Call:**

**Ordinance Public Hearing (Adoption): (none)**

**Consent Agenda**

Mayor Bernstein asks if any member would like to have any resolution removed from the consent agenda and voted on separately.

Mayor Bernstein asks if any member would like to abstain from voting on any resolution on the consent agenda.

Mayor Bernstein asks for a motion to accept the consent agenda (with any abstentions noted)

**Consent Agenda:**

Resolution No. 068-24	Approving Payment #3 – Final American Asphalt – 2021 Roads
Resolution No. 069-24	Accepting Donation from Vikings Soccer

- Resolution No. 070-24 Authorizing Colliers Engineering – Tier A Stormwater Reporting
- Resolution No. 071-24 Authorizing Redemption of Tax Sale Certificate
- Resolution No. 072-24 Authorizing Awarding Bid for Pine Terrace Drainage
- Resolution No. 073-24 Authorizing Municipal Alliance FY 2025
- Resolution No. 074-24 Authorizing Demarest PD Participation in LESO 1033 Program
- Resolution No. 075-24 Authorizing Foreman DPW – McCauley
- Resolution No. 076-24 Authorizing DPW New Hire – Keohane
- Resolution No. 077-24 Authorizing Colliers Engineering – GIS Mapping Preparation
- Resolution No. 078-24 Authorizing Execution of Developer’s Agreement – 95 County Rd.
- Resolution No. 079-24 Bills List

**Mayor’s Report**

**Council Committee Reports**

- Finance & Personnel (Slowikowski)
- Ordinance (Fox)
- DPW & Recreation (Marks)
- Economic Development (Jiang)
- Police and OEM (Reiss)
- Fire and EMS (Collins)

**Reports of Borough Officials**

- Borough Administrator
- Borough Attorney
- Borough Treasurer
- Ambulance
- Police Chief
- Fire Chief

**Meeting Open to the Public**

**Closed Session Resolution**

**Adjournment**

**BOROUGH OF DEMAREST**  
**COUNTY OF BERGEN**  
**ORDINANCE 1130-24**

**ORDINANCE AMENDING AND MODIFYING CHAPTER 27, ARTICLE II BOARD OF  
ADJUSTMENT, §27-23.1 VARIANCE CHECKLIST OF THE DEMAREST BOROUGH CODE**

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**Section 1. Purpose & Authority.** The purpose of this ordinance is to modify and amend Chapter 27, Article II Board of Adjustment §27-23.1 of the Demarest Borough Code pursuant to N.J.S.A. 40:48-1, and 40:49-2.

**Section 2. Amendments.** (amendments are highlighted, deletions strikethrough).

**§27-23.1 Variance Checklist**

The Borough of Demarest hereby adopts the contents of the documents entitled "Board of Adjustment Variance Checklists" and all contents set forth at length herein.

**GENERAL REQUIREMENTS**

- One Original and 15 copies of all fully execute application forms.\*
- One Original signed and sealed set of plans and 15 copies.\*
- One original current (within 9 months) signed and sealed survey and 15 copies.\*
- Digital copies of all plans.
- Sixteen copies of the Zoning Officer Denial form.\*
- Payment in full (with separate checks) of all application fees and escrow deposits with W9.
- One certificate from the Tax Collector stating all taxes are paid and up to date
- One certification of applicant (must be notarized)
- One owners affidavit (must be notarized)

\* Additional copies may be required.

**ALL SUBMITTED PLANS MUST INCLUDE**

- List of requested variances and waivers from any requirements, together with a statement of reasons why same should be granted (if applicable).
- A general description of the proposed development and a brief assessment of its effect on the site, adjacent properties and the neighborhood. Including but not limited to effects upon the natural environment, land use patterns, traffic and circulation, visual factors, utilities, and drainage.
- Zoning district in which parcel is located complete with all zone criteria.
- Title block containing name of applicant and owner, preparer, block and lot numbers and date prepared.
- Scale of map both written and graphic.
- North arrow.
- Location of existing buildings and structures, including fences and retaining walls.
- All existing and proposed impervious surfaces are to be shown.
- All existing and proposed easements or rights-of-way.

- Landscape plan and lighting plan.
- Proposed stormwater management measures (if applicable).
- Existing and proposed contours to determine the natural drainage of the land.

**Section 3. Repealer.** All prior ordinances that are inconsistent with this ordinance are repealed. All ordinances are hereby amended to be consistent with this ordinance and all ordinances, including this one, shall be construed consistent with the express purpose of this ordinance.

**Section 4. Savings and Construction.** This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. Any ambiguities in this ordinance shall be construed in accordance with the purpose of this ordinance. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Demarest Code only where stated herein; otherwise this ordinance is amendatory and supplementary to existing provision of the Demarest Code.

**Section 5. Codification.** This ordinance shall be codified as amendments to the chapters set forth herein.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:

Approved:

\_\_\_\_\_  
 Julie Falkenstern  
 Acting Municipal Clerk

\_\_\_\_\_  
 Brian Bernstein  
 Mayor

Introduced: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

**BOROUGH OF DEMAREST  
COUNTY OF BERGEN**

**ORDINANCE 1131-24**

**ORDINANCE AMENDING AND MODIFYING CHAPTER 175 ZONING §175-15 OF  
THE DEMAREST  
BOROUGH CODE**

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**Section 1. Purpose & Authority.** The purpose of this ordinance is to modify and amend Chapter 175 Zoning, §175-15 of the Demarest Borough Code pursuant to N.J.S.A. 40:48-1, and 40:49-2.

**Section 2. Amendments.** (amendments are highlighted, deletions strikethrough).

**§175-15 Prohibited Uses**

**§175-15.1 Sale of Animals**

**A. Definitions**

*Animal care facility* means an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations.

*Animal rescue organization* means any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of animals in permanent homes. This term does not include an entity that is a breeder or broker or one that obtains animals from a breeder or broker for profit or compensation.

*Breeder* means a person that maintains a dog or cat for the purpose of breeding and selling their offspring.

*Broker* means a person that transfers a dog or cat from a breeder for resale by another person.

*Offer for sale* means to sell, offer for sale or adoption, advertise for the sale of, barter, auction, giveaway or otherwise dispose of a dog or cat.

**B. Restrictions on the Sale of Animals**

No retail establishment shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of cats or dogs. Nothing in this section shall prohibit a retail establishment from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats provided the retail establishment shall not have any ownership interest in the

animals offered for adoption and shall not receive a fee for providing space for the adoption of any of these animals.

**C. Penalty.**

A retail establishment that violates this section shall be subject to a civil penalty of \$500, and each dog or cat offered for sale in violation of this section shall constitute a separate violation.

**Section 3. Repealer.** All prior ordinances that are inconsistent with this ordinance are repealed. All ordinances are hereby amended to be consistent with this ordinance and all ordinances, including this one, shall be construed consistent with the express purpose of this ordinance.

**Section 4. Savings and Construction.** This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. Any ambiguities in this ordinance shall be construed in accordance with the purpose of this ordinance. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Demarest Code only where stated herein; otherwise this ordinance is amendatory and supplementary to existing provision of the Demarest Code.

**Section 5. Codification.** This ordinance shall be codified as amendments to the chapters set forth herein.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:

Approved:

\_\_\_\_\_  
Julie Falkenstern  
Acting Municipal Clerk

\_\_\_\_\_  
Brian Bernstein  
Mayor

Introduced: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

**BOROUGH OF DEMAREST  
COUNTY OF BERGEN**

**ORDINANCE 1132-24**

**ORDINANCE AMENDING AND MODIFYING CHAPTER 32 OF THE DEMAREST  
BOROUGH CODE**

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**Section 1. Purpose & Authority.** The purpose of this ordinance is to modify and amend Chapter 32 of the Demarest Borough Code pursuant to N.J.S.A. 40:48-1, and 40:49-2.

**Section 2. Amendments.** (amendments are highlighted, deletions strikethrough).

Article IX Municipal Clerk

§ 32-34 Generally

There shall be a Clerk appointed by the Council, who shall serve as provided by N.J.S.A. 40A:9-133.

§ 32-35 Powers and duties.

The Clerk shall:

- A. Keep the minutes and records of the proceedings of the Council and of any Council committee upon request of the Chair of the committee. It shall be the duty of the Municipal Clerk to prepare minutes (where such minutes are required) generally within 30 business days following the day in which such meeting took place.
- B. Preserve and compile all ordinances and resolutions and not less than once per year, with the advice and assistance of the Borough Attorney; compile, codify and bind all the ordinances and resolutions then in effect, in conformity with the plan and system of the Code; and the Clerk shall annually index the record books, compilation and codification of ordinances and resolutions and provide for their publication.
- C. Have custody of the Borough seal and affix it to such books, papers and documents as may be specifically authorized pursuant to law or ordinance or when necessary to

exemplify any document on record in his/her office or to certify any act or paper which, from the records in his/her office, shall appear to have been a public act or document of the Borough.

D. Have and take custody of all official books, papers and documents of the Borough for which no other repository is provided by charter or ordinance and preserve and keep them safely.

E. Provide secretarial and clerical services for the Councilpersons in the discharge of their official duties.

F. Perform the functions required of Municipal Clerks by the General Election Law (Title 19 of the Revised Statutes) and any other state law or ordinance and receive for Borough use the fees prescribed therefor.

G. Administer the licensing provisions of Borough ordinances where no other provision is made for administration thereof and promptly remit to the Tax Collector all fees received in connection therewith.

H. Perform such functions as are vested in the Clerk by state law and ordinances relating to bingo and raffles licensing.

I. Have such other and different functions, powers and duties as may be prescribed by law or ordinance.

#### § 32-36 Compensation.

The salary of the Deputy Borough Clerk shall be such as shall from time to time be fixed by resolution of the Borough Council or by the Salary Ordinance of the Borough of Demarest.

**Section 3. Repealer.** All prior ordinances that are inconsistent with this ordinance are repealed. All ordinances are hereby amended to be consistent with this ordinance and all ordinances, including this one, shall be construed consistent with the express purpose of this ordinance.

**Section 4. Savings and Construction.** This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. Any ambiguities in this ordinance shall be construed in accordance with the purpose of this ordinance. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Demarest Code only where stated herein; otherwise this ordinance is amendatory and supplementary to existing provision of the Demarest Code.

**Section 5. Codification.** This ordinance shall be codified as amendments to the chapters set forth herein.

This ordinance shall be codified as amendments

**Section 6. Effective Date.** This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:

Approved:

\_\_\_\_\_  
Julie Falkenstern  
Acting Municipal Clerk

\_\_\_\_\_  
Brian Bernstein  
Mayor

Introduced: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

**BOROUGH OF DEMAREST  
COUNTY OF BERGEN**

**ORDINANCE 1133-24**

**ORDINANCE AMENDING AND MODIFYING CHAPTER PART II, GENERAL  
LEGISLATION, CHAPTER 176 RAFFLE AND BINGO LICENSE OF THE DEMAREST  
BOROUGH CODE**

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**Section 1. Purpose & Authority.** The purpose of this ordinance is to modify and amend Part II, General Administration, Chapter 176 pursuant to N.J.S.A. 40:48-1, and 40:49-2.

**Section 2. Amendments.** (amendments are highlighted, deletions strikethrough).

**PART II, GENERAL ADMINISTRATION**

**Chapter 176 Raffle and Bingo license**

**§ 176-1 Issuance**

The Municipal Clerk is hereby delegated the authority to act as the issuing authority to approve the granting of licenses for raffles and bingo games to be held in the Borough of Demarest pursuant to N.J.A.C. 13:47-1.1.

**§ 176-2 Investigation of Applications; License Issuance**

The Borough Clerk shall make an investigation of the qualifications of each applicant and the merits of each application in accordance with applicable licensing laws. The Borough Clerk is designated as the person having authority to approve the issuance of raffle and bingo licenses.

**Section 3. Repealer.** All prior ordinances that are inconsistent with this ordinance are repealed. All ordinances are hereby amended to be consistent with this ordinance and all ordinances, including this one, shall be construed consistent with the express purpose of this ordinance.

**Section 4. Savings and Construction.** This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. Any ambiguities in this ordinance

shall be construed in accordance with the purpose of this ordinance. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Part II, General Administration, Chapter 176 of the Demarest Code only where stated herein; otherwise this ordinance is amendatory and supplementary to existing provision of the Borough Code.

**Section 5. Codification.** This ordinance shall be codified as amendments to the chapters set forth herein.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:

Approved:

\_\_\_\_\_  
Julie Falkenstern  
Acting Municipal Clerk

\_\_\_\_\_  
Brian Bernstein  
Mayor

Introduced: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

**Resolution of the Demarest Governing Body**

**Resolution No. 068 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: APPROVING PAYMENT #3 (FINAL) FOR AMERICAN ASPHALT**

=====

**WHEREAS**, a contract was awarded to American Asphalt & Trucking LLC for Demarest Various Streets 2021 Project; and

**WHEREAS**, the Borough Engineer has reviewed and approved a request for the final progress payment #3 for release of contract retainage and driveway and sidewalk repair work on Prescott and Stewart Streets as prepared by American Asphalt & Trucking LLC and the final progress payment voucher dated November 28, 2023, in connection with Final Progress Payment Application #3, dated November 28, 2023:

**WHEREAS**, the Borough Engineer has recommended the payment to American Asphalt & Trucking LLC in the amount of Nine Thousand, Three Hundred and Seventy and 09/100 (\$9,317.09) Dollars, as reasonable and contract compliant; and

**WHEREAS**, the Chief Financial Officer has determined sufficient funds are available to fulfill this proposal in the Capital Account.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Borough of Demarest, County of Bergen, State of New Jersey that the payment in the amount of Nine Thousand, Three Hundred and Seventy and 09/100 (\$9,317.09) Dollars for the 2021 Various Streets Project be paid to American Asphalt & Trucking LLC.

**APPROVED:**

\_\_\_\_\_  
Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 069 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION ACCEPTING DONATION FROM VIKINGS SOCCER TO THE BOROUGH OF DEMAREST**

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**WHEREAS**, Vikings Soccer is a club soccer team with an address at 340 Homans Avenue, Closter, New Jersey 07624; and

**WHEREAS**, Vikings Soccer has obtained a proposal dated March 14, 2024, from Lupardi's Nursery Inc. with an address at 75 Blanch Avenue, Closter, New Jersey 07624 whereby Lupardi's Nursery, Inc. would perform certain landscaping services at the Demarest recreation fields as set forth in the attached proposal (the "Landscaping Services"); and

**WHEREAS**, Vikings Soccer is desirous of donating the Landscaping Services for the benefit of the Borough; and

**WHEREAS**, landscaping service to be paid for by Vikings Soccer and performed by Lupardi's Nursery will be supervised by and coordinated with the Demarest Department of Public Works; and

**WHEREAS**, it is in the best interest of the Borough to accept the donation as set forth herein.

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the Borough hereby accepts the donation of Landscaping Services on the condition that same shall be coordinated with the Borough's Department of Public Works.

**APPROVED:**

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Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

---

Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 070 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AUTHORIZING THE ENGINEERING SERVICES FOR TIER A STORMWATER REPORTING**

=====

**WHEREAS**, the Borough of Demarest has a need to acquire professional engineering services related to Tier A Stormwater Reporting; and

**WHEREAS**, the Borough received a proposal dated February 26, 2024 from Colliers Engineering & Design to provide those services, attached; and

**WHEREAS**, the Borough wishes to authorize tasks 1.0, 1.1, 1.2, and 2.1 included in such proposal for a total not to exceed \$28,000.00; and

**WHEREAS**, the appointment and the contract are exempted from the competitive bidding requirements of the Local Public Contracts Law, (NJSA 40A:11-1 et. Seq.) as "Professional Services", pursuant to NJSA 40A:11-5(1)(a); and

**WHEREAS**, the vendor is the currently appointed 2024 Borough Engineer for the Borough of Demarest and the Mayor and Council awarded said 2024 contract pursuant to the provisions of NJSA 19:44A-20.5; and

**WHEREAS**, the Chief Financial Officer has certified that funds are available; and

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the Borough Administrator is authorized to execute the agreement to authorize Colliers Engineering & Design to perform the work described herein not to exceed \$28,000.00 a copy of which is annexed to this Resolution.

**APPROVED:**

\_\_\_\_\_  
Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 071 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AUTHORIZING REDEMPTION AND DISBURSEMENT OF TAX SALE CERTIFICATE**

=====

**WHEREAS**, at the Municipal Tax Sale held on December 3, 2019, Tax Sale Certificate No. 19-001 was sold to US BANK CUST ACTLIEN on the property known as 16 Van Horn Street, Demarest, NJ 07627, Block 4, Lot 4.02, assessed to Megibow, Terri; and

**WHEREAS**, US BANK CUST ACTLIEN, had also paid a premium in the amount of \$85,700.00; and

**WHEREAS**, US BANK CUST ACTLIEN, assigned Tax Sale Certificate No. 19-001 to ACT PROPERTY LLC, PO Box 237174, New York, NY 10023 on January 13, 2023; and

**WHEREAS**, Terri Megibow, 16 Van Horn Street, Demarest, NJ 07627, has effected redemption of Tax Sale Certificate No. 19-001 in the amount of \$181,561.34.

**NOW, THEREFORE, BE IT RESOLVED**, that the Chief Financial Officer is hereby authorized to issue a check in the amount of \$267,261.34, payable to ACT PROPERTY LLC, PO Box 237174, New York, NY 10023 for the redemption of Tax Sale Certificate No. 19-001 and for the premium.

**APPROVED:**

\_\_\_\_\_  
Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 072-24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AWARDING BID FOR THE PINE TERRACE DRAINAGE IMPROVEMENTS N.J.S.A. 40A:11-1 ET. SEQ.**

=====

**WHEREAS**, the Borough of Demarest (the “Borough”) upon advertisement and pursuant to specifications, solicited bid proposals for the Pine Terrace Drainage Improvements project (the “Project”); and

**WHEREAS**, the Project includes drainage improvements to Pine Terrace located within the Borough; and

**WHEREAS**, seven (7) bid proposals were received by the Borough on March 7, 2024, the date set forth on the invitation for receipt of bid proposals; and

**WHEREAS**, the three lowest bids were submitted by Covino & Sons Construction of Fair Lawn, New Jersey submitting a total base bid of \$172,307.00, DLS Contracting, Inc. of Fairfield, New Jersey submitting a total base bid of \$190,849.00 and Matina & Sons, Inc. of Hackensack, New Jersey submitting a total base bid of \$200,000.00; and

**WHEREAS**, the Engineer for the Borough has determined that the bid of Covino & Sons Construction meets the bid specifications set forth in the invitation for bid proposals; and

**WHEREAS**, after reviewing all bids submitted and on the basis of the foregoing, the Engineer for the Borough has recommended the contract for the Project be awarded to Covino & Sons Construction as the lowest bidder for the Project in the amount of \$172,307.00; and

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the bid proposal submitted by Covino & Sons Construction shall be and is hereby accepted and the contract for the Pine Terrace Drainage Improvements shall be awarded to Covino & Sons Construction.

**APPROVED:**

\_\_\_\_\_  
Brian Bernstein, Mayor

**CERTIFICATION OF CFO**

I, Peter Suh, Chief Financial Officer of the Borough of Demarest, do hereby certify the availability of funds for the expenditure referenced herein.

\_\_\_\_\_  
Peter Suh, CFO

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024.

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 073 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE:RESOLUTION FOR GOVERNOR’S COUNCIL ON ALCOHOLISM AND DRUG ABUSE  
FISCAL GRANT CYCLE JULY 2020-JUNE 2025**

**WHEREAS**, the Governor’s Council on Alcoholism and Drug Abuse established the Municipal Alliances for the Prevention of Alcoholism and Drug Abuse in 1989 to educate and engage residents, local government and law enforcement officials, schools, nonprofit organizations, the faith community, parents, youth and other allies in efforts to prevent alcoholism and drug abuse in communities throughout New Jersey; and,

**WHEREAS**, The Borough Council of the Borough of Demarest, County of Bergen, State of New Jersey recognizes that the abuse of alcohol and drugs is a serious problem in our society amongst persons of all ages; and therefore, has an established Municipal Alliance Committee; and,

**WHEREAS**, the Borough Council further recognizes that it is incumbent upon not only public officials but upon the entire community to take action to prevent such abuses in our community; and,

**WHEREAS**, the Borough Council has applied for funding to the Governor’s Council on Alcoholism and Drug Abuse through the County of Bergen;

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Demarest, County of Bergen, State of New Jersey hereby recognizes the following:

- The Borough Council does hereby authorize submission of a strategic plan for the Demarest Municipal Alliance grant for fiscal year 2025 in the amount of:
 

GCADA Grant	\$ 3836.33
Cash Match	\$ 959.08
In-Kind	\$ 2877.25

2. The Borough Council acknowledges the terms and conditions for administering the Municipal Alliance grant, including the administrative compliance and audit requirements.

**APPROVED:**

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Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

---

Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 074 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AUTHORIZING THE BOROUGH OF DEMAREST POLICE DEPARTMENT TO PARTICIPATE IN THE DEFENSE LOGISTICS AGENCY, LAW ENFORCEMENT SUPPORT OFFICE 1033 PROGRAM TO ENABLE THE POLICE DEPARTMENT TO REQUEST AND ACQUIRE EXCESS DEPARTMENT OF DEFENSE EQUIPMENT**

=====

**WHEREAS**, the United States Congress authorized the Defense Logistics Agency (DLA) Law Enforcement Support Office (LESO) 1033 Program to make use of excess Department of Defense personal property by making that personal property available to municipal, county and State law enforcement agencies (LEAs); and

**WHEREAS**, DLA rules mandate that all equipment acquired through the 1033 Program remain under the control of the requesting LEA; and

**WHEREAS**, participation in the 1033 Program allows municipal and county LEAs to obtain property they might not otherwise be able to afford in order to enhance community preparedness, response, and resiliency; and

**WHEREAS**, although property is provided through the 1033 Program at no cost to municipal and county LEAs, these entities are responsible for the costs associated with delivery, maintenance, fueling, and upkeep of the property, and for specialized training on the operation of any acquired property; and

**WHEREAS**, N.J.S.A. 40A:5-30.2 requires that the governing body of the municipality or county approve, by a majority of the full membership, both enrollment in, and the acquisition of any property through, the 1033 Program.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the Borough of DEMAREST in the County of BERGEN, State of New Jersey that the DEMAREST Borough Police Department is hereby authorized to enroll in the 1033 Program for no more than a one-year period with authorization to participate terminating on December 31 of the current calendar year from January 1, 2024 to December 31, 2024.

**BE IT FURTHER RESOLVED** that the DEMAREST Borough Police Department is hereby authorized to acquire items of non-controlled property designated "DEMIL A," which may include office supplies, office furniture, computers, electronic equipment generators, field packs, non-military vehicles, clothing, traffic and transit signal systems, exercise equipment, farming and moving equipment, storage devices and containers, tools, medical and first aid equipment and supplies, personal protection equipment and supplies, construction materials, lighting supplies, beds and sleeping mats, wet and cold weather equipment and supplies, respirators, binoculars and any other supplies or equipment of a non-military nature identified by the LEA, if it shall become available in the period of time for which this resolution authorizes, based on the needs of the DEMAREST Borough Police Department, without restriction; and

**BE IT FURTHER RESOLVED** that the DEMAREST Borough Police Department is hereby authorized to acquire the following "DEMIL B through Q" property, if it shall become available in the period of time for which this resolution authorizes; and

**BE IT FURTHER RESOLVED** that the "DEMIL B thorough Q" controlled 3-page property list in its entirety is hereby approved and hereto attached to this resolution; and

**BE IT FURTHER RESOLVED** that the DEMAREST Borough Police Department shall develop and implement a full training plan and policy for the maintenance and use of the acquired property; and

**BE IT FURTHER RESOLVED** that the DEMAREST Borough Police Department shall provide a quarterly accounting of all property obtained through the 1033 Program which shall be available to the public upon request; and

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately and shall be valid to authorize requests to acquire "DEMIL A" property and "DEMIL B through Q" property that may be made available through the 1033 Program during the period of time for which this resolution authorizes; with Program participation and all property request authorization terminating on December 31<sup>st</sup> of the current calendar year.

**APPROVED:**

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Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

---

Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 075-24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION APPOINTING PAUL MCCAULEY TO THE POSITION OF FOREMAN**

=====

**WHEREAS**, the Borough of Demarest (the “Borough”) currently employs Paul McCauley (“McCauley”) as an Operator within the Department of Public Works; and

**WHEREAS**, the Borough is in need of appointing a Foreman within the Department of Public Works; and

**WHEREAS**, McCauley has been an exemplary member of the Department of Public Works and possesses the requisite skills, knowledge and work experience to hold the position of Foreman; and

**WHEREAS**, the Public Works Manager has recommended McCauley be promoted to the position of Foreman at an annual salary of \$97,631.74; and

**WHEREAS**, it is in the best interest of the Borough to promote McCauley to the position of Foreman effective March 26, 2024 at an annual salary of \$97,631.74.

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that Paul McCauley be promoted to the position of Foreman effective March 26, 2024 at an annual salary of \$97,631.74.

**APPROVED:**

\_\_\_\_\_  
Brian Bernstein, Mayor

**CERTIFICATION OF CFO**

I, Peter Suh, Chief Financial Officer of the Borough of Demarest, do hereby certify the availability of funds for the expenditure referenced herein.

\_\_\_\_\_  
Peter Suh, CFO

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024.

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body  
Resolution No. 076-24  
March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: A RESOLUTION OF THE BOROUGH OF DEMAREST HIRING SEAN KEOHANE  
FOR THE POSITION OF DEPARTMENT OF PUBLIC WORKS LABORER GRADE 2**

=====

**WHEREAS**, the Borough Council is the Governing Body of the Borough of Demarest, and is responsible for the regulation of the Borough’s Department of Public Works and its employees; and

**WHEREAS**, Sean Keohane has been recommended for employment by Public Works Manager Jason Gangi, and possesses the qualifications to be hired as a Grade 2 Laborer;

**NOW THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Demarest that Sean Keohane, residing at 15 Aster Lane, Rivervale, NJ 07675 is hereby hired for the position of Department of Public Works Laborer Grade 2 with a start date on or about April 1, 2024, at a salary of \$53,020.80, with all other terms of employment to be governed by the Collective Bargaining Agreement entered into Between the Borough of Demarest and Teamsters Union Local 125 effective January 1, 2020 through the present.

**APPROVED:**

\_\_\_\_\_  
Brian Bernstein, Mayor

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024.

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 077 -24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AUTHORIZING THE ENGINEERING SERVICES FOR STORMWATER MAP PREPERATION**

=====

**WHEREAS**, the Borough of Demarest has a need to acquire professional engineering services related to Tier A Stormwater Map Preparation; and

**WHEREAS**, the Borough received a proposal dated February 9, 2024 from Colliers Engineering & Design to provide those services, attached; and

**WHEREAS**, the Borough wishes to authorize the proposal for a total not to exceed \$79,000.00; and

**WHEREAS**, the appointment and the contract are exempted from the competitive bidding requirements of the Local Public Contracts Law, (NJSA 40A:11-1 et. Seq.) as "Professional Services", pursuant to NJSA 40A:11-5(1)(a); and

**WHEREAS**, the vendor is the currently appointed 2024 Borough Engineer for the Borough of Demarest and the Mayor and Council awarded said 2024 contract pursuant to the provisions of NJSA 19:44A-20.5; and

**WHEREAS**, the Chief Financial Officer has certified that funds are available; and

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the Borough Administrator is authorized to execute the agreement to authorize Colliers Engineering & Design to perform the work described herein not to exceed \$79,000.00 a copy of which is annexed to this Resolution.

**APPROVED:**

\_\_\_\_\_  
Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

**Resolution of the Demarest Governing Body**

**Resolution No. 078-24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: RESOLUTION AUTHORIZING EXECUTION OF DEVELOPER’S AGREEMENT WITH 95 COUNTY DEMAREST LLC**

=====

**WHEREAS**, 95 COUNTY DEMAREST LLC (the “Developer”) is the present owner of a tract of land designated as Block: 145, Lot: 5 as set forth on the Tax Map of the Borough of Demarest and commonly known as 95 County Road, (referred to as the "Property"); and

**WHEREAS**, the Developer having applied to the Demarest Planning Board for Site Plan Approval is desirous of converting a two (2) family dwelling, detached barn, driveways and associated improvements to eight (8) units townhomes/flats within two (2) buildings. Building “A” will contain two (2) affordable housing units in accordance with the Borough’s Ordinance and Settlement Agreement. The remainder of Building “A” and Building “B” will contain six (6) townhouse market-rate townhouse units at 95 County Road (the “Project”), as shown on a set of drawings approved by the Planning Board, and more thoroughly described hereof; and

**WHEREAS**, in conformity with the Borough’s Planning Ordinance, Building Code, and Health Code of the Borough, as well as other applicable statutes, ordinances, laws, rules and regulations, the

Planning Board Resolution of Approval, adopted on March 22, 2023, and the report of Craig Zimmermann, P.E., of Colliers Engineering & Design, dated October 25, 2022, December 5, 2022, December 29, 2022 and last revised February 24, 2023 and the report of Darlene A. Green, P.P., AICP, Consulting Planner of Colliers Engineering & Design, dated July 25, 2022, September 22, 2022, October 5, 2022, October 25, 2022, December 2, 2022, December 21, 2022 and February 27, 2023, the Developer is desirous of entering into a Developer's Agreement with the Borough with respect to the development of the Property in furtherance of the provisions of the Borough's Ordinances which, among other things, require that prior to the granting of a building permit, the Developer shall have installed or shall have furnished performance guarantees for the ultimate installation of the several improvements therein mentioned, and that no Certificate of Occupancy shall be issued by the Construction Code Official until the completion of all such required improvements has been certified to the Board by the Board or Borough Engineer or unless satisfactory performance guarantees to cover the cost of all such improvements or the incomplete portions thereof and deposits for Borough professional costs are filed by the Developer; and

**WHEREAS,** in conformity with the affordable housing obligations of the Borough under the laws of the State of New Jersey the parties hereto acknowledge that there are two (2) residential units which shall be deed-restricted as affordable housing rental units and shall be administered by a qualified Administrative Agent.; and

**WHEREAS,** the Developer, the Borough of Demarest Planning Board's legal counsel and the Borough of Demarest's legal counsel have negotiated the terms of the Developer's Agreement, a copy of which is on file with the Borough Clerk; and

**WHEREAS,** it is in the best interest of the Borough to execute the Developer's Agreement by and between the Borough of Demarest and the Borough of Demarest Planning Board with 95 County Demarest LLC.

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the Mayor is hereby authorized to execute the Developer's Agreement by and between the Borough of Demarest and the Borough of Demarest Planning Board with 95 County Demarest LLC.

**APPROVED:**

\_\_\_\_\_  
Brian Bernstein, Mayor

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024.

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk

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**DEVELOPER'S AGREEMENT  
(SITE PLAN)**

**BOROUGH OF DEMAREST AND THE  
PLANNING BOARD OF THE  
BOROUGH OF DEMAREST, NEW JERSEY**

**With**

**95 COUNTY DEMAREST LLC**

**PREMISES:**

**95 COUNTY ROAD  
BLOCK: 145, LOT: 5  
DEMAREST, NEW JERSEY**

**RECORD & RETURN TO:**

**DOUGLAS M. BERN, ESQ.  
BERN & ASSOCIATES LLC  
39 PARK PLACE, SUITE 204  
ENGLEWOOD, NEW JERSEY 07631  
201.431.5000**

## **DEVELOPER'S AGREEMENT**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2024 by, **95 COUNTY DEMAREST LLC**, a Limited Liability Company registered in the State of New Jersey with a principal place of business located at c/o Yoav Rettig, 565 Green Lane, River Vale, New Jersey 07645 (hereinafter called the "Developer") and the **BOROUGH OF DEMAREST**, a Municipal Corporation of the State of New Jersey, County of Bergen, (hereinafter called the "Borough"), and the **PLANNING BOARD OF THE BOROUGH OF DEMAREST**, (hereinafter called the "Board"), both having offices located at 118 Serpentine Road, Demarest, New Jersey 07627;

### **W I T N E S S E T H:**

**WHEREAS**, **95 COUNTY DEMAREST LLC** is the present owner of a tract of land designated as Block: 145, Lot: 5 as set forth on the Tax Map of the Borough of Demarest and commonly known as 95 County Road, (referred to as the "Property").

**WHEREAS**, the Developer is desirous of converting a two (2) family dwelling, detached barn, driveways and associated improvements to eight (8) units townhomes/flats within two (2) buildings. Building "A" will contain two (2) affordable housing units in accordance with the Borough's Ordinance and Settlement Agreement. The remainder of Building "A" and Building "B" will contain six (6) townhouse market-rate townhouse units at 95 County Road (the "Project"), as shown on a set of drawings approved by the Planning Board, and more thoroughly described in Paragraph 2 hereof; and

**WHEREAS**, in conformity with the Planning Ordinance, Building Code, and Health Code of the Borough, as well as other applicable statutes, ordinances, laws, rules and regulations, the Planning Board Resolution of Approval, adopted on March 22, 2023, and the report of Craig

Zimmermann, P.E., of Colliers Engineering & Design, dated October 25, 2022, December 5, 2022, December 29, 2022 and last revised February 24, 2023 and the report of Darlene A. Green, P.P., AICP, Consulting Planner of Colliers Engineering & Design, dated July 25, 2022, September 22, 2022, October 5, 2022, October 25, 2022, December 2, 2022, December 21, 2022 and February 27, 2023, the Developer is desirous of entering into a Developer's Agreement with the Borough and the Board with respect to the development of the Property in furtherance of the provisions of the Borough's Ordinances which, among other things, require that prior to the granting of a building permit, the Developer shall have installed or shall have furnished performance guarantees for the ultimate installation of the several improvements therein mentioned, and that no Certificate of Occupancy shall be issued by the Construction Code Official until the completion of all such required improvements has been certified to the Board by the Board or Borough Engineer or unless satisfactory performance guarantees to cover the cost of all such improvements or the incomplete portions thereof and deposits for Borough professional costs are filed by the Developer; and

**WHEREAS**, it is mutually desired by the parties hereto that the Project shown on the aforementioned Site Plan shall be improved and developed in such a manner as will ensure protection to the surrounding and neighboring properties, as well as the public roads in and about said area to the end that said development shall result in a desirable development within the Borough of Demarest; and

**WHEREAS**, the Developer acknowledges that the improvements delineated in all reports and as shown on the plans must meet the specifications in effect at the time of approvals and must be inspected during construction by the Board or Borough Engineer, and the Developer agrees to escrow sufficient inspection fees in accordance with N.J.S.A. 40:55D-53h with the Borough, in advance or as may be reasonably required, to defray this cost.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and agreements contained herein, it is hereby agreed as follows:

**1. OWNERSHIP OF LANDS; COMPLIANCE  
WITH N.J.S.A. 40:55D-48.1**

Upon execution and delivery of this Agreement, the Developer will file with the Board a certificate issued by an Attorney at Law of the State of New Jersey or a title commitment/policy issued by a title company authorized to do business in the State of New Jersey certifying to the Borough and the Board the interest of the Developer in the subject Property. Developer represents that it is a limited liability company pursuant to N.J.S.A. 42:2C-1 et seq. and as such, it shall provide a certified list of members holding ten (10%) percent or more of the interest in the limited liability company to the Borough. Provided this Agreement is still in effect, within ten (10) days after any transfer of title taking place thereafter, a further certificate of title of New Jersey counsel or title insurance policy will be filed certifying the condition of title and showing all ownership interests.

**2. IMPROVEMENTS - THE PROJECT:**

(a) The Developer agrees, at its expense, to furnish, provide and supply all materials, labor, equipment, tools and appliances necessary and proper to complete the proposed development including on-site and off-site improvements, if any, and landscaping as set forth on the plans approved by the Planning Board of the Borough of Demarest and known as the engineering drawings prepared by Hubschman Engineering, PA, consisting of nine (9) sheets dated March 23, 2022 and last revised February 15, 2023 and architectural drawings prepared by Rapaport & Associates, Inc. dated January 24, 2022 and last revised December 19, 2022, consisting of nine (9) sheet.

Such improvements shall be installed in a manner that is consistent with the requirements and specifications of the Borough and other applicable laws and regulations without deviation unless authorized to do so. Any improvements to be ultimately dedicated to the Borough shall be completed

within a period of three (3) years from the date of execution of this Agreement, to the satisfaction and approval of the Board or Borough Engineer, subject to force majeure, unless said time is extended by the Borough Council upon recommendation of the Borough Planning Board. In addition, the Developer agrees to be responsible for damage, caused by Developer or its agents, to existing streets and public property as a result of its operations or by the delivery of materials to the site and/or operation of equipment, and further agrees to restore streets and/or property so damaged to their/its original condition.

The aforesaid work shall be done in a good and workmanlike manner and shall not substantially deviate either in specification or course from the plans, profiles and documents described herein. To the extent that any design standard does not substantially meet the minimum requirements as set forth in the ordinances of the Borough of Demarest, where no variance or waiver has been granted, the Developer shall be required to comply with the appropriate standards as stated in the ordinance. The work shall not be deemed complete unless all improvements are installed in accordance with this Agreement, and all rubbish, debris, construction equipment, tools and surplus materials have been removed from the site, and the site left in a clean and neat appearing condition.

(b) The Planning Board's Resolution and all exhibits accepted by the Planning Board during the Public Hearings, together with the recommendations of the Board or Borough Engineer and Planner (insofar as the recommendations have not been modified or superseded by the Planning Board during the course of the hearings, the Resolution, or this Agreement) and not specifically included in this Agreement or mentioned herein, shall nevertheless be considered a part of this Agreement, said resolutions, maps and plans being made a part hereof by reference. A copy of the Planning Board Resolution of Approval (the "Resolution") under Application dated March 22, 2023, is attached hereto as Exhibit "A".

(c) The provisions hereof are intended to implement the conditions of the grant of the site plan approval.

**3. TIME FOR COMPLETION:**

All of the improvements and work referred to in Paragraph 2 hereof shall be completed within three (3) years from the date of this Agreement, and, in the event the work is not so completed within three (3) years from the date of this Agreement, then upon extension of this Agreement, the Borough may require that additional performance guarantees be provided in light of the then prevailing costs if necessary and to the extent permitted by law, to adequately secure the Borough.

**4. COMPLIANCE WITH LAW:**

All of the improvements referred to in Paragraph 2 hereof shall be performed in accordance with any applicable Borough specifications, State, and County laws, and specifications as set forth in Ordinances, Rules, Regulations and the Board Resolution, and shall be inspected by the Board or Borough Engineer, or someone designated in writing by the Board or Borough Engineer for that purpose, and a signed copy of said designation by the Board or Borough Engineer shall be furnished to the Developer prior to said inspection and approval by such designee of the Board or Borough Engineer.

**5. REVISIONS TO PLANS:**

The Developer agrees that if, during the course of construction and installation of improvements, it shall be reasonably determined by the Board or Borough Engineer, either on his own or at Developer's request, the revision of the plan is necessary with regard to the health, welfare, and safety of the residents of the Borough (the "Public Interest"), or with the Developer's consent, represents a more environmentally, or otherwise, practicable alternative to the methodologies employed in the approved plans in furtherance of the Public Interest, it will undertake at its own

expense such reasonable design and construction changes as may be reasonably indicated by the Board or Borough Engineer. Notwithstanding anything to the contrary herein, Developer shall have an absolute right to appear before the Board to contest any proposed change recommended by the Borough Engineer. This Paragraph is meant to apply to changes commonly referred to as "field changes" which shall be of a minor and technical nature and, which shall not be construed to require or require an amended land use approval. Nothing contained herein shall be construed so as to allow the Developer to relocate any improvements or landscaping on the approved plans without prior approval of the Planning Board if such prior approval is deemed necessary by the Board or Borough Engineer. Further, if the within application was the subject of variance approval, no change shall be made to the plans which would in any way further intensify or alter any variance without the express approval of the Planning Board, regardless of whether such change be a de minimis change, or a change which could be seen as a "field change", as such term has been used hereunder.

**6. DRAINAGE FACILITIES:**

(a) The Developer shall install all storm drainage facilities, manholes, inlets, pipes, connections and curb lines, and all other appurtenances necessary for proper construction and operation of the storm drain system as shown on the Site Plan and other drawings referred to herein, all of which shall be installed and laid out in such manner as may be approved by the Board or Borough Engineer. All interior sanitary sewer and storm drain facilities necessary to properly serve the premises shall be installed and operable prior to the issuance of a Certificate of Occupancy.

(b) In accordance with, and unless otherwise shown on the drainage plan reviewed and approved by the Borough Engineer in conjunction with Site Plan Approval, final grades shall blend into the established grades of all adjoining developed property as shown on the plans. Unless otherwise shown on the Approved Plans, differences in grade elevation along property lines will be

allowed only if, in the reasonable opinion of the Board or Borough Engineer, no drainage problems exist which would increase draining flow and a discharge of surface waters in excess of the approved Storm water Management Plan. If surface contours are changed by the Developer on the property so as to cause additional surface water runoff from one lot to another affecting the proper use of any adjacent lot, the Developer will construct such swales, drains, walls or other drainage facilities so as to prevent said runoff from affecting the proper use of any adjacent lot.

(c) The Developer shall hold the Borough, the Mayor and Council, the Board or Borough Engineer and the Planning Board harmless from any damage or liability that might arise due to the increased drainage of surface waters upon lands abutting the property being developed by it as shown on the documents herein referred to, and further agrees to alleviate any and all conditions that may arise by reason of the increased discharge of water, soil or dirt upon said abutting properties, including Borough property, which are caused by the Developer.

**7. UTILITIES:**

Developer shall construct all utilities servicing the property in accordance with the specifications of the respective utility companies and the Borough including, but not limited to, electric and telephone. Nothing herein shall require the Borough to install utilities for this Project.

**8. FIRE PREVENTION FACILITIES AND HYDRANTS:**

Fire prevention facilities, if any, and hydrants, if any, will be installed on the premises, at Developer's expense, in accordance with the site plan and as approved by the Fire Department of the Borough of Demarest.

**9. LIGHTING:**

The Developer shall provide lighting as provided in the approved site plan.

**10. SIGNS:**

No signs shall be placed on the premises without the Developer first securing a sign permit when required by law.

**11. ELECTRICAL TRANSFORMERS:**

All electrical transformers shall be installed either within buildings or underground.

**12. SURFACING AND PAVEMENT STANDARD:**

All roadways, parking areas and driveways to be constructed by the Developer shall be constructed and installed in accordance with the site plan as approved in the Memorializing Resolution.

**13. PARKING REGULATIONS:**

The Developer and its successors shall be responsible for enforcing parking regulations on the premises and precluding the conversion of any garage space in such a manner as to preclude the parking of two motor vehicles; however, nothing in this Paragraph is intended to supersede the legal authority of the Borough Police and Fire Department to monitor fire lanes or otherwise protect the public interest.

**14. GARBAGE COLLECTION:**

The individual garbage receptacles are to be stored within each unit, as shown on the Approved Plans. The Developer shall comply with the requirements of the New Jersey Mandatory Statewide Source Separation and Recycling Act. The Homeowner Association will provide garbage collection and recyclable material pick-up for this project and will be reimbursed for same in accordance with the requirements of the New Jersey Municipal Services Act N.J.S.A. 40:67-23.3 as it does for any other property.

**15. GRADING:**

Before the grading of any roadway, driveway or parking area, the area shall be cleared of all debris, branches, matted leaves, mud, and any other materials that, under sound construction practices, would be regarded as unsuitable.

**16. EASEMENTS:**

If applicable, the Developer shall provide for easements subject to the approval of the Board or Borough Engineer, wherever necessary, for drainage, public utilities, sanitary sewerage or for any other purpose as per the approval of the Board. Developer shall submit to the Board or Borough Engineer and Planning Board Attorney a drawing and description of all easements (if any) for their approval prior to filing of same. In addition, the Developer shall grant the Borough an easement for necessary municipal access over all interior private roads for the Borough's ambulance, police, fire, sanitation, school bus or other health and safety services. The Developer shall further provide any other easements which may be required pursuant to the Board approvals and the reasonable recommendations of the Board or Borough Engineer. Notwithstanding anything to the contrary herein, Developer shall have an absolute right to appear before the Board to contest any proposed change recommended by the Borough Engineer.

**17. BUILDING PERMITS REQUIRED:**

The Developer agrees that construction of the Project shall not commence until a Site Work Permit, or a Building Permit and all other necessary permits and approvals shall have been duly issued.

**18. AFFORDABLE HOUSING OBLIGATIONS:**

The Parties hereto acknowledge that there are two (2) residential units which shall be deed-restricted as affordable housing rental units and shall be administered by a qualified Administrative Agent. All necessary steps shall be taken to make the two (2) units creditworthy pursuant to applicable law.

**19. SSG GUARANTEES AND ESCROW – Intentionally Omitted:**

**20. RELEASE OF PERFORMANCE GUARANTEE AND DEPOSITS – Intentionally Omitted**

**21. BOROUGH'S PROFESSIONAL COSTS:**

The reasonable engineering, planning, and legal fees or charges for services rendered to the Board and to the Borough in connection with this Agreement and in connection with improvements made hereunder shall be paid by the Developer upon the execution and delivery of this Developer's Agreement. For this purpose, the Developer shall deposit upon the execution of this Agreement:

(a) As per Exhibit "B", a cash deposit in the sum of **EIGHTEEN THOUSAND and 00/100 (\$18,000.00) DOLLARS** for engineering services and **TWO THOUSAND FIVE HUNDRED and 00/100 (\$2,500.00) DOLLARS** for legal services, it being specifically agreed, that if during the course of the development it appears that the amount of deposit is inadequate to meet such costs, the Borough may require such additional sums to be deposited with the Borough as it might determine to be necessary and reasonable, and the Developer shall forthwith deposit same. No building permits or Certificates of Occupancy shall be issued until such additional deposits shall have been made.

(b) The Borough shall be and is hereby authorized by the Developer to disburse the said deposit in payment of such services as are rendered upon the submission of proper vouchers therefore, duly sworn to by the person or person rendering the services, and the unused portion of any such

deposit shall be returned to the Developer by the Borough upon completion of the professional services undertaken and upon certification of completion to the Borough by the respective professionals rendering such services.

**22. SUBMISSION OF DETAILED PLANS:**

In the event that the Board or Borough Engineer, during the course of construction and in his opinion, reasonably requires any further details for the plan submitted and approved, the Developer shall furnish such details on reasonable written notice by the Board or Borough Engineer, specifying the full nature of such details, within fifteen (15) working days. The Developer shall also submit, upon the reasonable request, detailed drainage and topographic plans as may be required by the Board or Borough Engineer, Borough Health Officer, and any other Borough, County, State or Federal Governmental Agency, and shall provide the Board or Borough Engineer with as-built drawings indicating the location and size of all sanitary sewer and storm drainage lines and structures, including all inverts, tops of manholes, tops of grates, location and elevation of all retaining walls and grades throughout the premises, including the final location and grades of curbs, sidewalks, roadways, parking areas and waterways. Notwithstanding anything to the contrary herein, Developer shall have an absolute right to appear before the Board to contest any proposed change recommended by the Borough Engineer.

**23. INSPECTION OF IMPROVEMENTS:**

The Borough contemplates the inspection of all site improvements and/or facilities to be accepted by the Borough. The Board or Borough Engineer shall inspect the installation of all site improvements set forth on Exhibit "B" annexed hereto, including, but not limited to, storm drains, road construction work, fences, retaining walls higher than four (4) feet, landscaping and all other facilities which may be maintained by the Borough, exclusive of utility items. The Developer shall

notify the Board or Borough Engineer and Public Works Department at least forty-eight (48) hours prior to the commencement of each phase of construction of any such facilities. Prior to commencement of construction, there shall be a pre-construction meeting. The Board or Borough Engineer shall have the right to reject any of the improvements constructed which do not meet with his approval. In the event of a temporary suspension of construction, the Board or Borough Engineer and Department of Public Works shall be notified of the renewed starting date of construction. Backfilling, after the laying of any drainage pipes, manholes or other facilities in connection therewith, shall be absolutely forbidden except after the inspection and approval by the Board or Borough Engineer or his duly authorized representative. The Board or Borough Engineer shall use his best efforts to have inspections completed in a timely manner so as to permit the Developer to proceed with construction in an orderly, safe and expeditious manner. The Borough Engineer shall have the right to reject any of the improvements constructed which do not meet his approval.

**24. T.V. INSPECTION:**

Upon their completion, sanitary lines installed or improved by the Developer will be “T.V. Inspected”, together with storm lines, if requested by the Board or Borough Engineer, at Developer’s expense, to ensure conformance to specifications and to determine if breaks, settlement, or misalignment have appeared since the backfilling of trenches.

**25. ENGINEER’S AND CONSTRUCTION CODE OFFICIAL’S FIELD REQUIREMENTS:**

This Agreement is subject to additional in-the-field requirements, in accordance with applicable codes and Borough Ordinances, standard construction specifications on file in the office of the Board or Borough Engineer, in accordance with OSHA requirements, the New Jersey Uniform Construction Code (“NJUCC”), and New Jersey Residential Site Improvement Standards. All such requirements shall be reasonable, shall be in writing, and shall be given in a timely fashion. The

purpose of such requirements is to adequately ensure that the improvements to be installed under this Agreement function properly and carry out all the purposes for which they are designed in a good, workmanlike manner consistent with sound engineering principles. The provisions of this Paragraph will not be utilized to require unusual additional work or facilities beyond that which is necessary to adequately ensure that the facilities operate and function properly to carry out the purpose for which they were designed. Nothing herein shall be deemed to authorize by implication the disapproval of construction materials and methods that are permitted under law or the NJUCC, except if expressly provided to the contrary herein or except if other and different specifications are shown on the site plan (including site grading plans, profiles and detailed plans submitted with the site plan).

**26. POLICE AND FIRE:**

(a) The Borough will provide Police and Fire protection for this project as it does for any other property within its jurisdiction.

(b) In addition, if reasonably required by the Fire Department, the Developer shall provide appropriate information confirming that the water pressure is adequate for firefighting purposes at proper volume and pressure to all floors and appropriate locations.

(c) In the event the Demarest Fire Chief determines that additional fire hydrants are required for such purpose, in accordance with any applicable regulations, the Developer, at its own expense, shall install the additional hydrants subject to the approval of the Demarest Fire Department. The location of the fire hydrants shall be in accordance with the recommendation of the Borough of Demarest Fire Department, and all other necessary equipment to provide fire protection, at proper volumes and pressure to all floors and locations, shall be as required by the Fire Department.

**27. BOROUGH NOT LIABLE FOR IMPROVEMENT COSTS:**

Nothing herein contained shall be construed to render the Borough or any of its officers, boards, or employees liable for any charges, costs, or debts for material, labor or other expenses incurred in the making of the improvements.

**28. INDEMNIFICATION OF MUNICIPALITY:**

Developer shall be and remain liable for any and all damage or monetary loss (including, but not limited to, attorney's fees) that may be suffered by the Borough or the Board, or their officers, employees, agents and/or professionals by any negligent act or omission by the Developer or any person, firm, or corporation to which the Developer is legally responsible arising from the construction or installation of the improvements, the performance of the terms hereof or from or out of this Agreement. The Developer shall also save, indemnify, and hold harmless the Borough, its officers, agents, boards and employees for any and all actions at law or in equity, charges, debts, liens, encumbrances, costs and attorney's fees which may arise from any such damage or loss, from the making of the improvements, the performance of the terms hereof or from or out of this Agreement, except where the Borough or its agents have been judicially determined to have acted contrary to law or failed to perform acts required by law of this Agreement or have been guilty of negligence.

When and in the event that, by reason of the alleged negligence of the Developer in the construction of the Project, litigation arises and the Borough is made a third-party Defendant to any lawsuit so instituted and by reason of the necessity of the Borough to defend such suit, escrow funds provided for in Paragraph 19 hereof are deemed to be insufficient to pay the continuing bills for services rendered to the Borough by its attorney and/or engineer, or other expenses or cost incurred in said litigation, the Borough may serve a written notice by Certified Mail, Return Receipt, upon the

Developer at the address set forth herein, requiring the Developer to deposit within ten (10) days thereof, such additional funds that the Borough may deem necessary for the completion of the development and the defense of any such litigation. The Developer shall, within ten (10) days, deposit such additional funds with the Borough as required. Should the Developer fail to do so within the required time period, the Borough may direct the appropriate officials to place a stop work order on all development and construction of the Project on the Property and as depicted on the Site Plan.

**29. DEDICATION OF STREETS - Intentionally Omitted**

**30. DUST AND NUISANCE:**

The Developer agrees not to commit a public or private nuisance by reason of dirt, dust, debris, air pollution, noise pollution, gas, smoke, or other annoyance resulting from construction, trucking or other operations. The Developer further agrees to abate any such nuisance within five (5) business days of receipt of written notice from the Board or Borough Engineer, unless said notice reasonably directs a shorter time limit. The means of dust control shall be subject to approval by the Board or Borough Engineer.

**31. DUTY RE: UNSAFE CONDITIONS:**

The Developer shall correct and make safe any dangerous or unsafe condition created, caused or suffered to exist by the Developer (or by those acting for or on behalf of the Developer) affecting public safety or general welfare if such condition develops. In the event that such condition exists, notice shall be given by certified mail to the Developer, whereupon Developer shall correct such condition within such reasonable period of time as the Borough in its notice shall specify. In the event such condition is not corrected by the Developer within the said time period, the Borough Council may order the corrective work to be done and the Developer and its surety shall reimburse and indemnify the Borough for all costs and expenses incurred thereby.

### **32. SOIL MOVEMENT:**

(a) **Permit:** Before construction is commenced on the lands subject to this Agreement, the Developer shall obtain the necessary permit therefor in accordance with the Ordinance limiting and controlling the movement of soil and the conditions set forth in this Resolution, if applicable.

(b) **Conservation:** All soil conservation measures, including re-vegetation of disturbed areas, required under all soil permits or as specified by the Board or Borough Engineer or the Bergen County Soil Conservation District, shall be adhered to by the Developer.

(c) **Additional Measures:** Prior to the start of work on the property, all soil erosion and sediment control measures shall be installed at the locations and in accordance with the details shown on the approved plans, prior to the start of work on the Project, except to the extent modified by approvals granted by the Bergen County Soil Conservation District. All reasonable additional measures arising from field conditions deemed necessary in the Public Interest by the Board or Borough Engineer shall also be installed by the Developer where and when directed by the Engineer. Once installed, said measures shall be properly maintained and/or replaced as necessary to serve the function for which they are intended. In the event that the Developer fails to install, replace, or adequately repair these facilities within seventy-two (72) hours from the time of notice to a representative of the Developer, either on the site or in the Developer's office, the Board or Borough Engineer shall have the authority to suspend all work on the Project until the required installation, replacement, or repair operations are completed to the Engineer's satisfaction. Should the Developer fail to cooperate in this regard a second time, the Board or Borough Engineer's suspension of work shall be effective until such time as the Borough Council considers the matter and permits work to resume.

(d) **Access to the Site:** Access to and egress from the site for soil movement purposes shall be in accordance with the approved plan. Use of any other entrance or exit shall be deemed a violation of this Developer's Agreement, subjecting the Developer to the same suspension penalties as describe in Subsection (c) above.

**33. CERTIFICATE OF CONTINUED OCCUPANCY:**

Nothing contained in this Agreement shall authorize the use or occupancy of any building that is the subject of this Agreement prior to the issuance of a Certificate of Occupancy for said building and prior to the installation of an approved sanitary sewer system and/or wastewater treatment system in accordance with all applicable laws, rules, regulations, codes, and ordinances.

**34. COUNTY AND STATE REQUIREMENTS:**

Developer represents that it has heretofore complied and that it will in the future comply with all, if any, requirements and/or regulations of the Bergen County Planning Board, the Bergen County Engineer, Bergen County Road Department and Bergen County Department of Public Works, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, Bergen County Utilities Authority, Bergen County Sewerage Authority and any other Governmental Agency if same are mandated by law, and hereby further represents that before commencing work, it will secure all County, State and Federal approvals required for such work.

**35. DEFAULT/REMEDIES:**

(a) The following shall constitute an event of default:

1. Where the Developer files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent or suffers any type of receivership, insolvency, bankruptcy, or other similar proceeding to be filed against it; or

2. Where the Developer ceases work on the items described in Exhibit "A" and does not complete any of said items within the time specified pursuant to Paragraph 2 hereinabove.

(b) Upon a default by the Developer under the terms and/or conditions of this Agreement, the Borough shall provide the Developer with fourteen (14) days written notice of such default, within which period the Developer shall be required to comply with all the terms of this Agreement and appropriate ordinances and rules and regulations of the Borough and its agencies. Notwithstanding the foregoing sentence, if the default is of a nature that it cannot, with the exercise of reasonable diligence, be cured within the fourteen (14) day period, then the fourteen (14) day period shall be extended to a reasonable period as agreed by the parties to enable the Developer to cure the default with the exercise of reasonable diligence. If at the expiration of the cure period, the Developer has failed to perform in accordance with this Agreement and in accordance with all applicable Borough ordinances and rules and regulations of the Borough and its agencies, the Borough, without further notice to the Developer, may exercise the remedies set forth in Subsection (c) hereof.

(c) (i) The cash deposit and Performance Bond (if any) may be utilized by the Borough for the performance and completion of the improvements described in this Agreement upon default of the Developer, as well as for other costs as set forth in this Agreement. It is understood that the Performance Guarantee is given pursuant to N.J.S.A. 40:55D-53, and the Borough and Developer shall be entitled to all the rights and remedies provided thereby, together with all rights and remedies provided by law and/or equity. Subject to N.J.S.A. 40:55D-1 *et seq.*, the Developer agrees that, in the event the Developer defaults under the terms of this Agreement, the Developer shall be responsible for not only the costs of completing the improvements, but also for all reasonable ancillary costs and reasonable counsel fees expended by the Borough to enforce the provisions of this Agreement. If

commercially available, the Performance Bond shall contain a provision allowing the immediate utilization of the proceeds of the bond in the event of the Developer's default as aforesaid.

(c) (ii) The Developer agrees that any time the Developer shall fail to comply with any of the terms of this Agreement or any part of the specification as herein mentioned, the Board or Borough Engineer, Construction Code Official or the Police Department, as to public safety matters, may forthwith stop all further work on said improvement until the work has been corrected or otherwise made to comply with the terms of this Agreement and the said specifications.

(c) (iii) Notwithstanding anything to the contrary herein contained, in the event conditions detrimental to health, life, limb or property are created by the Developer, they shall be promptly corrected at the expense of the Developer. If any emergency shall arise, the Borough will immediately notify the Developer on the site or, if the emergency permits, in the sole discretion of the Board or Borough Engineer, by notice hand delivered or sent by Certified Mail, Return Receipt to the address provided herein for notices. If no action is promptly taken by the Developer, the Borough is hereby empowered to take such corrective measures as in its sole discretion it may deem necessary including to charge the same against the Performance Guarantees. If this cost shall exceed the Performance Guarantees, or if no Performance Bond has been posted,, the Developer shall be liable to the Borough for such excess cost-plus reasonable attorneys' fees if suit shall be necessary to enforce collection.

### **36. INSURANCE:**

The Developer shall procure insurance for public personal injury liability and property damage liability including contingent liability which might result from the performance of the work required under this Agreement, and shall provide the Borough with a Certificate of Insurance

designating the Borough as an additional insured under each said policy in which insurance coverage shall be in at least the following amounts:

One person in any one occurrence	\$1,000,000.00
Two or more persons in any one occurrence	\$2,000,000.00
Property damage in any one occurrence	\$2,000,000.00
Aggregate property damage limit	\$4,000,000.00

The Developer further covenants and agrees that it will provide automobile liability and property damage insurance coverage and provide the Borough with a Certificate of Insurance designating the Borough as an additional insured under said policy, which insurance coverage shall be in at least the following amounts:

Bodily injury, each person	\$1,000,000.00
Bodily injury, each occurrence	\$2,000,000.00
Property damage	\$1,000,000.00

The Developer further covenants and agrees that it will provide workman's compensation coverages for employees and will require evidence of such coverages to be supplied by a sub-contractor who may be employed to perform the work under this Agreement. In addition, the Developer covenants and agrees that it shall provide Explosion, Collapse and Underground (XCU) coverage and broad form Comprehensive General Liability (CGL) coverage with respect to rented equipment.

**37. MAINTENANCE GUARANTEES:**

At the time of the completion of all improvements and the formal acceptance thereof by the Borough, the Developer shall be required to post a maintenance guarantee in the amount determined by the Borough Engineer in accordance with the appropriate ordinances of the Borough and statutes of the State of New Jersey. Said maintenance guarantee will cover all bonded improvements set forth in Exhibit "B" annexed hereto constructed by the Developer in connection

with the Site Plan and estimated to be fifteen (15%) percent or **TWENTY-THREE THOUSAND SIX HUNDRED TWENTY-TWO AND 75/100 (\$23,622.75) DOLLARS** of those bonded improvements and for a period of two (2) years.

**38. AS-BUILT PLANS:**

The Developer shall furnish to the Borough and the Department of Public Works as-built plans showing alignment and elevations of, including, but not limited to, all utilities, streets, roads, driveways and water and sewer improvements prior to the release of Performance Bonds. The as-built plans shall be in the form required by the Borough Engineer and Department of Public Works.

**39. RESTORATION OF ROADWAY AND ADJACENT PROPERTIES:**

Developer must, prior to the issuance of any Certificate of Occupancy, restore any damages to areas of streets, roadways, and properties adjacent to the subject site, all in accordance with the direction of the Board or Borough Engineer and/or Construction Code Official.

**40. COMPLIANCE WITH CONDITIONS AND RESOLUTIONS:**

Unless otherwise specifically addressed herein, the Developer shall comply with all the conditions and requirements set forth in the Board Resolution of Approval as set forth in Exhibit "A", annexed hereto.

**41. INSOLVENCY OR ABANDONMENT OF THE WORK:**

If, before the completion of construction of the Project, the Developer abandons the job, files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent, or suffers any type of receivership, insolvency, bankruptcy or other similar proceeding to be filed against it, or ceases work for a period of thirty (30) consecutive days without notice to, or the permission of, the Borough Engineer and fails to resume work within fifteen (15) days after receipt of notice by certified mail, return receipt at the address stated in this Agreement, then it shall be the duty of the surety immediately

to undertake the completion of the work at the expense of the Developer and the surety, or to pay to the Borough the cost of completion of the work as a local improvement pursuant to the provisions of N.J.S.A. 40:56, *et seq.*

**42. COMPLIANCE WITH CONDITIONS AND RESOLUTIONS:**

(a) Unless otherwise specifically addressed, Developer shall comply with each of the conditions and matters set forth in the Resolution of the Board adopted on March 22, 2023, granting Preliminary and Final Site Plan Approval.

(b) Developer shall further comply with each of the conditions and matters set forth in the Engineer's report from Colliers Engineering & Design, dated February 24, 2023 and Planner's report from Colliers Engineering & Design dated February 27, 2023 (insofar as the recommendations are consistent with the Board approval and have not been modified or superseded by the Planning Board during the course of the hearings, the Resolution, or this Agreement).

**43. COMPLIANCE WITH BOARD OF HEALTH REQUIREMENTS:**

The Developer shall comply with the lawful requirements of the Borough's Board of Health as to all matters within its jurisdiction.

**44. DISPUTE RESOLUTION:**

The Borough and the Developer agree that, in the event of any dispute between the Board or Borough Engineer and the Developer as to the compliance with this Agreement, the Developer reserves the right to a hearing before the Governing Body. In the event that any dispute should arise regarding the payment of professional fees attributed to the site, same shall be resolved in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* and applicable Borough Ordinances. In the event the Board or Borough Engineer and Developer are unable to resolve any dispute that may arise hereunder, such dispute shall be resolved by litigation.

**45. MUNICIPAL CONSENT FOR ASSIGNMENT OR SALE:**

No assignment thereof or sale of the Property in whole or in part, shall operate to relieve the Developer from its obligations hereunder, without the express written consent of the Governing Body or the Borough, which consent shall not be withheld unreasonably and shall be granted upon Developer's performance of items (i) through (iii) of this Paragraph. If the Developer seeks to assign or transfer property and the obligation of this Developer's Agreement: (i) the Developer shall advise the Borough in writing of such intention; (ii) the Developer shall provide the Borough sufficient proof in affidavit form from the Developer which shall affirmatively represent that the obligations and responsibilities set forth in the Developer's Agreement have not been violated by the Developer and shall further specifically represent that the Developer is aware of no uncured notices of violation from the Board or Borough Engineer or any agency having jurisdiction over the Project; (iii) the obligations of the Developer's Agreement shall be specifically assumed in writing by the assignees or transferees of the Developer to the Borough; and (iv) the Borough's consent to such assigns, transfers of sale shall not be unreasonably withheld or delayed.

**46. BOROUGH NOT RESPONSIBLE TO THIRD PARTIES:**

Nothing contained in this Agreement shall be construed to give any person or legal entity, not a party to this Agreement, any claims against the Developer and/or Borough or any of their agents or agencies with respect to any matter arising out of this Agreement including, but not limited to, the installation of any improvements, or for any damages arising therefrom.

**47. SUBORDINATION:**

This Agreement and any liens or charges created hereunder against the Property, or any portion thereof shall be subject and subordinate to any construction or permanent mortgage now or hereafter to be placed on the Property to the extent that such mortgage funds are used for the actual

construction of site improvements on the Property, inclusive of the structures to be created, pursuant to the Site Plan.

**48. BREACH OF AGREEMENT:**

In no case shall a Certificate of Occupancy be issued if a material breach or default in this Agreement has occurred and the same has not been cured. Without limitation upon any other remedy provided herein or by law, the Governing Body of the Borough may order that, in the event the same have been issued, no further building permits or Certificates of Occupancy shall be issued until any material breach or default in this Agreement has been cured.

**49. NOTICE:**

Any notice, request, consent or other communication under this Agreement (a "Notice") shall be in writing and shall be given by personal delivery or by Federal Express or similar overnight national courier, or by telecopier with confirmation (followed by overnight courier), addressed to the parties at the addresses hereinabove set forth. An additional copy of any notice intended for Developer shall be sent to:

95 County Demarest LLC  
565 Green Lane  
River Vale, New Jersey 07645  
Attention: Yoav Rettig

and an additional copy of any notice intended for the Borough shall be sent to:

Borough Administrator  
Borough of Demarest  
Municipal Building  
118 Serpentine Road  
Demarest, New Jersey 07627

and an additional copy of any notice intended for the Planning Board shall be sent to:

Douglas M. Bern, Esq.  
Bern & Associates LLC  
39 Park Place, Suite 204

Englewood, New Jersey 07631

Notice shall be deemed to be delivered upon receipt. Either party may, upon ten (10) days' notice to the other, change the address to which notices to such party shall thereafter be given.

**50. GOVERNING LAW:**

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of New Jersey. Any litigation arising out of this Agreement shall be brought in the Superior Court of New Jersey, Law Division, Bergen County vicinage, and the parties agree to submit to the jurisdiction of said Court.

**51. SUCCESSORS BOUND/RECORDING:**

(a) This Agreement shall be binding upon the successors and assigns of the parties hereto.

(b) This Agreement may be recorded in the Office of the Bergen County Clerk by the Borough at the sole cost and expense of the Developer. Upon completion of all improvements and the terms and conditions of this Agreement, the Borough will execute such document(s) as is reasonably required to discharge this Agreement, if same has been recorded.

**52. AGREEMENT NOT CONSTRUED AS WAIVER:**

Nothing herein contained shall be construed as preventing the Borough and/or Developer from exercising in any court of law or elsewhere any right or duties which may have by statute, ordinance, or other law. Nothing herein contained shall be deemed a waiver by any part of any ordinance or state statute or other law, or be construed as an abridgement, pre-emption, or waiver of the powers of any Borough Board, Agency, or Public Body. This clause shall not operate to confer upon any such public body any powers, rights, or duties it does not now possess, nor abridge the right of the Developer vis-à-vis any such public body.

**53. MUNICIPAL OFFICIALS ETC. NOT LIABLE ON CONTRACT:**

The covenants, undertakings, agreements and other obligations mentioned in this Agreement shall not be construed as representations by the Mayor and Council, the Board, or by any Borough officer, agent or employee to have or to assume any contractual or other liability to or with any persons, firms or corporations purchasing any land, buildings, or improvements from the Developer or otherwise using or having any interest in the same, nor shall this Agreement be construed to place any liability on the Borough or Board to these persons.

**54. MODIFICATIONS:**

This Agreement may only be changed, modified or amended by a written instrument signed by all parties hereto. No amendment, extension, modification, or alteration in any of the terms and/or conditions or requirements by the Borough shall operate so as to relieve any surety from its obligations on any performance or maintenance guarantee.

**55. SEVERABILITY:**

The provisions of this Agreement are severable; if any one provision be determined unenforceable, this shall have no effect on the balance of the provisions hereof which shall remain in full force and effect.

**56. TERMINATION OF AGREEMENT:**

This Agreement shall terminate upon the issuance of a Certificate of Occupancy.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be signed by their proper officers and their corporate seals to be affixed the date and year first written above.

**DEVELOPER:**

**WITNESS:**

**95 COUNTY DEMAREST LLC**, a Limited Liability Company of the State of New Jersey

\_\_\_\_\_

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

**BOROUGH OF DEMAREST**, a Municipal Corporation of the State of New Jersey

**ATTEST:**

\_\_\_\_\_

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

, RMC,

BRIAN BERNSTEIN, MAYOR

BOROUGH CLERK

**ATTEST:**

**PLANNING BOARD OF THE  
BOROUGH OF DEMAREST**

\_\_\_\_\_

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

DOUGLAS M. BERN, ESQ.  
ASSISTANT SECRETARY

MARIAN HAYDEN, CHAIRWOMAN

**CORPORATE ACKNOWLEDGEMENT**

STATE OF NEW JERSEY

SS:

COUNTY OF BERGEN

I CERTIFY that on \_\_\_\_\_, 2024 \_\_\_\_\_, personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument of 95 COUNTY DEMAREST LLC, the entity named in this instrument; and
- (c) executed this instrument as the act of the entity named in the instrument

Signed and sworn to before me

On \_\_\_\_\_, 2024

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_





**EXHIBIT "A"**

**RESOLUTION OF THE BOROUGH OF DEMAREST  
PLANNING BOARD**

**DATED: March 22, 2023**

**EXHIBIT "B"**

**ENGINEER'S ESTIMATE OF COST OF IMPROVEMENTS**

**DATED: November 22, 2023 and December 5, 2023**

**Resolution of the Demarest Governing Body**

**Resolution No. 079-24**

**March 25, 2024**

<b>Council Member</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Jiang</b>						
<b>Fox</b>						
<b>Marks</b>						
<b>Slowikowski</b>						
<b>Reiss</b>						
<b>Collins</b>						

**TITLE: PAYMENT OF BILLS**

=====

**BE IT RESOLVED**, by the Mayor and Council of the Borough of Demarest that the following bills in the sum of \$\_\_\_ on bill list dated March \_\_, 2024 have been approved and authorized for payment and the that the Mayor, Borough Clerk and Borough Treasurer are hereby authorized to issue warrants in payment of same.

**APPROVED:**

\_\_\_\_\_  
Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on March 25, 2024

\_\_\_\_\_  
Julie Falkenstern, Acting Borough Clerk