

**MAYOR AND COUNCIL
BOROUGH OF DEMAREST
WORK SESSION
MEETING AGENDA
May 13, 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:

Proclamation

WHEREAS The Borough of Demarest is pleased to acknowledge The Art School at Old Church for providing 50 years of distinguished service as an innovative, nonsectarian, nonprofit center for arts and culture in Demarest, New Jersey; and

WHEREAS The Art School at Old Church provides individuals of all ages and interests with opportunities to study each semester with more than fifty professional artists who are experts in painting, drawing, sculpture, ceramics, printmaking, jewelry, fiber arts, photography, and filmmaking; and

WHEREAS the Art School at Old Church ensures equitable access to its programs by offering senior discounts, family memberships, and need and merit-based scholarships to individuals and families; and

WHEREAS The Art School at Old Church provides individuals with varying abilities the accommodations necessary to participate safely and fully in lifelong learning in and through the arts; and

WHEREAS The Art School at Old Church provides students with learning differences the arts instruction and exhibition opportunities necessary to establish creative careers; and

WHEREAS the Art School at Old Church hosts the nationally acclaimed, Old Church Pottery Show, which inspires more than 1,000 visitors each year to engage directly with renowned, established, and emerging ceramicists from across the United States; and

WHEREAS The Art School at Old Church creates free arts and cultural experiences in collaboration with community partners, including Englewood Medical and Health Center, Demarest Free Public Library, The Center for Hope and Safety, The Belskie Museum of Art and Science, Juniper Village Senior Community, Northern Valley Demarest School District, and The Borough of Demarest; and

WHEREAS the Art School at Old Church attracts participants from eleven counties in New Jersey; and

WHEREAS the Art School at Old Church has inspired more than 250,000 artists, students, and gallery visitors since opening to the public in 1974; and

WHEREAS The Art School at Old Church ensures that profound arts and cultural experiences will always be accessible to individuals of all ages, backgrounds, and abilities.

NOW THEREFORE, I, BRIAN BERNSTEIN, MAYOR OF THE BOROUGH OF DEMAREST, do hereby proclaim May 5, 2024 as a day to celebrate and recognize the 50-year anniversary of the Art School at Old Church in Demarest, New Jersey and the contributions the School has made to the Demarest Community.

Ordinance (Introduction): (none)

Ordinance Public Hearing (Adoption): (none)

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

Mayor Bernstein asks for a motion to open the public hearing on Ordinance # 1131-2024

A motion was made by _____ and seconded by _____

Roll Call:

Mayor Bernstein asks if anyone wishes to be heard concerning adoption of this ordinance.

Speaker(s):

Mayor Bernstein asks for a motion to close the Public Hearing on this ordinance and that it be adopted with notice of final passage to be published in the Bergen Record.

A motion was made by _____ and seconded by _____

Roll Call:

Ordinance No. 1134-24 AMENDING AND MODIFYING CHAPTER 175 ZONING FEES AND ESCROW FOR VARIANCE AND CONDITIONAL USE APPLICATIONS

Mayor Bernstein asks for a motion to open the public hearing on Ordinance # 1134-2024

A motion was made by _____ and seconded by _____

Roll Call:

Mayor Bernstein asks if anyone wishes to be heard concerning adoption of this ordinance.

Speaker(s):

Mayor Bernstein asks for a motion to close the Public Hearing on this ordinance and that it be adopted with notice of final passage to be published in the Bergen Record.

A motion was made by _____ and seconded by _____

Roll Call:

Work Session Discussion Items:

Engineer's Report
Boroughwide Reassessment

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. 097-24 Awarding Contract for Leaf Removal
- Resolution No. 098-24 Authorizing Bid- FY2023 NJDOT Paving
- Resolution No. 099-24 Authorizing Construction Management FY2023 NJDOT Paving
- Resolution No. 100-24 Authorizing Design and Bidding FY 2024 NJDOT Paving

Resolution No. 101-24	Soil Moving Permit – 186 Chestnut
Resolution No. 102-24	Soil Moving Permit – 16 Donnybrook
Resolution No. 103-24	Escrow Release
Resolution No. 104-24	Authorize Redevelopment Agreement
Resolution No. 105-24	Bill List
Resolution No. 106-24	Appoint Finance Assistant - Patel
Resolution No. 107-24	Authorize Construction Management Riverside Coop

Meeting Open to the Public

Closed Session - Potential Litigation

Adjournment

BOROUGH OF DEMAREST
COUNTY OF BERGEN

ORDINANCE 1131-24

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

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: _____

3/25/24

Adopted: _____

**BOROUGH OF DEMAREST
COUNTY OF BERGEN**

ORDINANCE 1134 -2024

**ORDINANCE AMENDING AND MODIFYING CHAPTER 175 ZONING, ARTICLE VIII.
ADMINISTRATION, 175-33 FEES AND ESCROW DEPOSIT FOR VARIANCE
AND CONDITIONAL USE APPLICATIONS
OF THE DEMAREST BOROUGH CODE**

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).

§ 175-33. Fees and Escrow Deposits for Variance and Conditional Use Applications

- A. An applicant for a variance or conditional use shall remit to the Borough of Demarest the following nonrefundable fees:
- 1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): \$200
 - 2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): ~~\$100 per variance requested, with \$200 minimum~~ \$250 + \$100 per additional variance
 - 3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): \$500 per variance
 - 4) Conditional Use: \$500
- B. The application shall be accompanied by an escrow deposit to pay Borough Professional fees in the following amount:
- 1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): ~~\$500.~~ \$2,500
 - 2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): ~~\$200 per variance requested, with \$500 minimum.~~ \$2,500 + \$250 per additional variance
 - 3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): ~~\$1,000.~~ \$3,000 + \$1,000 per additional variance
 - 4) Conditional Use: ~~\$1,000~~ \$5,000
- C. The escrow deposit posted hereunder shall remain on deposit with the Borough until the Attorney and Engineer for the Zoning Board of Adjustment certifies that all vouchers for services rendered in connection with the ~~preparation and publication of a resolution memorializing the action of the Zoning Board of Adjustment with respect to the application have been paid in full, after which time any balance remaining shall be refunded upon issuance of a building permit.~~ application before the Zoning Board of Adjustment have been paid in full, after which time any balance remaining shall be refunded upon request by the applicant after the issuance of a building permit.

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: 3/25/24

Adopted: _____

Resolution of the Demarest Governing Body

Resolution No. 097-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: AUTHORIZING CONTRACT FOR LEAF REMOVAL

WHEREAS, the Borough of Demarest ('Borough' or 'Demarest') requires marketing services for the disposal of its collected fallen leaves and related organic compost materials; and

WHEREAS, Organic Recycling, Inc., 121 Route 303, Orangeburg, New York, has the capabilities to provide the necessary services to Demarest and has presented the Borough with a proposed Contract for the marketing of its collected leaves and related compost materials (the "Contract"); and

WHEREAS, the marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program is exempt from the public bidding requirements pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-5(s); and

WHEREAS, the Contract is for a term of three (3) years at the rates set forth on the annexed Contract; and

WHEREAS, it is in the best interest of the Borough to authorize execution of the Contract.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Borough of Demarest, in the County of Bergen, and the State of New Jersey authorizes execution of the Contract; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution shall be served upon the vendor and Borough Chief Financial Officer upon adoption hereof.

APPROVED:

Brian Bernstein, Mayor

CERTIFICATION

I, Peter Suh, Chief Financial Officer for the Borough of Demarest do hereby certify available funds for the expenditure set forth in the annexed Contract.

Peter Suh, Chief Financial Officer

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 May 13, 2024.

Julie Falkenstern, Acting Borough Clerk



Jan. 25, 2024

Mr. Jason Gangi
Borough of Demarest
23 Wakelee Drive
Demarest, NJ 07627

RE: Leaf Disposal Proposal

Dear Mr. Gangi,

Organic Recycling Inc. (ORI), is pleased to provide the following proposal for pickup of leaves at the borough's site, the Borough's annual Fall leaves collected by the Department of Public Works, from within the boundary of the Borough.

ORI Trucking Leaves Material duration contract for 3 years:

1. We would like to offer the price of **\$9.95** per cubic yard loose leaves. Estimated about 11,000 cubic yards of loose leaves. **Total amount not to exceed: \$101,490.**

1st year at rate of 101,490
2nd year at rate of 103,520
3rd year at rate of 105,590
2. Plus **\$180** per hour on our Tractor Trailer rate approximately between 5 to 6 trailer loads a day (8 hours per day).
Approximately 80 to 90 cubic yard per load on the trailer. Estimated about 180 hours on the tractor trailer. **Total amount not to exceed: \$32,400.**

1st year at rate of \$32,400
2nd year at rate of \$33,300
3rd year at rate of \$34,200
3. Move between 480 to 540 cubic yards per day using 1 tractor trailer.
4. Borough shall ensure as far as practical that only clean leaves are delivered to the compost facility. Borough acknowledges that stones, metal and other hard objects can cause severe damage to the grinding equipment and that other physical contaminants like plastics can render the finished compost unusable.



ORGANIC RECYCLING, INC.

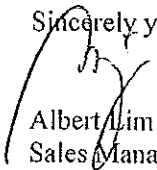
121 ROUTE 303 BLDG #1
ORANGEBURG, NY 10962
ORGANICRECYCLING.COM
TEL: 845.398.1012
FAX: 845.398.1017

5. ORI will rent front-end loader at \$3,100 from October 1st to January 10th and ORI operate at \$6,000 and loading the leaves into ORI's tractor trailer from Monday to Friday between 7am to 4pm.

1st year at rate of \$3,100 Loader Rental and \$6,000 Ori Loader Operator
2nd year at rate of \$3,250 Loader Rental and \$6,400 Ori Loader Operator
3rd year at rate of \$3,450 Loader Rental and \$6,750 Ori Loader Operator

If you have any question, please contact me at my cell phone (914)906-6788 or email at al@organicrecycling.com

Sincerely yours,


Albert Lim
Sales Manager

Confirmed By:

Borough of Demarest

Resolution of the Demarest Governing Body

Resolution No. 098-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

**TITLE: AUTHORIZE THE BOROUGH CLERK TO ADVERTISE FOR BIDS
FISCAL YEAR 2023 NJDOT MUNICIPAL AID ROAD PROGRAM**

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BE IT RESOLVED by the Mayor and Borough Council of the Borough of Demarest, County of Bergen, State of New Jersey upon the recommendation of the Borough Engineer, Colliers Engineering & Design, that the plans and specifications for:

FISCAL YEAR 2023 NJDOT MUNICIPAL AID ROAD PROGRAM

Are hereby approved and the Borough Clerk is hereby authorized to advertise for bids.

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 May 13, 2024.

Julie Falkenstern, Acting Borough Clerk

Resolution of the Demarest Governing Body

Resolution No. 099 -24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION AUTHORIZING THE CONSTRUCTION MANAGEMENT FOR 2023 NJDOT PAVING – MADISON AVE.

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WHEREAS, the Borough of Demarest has a need for construction management services related to FY2023 NJDOT Paving of Madison Ave.; and

WHEREAS, the Borough received a proposal dated May 7, 2024 from Colliers Engineering & Design to provide those services, attached, for the sum of \$32,500.00; 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 in account CIF 04-2250; 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 \$32,500.00 a copy of which is annexed to this Resolution.

APPROVED:

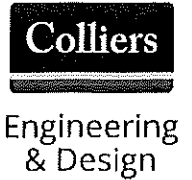
Mayor Brian Bernstein

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

400 Valley Road
Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



May 7, 2024

Julie Falkenstein, Borough Administrator
Mayor and Council
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

Proposal for Professional Services
NJDOT FY2023 – Madison Avenue
Professional Engineering Construction Administration Services
Borough of Demarest, Bergen County, NJ
Colliers Engineering & Design Proposal No.: DEB0055p

Dear Mayor and Council,

Colliers Engineering & Design, Inc. (CED) is pleased to present the following agreement for construction administration services regarding the NJDOT FY 2023 Madison Avenue Project. Funding shall be provided through current bond ordinance(s) and the anticipated capital bond ordinance for capital improvements. Partial funding shall be provided through a grant received by the New Jersey Department of Transportation Local Aid. The Engineer's Estimate is approximately \$214,322.00 for the Base Bid and \$245,287.00 for the Base Bid Plus Alternative "A". The NJDOT has awarded \$112,840.00 in grant funding for this project.

The project consists of improvements to the following locations:

- **Madison Avenue** (from Knickerbocker Road to Stelfox Street) – Approximately 1,985 linear feet

It is our understanding that Madison Avenue is under the Borough's jurisdiction. It is also our understanding that this roadway is generally in poor condition. Improvements to the roadway will include milling, base repair, spot curb repair, inlet grates, curb pieces, ADA compliant curb ramps with detectable warning surfaces, resurfacing, striping and restoration.

CED has previously been authorized to design the project and coordinate with NJDOT for approval and authorization to bid. This engineering agreement shall be utilized for construction oversight and NJDOT closeout procedures.

Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

TASK 1.0 – CONSTRUCTION OBSERVATION AND ADMINISTRATION SERVICES

Upon award of the construction contract to the lowest responsive and responsible bidder, CED shall coordinate a Pre-Construction meeting with the contractor and the Borough. During construction, CED shall monitor the contractor's performance and enforce the adherence to the contract documents and project schedule.

CED shall provide the Borough with on-site construction administration services during milling and paving operations. CED will also supervise any ancillary work such as striping, curb replacement, and ADA ramp reconstruction. This task should last approximately 4 weeks. In addition, CED anticipates that there will be 2 weeks of part-time construction administration services for the contractor to complete the punch list items. CED will utilize the same construction administrator on the site for the entirety of the project mentioned above in order to provide consistency for the project.

Daily observation reports will be retained by CED regarding the project. CED shall review and prepare contractor's payments as well as change orders (if necessary). If unacceptable work or material is supplied by the contractor, immediate corrective action shall be taken by CED on behalf of the Borough. CED will review the submittals for the projects including shop drawings and as-built drawings provided by the contractor.

It should be noted that dependent upon the construction activity, one week may require additional site observations services while another week may require less observation. This is strictly dependent upon the contractor's course of action. Construction Administration Services shall commence prior to the actual construction due to the review and approval of Shop Drawings. Should additional time and effort be necessary for on-site inspection services, CED will prepare an addendum outlining the amount of time and effort that is required to complete the tasks and inform the Borough accordingly. CED will review shop drawings as submitted by the contractor. We will make the necessary recommendations specific to final roadway striping and layout. We will also assist with the review of pay requests and preparation of closeout documents as it relates only to the project.

Prior to completion, a final punch list shall be created by the construction administrator and completion deadlines shall be scheduled for all open items. Upon completion of the punch list items, a final site visit shall be scheduled with the contractor and the Borough to close out the project. CED will prepare the paperwork for final payment for the contractor and submittal to NJDOT for funding reimbursement.

CED will coordinate with NJDOT throughout construction and after project completion for closeout of the project. Upon completion of construction, CED will coordinate with NJDOT for final inspections, any needed corrective actions, and perform the effort necessary to obtain reimbursement from the funding agency.

PROJECTED SCHEDULE

<u>Task</u>	<u>Anticipated Schedule</u>
Design Services	Completed
Bidding Services	May 2024
Construction Contract Award	June 2024
Construction Administration	July 2024
Project Closeout	Summer/Fall 2024

The goal is to construct the entirety of the project during the 2024 construction season. Please note that this project is weather dependent. Should inclement weather occur, the construction schedule may need to be altered.

Schedule of Fees

Task Name	Fee
TASK 1.0 – CONSTRUCTION OBSERVATION AND ADMINISTRATION SERVICES	\$32,500.00
TOTAL LUMP SUM FEE	\$32,500.00

The above design services will be provided on a lump sum basis not to exceed the listed amount unless otherwise authorized. This Contract and Fee Schedule is based upon the Borough Engineering Contract authorized by Borough of Demarest.

Project Deliverables

During the reimbursement preparation process, CED will provide the Borough of Demarest with documentation for their review and execution on an as-needed basis or as requested. Certification by the Chief Financial Officer shall be required for the closeout documents in order to recoup reimbursable funds.

Reimbursable expenses

Reimbursable expenses including delivery, printing, copying, postage, and other reproducible costs for the above-mentioned deliverables are included within this agreement and are included in the project cost.

Exclusions

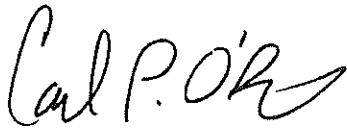
If any item listed herein, or otherwise not specifically mentioned within this agreement or the Borough Engineering Agreement is deemed necessary, then CED may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra services. Unanticipated additional services shall be in accordance with the Schedule of Hourly Rates for the number of hours of effort required. No extra services will be performed without authorization from the Borough.

Please forward a copy of the Resolution of Approval or approved Purchase Order to this office. This will constitute approval of the proposed engineering services.

We thank you very much for the opportunity to offer our services and look forward to working with you on this and future projects. In the meantime, should you have any questions regarding this agreement, please feel free to contact us.

Sincerely,

Colliers Engineering & Design, Inc.



Carl O'Brien, P.E.
Geographic Discipline Leader



Nick Chelius, P.E.
Borough Engineer

CPO/nhc/ka

cc: Michael Greco, Deputy Borough Clerk (via email)
Deena Rosendahl, Esq., Borough Attorney (via email)
Peter Suh, Borough CFO (via email)
Craig Zimmermann, COLLIERS ENGINEERING & DESIGN (via email)
Robert Culvert, COLLIERS ENGINEERING & DESIGN (via email)
Jamie Giurintano, COLLIERS ENGINEERING & DESIGN (via email)
James Priolo, COLLIERS ENGINEERING & DESIGN (via email)

Resolution of the Demarest Governing Body

Resolution No. 100 -24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION AUTHORIZING ENGINEERING SERVICES FOR 2024 NJDOT PAVING – STEWART ST. & STELFOX ST.

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WHEREAS, the Borough of Demarest has a need for engineering design and bidding services related to FY2024 NJDOT Paving of Stewart St. & Stelfox St.; and

WHEREAS, the Borough received a proposal dated May 7, 2024 from Colliers Engineering & Design to provide those services, attached, for the sum of \$63,000.00; 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 in account CIF 04-2250; 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 \$63,000.00 a copy of which is annexed to this Resolution.

APPROVED:

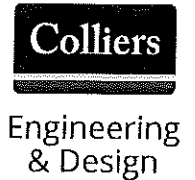
Mayor Brian Bernstein

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

400 Valley Road
Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



May 7, 2024

Julie Falkenstern, Borough Administrator
Mayor and Council
Borough of Demarest
118 Serpentine Road
Demarest, New Jersey 07627

Professional Design and Bidding Engineering Services
NJDOT FY2024 – Stewart Street & Stelfox Street Improvements
Borough of Demarest, Bergen County
Colliers Engineering & Design Proposal No.: DEB0061P

Dear Ms. Falkenstern,

Colliers Engineering & Design Inc. DBA Maser Consulting (CED) is pleased to present this agreement to provide survey, design and bidding services relating to the NJDOT FY2024 – Stewart Street and Stelfox Street Improvements project. Specifically, the limits are:

- **Stewart Street** - from Hardenburgh Avenue to the cul-de-sac – approximately 375 linear feet and;
- **Stelfox Street** – from Hardenburgh Avenue to Madison Avenue - approximately 900 linear feet.

It is our understanding that both streets are under the Borough's jurisdiction. It is also our understanding that these roadways are generally in poor condition. Stewart Street is a typical mill/paving project within the existing curb lines, while Stelfox Street will be widened and considered to be a reconstructed roadway. We understand that the Borough has been awarded a Fiscal Year 2024 Municipal Aid grant from the New Jersey Department of Transportation (NJDOT) in the amount of \$270,109.00. The preliminary construction cost estimate for the project is approximately \$338,935.00. The grant award is intended to assist the Borough with funding of improvements outlined in the Borough's respective Municipal Aid grant application.

Survey and Subsurface Utility Evaluation (SUE) will be performed within Stelfox Street so that portions of the roadway can be widened toward a uniform width throughout the roadway. In addition, any ponding or drainage issues due to low spots in existing grade elevation, failing infrastructure and/or lack of infrastructure can be identified and mitigated as part of the design. Furthermore, areas that require curbing and/or modification to the roadway grading, can be designed with roadway profiles and cross sections. Accordingly, the improvements within both roadways will include drainage improvements, curbing, milling, base repair, replacement of ADA curb ramps, paving, striping, and restoration.

In order to comply with the grant requirements, the Borough is obligated to award a construction contract within 24 months of grant award.

CED will provide the following services:

SCOPE OF SERVICES

TASK 1.0 SURVEY SERVICES

Task 1.1 Boundary/ROW Survey

CED will prepare a Boundary/ROW Survey of Stelfox Street in accordance with the standards set forth in the Laws of the State of New Jersey Statutory Reference NJSA 45:8-28(e) and more specifically, the administrative rules and regulations promulgated by the State Board of Professional Engineers and Land Surveyors and contained in N.J.A.C. 13:40-5.1.

Included in this task of service are the following tasks:

- Public records research and pre-field records review;
- Field traverse, location survey and data collection;
- Field survey data reduction and computation;
- Boundary analysis and survey calculations;

Unless provided by the Borough, the boundary survey will be subject to such facts that a current and accurate title report would disclose.

The fee for this survey does not include the installation of property corner markers. If requested, we will set a state-approved property corner marker at each property corner where no marker currently exists in accordance with New Jersey administrative code, for an additional fee. **The fee for this service is \$350.00 per corner marker, or a minimum of \$1,400.00**, for mobilization and services. If you elect not to have property corner markers installed, please sign and return the attached corner marker waiver form which is being provided in accordance with the NJ administrative code.

The fee for this task is based upon the assumption that the deed mathematically closes, that there are no title problems, that there are no overlaps or gores with adjoining properties and that extraordinary research or analysis is not required. If any of the items cited in this paragraph do become issues during our survey efforts, we will discuss the necessary additional services and related costs with you prior to proceeding with the additional services.

Task 1.2 Topographic Survey

CED will perform a topographic survey of Stelfox Street located in the Borough of Demarest, Bergen County, New Jersey, in accordance with the Standards set forth in the Laws of the State of New Jersey Statutory Reference NJSA 45:8-28(e) and more specifically, the administrative rules and regulations promulgated by the State Board of Professional Engineers and Land Surveyors and contained in N.J.A.C. 13:40-5.1.

The limits of the survey are outlined in red as depicted in the Survey Limits image below:

SURVEY LIMITS



Our office will prepare a topographic survey map that is a graphic pictorial representation of existing site features observed at the time of the field survey such as buildings, curbs, sidewalks, roadways, driveways, retaining walls, fences, individual trees four inches (4") in diameter and greater, and utility hardware. Limits of the topography extend 25 feet beyond the pavement and 50 feet along intersecting roads. Driveway elevations and garage door thresholds will be obtained. The topographic map will depict existing spot elevations and contours at a one-foot (1') contour interval. GPS surveying techniques will be used to control the survey with the resulting horizontal datum being New Jersey State Plane Coordinate System NAD83 and the vertical datum being North American Vertical Datum NAVD88.

Visible and accessible utilities and/or utility structures within the survey limits, as described above, will be surveyed and shown on the plan to include rim, grate and invert elevations, and pipe sizes entering and/or exiting the structures. For the purposes of this contract, accessible utilities shall be defined as those utilities that are visible to the naked eye at ground level and are safely accessible by foot by CED field survey personnel without the need for additional safety measures and/or assistance with making pipes visible, open and clear for inspection and measuring.

We will survey visible evidence of existing utilities within the survey limits based on investigation and designation performed by our subsurface utility engineering group under separate task of this contract.

Included in this task of service are the following tasks:

- Establish on-site survey control;
- Field traverse, topographic survey and data collection;
- Field survey data reduction and computation;
- Preparation of topographic survey map in AutoCAD Civil 3D 2020 format.

Traffic safety protection for field survey crew and cleaning of clogged or obstructed drain and sewer structures is **not** included in the fee for this survey. If it is determined that safety protection is required for any of the survey services performed under this contract, we will advise you of the approximate cost prior to moving forward. Such additional cost would be invoiced as a reimbursable expense pursuant to prior authorization.

Task 1.3 Utility Investigation and Mapping

CED proposes to provide the following professional Utility Investigation and Mapping Services in support of the above-named project in accordance with the project limits as indicated on the provided map and site sketch.

Utility Records Research. Conduct comprehensive utility records research and collect applicable utility owner records to assist in identifying utility owners that may have facilities on or be affected by the project. Includes interfacing with utility owners/operators to ascertain the availability and completeness of record documents and to obtain verbal or historical information on existing subsurface facilities and operational status. All utility records obtained through this process will be included as an attachment in the final deliverable.

Buried Utility Mapping (Horizontal Mapping of Utilities). Designating the presence and approximate horizontal location of subsurface utilities using geophysical prospecting techniques including electromagnetic, sonic, and acoustical techniques. CED will provide the following designating services to aid the Borough:

As a "Value-Added" service, to the extent possible, CED will provide electronic depth measurements at regular intervals along each designated subsurface facility. The electronic depth information will be recorded at approximate 25-foot intervals and shall be collected in the normal course of utility mapping. The collected electronic depth information will be incorporated into the project deliverable (field sketch on aerial mapping) for the project from which utility profiles may be developed.

- Provide equipment, personnel and supplies needed for performing designating services. CED shall determine equipment, personnel and supplies needed to perform these services.
- Designate the existing underground utility pipeline facilities within the identified area as described in the Survey Limits map above. Conduct appropriate investigation of site conditions.
- Mark the horizontal position of underground utilities on the ground with spray paint to be surveyed by CED Survey team (fees for the survey are included in another Task). These utilities may include water, natural gas, electric, and telecommunications.
- Measure inverts and record data at all sanitary and storm drain structures including (but not limited to) manholes, inlets, catch basins, cleanouts. This information will be provided to the CED Survey team for inclusion in the final mapping. Sanitary and storm drain lines between structures will not be marked out.

- GPR data will be collected approximately every 50 feet of roadway to evaluate the pavement and sub-base thickness. The data will be post-processed and interpreted to determine the thickness of these materials within the project limits. This information will be included in the final deliverable.
- Formulate a field sketch on aerial mapping documenting all utilities designated with electronic depth information and notes. This will be provided to the CED Survey team who will be providing the final CAD deliverable.
- Coordinate with CED Survey team to ensure that the utility investigation results are accurately represented in their final deliverable.
- Aerial utilities are excluded from this Task.
- A final report detailing the results of the utility investigation will be provided within two (2) weeks of completion of field work. The report will include the investigation methodology and equipment used, along with a detailed summary of all the information obtained through the course of this work, including pipe sizes, materials, duct bank limits and any other pertinent information.

GPR Assumptions/Clarifications. GPR effectiveness and resolution is highly dependent on soil conditions within the investigation area. GPR's ability to identify or resolve subsurface anomalies may vary significantly across the investigation area. GPR resolution depths are soil dependent and can vary from zero feet (0') to eight feet (8') of penetration at infinite points across an investigation area. While GPR can be a very effective tool in locating or identifying subsurface objects or facilities (anomalies), the results are interpretive and subject to possible misinterpretation or error. SUE Provider personnel will make every reasonable effort to properly identify and interpret GPR anomalies in accordance with the performance limitations of the technology and provide recognizable markings for the Borough.

Provider Certifications. The Utility Investigation Provider shall not be required to sign any documents, no matter by whom they may be requested, that would result in the Provider having to certify, guarantee or warrant the existence of conditions which the Provider cannot ascertain. The Client also agrees that it has no right to make the resolution of any dispute with the Provider or the payment of any amounts due to the Provider in any way contingent upon the SUE Provider signing any such certification.

TASK 2.0 DESIGN AND BIDDING

CED will develop construction drawings and specifications to be utilized for public bid. Bid documents will be prepared in accordance with NJDOT requirements. The scope of improvements expressed in the bid documents will be as specified in the respective grant application.

The existing site conditions will be investigated during the design; more specifically, the conditions of the curbing, sidewalk, driveway, roadway, and drainage structures. Utilizing the survey prepared in Task 1.0 above as a base map for Stelfox Street, this information will be located, inspected for condition, and depicted on a plan that will be utilized for bidding. As Stewart Street is not to be fully



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reconstructed, formal survey services will not be performed within that roadway. The base map for Stewart Street will be prepared utilizing available tax maps, aerial mapping, and site observation.

The improvements will include the widening of Stelfox Street to achieve a uniform width throughout the roadway. Improvements will also include review of potential drainage issues toward mitigation. The installation of storm water infrastructure in the form of inlets and piping will be proposed. Runoff collected by the proposed infrastructure will be conveyed to the nearest existing infrastructure while maintaining existing drainage patterns to the greatest extent feasible. Roadway cross slopes, gutter slopes and longitudinal slopes will be evaluated, and grading will be designed, as feasible, to improve slopes and associated drainage. Where applicable, the vertical profile and cross sections of the proposed roadway will be modified in an effort to meet industry standards while minimizing drainage issues and impact to the surrounding properties.

Accordingly, for both roadways curbing, drainage structures, milling, paving, replacement of inlet grates and curb pieces, reconstruction of storm inlets to remain, pavement base repair as needed, striping, and restoration of landscape areas are included as part of the project. ADA ramps within the project limits will be designed and reconstructed for compliance with design standards. In addition, modifications to gutter profiles may require re-design of certain driveway aprons and portions of the associated sidewalk. While tree removals and/or utility pole relocations are not anticipated based on a preliminary review, during design it may be necessary for us to recommend these removals/relocations to facilitate the proposed improvements. We will advise accordingly.

CED will prepare the base mapping, title sheet, general notes and legend, estimate of quantities, construction plans and the construction details. CED will also prepare the supplemental and technical specifications for the site improvement items that are specified on our construction drawings for incorporation into the overall bid specifications. The specifications will be prepared in the latest NJDOT format, as amended. As this project develops, and the Construction Cost Estimate (CCE) is closer to completion during the design phase, the Borough will be updated with the status of design and whether alternate bids are recommended.

The construction plans will callout the curb ramp types in accordance with Public Right-of-Way Guidelines (PROWAG) for ADA accessibility. It will be the responsibility of the contractor to construct ADA-compliant curb ramps. Upon construction of curb ramps, CED will inspect the ramps for compliance with ADA requirements. Curb ramps determined to be non-compliant with the ADA requirements will be reconstructed by the contractor at no additional cost to the Owner.

The project limits may be adjusted by utilizing alternate bids based upon the budget approved by the Borough. CED will prepare the CCE based on the quantity required for each alternate bid and finalize the design in order for the project to remain within the construction budget. Bidding services will be coordinated through our Mount Arlington office.

Specifications will be developed in accordance with NJDOT Standard Specifications for Road and Bridge Construction, as currently amended. An Engineer's Estimate will be prepared and submitted to NJDOT Bureau of Local Aid along with an Engineer's Design Certification, plans, and specifications.

Upon receiving authorization to bid from NJDOT, we will coordinate with the Borough regarding public advertisement of the bid documents.

Throughout the design, CED will prepare submittals to NJDOT Bureau of Local Aid in accordance with the Municipal Aid program requirements. Submittals will include final plans, specifications, Engineer's Estimate, Engineer's Design Certifications, Resolution of Award, and Bid Tabulation.

FEE AGREEMENT

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the Scope of Services.

TASK 1.0	SURVEY SERVICES	\$19,500.00
TASK 2.0	DESIGN AND BIDDING	\$43,500.00
TOTAL LUMP SUM FEE		\$63,000.00

The above engineering services will be provided on a lump sum basis not to exceed the listed amount. This contract and fee schedule are based upon the Borough Engineering Contract, authorized by the Borough. Please note, Construction Administration and Observation Services are not included in this agreement. A separate agreement for said services will be prepared and provided to the Borough upon opening of contractor bids.

PROJECT SCHEDULE

The following is the anticipated project schedule:

	Anticipated Duration
Committee Award of Professional Services	Anticipate Authorization May 2024
Survey and SUE Services	To be completed within 45 days of Authorization
Preparation of Design Plans and Specifications	To be completed within 120 days of Authorization
NJDOT Concurrence	To be submitted after Design is complete - Anticipate 30 days for Approval
Bidding of Project	To be bid after NJDOT Approval - Anticipate 30 days for bidding process
Contractor Award	TBD

Construction (Anticipated)	TBD – Anticipate Fall/Winter/Spring 2024/2025
Project Closeout (Anticipated)	To occur post construction – Anticipate Spring 2025

PROJECT DELIVERABLES

During the design process, CED will provide the Borough with one (1) set of drawings for review during the design phase. Bid packages will be distributed and coordinated through our Mount Arlington office. Two (2) final bid documents will be provided prior to bidding.

PLAN REVISIONS AND EXTRA SERVICES

Any revision requested by the Borough or review agencies that is a major redesign or not an error or omission on the part of CED will be billed on an hourly basis in accordance with our current contract. Please note that a separate agreement will be provided prior to the pre-construction meeting specific to Construction Administration Services.

REIMBURSABLE EXPENSES

Reimbursable expenses including delivery, printing, copying, postage, and other reproducible costs for the above-mentioned deliverables are included within this agreement and are included in the project cost.

EXCLUSIONS

If any item listed herein, or otherwise not specifically mentioned within this agreement or the Borough Engineering Agreement, is deemed necessary, then CED may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra work. Unanticipated additional services shall be in accordance with the Schedule of Hourly Rates for the number of hours that the Construction Administrator or Engineer is on-site. No extra engineering services will be performed without authorization from the Borough.

Please forward a copy of the Resolution of Approval or approved Purchase Order to this office. This will constitute approval of the proposed services and we shall initiate the engineering design services as discussed within this correspondence.

We thank you very much for the opportunity to offer our services and look forward to working with you on this and future projects. In the meantime, should you have any questions regarding this agreement, please feel free to contact me.



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& Design

Sincerely,

Colliers Engineering & Design

A handwritten signature in black ink, appearing to read "Nick Chelius".

Nick Chelius, P.E.
Borough Engineer Representative

A handwritten signature in black ink, appearing to read "Carl P. O'Brien".

Carl O'Brien, P.E.
Geographic Discipline Leader

- cc: Michael Greco, Deputy Borough Clerk (via email)
Deena Rosendahl, Esq. Borough Attorney (via email)
Peter Suh, Borough CFO (via email)
Patrick Jamieson, (CED via email)
Jamie Giurintano, PE (CED via email)
Craig Zimmermann, PE (CED via email)
James Priolo, PE (CED via email)

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Resolution of the Demarest Governing Body

Resolution No. 101 -24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION APPROVING SOIL MOVING PERMIT FOR 186 CHESTNUT ST.

=====

BE IT RESOLVED by the Borough Council of the Borough of Demarest that the Soil Moving Application and Soil Erosion Control Plan for 186 Chestnut St. Block 170 Lot 61 prepared by Angelo Onello, P.E., is hereby approved subject to the following conditions:

1. No topsoil shall be removed from the site.
2. The applicant shall indicate the location to which excess soil will be exported.
3. The applicant shall indicate the route of travel within the Borough.
4. The applicant shall provide for the cleaning of the streets used in the route of travel within the Borough.
5. The applicant shall provide the name of the person responsible for the soil movement.
6. The applicant shall be responsible for any damage done to Borough streets during the soil removal process.
7. The applicant shall deposit, with the Borough, escrow in the amount of \$ 1,290.00 for inspections services of the Borough Engineer.
8. The applicant shall provide a performance guarantee to the Borough in the amount of \$ 25,800.00

APPROVED:

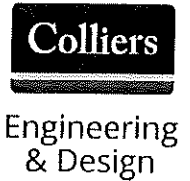
Brian Bernstein, Mayor

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

400 Valley Road Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



April 23, 2024

Dot Haight
Building Department
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

186 Chestnut Street
Block 61, Lot 170
Borough of Demarest, Bergen County, NJ
Soil Moving Application – Proposed Pool & Patio - **Review #2**
Colliers Engineering & Design Project No. DEP0201

Dear Ms. Haight,

Pursuant to your request, our office has reviewed the following plans and other documents filed by the Applicant in support of a soil moving application in relation to the construction of a new in-ground pool, patio and other related appurtenances at the subject property:

- a) Site plans consisting of seven (7) sheets, prepared and signed by Angelo Onello, P.E. dated February 27, 2024;
- b) **Site plans consisting of nine (9) sheets, prepared and signed by Angelo Onello, P.E. dated February 27, 2024; last revised April 19, 2024;**
- c) Property Survey consisting of one (1) sheet, prepared and signed by Christopher Lantelme, P.E., L.S. dated November 2, 2023;
- d) Soil Moving Application for the subject property;
- e) **Comment response & submission cover letter, prepared and signed by Angelo Onello, P.E. dated April 19, 2024;**
- f) **Soil testing results, prepared and signed by Lisa V. Mahle-Greco, P.E. of Johnson Soils Company, dated March 28, 2024.**

After our review of these documents, we offer the following comments in this matter:

General

1. The Applicant/Owner in this matter is:

Bradley & Christopher G. Ciliberto
186 Chestnut St.
Demarest, NJ 07627

The Applicant/Owner shall notify the Borough of Demarest Building Department of any changes to the above information.



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2. The site is currently comprised of a single-family dwelling patio, pavilion, walkways, asphalt driveway, drainage improvements, and other related improvements. The Applicant is proposing to demolish the rear yard walkways, pavilion, patio, portions of the driveway and front walk. The proposed construction consists of a new in-ground pool, patio, pavilion, walkways, modified driveway, rebuilt front walk, drainage improvements, and other related improvements.
3. The project site is located in the Residence B Zone according to the Borough of Demarest Zoning Map, where the construction of a single-family dwelling and the installation of an in-ground pool is permitted.
4. The project site is a rectangular shaped lot consisting of 22,496 SF where a minimum of 22,500 SF is required in this zone. The property has frontage along Chestnut Street in the westerly direction.
5. According to the site plans, no variances are being requested for the proposed construction.
6. The existing improved coverage on the lot is 5,225 S.F. (23.23%). The proposed impervious coverage is 6,729 S.F. (29.92%) where a maximum of 30% is allowed in this zone. The net increase in impervious coverage is 1,504 S.F.

Site Plan

7. Based on the definitions provided in Section §175-27 of the Borough Ordinance, the proposed pool and patio are considered Accessory Uses.
8. The Applicant is proposing to relocate two existing drywells (labeled as #3 & #4) and install two new Cultec drywells (labeled as #5 & #6). Stormwater is to be captured and conveyed to the drywells using a system of surface inlets, and roof leader connections. We offer the following comments related to drainage design:
 - a. We have reviewed the design calculations for the drywells and note several items:
 - i. The calculations take credit for the pool and spa area. The Applicant shall be made aware that these areas cannot be deducted and must be considered as part of the net increase in coverage.
This item has been addressed.
 - ii. The proposed drywells must be sized to accommodate a minimum tributary area equivalent to or greater than the net increase in coverage (1,504 SF). The size must also be adequate to handle the actual drainage area depicted on the plan. The applicant should revise the plan and calculations to include the total tributary drainage area of the lawn inlets and roof leaders directed toward the proposed drywells.
The Applicant has provided updated calculations and drainage areas on sheet six (6) of the site plans as requested. We have reviewed this information and take no further exception. This item has been addressed.
 - iii. Separate capacity calculations should be provided for each drywell system. The Applicant should also provide calculations for drywells #3 & #4 since they

are being relocated and new inlet/roof leader connections are being established. The drainage area for the existing drywells (prior to relocation) and the newly relocated drywells (after relocation) should be provided.

This item has been addressed.

- b. The Applicant shall be made aware that an at-grade inspection port is required for future maintenance.

The Applicant has updated the construction details to specify inspection ports as requested. This item has been addressed.

- c. The Applicant shall be made aware that soil testing is required at the location of the proposed drywells. Soil testing should include the elevation of the Seasonal High-Water Table (SHWT) and the percolation rate of the soil. It shall be confirmed that the bottom of the seepage pit is at least two (2) feet above the SHWT.

The Applicant has provided soil testing results indicating no groundwater encountered and K-4/K-3

- d. The Engineer shall be notified to inspect the seepage pit system prior to backfilling.
This comment remains in effect.

9. Per §175-24(N), all swimming pools shall be enclosed with a substantial fence no less than forty-eight (48) inches in height. The Applicant appears to be compliant.

10. The Applicant is proposing to remove a total of 11 trees from the property. Replacement trees are provided. The Applicant should also include a calculation or summary table of tree removal and a calculation for the required replacement trees as described in Borough Ordinance. We defer to the Shade Tree Commission for final comment on this matter.

The Applicant has added a list of trees to be removed and a list of replacement trees as requested. We continue to defer to the Shade Tree Commission for final comment on this item.

- a. There is a 36" Oak in the southeastern corner of the property that is designated to remain. Improvements appear to be proposed within the dripline of this tree include PVC pipe and portions of the pool/patio area.

The Applicant has added a note to Sheet 4 of the site plans indicating the tree shall be evaluated during initial construction activity, whereas if removal is determined to be necessary, owner shall amend the tree removal application and provide replacement plantings for the same. This revision adequately addresses this item.

11. We offer the following comments related to the proposed grading:

- a. The site as it currently exists slopes downward in the northeastern direction with grades ranging from 85 in the southwestern corner to 73 in the northeastern corner (a difference of 12 feet).
- b. The Applicant is proposing to construct several swales to direct stormwater to the proposed lawn inlets.
- c. The Applicant is proposing minor regrading. Existing drainage patterns appear to be maintained on the property.

We take no exception to the grading proposed.

Soil Moving Application

12. The Applicant has submitted a soil moving application and calculations, which indicates a total cut of 255 cubic yards and total fill of 50 CY. The calculations indicate that 205 cubic yards of soil are to be exported from the site. If grading changes occur beyond what is presented on the plan, the Applicant shall revise the soil moving calculations to account for the proposed change in soil volume. **The soil movement calculations have been updated to reflect revised grading. 305 cubic yards of cut, 85 cubic yards of fill, and 220 cubic yards of net export are now anticipated to complete the project.**
13. The Applicant will require a soil moving permit in accordance with Chapter 147 (§147-1) of the Borough Ordinance as the posted values of soil movement are greater than 250 cubic yards. As a result, the following provisions apply:
 - a. As per Borough Ordinance Section 147-7, the Applicant shall move the soil, in accordance with the soil permit, under the supervision of the Building Inspector and Borough Engineer and shall pay a reasonable fee for such services in the amount determined by the Mayor and Council.
 - b. As per Borough Ordinance Section 147-8, the owner of the premises or the person in charge of relocation of the soil, when permission has been duly granted, shall not take away the top layer of soil for a depth of eight inches, but such top layer of soil to a depth of eight inches shall be set aside for retention on the premises and shall be respread over the premises when the rest of the soil has been moved pursuant to levels of contour lines approved by the Mayor and Council of the Borough of Demarest.
 - c. As per Borough Ordinance Section 147-9, no permission or soil permit shall be issued unless and until the Applicant therefore shall have filed with the Borough of Demarest a performance bond, in form, amount and surety acceptable to the Borough of Demarest, conditioned upon full and faithful performance of the soil's being moved in accordance with the provisions of the Borough's Soil Moving Ordinance and permission of the Mayor and Council granted pursuant hereto.
 - d. An engineer's cost estimate shall be submitted by the Applicant to determine the performance guaranty to be submitted to the Borough. The cost estimate for bonding should include all cost associated with soil erosion and sediment control measures, seepage pit installation, drainage structures / piping, and soil moving (on-site and export).

Miscellaneous

14. The Applicant is responsible for procuring all applicable federal, state, and county approvals necessary to complete the proposed improvements.
15. If drainage issues arise during or after construction, the Applicant will be responsible for remedying any drainage issues caused by the proposed demolition activities. In addition, water

runoff directed to neighboring properties is prohibited. However, suppose runoff water does enter neighboring properties as a result of proposed land disturbance and construction. In that case, the Applicant will be responsible for remedying that situation at no additional cost to the Borough.

16. Sediment shall be removed from the upstream face of the silt fence when it has reached a depth of $\frac{1}{2}$ the silt fence height or when the silt fence is leaning or buckling from the collected sediment and debris. Silt fence shall be inspected daily for signs of deterioration and sediment removal. When damaged, the silt fence shall be repaired or replaced immediately. Soil erosion and sediment control measures, including silt fence, shall be installed prior to the start of construction.
17. The Applicant should place a silt fence downgrade on all areas where the existing ground disturbance will occur. In addition, the disturbed areas must be stabilized with seed and straw as soon as construction is completed. These recommendations/requirements are made to prevent sediment-laden water from entering municipal streets and neighboring properties.
18. The Applicant will inevitably mobilize construction equipment and/or will have deliveries of material from the Borough Right-of-Way, which could damage municipal infrastructure. Therefore, the Applicant will be responsible for any damages to the curb, sidewalk, drainage infrastructure, and/or pavement in the Borough's Right-of-Way.
19. A signed and sealed "As-Built" site plan should be submitted as a requirement for this office to "sign off" on the issuance of the Certificate of Occupancy (C.O.). The "As-Built" should accurately show site features, including grading, spot elevations, coverage quantities, etc

Our office has reviewed the application, and based on the above, this office ***does recommend*** permits be issued after the Applicant provides a cost estimate as outlined in comment 13d and obtains permission from Mayor and Council.

Should you have any questions, you may contact me at (201) 775-1283.

Sincerely,

Colliers Engineering & Design



Nick Chelius, P.E.
Borough Engineer

cc: Kevin Burnett, Construction Code Official (via e-mail)
Angelo Onello, P.E., Applicant's Engineer (angelo@onelloeng.com)
Bradley & Christopher Ciliberto, Applicants (CGCiliMD@mail.com)



May 3, 2024

Ciliberto, Demarest – Construction Cost Estimate

Borough of Demarest
Building Department
Dot Haight
Kevin Burnett, Construction Code Official
118 Serpentine Road
Demarest, New Jersey 07627

Colliers Engineering & Design #DEP0201
Nicholas Chelius, PE
400 Valley Road
Suite #304
Mount Arlington, New Jersey 07856

Re: Ciliberto Poolscape & Pavilion
#186 Chestnut Street
Lot 170 - Block 61
Borough of Demarest
Bergen County, New Jersey

As per the Colliers Engineering & Design review letter, file #DEP0201, prepared by Nick Chelius, PE, April 23, 2024, specifically within the sub-section titled: 'Soil Moving Application', item #13 d:

The Applicant will require a soil moving permit in accordance with Chapter 147 (§147-1) of the Borough Ordinance as the posted values of soil movement are greater than 250 cubic yards. As a result, the following provisions apply:

d. An engineer's cost estimate shall be submitted by the Applicant to determine the performance guaranty to be submitted to the Borough. The cost estimate for bonding should include all cost associated with soil erosion and sediment control measures, seepage pit installation, drainage structures / piping, and soil moving (on-site and export)

The following construction cost estimate is provided below:

Cost Estimate

Item	Description	Cost
A	Remove & reinstall existing stormwater drywells Remove existing stormwater drywells (four, 4 units total), clean and reinstall as per approved engineering drawings. Tanks shall be excavated, cleaned, and re-utilized at new locations (as per plans). Four (4) x 500-gallon concrete tanks; existing materials, new crushed-stone (as necessary), and labor	\$10,000
B	Install new stormwater drywells Install three (3) new stormwater drywells, Cultec model #330XL HD; locations as per plan; materials and labor	\$5,000
C	Install drainage inlets & pipe networks Install stormwater drainage facilities as per plan; connect all 4" and 6" drainage pipes as per plan. Approximately 300 LF x 6" pipe and 100 LF x 4" pipe; SDR-35 grade PVC pipe. Install eight (8) x 18" stormwater catch-basins as per plan. Materials and labor	\$6,500
Total		\$21,500

We trust all is in order for the continuance of your review

Thank you for your assistance,



Angelo Onello, PE
201-774-1444
Angelo@OnelloEng.com

Cc: Ciliberto, Bradley & Christopher
bradleync@mail.com & cgcilimd@mail.com

Dreamscape Design & Construction
paulkluhspies@optonline.net

Resolution of the Demarest Governing Body

Resolution No. 102 -24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION APPROVING SOIL MOVING PERMIT FOR 16 DONNYBROOK DR.

=====

BE IT RESOLVED by the Borough Council of the Borough of Demarest that the Soil Moving Application and Soil Erosion Control Plan for 16 Donnybrook Dr. Block 87.01 Lot 3 prepared by Christopher Lantelme P.E., is hereby approved subject to the following conditions:

1. No topsoil shall be removed from the site.
2. The applicant shall indicate the location to which excess soil will be exported.
3. The applicant shall indicate the route of travel within the Borough.
4. The applicant shall provide for the cleaning of the streets used in the route of travel within the Borough.
5. The applicant shall provide the name of the person responsible for the soil movement.
6. The applicant shall be responsible for any damage done to Borough streets during the soil removal process.
7. The applicant shall deposit, with the Borough, escrow in the amount of \$ 1,353.96 for inspections services of the Borough Engineer.
8. The applicant shall provide a performance guarantee to the Borough in the amount of \$ 27,079.20

APPROVED:

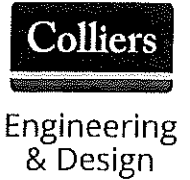
Brian Bernstein, Mayor

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

400 Valley Road Suite 304
Mt. Arlington, NJ 07856
Main: 877 627 3772



April 25, 2024

Dot Haight
Building Department
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

16 Donnybrook Drive
Block 87.01, Lot 3
Borough of Demarest, Bergen County, NJ
Soil Moving Application Review – Proposed Dwelling
Colliers Engineering & Design Project No. DEP0203

Dear Ms. Haight,

Pursuant to your request, our office has reviewed the following plans and other documents filed by the Applicant in support of a soil moving application in relation to the construction of a new dwelling, in-ground pool, drainage improvements and other related appurtenances at the subject property:

- a) Site plans consisting of one (1) sheet, prepared and signed by Christopher Lantelme, P.E. & P.L.S., of Lantelme, Kurens & Associates, P.C., dated March 5, 2024; **Revised April 19, 2024;**
- b) Architectural Plans consisting of ten (10) sheets, prepared and signed by Linda Del Nobile, AIA, of Del Nobile Designs, dated February 23, 2024;
- c) Soil Moving Application for the subject property;
- d) **Construction cost estimate prepared and signed by Christopher Lantelme, P.E. & P.L.S., of Lantelme, Kurens & Associates, P.C., dated April 19, 2024.**

After our review of these documents, we offer the following comments in this matter:

General

1. The Applicant/Owner in this matter is:

New Luxury Homes LLC
PO Box 182
Demarest, NJ 07627

The Applicant/Owner shall notify the Borough of Demarest Building Department of any changes to the above information.

2. The site is currently comprised of a single-family dwelling with deck, driveway, walkways and other related improvements which are to be demolished in their entirety. The Applicant is proposing to construct a new dwelling with associated porch, patio, in-ground pool, driveway, walkways, drainage improvements, and other related improvements.

3. The project site is located in the Residence B Zone according to the Borough of Demarest Zoning Map, where the construction of a single-family dwelling and the installation of an inground pool is permitted.
4. The project site is a rectangular shaped parcel consisting of 22,500 SF. The property has frontage along Donnybrook Drive to the south. The property is located in Demarest but abuts the Borough of Closter to the north.
5. According to the site plans, no variances are being requested for the proposed construction.
6. The existing improved coverage on the lot is 5,490 S.F. (24.4%). The proposed improved coverage is 6,660 S.F. (29.6%) where a maximum of 30% is allowed in this zone. The net increase in improved coverage is 1,170 S.F.

Site Plan

7. Based on the definitions provided in Section §175-27 of the Borough Ordinance, the proposed pool is considered an Accessory Use.
8. The Applicant is proposing four (4) 500-gallon precast concrete drywells to collect and storm stormwater runoff on the property from what appears to be the roof area of the proposed dwelling. We offer the following comments related to drainage design:
 - a. We have reviewed the design calculations for the drywells and take no exception. The Applicant is collecting approximately 3,370 SF of roof area and directing stormwater to the proposed drywells. The provided capacity is sufficient to handle this area.
 - b. The Applicant shall be made aware that soil testing is required at the location of the proposed drywells. Soil testing should include the elevation of the Seasonal High-Water Table (SHWT) and the percolation rate of the soil. It shall be confirmed that the bottom of the seepage pit is at least two (2) feet above the SHWT.
 - c. The Engineer shall be notified to inspect the seepage pit system prior to backfilling.
9. Per §175-24(N), all swimming pools shall be enclosed with a substantial fence no less than forty-eight (48) inches in height. We offer the following comments related to fencing:
 - a. The Applicant has not shown the required pool fencing on the plan. The plan shall be revised to include the required fencing enclosure. **Comment addressed.**
 - b. The Applicant should provide a detail of the proposed fence. The height of the fence should be clearly indicated. **The detail indicates the proposed fence is four feet high. Comment addressed.**
 - c. A pool compliant self-locking gate should be specified at the side yard entrance. **Comment addressed.**
10. The Applicant has provided building height calculations on the plan indicating an average grade elevation of 43.7 and a mid-roof elevation of 73.7. The total proposed building height is 30 feet

where a maximum of 30 feet is allowed in this zone. The Applicant shall be made aware that a foundation location survey will be required to confirm the dwelling layout and building height is consistent with the approved plans.

11. We offer the following comments related to the proposed grading:
 - a. The existing site is relatively flat with grades ranging from approximately 43 at the property corners to around 45 at the center of the property where the dwelling is to be located.
 - b. The Applicant is proposing minor regrading of the property. It appears natural drainage patterns will be maintained. We take no exception to the grading changes proposed.
 - c. Grades should not be altered by more than one foot in areas within the drip line of any trees to remain.
12. The Applicant has designated approximately three (3) trees for removal. The Applicant should revise the plan to include a tree removal table and a table summarizing the replacement trees proposed. We defer to the Shade Tree Commission for final comment and approval of any removal and/or replacement trees. **Comment addressed.**
13. The site plan indicates a total impervious coverage of 29.6% is proposed where 30% is allowed in the zone. The Applicant shall be advised that any additional coverage beyond what is represented on the site plans would trigger the need for a variance. An as-built survey with a coverage breakdown will be required prior to the issuance of a C.O.
14. We have reviewed the placement of the proposed pool and patio, and it appears the Applicant is compliant with all accessory structure setback requirements. We take no exception.

Soil Moving Application

15. The Applicant has submitted a soil moving application and calculations, which indicates a total cut of 551 cubic yards and total fill of 164 cubic yards. The calculations indicate that 387 cubic yards of soil are to be exported from the site. If grading changes occur beyond what is presented on the plan, the Applicant shall revise the soil moving calculations to account for the proposed change in soil volume.
16. The Applicant will require a soil moving permit in accordance with Chapter 147 (§147-1) of the Borough Ordinance as the posted values of soil movement are greater than 250 cubic yards. As a result, the following provisions apply:
 - a. As per Borough Ordinance Section 147-7, the Applicant shall move the soil, in accordance with the soil permit, under the supervision of the Building Inspector and Borough Engineer and shall pay a reasonable fee for such services in the amount determined by the Mayor and Council.
 - b. As per Borough Ordinance Section 147-8, the owner of the premises or the person in charge of relocation of the soil, when permission has been duly granted, shall not take

away the top layer of soil for a depth of eight inches, but such top layer of soil to a depth of eight inches shall be set aside for retention on the premises and shall be respread over the premises when the rest of the soil has been moved pursuant to levels of contour lines approved by the Mayor and Council of the Borough of Demarest.

- c. As per Borough Ordinance Section 147-9, no permission or soil permit shall be issued unless and until the Applicant therefore shall have filed with the Borough of Demarest a performance bond, in form, amount and surety acceptable to the Borough of Demarest, conditioned upon full and faithful performance of the soil's being moved in accordance with the provisions of the Borough's Soil Moving Ordinance and permission of the Mayor and Council granted pursuant hereto.
- d. An engineer's cost estimate shall be submitted by the Applicant to determine the performance guaranty to be submitted to the Borough. The cost estimate for bonding should include all cost associated with soil erosion and sediment control measures, seepage pit installation, drainage structures / piping, and soil moving (on-site and export). **The Applicant has provided an estimate as requested.**

Miscellaneous

17. The Applicant is responsible for procuring all applicable federal, state, and county approvals necessary to complete the proposed improvements.
18. If drainage issues arise during or after construction, the Applicant will be responsible for remedying any drainage issues caused by the proposed demolition activities. In addition, water runoff directed to neighboring properties is prohibited. However, suppose runoff water does enter neighboring properties as a result of proposed land disturbance and construction. In that case, the Applicant will be responsible for remedying that situation at no additional cost to the Borough.
19. Sediment shall be removed from the upstream face of the silt fence when it has reached a depth of $\frac{1}{2}$ the silt fence height or when the silt fence is leaning or buckling from the collected sediment and debris. Silt fence shall be inspected daily for signs of deterioration and sediment removal. When damaged, the silt fence shall be repaired or replaced immediately. Soil erosion and sediment control measures, including silt fence, shall be installed prior to the start of construction.
20. The Applicant should place a silt fence downgrade on all areas where the existing ground disturbance will occur. In addition, the disturbed areas must be stabilized with seed and straw as soon as construction is completed. These recommendations/requirements are made to prevent sediment-laden water from entering municipal streets and neighboring properties.
21. The Applicant will inevitably mobilize construction equipment and/or will have deliveries of material from the Borough Right-of-Way, which could damage municipal infrastructure. Therefore, the Applicant will be responsible for any damages to the curb, sidewalk, drainage infrastructure, and/or pavement in the Borough's Right-of-Way.

22. A signed and sealed "As-Built" site plan should be submitted as a requirement for this office to "sign off" on the issuance of the Certificate of Occupancy (C.O.). The "As-Built" should accurately show site features, including grading, spot elevations, coverage quantities, etc.

Our office has reviewed the application, and based on the above, this office **does recommend** permits be issued after the applicant posts the required performance guarantee, engineering escrow, and obtains approval from Mayor & Council.

Engineers Cost Estimate:	\$22,566.00
Performance Guarantee (120%):	\$27,079.20
Engineering Escrow (5%):	\$ 1,353.96

Should you have any questions, you may contact me at (201) 775-1283.

Sincerely,

Colliers Engineering & Design



Nick Chelius, P.E.
Borough Engineer

cc: Kevin Burnette, Construction Code Official (via e-mail)
Christopher Lantelme, P.E., Applicant's Engineer (c111@verizon.net)
Luxury Homes LLC, Applicant (enkeleta.dekaj@gmail.com)

Lantelme, Kurens & Associates, P.C.

ENGINEERS & SURVEYORS 101 West Street, P.O. Box 486, Hillsdale, New Jersey 07642 (201) 666-2450

Fax (201) 666-9745

Christopher J. Lantelme, P.E. & L.S.

April 19, 2024

COST ESTIMATE

TOWN: Demarest

PROJECT: 16 Donnybrook drive – New Dwelling

Costs for work performed per Building Department request

Item	Description	Quantity	Unit	Unit Price	Total
1	Soil Erosion & Control Measures	-	-	-	2,000
2	Seepage Pit installation	4	500 gal	2,500	10,000
3	Roof Leaders	1	-	1,000	1,000
4	Soil Moving from site	387	Yds	15	5,805
				Subtotal	18,805
				Contingency @ 20%	3,761
				Estimated Construction Cost	\$22,566

Prepared By:



Christopher J. Lantelme, PE & LS

Resolution of the Demarest Governing Body

Resolution No. 103 -24

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION TO RELEASE ESCROW

WHEREAS, the following applicant(s) posted escrow monies with the Borough for payment to Borough professionals in conjunction with development; and

WHEREAS, Borough professionals have determined that all required improvements have been satisfactorily completed and all fees due for services rendered have been received;

<u>Applicant</u>	<u>Address</u>	<u>Account</u>	<u>Amount</u>
36 Forest LLC	3 Canterbury Ct. Alpine, NJ 07620	13-7000-00-7223-08	\$1500.00

NOW THEREFORE, BE IT RESOLVED, that the Chief Financial Officer is and hereby authorized to return the balance of escrow monies to the applicant(s).

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

BOROUGH OF DEMAREST
 118 SERPENTINE ROAD
 DEMAREST, NJ 07627
 TEL: (201) 768-3611 FAX: (201) 768-3943
ACCOUNT LEDGER

Check # Invoice # / Description Payee

DEPOSIT

	Deposits	Disbursements	Open/Date	Pd Date	Enc Date	PO #
3-7000-00-7223-08	\$1,500.00	\$0.00	09/05/2023	09/05/2023	/ /	
PERFORMANCE GUARANTEE 36 FOREST ROAD,	\$1,500.00	\$0.00				
Grand Totals	\$1,500.00	\$0.00				

Resolution of the Demarest Governing Body

Resolution No. 104-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: APPROVING AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN THE BOROUGH OF DEMAREST AND BC UW/MADELINE HOUSING PARTNERS, LLC FOR PROPERTY LOCATED AT 127 HARDENBURGH AVENUE, ALSO KNOWN AS BLOCK 2, LOTS 13 & 14 LOCATED IN AN AREA IN NEED OF REHABILITATION FOR DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT

=====

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (hereinafter referred to as the “LRHL”), provides a process for municipalities to participate in the redevelopment and improvement of parcel(s) of property designated as “areas in need of rehabilitation”; and

WHEREAS, the Mayor and Council (hereinafter referred to as the “Governing Body”) of the Borough of Demarest (the “Borough”) serve as an instrumentality and agency of the Borough pursuant to the LRHL for the purpose of implementing a redevelopment plan and carrying out projects within the rehabilitation area; and

WHEREAS, the property identified as Block 2, Lots 13 and 14 also known as 127 Hardenburgh Avenue (hereinafter the "Property") has been designated as an “area in need of rehabilitation” in accordance with the LRHL; and

WHEREAS, the redevelopment of this “area in need of rehabilitation” (also known as the Hardenburgh Rehabilitation Area) was provided for in the Hardenburgh Redevelopment Plan which allows for the construction of affordable housing and such other amenities and features as are commonly associated with residential facilities; and

WHEREAS, BCUW/Madeline Housing Partners, LLC (hereinafter the “Redeveloper”) submitted a proposed project for the Property that includes the development, construction, and management of seventeen (17) units of affordable family, supportive and senior housing units, including all common areas and amenities (the “Project”); and

WHEREAS, the Property is part of the Court-approved Housing Element and Fair Share Plan as well as the Affordable Housing Settlement Agreement for the Borough; and

WHEREAS, the LRHL authorizes the Borough to designate qualified entities to serve as redevelopers of rehabilitation areas and to enter into contracts or agreements for the planning, construction or undertaking of those development projects or redevelopment work; and

WHEREAS, on March 30, 2020, the Municipality adopted a Resolution Designating the Redeveloper as such, approving the proposed affordable housing Project and authorizing the negotiation and execution of a redevelopment agreement; and

WHEREAS, the Municipality finds the proposed Project consistent with the Redevelopment Plan; and

WHEREAS, Borough has determined that the development of the Property as proposed by the Redeveloper is in the best interest of the Borough and the health, safety, morals and welfare of the residents thereof and in accordance with the public purposes and provisions of the applicable federal, State and local laws and requirements under which the Project will be undertaken and assisted; and

WHEREAS, the Borough has determined that it is in the best interests of the Borough to enter into a redevelopment agreement with the Redeveloper to set forth the principles of agreement between the Borough and Redeveloper for the redevelopment of the Property and to set forth in greater detail their respective undertakings, rights, and obligations in connection with the construction of the Project; and

WHEREAS, the Borough and Redeveloper have agreed to the terms and conditions with respect to the redevelopment of the Property, the construction of the improvements and the payment of certain costs in connection therewith.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Demarest, County of Bergen, State of New Jersey, that it hereby approves and authorizes the execution of a redevelopment agreement with BCUW/Madeline Housing Partners, LLC, 6 Forest

Avenue Suite 220, Paramus, NJ as Redeveloper for the redevelopment of 127 Hardenburgh Avenue, also known as Block 2, Lots 13 & 14 for the Project.

BE IT FURTHER RESOLVED that the Mayor and the appropriate Borough officials are hereby authorized to execute any and all documents, including the redevelopment agreement substantially consistent with the form of agreement attached hereto, to effectuate the completion and implementation of the Project, subject to final review by the Borough Attorney as to legal form and content.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon adoption.

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 May 13, 2024.

Julie Falkenstern, Acting Borough Clerk

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE BOROUGH OF DEMAREST
as Municipality

AND

BCUW/MADELINE HOUSING PARTNERS, LLC
as Redeveloper

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THIS REDEVELOPMENT AGREEMENT (hereinafter the "Agreement") is entered into this __ day of _____, by the Borough of Demarest, a municipal corporation and body politic of the State of New Jersey, having its offices at 118 Serpentine Road, Demarest, New Jersey (hereinafter the "Municipality"), and BCUW/Madeline Housing Partners, LLC, a New Jersey limited liability company authorized to conduct business within the State of New Jersey and having a principal office located at 6 Forest Avenue, Suite 220, Paramus, New Jersey (hereinafter the "Redeveloper") (the Municipality and the Redeveloper are hereinafter collectively referred to as the "Parties" and sometimes separately as the "Party").

WHEREAS, on or about July 8, 2020, the Municipality received a Final Order of Compliance and Judgment of Statutory Repose (hereinafter the "Order") concluding the Borough's Declaratory litigation filed in the Superior Court of New Jersey, Law Division-Bergen County, and captioned as In Re Petition of the Borough of Demarest, Bergen County, New Jersey and Sylco Investments, LLC, et. als. v. Borough of Demarest, et. als., BER-L-6301-15 and BER-L-6364-19, (sometimes known as 'the Litigation') that was the result of a settlement agreement by and between the parties (hereinafter the "Settlement Agreement"); and

WHEREAS, the Settlement Agreement in part calls for the designation of specific parcels of property identified as Block 23 Lots 13 and 14 also known as 127 Hardenburgh Avenue (hereinafter the "Property") as an "area in need of rehabilitation" in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., (hereinafter the "LRHL"); and

WHEREAS, the redevelopment of this "area in need of rehabilitation" (also known as the Hardenburgh Rehabilitation Area) was provided for in the Hardenburgh Redevelopment Plan which allows for the construction of affordable housing and such other amenities and features as are commonly associated with residential facilities; and

WHEREAS, the Redeveloper submitted a proposed project for the Property that includes the development, construction, and management of seventeen (17) units of affordable family, supportive and senior housing units, including all common areas and amenities; and

WHEREAS, the Municipality determined that the proposed improvements (hereinafter the Improvements) submitted by the Redeveloper and approved by the Court, closely reflected the goals and objectives of the Municipality with respect to this portion of the Municipality, and aligned with the Municipality's anticipated Housing Element and Fair Share Plan and would result in a residential facility that was, in the aggregate, beneficial to the community; and

WHEREAS, the Mayor and Governing Body serve as an instrumentality and agency of the Municipality pursuant to the LRHL for the purpose of implementing the Redevelopment Plan and carrying out redevelopment projects within the Municipality; and

WHEREAS, the LRHL authorizes the Municipality to designate qualified entities to serve as redevelopers of rehabilitation areas and to enter into contracts or agreements for the planning, construction or undertaking of those development projects or redevelopment work; and

WHEREAS, on March 30, 2020, the Municipality adopted a Resolution Designating the Redeveloper as such, approving the proposed affordable housing facility described above (hereinafter the “Project”) and authorizing the negotiation and execution of a redevelopment agreement; and

WHEREAS, the Municipality finds the proposed Project as set forth and further described in the project drawings, architectural renderings, and site plan approval, attached and annexed hereto as **Exhibit A**, consistent with the Redevelopment Plan; and

WHEREAS, The Redeveloper has demonstrated to the Municipality its credentials, experience, and financial capability to design and construct the Project; and

WHEREAS, pursuant to the LRHL, it is the intention of the Parties to enter into this Agreement to further define and memorialize the respective obligations of the Parties hereto with regard to proceeding with the redevelopment of the Property in the manner prescribed herein.

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms.

The Parties agree that, unless the context otherwise specifies or requires, in addition to the terms defined above, the following terms shall have the respective meanings specified below and such definitions shall be applicable equally to the singular and plural forms of such terms.

Affiliate - means with respect to any Person, any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person.

Applicable Laws - shall mean all federal, State and local laws, ordinances, Governmental Approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Housing and Redevelopment Law, the Long-Term Tax Exemption Law, the Municipal Land Use Law, and Environmental Laws, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder and applicable federal and State labor standards.

Certificate of Completion- A written certificate issued by the Municipality in accordance with Section 4.3 hereof, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to the Project, if applicable, whose issuance shall serve to release the Project and Redeveloper from all terms, obligations and conditions contained in this Agreement.

Certificate of Occupancy- As defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Municipality relative to a particular dwelling unit within the Project indicating that such dwelling unit has been completed in accordance with the construction permit, the Uniform Construction Code, and any other Applicable Law(s).

Claims means any and all liabilities (statutory or otherwise), obligations, claims, damages, causes of action, proceedings, costs, and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and court costs), losses and injuries.

Closing means the conveyance of title to the Property by the Municipality to the Redeveloper, as set forth in Article 3 of this Agreement.

Commencement Date- Subject to the terms herein, the commencement date for construction shall be the first day of the calendar month coinciding or next following the date of receipt by the Redeveloper from the Municipality of a building permit authorizing physical construction of new development at the Property.

Completion, Complete or **Completed** means (i) that all work related to the Project in its entirety has been completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws so that the developed Property may be used and operated under the applicable provisions of this Agreement, and (ii) that all permits, licenses and approvals required for the Property are in full force and effect. Completion of the Project shall be conclusively evidenced by the issuance of a Certificate of Completion.

"Control", "Controlling", "Controlled by" and "under common Control with" shall mean with respect to any Person as defined in this Agreement, the possession, directly or indirectly, of the power to direct or cause and direct the day-to-day management policies of such Person, whether through the ownership of voting securities or by contract or otherwise. For avoidance of doubt, the fact that a Person with the power to direct or cause and direct the day-to-day management policies of another Person which may require the consent of one or more other Persons to annual operating plans, including, but not limited to operating and capital budgets, and other specified major decisions, shall not be deemed to mean that such Person does not have control.

"Day" shall mean a business day, excluding Saturday, Sunday, and any holiday upon which the New York Stock Exchange is closed.

Effective Date means the date upon which this Agreement is last executed by either the Redeveloper and/or the Municipality.

Foreclosure means that event in which a Holder forecloses its mortgage secured by the Property, or part thereof, or takes title to the Property, or part thereof, by deed-in-lieu of foreclosure or similar transaction.

“Governmental Body” shall mean any federal, State, County, or Municipal agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government regulation of the construction proposed by the Redevelopment Plan, the Improvements/Project this Agreement and/or any and all Governmental Approvals.

Governmental Approvals means any approvals, authorizations, permits, licenses, or certificates required and issued or granted by any Governmental Body having jurisdiction necessary to implement and complete the Project in accordance with the Redevelopment Plan, the Applicable Law(s), and this Agreement.

Holder means a mortgagee or its affiliate or authorized servicing entity, providing financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any portion thereof.

Impositions means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property or on any of the Improvements constructed thereon.

Improvements means all buildings, structures and appurtenances including, without limitation, dwelling units, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Property and the streets immediately abutting the Property.

Infrastructure Improvements shall mean the preparation and installation on, in, under and to the Property of site work and the building foundations, on-site and off-site roads and improvements required in connection with permits and approvals for such improvements, all consistent with the requirements of the Redevelopment Plan and Applicable Laws.

Off-Tract Improvements means all Improvements not on the Property, if any, and any incidental work associated therewith, necessary for the construction of the Project or the Improvements, and/or as may be required in connection with Governmental Approvals, including, but not limited to, environmental remediation, roadways, storm drainage, sewers and utilities, wetlands mitigation, filling land, material storage and other similar ancillary off-site functions.

Person means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or partnership, trust, unincorporated association, institution, public or Governmental Body or any other entity.

Project means the development and construction of the Improvements and the Off-Tract Improvements, as more specifically described in Section 2.2 herein and in Exhibit A to this Agreement.

Project Schedule means the schedule attached and annexed hereto as **Exhibit B** which designates the order of and timeframes for the permitting development and construction of the Improvements on the Property and approved by any and all relevant Governmental Bodies.

Public Improvements means Infrastructure Improvements and upgrades such as streets, grading, pavement, gutters, curbs, sidewalks, street lighting, surveyors' monuments, water mains, culverts, storm and sanitary sewers, drainage structures, erosion control and sedimentation devices, open space, and landscaping required under site plan approval memorialized by the Planning Board that will be dedicated to the Municipality pursuant to Applicable Law(s) or pursuant to this Agreement.

1.2 Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the Effective Date.

(b) Words imparting a particular gender meaning and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Unless otherwise noted, the terms "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation."

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify, or dictate.

(e) All notices to be given pursuant to Section 10.1 hereof and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) Days, unless the context dictates otherwise.

(f) Any reference to Applicable Laws or any Applicable Law shall be read to mean as the Applicable Law as amended from time to time except where Redeveloper's obligation to comply was satisfied prior to the amendment.

(g) The Recitals contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

(h) Whenever the terms of the Parties' Settlement Agreement conflict with this Agreement, the Settlement Agreement terms shall control.

ARTICLE 2 DESCRIPTION OF PROJECT

2.1 Purpose; Designation as Redeveloper. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Municipality and the Redeveloper in connection with the redevelopment of the Property by the Redeveloper through the development and construction of the Project.

The Municipality hereby affirms and agrees that the Redeveloper was designated and appointed as the exclusive redeveloper of the Property. Further, the Municipality and the Redeveloper acknowledge and agree that said designation is effective only for the purpose of developing and constructing the Project upon the Property and thereafter making such dwelling units constructed available to qualified moderate, low and very low-income households. In connection with such designation and appointment, the Redeveloper has the exclusive right to perform and/or to have others perform any and all redevelopment activities on and about the Property as permitted in the Redevelopment Plan. Each of the Parties agrees that all redevelopment on and about the Property will only be authorized and may only be undertaken by the Redeveloper under the framework and in accordance with the terms of this Agreement and the Redevelopment Plan. Further, the Municipality agrees that for the term of this Agreement it will not negotiate for the provision of another redeveloper or developer for the Property or any portion thereof, except as may be required pursuant to Section 11.2 hereof.

2.2 The Project. As represented by the Redeveloper and approved by the Municipality, the Project shall consist of the development and construction of a residential facility containing seventeen (17) dwelling units, common areas and amenities all more particularly described in **Exhibit A** which is attached and annexed hereto. Each of the dwelling units developed and constructed shall be designated as Affordable Housing and made exclusively available to moderate, low and very low-income households.

2.3 Development and Design Concepts. It is acknowledged by the Redeveloper that it is obligated under this Agreement to construct the Project substantially in accordance with the Site Plan approval(s) previously received from the Borough's Planning Board, and in conformance with a Developer Agreement executed, or to be executed, between the Parties which details the physical and construction aspects of the approved Project and further ensures conformance with the terms of approval from the Planning Board. A copy of the subject Planning Board approval is attached and annexed hereto as **Exhibit A**. The Redeveloper shall not deviate from any aspect of the approved Project including but not limited to any specific exterior/interior elements or any specific materials without the Municipality's express written consent, which shall not be unreasonably withheld, conditioned, or delayed.

2.4 Development Milestones. The Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule which is attached and annexed hereto as **Exhibit B**, subject to delays caused by an event(s) of Force Majeure, as this phrase is defined elsewhere in this Agreement. The Redeveloper shall have the right to accelerate the time frames set forth in the Project Schedule, upon notice given to the Municipality, should field conditions and market conditions provide the Redeveloper the opportunity to do so.

2.5 Qualified Entities

(a) By virtue of its designation as Redeveloper, BCUW/Madeline Housing Partners, LLC, has been determined to be a Qualified Entity. Notwithstanding any other provision in this Redevelopment Agreement, any transfer of the Redeveloper's rights and obligations set forth herein shall be limited to another Qualified Entity who shall thereafter assume the rights and obligations of the Redeveloper. The Project will, at the Redeveloper's option, be developed by (i) the Redeveloper; (ii) any partnership, corporation, limited liability company or other legal entity to which the Redeveloper and/or any Affiliate of the Redeveloper is the majority beneficial owner, or (iii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any Affiliate of the Redeveloper are collectively the majority beneficial owners. Upon the Redeveloper's determination regarding such entity(ies), if other than the Redeveloper, the Redeveloper shall provide to the Municipality the name(s), contact person(s) and address(es) of each. In no event however shall the Redeveloper appoint any entity other than a Qualified Entity to develop the Project. Notwithstanding the foregoing, the Project will be constructed by a reputable, qualified and fully insured licensed contractor selected by the Redeveloper with whom the Redeveloper has previously worked on similar projects (the "Construction Contractor"). Upon the Redeveloper's selection of the Construction Contractor, the Redeveloper will provide the Municipality with the Construction Contractor's resumé evidencing its qualifications.

(b) The phrase "Qualified Entity" as used in this Agreement shall mean a partnership, corporation, limited liability company or other legal entity which has demonstrated to the satisfaction of the Municipality that:

- (i) It has the financial capacity to undertake the development, construction, and operation of the Property in question, including, without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Property;
- (ii) It is able to comply with and conform to all of the provisions of this Agreement and the Applicable Law(s) as they relate to the development of the Property and expressly assumes all such obligations;
- (iii) Has not filed a petition under federal bankruptcy laws or any state insolvency law or has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such entity, or any partnership in which such entity was or is a

general partner or any entity in which such entity was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of ten (10%) percent (and, in the case of an involuntary proceeding, such proceeding has not been terminated within sixty (60) Days of its commencement) within the ten (10) years preceding the date of submission of such entity's application for consideration as a Qualified Entity;

- (iv) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such entity, is not a target of or a potential witness in a criminal investigation;
- (v) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Municipality or the Redeveloper which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Municipality or the Redeveloper alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Municipality or the Redeveloper;
- (vi) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Applicable Law(s) relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision; and
- (vii) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any Municipality, state, or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest.
- (viii) It shall comply with any other conditions that the Municipality may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

2.6 Other Governmental Approvals. It is acknowledged by both Parties that it may be necessary for the Redeveloper to obtain any number of other/additional Governmental Approvals from other Governmental Bodies in order to undertake the development, construction and/or operation of the Project. The Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed Governmental Approvals for the

Project in a timely fashion and utilizing commercially reasonable efforts. The Municipality agrees to promptly provide any pertinent information in its possession and to provide any reasonable assistance which may be required of it to enable the Redeveloper to properly apply for and obtain such Governmental Approvals in a timely fashion, including making applications in the name of the Municipality if deemed necessary for such approval or permit or if required by the Applicable Law(s). The Municipality agrees to support and endorse any applications for any Governmental Approvals required for the Project.

ARTICLE 3

PROPERTY ACQUISITION AND EASEMENTS

3.1 Agreement to Sell and Purchase the Property. Subject to the terms and conditions set forth in this Agreement, and the satisfaction or waiver of the conditions precedent set forth in Section 3.4, hereof, the Municipality agrees to transfer the Property to the Redeveloper, and the Redeveloper agrees to acquire the Property from the Municipality, in consideration of the Redeveloper's undertaking to develop and construct the Project in accordance with the provisions of this Agreement, the Redevelopment Plan and the Governmental Approvals.

3.2 The Redeveloper's Due Diligence. Pursuit of financing by Redeveloper may require environmental testing and reports satisfactory to the financial agency. The Municipality consents to Redeveloper performing tests and taking samples from the Property which may be invasive (hereinafter collectively referred to as the "**Redeveloper's Due Diligence**"). Redeveloper shall reasonably restore the Property after such testing. Redeveloper shall present proof of insurance certificates to the Municipality prior to entering upon the Property naming the Municipality as an additional insured concerning acts or omissions of the Redeveloper's employees and agents while on the Property which certificate shall be reasonably satisfactory to the Municipality's insurance consultant. Within five (5) days of this Agreement being fully executed and a copy delivered to the Redeveloper, the Municipality will provide Redeveloper all reasonably available information and reports in the possession of the Municipality related to the Property.

3.3 Terms and Conditions for Purchase and Sale. Provided that all Conditions Precedent to the Redeveloper's obligations to Close as set forth in this Agreement have been satisfied or waived, the Parties may Close upon the Property. The Closing shall occur on that date that is ten (10) Days following satisfaction of and/or waiver of each of the Conditions Precedent or upon such date and time as the Parties shall reasonably agree upon.

3.4 Conditions Precedent. The obligations of the Municipality to Close Title to the Property shall be subject to the fulfillment of all of the following conditions:

- (a) All representations and warranties of the Redeveloper contained in this Agreement shall be true and correct in all material respects as of the Closing.

- (b) The Redeveloper shall have performed and observed; in all material respects, all covenants, and agreements of this Agreement to be performed and observed by the Redeveloper.
- (c) The Redeveloper shall have obtained all necessary Governmental Approvals required for the development and construction of the Project.
- (d) The Redeveloper shall have submitted to the Municipality the Financial Package described in Section 5.2 hereof.
- (e) The Redeveloper having secured financing for the Project as described in Section 5.2 hereof; the Parties agree to cooperate so that the Closing of Title can occur simultaneously with the closing of the Redeveloper's financing commitment for the Project.

The Parties acknowledge and agree that should an Event of Default on the part of the Redeveloper occur, among its other rights and remedies set forth in Article 7 hereof, title to the Property shall revert to the Municipality.

3.5 Transfer of Ownership; Title. The Closing on the Property shall be held at the offices of the Weiner Law Group LLP, 629 Parsippany, Road, Parsippany, New Jersey 07054, or such other place as the Parties may mutually agree, and at a time that the Parties may mutually agree.

- (a) At the Closing(s), the Municipality shall tender to the Redeveloper a properly executed Bargain and Sale Deed with Covenant Against Grantor's Acts (hereinafter referred to as the "Deed"), and an adequate Affidavit of Title in a form acceptable to the Redeveloper and/or its Title Insurer; a properly executed Affidavit of Consideration or Exemption; a Residency Certification; a Bulk Sales Tax Clearance Certificate; a true copy of the Ordinance of the Municipality authorizing the sale and conveyance; a Non-Foreign Affidavit; and such other documents as may reasonably be requested by the Redeveloper and/or its Title Insurer.
- (b) At the Closing, the Redeveloper shall tender to the Municipality a prepared closing statement, one (\$1) dollar as and for consideration for the transfer and a resolution of the Redeveloper's authorizing the acceptance of title to the Property and acknowledging its obligation to develop and construct the Project.

3.6 Physical Condition of the Property. Except as otherwise explicitly provided for herein or in other documents to the contrary, the Property is being sold to the Redeveloper in "AS IS" condition. The Redeveloper recognizes and acknowledges that the Municipality is making no representation or warranty as to the condition of the Property or its fitness for the Redeveloper's intended use. At the Closing, the Municipality shall deliver possession of the Property vacant and free from tenants, occupants, or parties in possession in the same condition as it is on the Effective Date of this Agreement excepting for ordinary and reasonable usage and exposure to the elements. Prior to the Closing, the Municipality shall permit the Redeveloper, its agents, contractors and/or representatives reasonable access to the Property.

3.7 Environmental Indemnification. As of the Closing on the Property, the Redeveloper hereby agrees, at its sole cost and expense, to indemnify, defend and hold harmless

the Municipality, its employees and agents from any injuries, losses, liabilities, damages, liens, expenses (including, without limiting the generality of the foregoing, the costs of any environmental testing, remediation and the costs of reasonable attorney fees), charges, costs penalties, fines, actions, injunctions, suits, claims, judgments, or demands imposed, at any time, upon the Property and/or imposed upon, or incurred by, the Municipality, directly or indirectly, at any time: (i) as a result of or in connection with violation(s) of any or all of Applicable Laws by the Redeveloper; or (ii) sustained as a result of any environmental conditions on, in, under or migrating from the Property first arising after the Closing. This Section 3.6 shall survive the Closing on the Property and in addition to, and not instead of, the Indemnification provisions set forth in Sections 8.1 and 8.2, hereof. Notwithstanding anything to the contrary, the Redeveloper shall have no liability and no indemnity obligation with respect to any Environmental Conditions existing prior to the Closing, regardless of when discovered or any conditions caused by the Municipality or third parties prior to Closing.

3.8 Title Insurance Survey. Within sixty (60) Days of the Effective Date, the Redeveloper shall order a title commitment with respect to the Property (hereinafter the "Title Commitment"). Within sixty (60) Days of the Effective Date, the Redeveloper may order a physical survey (or an update for a previously existing survey), from a licensed surveyor, of the Property. The costs and expenses associated with the aforementioned title commitment and physical survey shall be the responsibility of the Redeveloper. The Redeveloper shall give the Municipality a specific written notice of its objection(s) to any encumbrance or other title exception, or matter reflected in the Title Commitment and any matter reflected on the physical survey that is not a Permitted Exception (hereinafter the "Title Notice") within ten (10) Days following its receipt of the Title Commitment. The Municipality shall remedy such objections promptly following receipt of the Title Notice, or in the case of matters identified in the Title Notice that require only the payment of money to satisfy those items. The Redeveloper shall be permitted to update the Title Commitment prior to the Closing and undertake the preceding title objection process with respect to matters of title and survey that have arisen since the initial search date and survey date, as the case may be.

3.9 Risk of Loss. Except as otherwise provided above with respect to the Redeveloper's activities and investigations, if any, the Municipality is responsible for any damage or loss to the Property, except for normal usage and exposure to the elements, until Closing.

3.10 Brokerage Fees. The Redeveloper and the Municipality each represent to the other that they have not dealt with or transacted any business with any broker in connection with the sale and purchase of the Property, and each agrees to indemnify, defend, and hold the other harmless from any claim of any broker may make as a result of such Party's actions inconsistent with the respective representations made herein. This representation shall survive the Closing(s) hereunder or the expiration or the termination of this Agreement.

3.11 Form 1099-S Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper is responsible for collecting certain information from the Municipality necessary to complete and file Form 1099-S with the Internal Revenue Service. The Municipality agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such

filing and shall fully cooperate with all of the Redeveloper's reasonable requests deemed commercially necessary to fulfill this obligation.

3.12 Closing Prorations. To the extent applicable, as of the date of the Closing, the Parties shall make adjustment(s) for any items which shall be appropriate for adjustment under local closing standards and practices.

All real estate taxes, tax liens or other taxes with respect to the Property (or relevant portion thereof) shall be pro-rated as of the date of the Closing, based on an accrual basis for the calendar year in which the relevant Closing occurs.

All assessments, general or special, shall be prorated as of the date of the Closing, with the Municipality being responsible for any installments or assessments that are due and payable prior to the relevant date of the Closing and the Redeveloper being responsible for any installments or assessments that are due and payable on or after the relevant date of the Closing.

Water, electricity, sewer, gas, or other essential utility service charges, based on any final meter reading, if any, shall be satisfied by the Municipality at or before the relevant Closing.

3.13 Consideration

The Redeveloper will acquire the Property from the Municipality for one (\$1.00) dollar and shall be paid at the Closing. The Parties hereby acknowledge and agree to the sufficiency of the consideration set forth in the previous sentence.

3.14 Long-Term Tax Exemption

At its option, the Redeveloper may make application to the Municipality's Governing Body for a Long-Term Tax Exemption pursuant to N.J.S.A. 40A:20-1 et. seq. and any other Applicable Laws.

Upon its receipt of a complete application containing all information and documentation required in the Applicable Law(s), the Municipality shall reasonably review and consider the benefits and burdens associated with the approval of such long-term tax exemptions.

Upon the Redeveloper's submission of an application for a long-term tax exemption that is deemed complete, the Municipality, and its relevant staff and consultants shall review same and shall make a determination whether or not to grant the request.

Upon review of the application and confirmation by the Municipality that the benefit of such arrangement outweighs the costs, if any, the Municipality shall consider granting a Governmental Approval in the form of an Ordinance.

If the Municipality fails to approve the long-term tax exemption for the Project, the Redeveloper may terminate this Agreement and shall no longer be obligated to proceed with the Project; nor shall the Redeveloper be required to reimburse the Municipality all or any portion of the Municipal Contribution (as hereinafter defined).

ARTICLE 4

CONSTRUCTION OF PROJECT

Subject to the terms of this Agreement and any and all relevant Governmental Approvals, the Redeveloper agrees to undertake the development and construction of the Improvements necessary for the Project. The Redeveloper shall undertake the development of the Improvements, and the Infrastructure Improvements, subject to its receipt of all necessary Governmental Approvals.

The Redeveloper agrees that, notwithstanding the Applicable Law(s), it is the Redeveloper's responsibility to undertake the appropriate measures to negotiate with, acquire, extend, relocate, or otherwise address the existence of existing utilities (water, sewer, telephone, cable, electric, gas, etc.), both on and off the Property, in order to complete the Project as provided for in this Agreement and in the relevant Governmental Approvals. The Redeveloper shall exercise reasonable efforts to ensure the effective coordination for the development and construction of the Public Improvements and the Utility Infrastructure Improvements and shall reasonably cooperate with the Municipality to ensure that the implementation of the Project does not unreasonably interfere with the operation of existing utilities. The Redeveloper shall be obligated to complete the negotiation, installation, relocation and/or extension (as applicable) of the utilities to the Property by or before the issuance of a Certificate of Occupancy.

4.1 Progress Reports and Progress Meetings. The Redeveloper shall submit to the Municipality quarterly progress report in writing, concerning the actual progress of the Redeveloper with respect to the implementation and construction of the Project (hereinafter the "Progress Report"). The quarterly reports shall be due on January 1st, April 1st, July 1st and October 1st. The work and construction activities of the Redeveloper shall be subject to inspection by the Municipality at reasonable times and upon reasonable notice to the Redeveloper. Upon the request of the Municipality (which shall occur no more than once a quarter), the Redeveloper and any necessary consultants and professionals shall meet with the Municipality, its employees, professionals, consultants, and officials, to report on its progress or to address any concerns the Municipality has based upon its review of any Progress Report (hereinafter the "Progress Meeting").

4.2 Suspension of Construction. The Redeveloper shall not suspend or discontinue the performance of its obligation to construct the Project under this Agreement, other than in the manner provided for herein or the occurrence of an event of Force Majeure, as set forth in Article 6.8, hereof. If the Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of sixty (60) Days for reasons other than an event of Force Majeure and the suspension or abandonment is not cured, remedied or explained to the satisfaction of the Municipality in writing within ten (10) Days after written demand by the Municipality to do so, then such shall constitute an Event of Default by the Redeveloper under this Agreement and the Municipality shall have the right to seek any remedies pursuant to this Agreement and all other remedies available to the Municipality at law or in equity.

4.3 Certificates of Occupancy and Certificate of Completion.

(a) Upon Completion of the construction of the Improvements, in accordance with the Governmental Approvals, the Redeveloper may apply to the Municipality for a Certificate of Occupancy for the Project. Alternatively, the Redeveloper may apply to the Municipality for a Certificate of Occupancy for each dwelling unit constructed as part of the Project as may from time to time, be completed.

(b) Upon Completion of the Project, for purposes of releasing the restrictions referenced in this Agreement and under the Applicable Law(s), the Municipality shall issue a Certificate of Completion in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of the Applicable Law(s), the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to the Redeveloper's construction of the Project.

(c) Upon issuance of a Certificate of Completion (a) the Covenants and Restrictions set forth in Section 6.3 hereof shall cease and terminate, except for those Covenants and Restrictions by provision survive the issuance of a Certificate of Completion, and (b) the conditions determined to exist at the time the Property was designated as an area in need of rehabilitation shall be deemed to no longer exist. If the Municipality shall fail or refuse to provide the Certificate of Completion within twenty (20) Days after written request by the Redeveloper, the Municipality shall provide to the Redeveloper a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for the Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, the Redeveloper may record it in the Bergen County Clerk's office.

4.4 Public Improvements.

The Redeveloper shall be responsible for the construction and provision of the Improvements as well as the Public Improvements constituting the Project. The Public Improvements include any and all necessary Off-Site Infrastructure Improvements or upgrades to any pre-existing infrastructure systems required as a direct result of the Project.

4.5 Parking.

All off street parking necessary for the Project shall be provided in accordance with the Redevelopment Plan.

4.6 Affordable Housing Requirements. Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., other Applicable Laws and whatever future Rules or Regulations are adopted by the Council on Affordable Housing (C.O.A.H.) or other relevant Governmental Body(ies), all residential units constructed on the Property, will be deed restricted for at least thirty (30) years as affordable dwelling units consistent with the Settlement Agreement, this Agreement and all relevant Governmental Approvals. These dwelling units shall consist of the very low, low and moderate income housing required under UHAC (Uniform Housing Affordability Controls) and consistent with all other agreements between the Parties.

ARTICLE 5 CONSTRUCTION AND PROJECT FINANCING

5.1 Redeveloper's Commitment to Finance Construction of the Project. The Redeveloper has represented that the estimated administrative and construction costs to develop and construct all the Improvements that are a part of the Project are approximately Eight Million Three Hundred Thousand and 00/100 (\$8,300,000.00) Dollars (hereinafter the "Project Cost Estimate"). The Redeveloper acknowledges that the Municipality has relied upon its representations that it is financially capable of carrying out its obligations to construct the Improvements and complete the Project pursuant to this Agreement, the relevant Governmental Approvals, and the Applicable Law(s). The Redeveloper represents that such financing will be a combination of municipal contribution, grant funding, and low and no interest public debt financing.

5.2 Project Costs and Administrative Costs. Based on the Project Cost Estimate set forth in Section 5.1, hereof, the Redeveloper will apply for financing from various institutional sources, including, but not limited to the New Jersey Department of Community Affairs, Bergen County HOME, Federal Home Loan Bank, and various other block grant sources. The Redeveloper acknowledges that there will be various administrative costs associated with the redevelopment of the Redevelopment Area and the Project (hereinafter the "Administrative Costs").

On or prior to the earlier to occur of (i) one hundred eighty (180) Days after the Redeveloper has obtained all Governmental Approvals, or (ii) one hundred twenty (120) Days prior to Commencement of Construction of the Project, the Redeveloper shall submit to the Municipality a financial package that the Redeveloper believes to be complete (hereinafter the "Financial Package") describing the anticipated sources of funding for the Project, including, but not limited to, a commitment or a "term sheet" for construction financing required for the Project and a representation regarding any equity capital necessary for the Commencement of Construction of the Project. If the Financial Package submitted by the Redeveloper fails to indicate that sufficient financing for all costs associated with the Project is available and the Redeveloper is therefore unable to proceed with the Project then, unless the Redeveloper requests an extension of such time setting forth the basis for its failure to timely secure financing, which request the Municipality may grant or deny in its sole but reasonable discretion, the Municipality or the Redeveloper may terminate this Agreement, in which event neither Party shall have any further rights or obligations under this Agreement except for those which expressly survive termination.

Notwithstanding the foregoing, in the event that the Redeveloper is unable to secure sufficient financing for all of the Project for any reason whatsoever by the date which is twelve (12) months from the date of this Agreement, the Municipality or the Redeveloper may terminate this Agreement and neither party shall have any further rights or obligations under this Agreement.

5.3 Municipality Contribution to Project Cost. On the basis of the Redeveloper's representation of the current Project Cost Estimate, the Municipality shall contribute a maximum of Nine Hundred Thirty Thousand and 00/100 (\$930,000.00) Dollars to defray the development and construction costs, (hereinafter the "Municipal Contribution"). A maximum of \$400,000 is attributable to the very-low income units for which \$200,000 shall be payable when the building permit is issued and \$200,000 shall be payable upon receipt of Certificate of Occupancy for said units. The Parties acknowledge that the Municipal Contribution is in addition to the market value of the Property. The Municipal Contribution sum shall be utilized to pay for administrative costs, pre-development and development costs and construction costs for the Project.

The Parties acknowledge and agree that prior to the Effective Date, the Redeveloper sought and received from the Municipality reimbursement in the amount of One Hundred Seventy-Six Thousand Two Hundred Eighty-Nine and 50/100 (\$176,289.50) Dollars. Said amount shall be deducted from the Municipal Contribution set forth in the preceding paragraph.

In no event shall the Municipality be obligated for any sums of money in excess of the Municipal Contribution set forth in this Section 5.3. Notwithstanding the foregoing, The Redeveloper shall be permitted to apply for and may be considered for additional funding in the future by the Municipality for the Project. Such additional funding shall be made available at the Municipality's sole discretion.

5.4 Rights of Institutional Mortgagee. Any financial institution or other entity lending money on the security of the Property in the Project shall be entitled to the protection of any and all Applicable Law(s) providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights.

(a) This Agreement as a financial arrangement made by a Governmental Body of the State of New Jersey pursuant to the relevant Applicable Laws in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provisions of this Article 5.

(b) To the extent necessary, the Municipality agrees to execute subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

(c) Upon the request of a construction mortgage or permanent financing lender, the Municipality will subordinate a statutory right of reverter applicable to the Property as a result of the transfer in order to facilitate the construction and permanent financing. The Property shall remain subject to a use restriction limiting the use of the Property to seventeen (17) affordable family, senior, and supportive housing units for developmentally disabled persons unless the Municipality agrees to a different use of the Property.

5.5 Rights of Mortgagees. Notwithstanding any other provision of this Agreement, the Holder of any mortgage (including any such Holder who obtains title to the Property or any part thereof), or any other party who thereafter obtains title to the Property or such part from or through such Holder or any purchaser at foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project, except to secure and make the Project site and Property safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Property to Redeveloper be construed to so obligate such Holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Property or any part thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements provided, or permitted under the Redevelopment Plan or otherwise approved by the Municipality. Notwithstanding any other term or provision of this Agreement, in the event that the Holder of any mortgage shall acquire control of or title to the Property or any part thereof, whether by foreclosure, deed in lieu of foreclosure or otherwise, then (i) such transfer of title to the Holder shall not constitute an Event of Default under this Agreement, and (ii) in no event shall Holder have any liability under this Agreement for any costs, expenses or damages incurred by the Municipality, or any person or entity claiming by or through the Municipality, including, without limitation, any liability for Administrative Costs or for indemnification under Article 9 of this Agreement.

5.6 Notice to Mortgagee. Whenever the Municipality shall deliver any notice or demand to the Redeveloper with respect to any breach or Default by the Redeveloper of its obligations or covenants under this Agreement or under any relevant Applicable Law(s), the Municipality shall at the same time forward a copy of such notice or demand to each Holder of any mortgage at the last known address of such Holder shown in the land records of the County. Notice that such breach or Default subsequently has been cured shall also be provided by the Municipality to each such Holder of any mortgage.

ARTICLE 6 **REPRESENTATIONS AND WARRANTIES**

6.1 Redeveloper's Representations and Warranties. The Redeveloper hereby represents and warrants to, and covenants with the Municipality that:

(a) The Redeveloper has the legal capacity to enter into this Agreement, abide by each and every Applicable Law and to perform each of the undertakings set forth in a timely fashion.

This Agreement constitutes a valid and legally binding obligation of the Redeveloper enforceable in accordance with its terms, subject to the occurrence of an event of Force Majeure.

(b) The Redeveloper is a duly organized and a validly existing legal entity under the Applicable Law(s) and all necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

(c) No receiver, liquidator, custodian, or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper shall have been filed.

(e) No indictment has been returned against any officer of the Redeveloper with respect to any transaction contemplated by the terms of this Agreement.

(f) The Redeveloper's execution and delivery of this Agreement and its performance hereunder shall not constitute a violation of any operating, partnership and/or stockholder agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument, or judgment, to which the Redeveloper is a party or is the subject of.

(g) Subject to obtaining any financing in accordance with this Agreement, the Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project.

(h) To the best of the Redeveloper's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which shall materially and substantially impair its ability to perform pursuant to the terms of this Redevelopment Agreement other than those referenced in the settlement agreements in the Litigation/Lawsuits.

(i) The Redeveloper's Certificate of Formation and Certificate of Good Standing, duly certified by the Secretary of State of the state of the Redeveloper's formation, are in full force and effect.

(j) It is the intention of the Redeveloper to develop and construct the Project and thereafter operate and maintain the Project lawfully and to continuously hold the dwelling units available exclusively to low and very low-income families and seniors.

6.2 Municipality's Representations and Warranties. The Municipality hereby represents and warrants to, and covenants with the Redeveloper that:

(a) The Municipality has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Municipality is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Agreement is duly executed by the Municipality and is valid and legally binding upon the Municipality and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement, or other instrument to which the Municipality is a party.

(c) The designation of the Property as an “area in need of redevelopment”, the adoption of the Redevelopment Plan and any subsequent amendments thereof and the designation of the Redeveloper as such were done in conformance with the Applicable Laws, are currently in full force and effect, and the Municipality is duly and properly acting as the “redevelopment entity” for the Redevelopment Plan pursuant to the LRHL.

(d) There is no pending, or to the best of the Municipality’s knowledge, threatened litigation affecting the Property that would prevent the Municipality from performing its duties and obligations hereunder. The Municipality represents to the Redeveloper that the Litigation has been resolved and settled, and the terms of the settlement have been memorialized in the Settlement Agreement(s).

(e) The Municipality is the owner in fee simple of the Property. The Property is now and has been held in peaceable and undisturbed possession by the Municipality. The Municipality does not know of any facts by reason of which its possession or title may be disputed or any claim to any part of the Property or any interest therein adverse to the Municipality may be asserted.

(f) The Property is vacant, except for the public streets, sewer pump, infrastructure, and utility conduits, if any. Further, there are no tenants, occupants or other users occupying or holding rights to occupy any portion of the Property. The Municipality has received no notice and has no knowledge that the Property is in violation of any Applicable Laws, including any Environmental Laws. The Municipality has received no notice and has no knowledge of any fact or condition which would constitute a violation under any Applicable Laws including any Environmental Laws. To the Municipality’s knowledge, no Governmental Body has enacted or adopted or threatened or announced any intention to enact or adopt any Applicable Law(s) or impose a moratorium on development, construction or connection to any water supply or wastewater utility services, which would have a material adverse impact on the Property, the Project or occupancy of any residential Units to be constructed on the Property. The Municipality

will cooperate with the Redeveloper and oppose any such law or moratorium or Governmental Approval which would have a material adverse impact on the Property.

(g) No proceedings to take all or any part, of the Property by condemnation or right of eminent domain are pending or, to the Municipality's knowledge, threatened. The Property is not subject to any governmental assessments for on-site or Off-Site Improvements, and the Municipality has no notice or knowledge of any proposed on-site or Off-Site Improvements that would affect the Property or could result in assessments being imposed against the Property. The Property is currently exempt from real estate taxes.

(h) There are no actions, suits, proceedings, or investigations, whether administrative or judicial, or any arbitrations pending, or to the Municipality's knowledge, threatened, which may affect its execution, delivery, or performance of its obligations under this Agreement. There are no outstanding Judgments, orders, directives, or notices of violation issued by any Governmental Body against the Municipality with respect to the Property.

(i) Except for the Redevelopment Plan, this Agreement and the Settlement Agreement, there are no other outstanding agreements or contracts, oral or written, relating to the Property to which the Municipality is a party, or by which the Municipality or the Property may be bound, or which otherwise run with the Property.

(j) To the knowledge of the Municipality, there are no liens under any Applicable Law(s) which do or may result in any liens or encumbrances and the Municipality does not know of any facts by reason of which any such liens may attach to the Property.

(k) There is/are no action(s), proceeding(s) or investigation(s) now pending, nor any basis therefore, known or believed to exist, which questions the authority of the Municipality to enter into this Agreement or any action or act taken or to be taken by the Municipality pursuant to this Agreement and the Municipality has received no notice of any of the foregoing, except for the terms and provisions of the Settlement Agreement(s) with the litigants in the Litigation.

(l) The Municipality has received no notice asserting any noncompliance in any material respect by the Municipality with any Applicable Laws, including but not limited to the rulings of any Governmental Body having jurisdiction over the Property nor with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the Municipality's ability to perform its obligations in connection with this Agreement.

(m) The Municipality represents and warrants that to the best of the Municipality's knowledge: (a) the Property is in compliance with all Applicable Laws including but not limited to all federal and state Environmental; Laws applicable to Hazardous Substances and (b) there is no pending or contemplated legal action or administrative action proceeding arising out of or related to the environmental condition of the Property.

(n) The Municipality represents and warrants to the best of the Municipality's knowledge that: (a) the Municipality and its agents, servants and employees and contractors have not discharged, deposited, or caused to be deposited any Hazardous Substance on the Property; and (b) the Municipality has no knowledge of the presence of any Hazardous Substances in, on, under or emanating from the Property.

(o) To the best of the Municipality's knowledge, there are no threatened claims or litigation by any Governmental Body with respect to the Property.

(p) The Municipality represents and warrants that to the best of the Municipality's knowledge that there is sufficient potable water and sanitary sewerage capacity for the Project.

6.3 Redeveloper Declaration of Covenants and Restrictions.

(a) The Redeveloper agrees to record, and provide a recorded copy to the Municipality, of a Declaration of Covenants and Restrictions (hereinafter the "Declaration"), with respect to the Property that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deed. All provisions hereinafter with respect to the insertion in or the application to the Deed of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

(b) Description of Covenants and Restrictions.

The Covenants and Restrictions to be imposed upon the Redeveloper until a Certificate of Completion is issued and recorded in the Deed and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Devote the Property to the uses specified in the Redevelopment Plan, as may be amended, and as agreed herein, and shall not devote the Property or any portion thereof to any other uses;
- (ii) Pursuant to the Applicable Law(s), not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof;
- (iii) In the lease or occupancy of the Property or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age,

race, color, creed, religion, ancestry, national origin, sex, affectional or sexual orientation, gender identity or expression, disability or marital status, and the Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, affectional or sexual orientation, gender identity or expression, disability or marital status to the extent required by the Applicable Law(s);

- (iv) Commence Construction of the Improvements within times set forth in the Project Schedule in which is attached and annexed hereto as Exhibit B provided that the Governmental Approvals are not delayed by the actions or inactions of the Municipality or any Governmental Body, or any Event of Force Majeure; and
- (v) Not sell, lease, or otherwise transfer the Property, or any part thereof, without the written consent of the Municipality, except for permitted Transfers to a Qualified Entity and/or as otherwise may be permitted pursuant to this Agreement.

(c) Effect and Term of the Covenants and Restrictions.

It is intended and agreed, and the Deed and the Declaration shall so expressly provide to the extent permitted by the Applicable Law(s), that the Covenants and Restrictions set forth in this Section 6.3 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Municipality, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in this Section 6.3 shall remain in effect until the issuance by the Municipality of a Certificate of Completion, as provided in this Section 6.3, hereof, (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate), except, however, that the Covenants and Restrictions provided in Section 6.3 (i), (ii) and (iii), hereof shall remain in effect without limitation as to time; provided that, until their termination as provided above, such Covenants and Restrictions shall be binding on the Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Property, and the Improvements constructed thereon or any part thereof.

(d) Enforcement by Municipality

In amplification, and not in restriction of the provisions of this Article 6, it is intended and agreed that the Municipality and its successors and assigns shall be deemed

beneficiaries of the Covenants and Restrictions set forth in Section 6.3(b) hereof both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Municipality for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Municipality has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Municipality shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

ARTICLE 7 DEFAULT

7.1 Events of Default. Each of the following shall constitute an Event of Default (hereinafter the “Default”) by the applicable Party:

(a) Either Party’s failure to observe or perform any material, obligation, covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission by the Party designated elsewhere in this Agreement, and except as otherwise specified below, the continuance of such Default for a period of thirty (30) Days after Notice from the aggrieved Party (hereinafter the “Default Notice”) specifying the exact terms of such Default and requesting that such Default be remedied; provided, however, if the Default is one that cannot be completely remedied within thirty (30) Days after such Default Notice, it shall not be a Default until sixty (60) Days after such Default Notice, as long as the subject Party is proceeding in good faith and with due diligence to remedy said Default as soon as practicable.

(b) Any Party or its successor in interest shall violate any of its Covenants, Restrictions, Representations, Declarations, or obligations to perform under the terms of this Agreement and failure shall have continued for a period of thirty (30) Days after receipt of written Default Notice specifying such Default (or such longer or shorter time as may be specified herein), and demanding that same be remedied, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion;

(c) The Redeveloper shall fail to implement or construct the Project pursuant to the Project Schedule attached and annexed hereto as Exhibit B, subject to the occurrence of an event of Force Majeure or the provisions of this Agreement, or shall abandon or substantially suspend construction of the Project for a continuous period in excess of sixty (60) Days, unless such suspension arises out of an event of Force Majeure, and any such Default, violation, abandonment, or suspension shall not be cured within thirty (30) Days after written demand by the aggrieved Party to do so, or such longer period if incapable of cure within such thirty (30) Day period and aggrieved Party agrees to extend such time to cure, provided that the aggrieved Party has commenced and is diligently prosecuting such cure; or

(d) There is, in violation of this Agreement, any transfer of the fee title to the Property, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within thirty (30) Days after written demand served upon the Redeveloper by the Municipality; or

(e) A Redeveloper default shall have occurred under any financing agreements for the Project, and the period for cure shall have elapsed after receipt by the Redeveloper of written notice under such agreements specifying the nature of such failure and requesting that such failure be remedied, without cure having been affected, and enforcement proceedings having been commenced.

(f) i) the Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper having a ninety (90) Day period to resolve same; or (iii) the Redeveloper, (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors.

(g) A decision or order determination by a court of competent jurisdiction that the Redeveloper has engaged in fraud in the inducement of, or willful misconduct in connection with the Project.

(h) A Municipality Default shall have occurred if the Municipality shall fail to timely perform and/or cure any of its responsibilities and obligations under this Agreement and failure shall have continued for a period of thirty (30) Days after receipt of written Default Notice specifying such Default (or such longer or shorter time as may be specified herein).

7.2 Right to Cure Upon Event of Default. Except as otherwise provided in this Agreement, in the event of any Default in any of its terms or conditions by any Party hereto or any successor to such Party, such Party (or successor) shall, within thirty (30) Days (or such longer, or shorter, period to the extent expressly provided above) of receiving written Default Notice from another, proceed to cure or remedy such Default. In case such action is not taken or diligently pursued, or the Default shall not be cured or remedied within such prescribed time, or any extension of such time granted at the discretion of the aggrieved Party, the aggrieved Party may pursue its remedies in accordance with this Agreement.

7.3 Municipality's Remedies.

If the Redeveloper shall fail to timely cure any Default by the Redeveloper as set forth in Section 7.1, hereof the Municipality shall have the right to:

(a) terminate this Agreement and to de-designate Redeveloper with respect to the Project or relevant portion of the Property which has not received a Certificate of Completion; and

(b) pursue all other remedies available to it at law or equity, including but not limited to reasonable attorney fees and costs of Court.

7.4 Redeveloper's Remedies. If the Municipality shall fail to timely cure any event of Default by the Municipality as set forth in Section 7.1, the Redeveloper shall be entitled, in its sole and absolute discretion, to terminate this Agreement and/or seek any other remedies available to it at law or equity.

7.5 Limitation of Liability. The Parties agree that in the event of any Default under this Agreement, the Parties shall look solely to the Parties hereto and their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, elected officials, representative or other person affiliated with such Party shall be personally liable for any such judgment or damages. In no event shall either Party be responsible for any consequential or punitive damages.

7.6 No Waiver of Rights and Remedies by Delay. Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved Party of or limit the aggrieved Party's rights in any way (it being the intent of this provision that the aggrieved Party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved Party may still resolve the problems by the Default involved; nor shall any waiver in fact made by the aggrieved Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other Default(s) by the other party under this Agreement or with respect to the particular Default except to the extent specifically waived in writing.

7.7 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Default or of any of its remedies for any other Default by the other party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

7.8 Force Majeure. For purposes of this Agreement and as otherwise used in this Agreement, "event of Force Majeure" shall mean any of the events or conditions set forth in the definition of this phrase set forth earlier herein, or any combination thereof, or other similar events or conditions that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (hereinafter the "Affected Party") under this Agreement:

- (a) An act of God including severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other weather conditions, pandemic, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people, or any other similar act or event outside the control of the Affected Party;
- (b) The condemnation, taking, seizure, involuntary conversion, or acquisition of title to or use of the Property, or any material portion or part thereof, by the action of any federal, state, or local government or governmental agency or authority;
- (c) Delays incurred in obtaining Governmental Approvals caused solely by the relevant Governmental Body after the Affected Party has taken all required action in obtaining such Governmental Approval and the continued delay is outside and beyond the control of the Affected Party;
- (d) Delays resulting from legal challenges brought to challenge any Governmental Approval related to this Project by third parties over whom the Affected Party has no control that have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;
- (e) Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees, or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of Redeveloper and have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;

7.9 Notice of an Event of Force Majeure. If an event of Force Majeure has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such event of Force Majeure shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within five (5) Days following such Party's knowledge of the occurrence of such event of Force Majeure. The party receiving such notice may contest and/or reject the claim of an event of Force Majeure in writing, setting forth its bases for such rejection and demanding that the Affected Party proceed with its obligations under this Agreement. If the Affected Party intends to continue to rely upon the condition claimed to result in an event of Force Majeure, it may request, in writing, a neutral professional review. The Parties shall then mutually select and designate a local member of the profession to which the event of Force Majeure relates and agree to permit such individual to arbitrate and decide the reasonableness of the claim an event of Force Majeure and the appropriate extension of time to be granted to the Affected Party.

7.10. Effect on Obligations.

(a) Upon the occurrence of an event of Force Majeure, the applicable deadline, obligation, or term affected by such event of Force Majeure shall be extended for a period of time equal to the delay caused by the event of Force Majeure, provided that timely notice was provided by the Affected Party.

(b) The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an event of Default where such performance, failure of performance or delay in performance is/are the result of an event of Force Majeure, provided, however, that the event of Force Majeure (a) was not invoked in bad faith or intentionally by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the event of Force Majeure.

(c) Each Party shall diligently and in good faith seek to mitigate the effect of such event of Force Majeure and to perform its obligations to the extent practicable notwithstanding the occurrence of an event of Force Majeure and to overcome such event of Force Majeure as soon as is possible or practicable.

(d) Reinstatement of Performance Obligations. The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an event of Force Majeure and, in the case of the party not seeking to delay its performance based upon such event of Force Majeure, after receipt by such party from the Affected Party of written notice that the event of Force Majeure is no longer occurring and that such party can resume performance of its obligations under this Agreement.

7.11 Defense of Governmental Approvals. Notwithstanding any of the above, the Redeveloper shall assume the defense of any challenge to any Governmental Approval it requires in order to proceed with the Project without cost to the Municipality so as to continue to move forward with the Project.

ARTICLE 8
INSURANCE

8.1 Insurance Requirement. During the term of this Agreement, or as required prior to any construction at the Property, the Redeveloper, or its contractors, shall provide and maintain adequate insurance including the types of coverage and in amounts reflecting industry standards for adequate insurance against risk of loss and casualty in connection with the type, extent and magnitude of work to be performed under this Agreement until such work has been Completed and furnish the Municipality with a copy of certificates of insurance prior to commencement of

any site work evidencing that the Redeveloper has obtained such insurance. Such policies shall include, but not necessarily be limited to:

(a) Contractor's Comprehensive General Liability and Property Damage Insurance in the amount of Two Million and 00/100 (\$2,000,000.00) Dollars naming the Borough as an additional insured, with waiver of subrogation and indemnification and hold harmless provisions; and

(b) Builders Risk/Installation Coverage or its Equivalent, on a Replacement Cost basis in an amount equal to or exceeding the full insurable value of the Improvements, or the maximum exposure to a single occurrence; and

(c) Vehicle Liability and Property Damage Insurance in the amount of One Million and 00/100 (\$1,000,000.00) Dollars comprehensive single limit per occurrence and Five Hundred Thousand and 00/100 (\$500,000.00) Dollars property damage on all vehicles.

8.2 Insurance Pre-Condition to Commencement of Construction. The Redeveloper shall not commence site work until it has obtained the insurance required under this section. All coverage shall be with insurance carriers licensed and admitted to do business in New Jersey and reasonably acceptable to the municipality.

8.3 Insurance as Primary Coverage. This coverage shall be primary to any other policies of the Municipality Indemnified Parties and shall not be contributing with any other insurance or similar protection available to the Municipality whether other available insurance be primary, contributing, or excess.

8.4 Continuation Of Coverage. The Redeveloper shall be required to maintain the above policies during and throughout the term of this Agreement. If any of the above coverages expire during the term of this Agreement, the Redeveloper shall deliver renewal certificates and/or policies to the Municipality at least sixty (60) Days prior to the expiration date. All insurance certificates provided by the Redeveloper under this Agreement shall stipulate that the insurance will not be changed or canceled without giving at least sixty (60) Days written notice to the Municipality by certified mail.

ARTICLE 9 **INDEMNITY**

9.1 Obligation to Indemnify. The Redeveloper and the Municipality (collectively the "Parties") agree to indemnify and hold each other and their respective officials, members, agents, servants, employees and consultants (hereinafter collectively referred to as, the "Indemnified Parties") harmless from and against any and all Claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys' fees and expenses and experts' fees and expenses) (hereinafter collectively referred to as, "Claims") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage

to property, arising from or in connection with the condition, use, possession, conduct, management, planning, design, financing, implementation, construction or maintenance of the Project, marketing, leasing or sale of the Property or the Project or any activities of or on behalf of the Redeveloper or the Municipality within the Property, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of the Indemnified Parties. The Redeveloper or the Municipality shall provide notice to the other Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) Days of the Redeveloper or the Municipality, as applicable, receiving actual notice of the subject Claims, provided, however, that in the event such notice is not timely received, the Redeveloper or the Municipality shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

9.2 Indemnification Coverage. In any situation in which the Indemnified Parties are entitled to receive and desire defense and/or indemnification, the Indemnified Parties shall give prompt notice of such situation to the Redeveloper or the Municipality, as the case may be. Failure to give prompt notice shall not relieve the Redeveloper or the Municipality of any liability to indemnify the Indemnified Parties, unless such failure to give prompt notice materially impairs the Redeveloper's or the Municipality's ability to defend. Upon receipt of such notice, the Redeveloper or the Municipality shall resist and defend any action or proceeding on behalf of the Indemnified Parties, including the employment of counsel reasonably acceptable to the Redeveloper or the Municipality, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper and the Municipality shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the Redeveloper or the Municipality unless the employment of such counsel is specifically authorized by the Redeveloper or the Municipality, which authorization shall not be unreasonably withheld or delayed, provided, however, that if the defense of such action is assumed by the Redeveloper's or the Municipality's insurance carrier, employment of such separate counsel by the Redeveloper or the Municipality shall be at the sole discretion of such carrier. The Redeveloper or the Municipality shall not be liable for any settlement of any such action effected without their respective consent, but if settled with the consent of the Redeveloper or the Municipality, or if there is a final judgment against the Redeveloper party or the Municipality party in any such action, the Redeveloper or the Municipality, as the case may be, shall indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Indemnified Parties are entitled to indemnification hereunder.

9.3 Survival of Indemnity. The provisions of this Article 8 shall survive the termination of this due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as a result of the recording of a Certificate of Completion, provided, however, that such indemnity shall be binding on each successor in interest to the Project, the Property, respectively, only for such period as the Redeveloper or such successor or party shall have title to, or an interest in, or possession of the Property, the Improvements, or any portion thereof.

ARTICLE 10 **NOTICES AND DEMANDS**

10.1 Notice Provisions. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number), or by email (evidenced by confirmation of receipt to a verified email address) or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses, facsimile numbers or emails:

If to the **Municipality**, to:

Julie Falkenstern, Borough Administrator (or Designee)
Borough of Demarest
118 Serpentine Road
Demarest, New Jersey 07627
Telephone: 201-768-1067
Email: boroadmin@demarestnj.gov

With a copy to:

Wendy R. Quiroga, Esq.
Weiner Law Group LLP
629 Parsippany Road
Parsippany, New Jersey 07054
Telephone: 973-403-1100
Fax: 973-403-0010
Email: wrequiroga@weiner.law

If to the **Redeveloper**, to:

Tom Toronto-President
BCUW/Madeline Housing Partners
6 Forest Avenue-Suite 220
Paramus, New Jersey 07652
Telephone: 201-291-4050
Email: ttortonto@bergenunitedway.org.

with a copy to:

Brenda J. Stewart, Esq.
200 Market Street, Suite 401
Montvale, New Jersey 07645
Telephone: 201-799-2116
Fax: 201-799-2116
Email: bstewart@beattielaw.com

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 9.1 change the address, facsimile number or persons to which notices shall be sent.

ARTICLE 11
RESTRICTIONS ON TRANSFERS

11.1 Restrictions on Transfer. So long as this Agreement is effective, prior to the issuance of a Certificate of Completion for the Project, pursuant to the LRHL except as otherwise permitted by this Agreement, the Redeveloper shall be without power to sell, otherwise transfer title to or ownership of the Project or any such part, without the written consent of the Municipality, which consent shall not be unreasonably withheld, delayed or conditioned. The prohibition in this Section 11.1 shall apply to any sale, transfer, pledge, or hypothecation by the Redeveloper of all or substantially all of its assets "in bulk" or all or substantially all of its membership interest in the not for profit entity to a successor, or the sale, transfer, pledge, or hypothecation of fifty (50%) percent or more of the interest of the Redeveloper; or the sale, transfer, pledge, or hypothecation of fifty (50%) percent or more of the beneficial ownership interest in the Redeveloper if the Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases, whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of the Redeveloper which is prohibited by the third sentence of this Section.

11.2 Permitted Transfers. Notwithstanding the foregoing, the Municipality hereby consents, without the necessity of any further approval, but subject to prior notice to the Municipality (except as to conveyances in Sections (a) and (b)), to the following conveyances:

- (a) A conveyance of driveways, roads, infrastructure, or open space.
- (b) Utility and other necessary easements.
- (c) A mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction, and marketing of the Project.
- (d) A conveyance of the Property to the Holder of any mortgage authorized under this Agreement, whether through foreclosure, deed-in-lieu of foreclosure, or otherwise.
- (e) A transfer from the Redeveloper to an Affiliate entity as defined in Section 2.5 hereof or an urban renewal entity for tax abatement or exemption purposes.
- (f) Sale, transfer, pledge or hypothecation of any percent of stock or beneficial ownership interest so long as the original members of the Redeveloper shall maintain a Controlling management interest.

11.3 Conveyance to a Qualified Entity. Upon conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.5 hereof, the Redeveloper shall be relieved of its right and obligations hereunder.

11.4 Subsequent Conveyance by the Redeveloper. Upon issuance of a Certificate of Completion for the Project, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey, or encumber any such portion of the Project without the consent of the Municipality and free of any restrictions imposed by this Agreement.

ARTICLE 12 **MISCELLANEOUS**

12.1 Term. This Agreement shall terminate upon the sooner of Completion of the Project as evidenced by a Certificate of Completion for the Project, or ten (10) years, subject to extension based upon any events of Force Majeure or any other reasonable extension granted in the Municipality's sole discretion (hereinafter "Termination Date"). Within sixty (60) Days after the Termination Date, the Municipality shall adopt applicable resolutions and/or ordinances, pursuant to the LRHL, declaring that the Property is no longer an "area in need of redevelopment".

12.2 No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

12.3 Amendment; Waiver. No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement, including approval by Resolution of the Municipality. The failure of the Municipality or the Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Municipality or the Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Municipality or the Redeveloper.

12.4 Consents. Unless otherwise specifically provided herein, no consent or approval by the Municipality or the Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the Party by or on whose behalf such consent is given.

12.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall

be filed in either the Superior Court of New Jersey, Bergen County, or in the United States District Court for the District of New Jersey in accordance with their respective New Jersey Court Rules.

12.6 Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

12.7 Binding Effect. Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the Redeveloper, the Municipality and their respective successors and assigns.

12.8 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the Redeveloper and the Municipality, their relationship being solely as contracting parties under this Agreement.

12.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

12.10 Prior Agreements Superseded. This Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties respecting the within subject matter. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

12.11 Exhibits. All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

12.12 Affirmative Action. Should the Redeveloper use any public funding or financing for the Project which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (N.J.S.A. 17:27), the Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

12.13 Non-Discrimination. The Redeveloper shall not discriminate against or segregate any person or a group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation, gender identity or expression in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project or the Property; nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation,

with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Property.

12.14 Construction. Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each party and agree that no provision of this Agreement shall be construed in favor of or against either party by virtue of the fact that such party or its counsel have provided an initial or any subsequent draft of this Agreement.

[SIGNITURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of Effective Date.

WITNESS:

BCUW/MADELINE HOUSING PARTNERS,
LLC- Redeveloper

Name: _____

TOM TORONTO Co-Manager

Title: _____

Dated: _____

SHARI DePALMA Co-Manager

WITNESS:

BOROUGH OF DEMAREST
Municipality

Acting Deputy Borough Clerk

BRIAN BERNSTEIN, Mayor

Exhibit A

Project Drawings, Architectural Renderings, and Site Plan (Preliminary)

Exhibit B

Project Schedule

DRAFT

**Borough of Demarest – 127 & 129 Hardenburgh Ave
Preliminary Development Construction Timeline
Affordable Housing Project – 17 units/ 26 beds**

#	Task	Finish Date	Responsibility
1	Execute Transfer & Developer Agreement	5/23	Mayor and Council
2	Engineering & Environmental Soil Testing		BCUW/Madeline – Engineer
3	Architectural Plan Development for Site Plan Submission	2/23	Architect
4	Site Plan Hearing & Approval	3/23	Attorney
5	Project Bidding	3/24	BCUW/Madeline
6	Project Financing Process	3/24	BCUW/Madeline
7	Construction Contract Award	3/24	
8	Submission to Borough’s Building Department & Engineering Department for Permits	10/24	General Contractor
9	Construction Begins	1/25	General Contractor
10	Certificate of Occupancy Granted	2/26	Building Department
11	Tax Exempt Application	2/26	BCUW/Madeline – Tax Assessor

Resolution of the Demarest Governing Body

Resolution No. 105-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

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 \$ 2,616,768.51 on bill list dated May 13, 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:

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 May 13, 2024.

Julie Falkenstern, Acting Borough Clerk

P.O. Type: All
Range: First
Format: Condensed
Vendors: All
Rcvd Batch Id Range: First to Last

Include Project Line Items: Yes
to Last
Received Date Range: 05/02/24 to 12/31/24
Include Non-Budgeted: Y

Open: N Paid: N Void: N
Rcvd: Y Held: N Aprv: N
Bid: Y State: Y Other: Y Exempt: Y

Vendor #	Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
AMERI045	AMERICAN HOSE & HYDRAULICS	24-00367	04/11/24	pump gear	Open	667.02	0.00		
ANTHO010	ANTHONY DIMITRIADIS	24-00491	05/07/24	training meeting breakfast pd	Open	98.96	0.00		
		24-00510	05/09/24	ups reimbursement	Open	14.24	0.00		
						113.20			
ATLAN015	ATLANTIC TOMORROW'S OFFICE	24-00429	04/25/24	copier clicks pd	Open	355.35	0.00		
AUTOM010	AUTOMOTIVE BRAKE CO.	24-00498	05/08/24	April 2024 Invoices	Open	254.16	0.00		
BANCO005	BANCORP	24-00469	05/03/24	pd lease rental	Open	18,242.00	0.00		
BENJA005	BENJAMIN BROS.	24-00493	05/07/24	April 2024	Open	388.64	0.00		
BERGE025	BERGEN CNTY DEPT OF HEALTH	24-00449	04/30/24	nursing svcs, filled syringes	Open	2,136.00	0.00		
BERGE180	BERGEN CNTY, DIV OF TREAS	24-00465	05/03/24	2nd Qtr 2024 County Tax	Open	1,005,096.29	0.00		
		24-00466	05/03/24	2nd Qtr 2024 OpenSpace Tax	Open	45,084.00	0.00		
						1,050,180.29			
BRUNO005	BRUNO ASSOCIATES, INC	24-00456	05/01/24	april 2024 services	Open	2,500.00	0.00		
CASES005	CASES BY SOURCE INC	24-00379	04/15/24	PELICAN CASE 1150 BLUE	Open	490.00	0.00		
CHASA005	CHASAN, LAMPARELLO, MALLON & C	24-00480	05/07/24	Sep 2023 (Tax Appeals)	Open	2,866.60	0.00		
		24-00481	05/07/24	Oct 2023 (Tax Appeal)	Open	3,232.90	0.00		
		24-00482	05/07/24	Nov 2023 (Tax Appeal)	Open	1,650.00	0.00		
		24-00483	05/07/24	Jan 2024 (Tax Appeal)	Open	1,213.00	0.00		
		24-00484	05/07/24	Feb 2024 (Tax Appeal)	Open	1,432.00	0.00		
		24-00485	05/07/24	Mar 2024 (Tax Appeal)	Open	720.00	0.00		
		24-00527	05/10/24	April 2024 (Tax Appeal)	Open	435.20	0.00		
						11,549.70			
COLLI010	COLLIERS ENGINEERING & DESIGN	24-00505	05/09/24	DEP0171A 127 HARDENBURGH AVE	Open	46.25	0.00		
		24-00508	05/09/24	DEZ0039 74 PINE TERRACE	Open	987.50	0.00		

Vendor #	Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
COLLI010 COLLIERS ENGINEERING & DESIGN Continued									
24-00509	05/09/24	DEZ0040	63 CENTRAL AVE	Open	1,281.25	0.00			
24-00512	05/09/24	DEB0063	2024 GENERAL ENGINEER	Open	5,050.00	0.00			
24-00513	05/09/24	DEB0058	MS4 TIER A PERMITTING	Open	4,305.00	0.00			
24-00514	05/09/24	DEP0194	BLANCHE AVE PSEG ROAD	Open	46.25	0.00			
24-00515	05/09/24	DEP0195	ROSS AVE PSEG ROAD OPE	Open	46.25	0.00			
24-00516	05/09/24	DEB0047	PINE TRRACE DRAINAGE I	Open	4,697.50	0.00			
24-00517	05/09/24	DEP106	FRICK ESTATES/WOODLAND	Open	2,358.75	0.00			
24-00518	05/09/24	DEP106	FRICK ESTATES/WOODLAND	Open	1,008.75	0.00			
24-00519	05/09/24	DEP0163	95 COUNTY ROAD	Open	1,265.00	0.00			
24-00520	05/09/24	DEP0201	186 CHESTNUT STREET	Open	386.25	0.00			
24-00521	05/09/24	DEP0200	8 BLANCHE AVENUE	Open	352.50	0.00			
24-00522	05/09/24	DEP0199	38 EVERGREEN PLACE	Open	386.25	0.00			
24-00523	05/09/24	DEP0203	16 DONNYBROOK DRIVE	Open	570.00	0.00			
24-00524	05/09/24	DEP0178	48 MEADOW ST BLD 55	Open	268.75	0.00			
24-00525	05/09/24	DEP0175	146 WOODLAND ROAD	Open	416.25	0.00			
24-00536	05/10/24	DEP0202	38 RODNEY PLACE	Open	1,720.00	0.00			
						<u>25,192.50</u>			
CROSS010 CROSSING GUARD SERVICES LLC									
24-00501	05/08/24	I#1063	LutherLee 4/22-4/26/24	Open	362.20	0.00			
24-00502	05/08/24	I#1064	Serv NVRHS 4/22-4/26/24	Open	724.40	0.00			
24-00503	05/08/24	I#1065	BoroHal 4/22-4/26/2024	Open	3,984.20	0.00			
						<u>5,070.80</u>			
DECAR005 DECARLO TREE MASTERS									
24-00467	05/03/24	139 anderson ave	remove locust	Open	1,400.00	0.00			
DECOT005 DECOTIIS, FITZPATRICK, COLE &									
24-00265	04/02/24	b1	blanket po 2024	Open	5,856.33	0.00			B
24-00443	04/29/24	PROPERTY SURVEY & LEGAL DESCR.		Open	5,700.00	0.00			
24-00463	05/02/24	dpw	teamsters negotiations	Open	991.50	0.00			
24-00464	05/02/24	PD PBA CONTRACT NEGOTIATIONS		Open	37.50	0.00			
						<u>12,585.33</u>			
DELSP005 DEL'S PEST ARREST INC									
24-00451	05/01/24	DECEMBER 2023 SERVICE		Open	260.00	0.00			
24-00452	05/01/24	JANUARY 2024 SERVICE		Open	260.00	0.00			
24-00453	05/01/24	JAN2024 ANIMAL INSPECTION		Open	650.00	0.00			
24-00454	05/01/24	MARCH 2024 SERVICE		Open	260.00	0.00			
24-00455	05/01/24	APRIL 2024 SERVICE		Open	260.00	0.00			
						<u>1,690.00</u>			
DELTA005 DELTA DENTAL OF NJ INC									
24-00511	05/09/24	I#PM00000001030038	June 2024	Open	3,928.74	0.00			
DEMAR015 DEMAREST BOARD OF EDUCATION									
24-00489	05/07/24	MAY TAX LEVY		Open	1,394,485.00	0.00			
DURAW005 DURAWEAR GLOVE & SAFETY									
24-00475	05/06/24	CALABRATION GAS		Open	1,072.20	0.00			

Vendor #	Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
ELIZA015	ELIZABETH A DE.MARTINO	24-00461	05/02/24	pd colar tags/patches	Open	750.00	0.00		
EQUIT005	EQUITABLE	24-00492	05/07/24	A#20000000033676 I#1554658	May Open	1,729.94	0.00		
IMPAC005	IMPAC FLEET	24-00497	05/07/24	I#SQLIM-952646	April'2024 Fuel Open	6,076.06	0.00		
INSTI005	INSTITUTE FOR PROF DEVELOPMENT	24-00537	05/10/24	Records&Information Mgmt webin	Open	100.00	0.00		
INTER040	INTERSTATE WASTE SERVICES	24-00530	05/10/24	I#9727951	April 2024	49,950.98	0.00		
JBLOC005	J & B LOCK & ALARM INC	24-00430	04/25/24	HEAT DETECTOR/SERVICE	Open	325.00	0.00		
		24-00431	04/25/24	FIRE ALARM MONITORING	Open	360.00	0.00		
		24-00446	04/30/24	I#73148 CentralStationAlarm	Open	390.00	0.00		
		24-00494	05/07/24	I#73185 Alarm Service CentralS	Open	468.50	0.00		
						<u>1,543.50</u>			
LAWOF015	LAW OFFICES OF MARK D. MADAIO	24-00507	05/09/24	RESO (CUTLER 74 PINE TERRACE)	Open	1,012.50	0.00		
LOWES010	LOWE'S	24-00499	05/08/24	Acct #98003339177	April 2024	261.03	0.00		
MAURE005	MAUREEN NEVILLE	24-00441	04/29/24	dunkin donuts reimbursement	Open	108.15	0.00		
MCLOU005	M'CLOUGHLIN, JOHN	24-00476	05/06/24	OFFICER DINNER	Open	300.88	0.00		
		24-00529	05/10/24	Officer meeting	Open	410.00	0.00		
						<u>710.88</u>			
MICHA005	MICHAEL SHIELDS	24-00473	05/06/24	JUNE REIMBURSEMENT FOR PERS	Open	3,797.32	0.00		
MUNIC035	MUNICIPAL CAPITAL FINANCE	24-00479	05/07/24	PMT#6 (CONTRACT)	Open	415.00	0.00		
NJADV005	NJ ADVANCE MEDIA, LLC	24-00447	04/30/24	NOTICE OF DECISION	Open	24.08	0.00		
		24-00533	05/10/24	STAR LEDGER REORG	Open	18.06	0.00		
						<u>42.14</u>			
NJDEP005	NJ DEPT OF HEALTH	24-00468	05/03/24	april dog license	Open	75.00	0.00		
OPTIM005	OPTIMUM	24-00437	04/29/24	A#07802-088748-01-3	April 2024	66.99	0.00		

Vendor #	Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
PARTA005	PARTAC PEAT CORPORATION	24-00174	03/21/24	BEAM CLAY	Open	2,445.54	0.00		
PETER040	PETER SUH	24-00440	04/29/24	reimbursement taper planter	Open	133.64	0.00		
		24-00490	05/07/24	amazon seat cover dpw reimburs.	Open	139.99	0.00		
						<u>273.63</u>			
PHOEN005	PHOENIX ADVISORS, LLC	24-00448	04/30/24	I#11190 BAN Series 2023	Open	1,800.00	0.00		
PIAZZ005	PIAZZA & ASSOCIATES, INC.	24-00531	05/10/24	may consulting fee/postage	Open	200.68	0.00		
READY005	READYREFRESH BY NESTLE	24-00445	04/30/24	I#04D0444045116 3/15-4/14/24	Open	236.56	0.00		
ROCKL005	ROCKLAND ELECTRIC CO.	24-00534	05/10/24	A#46060-50000-9 129Hardenburgh	Open	143.01	0.00		
		24-00535	05/10/24	A#36498-04000-9 Wakelee Rd Lit	Open	143.88	0.00		
						<u>286.89</u>			
SLATT005	SLATTERY TIMOTHY	24-00504	05/09/24	EMT TRAINING	Open	1,780.00	0.00		
STAPL005	STAPLES BUSINESS ADVANTAGE	24-00442	04/29/24	SUPPLIES DEMAREST	Open	1,475.42	0.00		
		24-00478	05/07/24	demarest supplies	Open	25.79	0.00		
						<u>1,501.21</u>			
STATE005	STATE LINE FIRE SAFETY INC	24-00495	05/07/24	I#138373 FireExting-Clip	Open	10.40	0.00		
SUNSE005	SUNSET HAND CAR WASH	24-00439	04/29/24	PD CAR WASH MARCH	Open	345.00	0.00		
		24-00488	05/07/24	april pd car wash	Open	348.00	0.00		
		24-00506	05/09/24	APRIL CAR WASHES	Open	40.00	0.00		
						<u>733.00</u>			
TMOBI005	T-MOBILE	24-00462	05/02/24	A#990625644 03/21/24-4/20/24	Open	460.09	0.00		
TRANS010	TRANSUNION RISK AND ALTERNATIV	24-00471	05/06/24	APRIL BILLING	Open	120.00	0.00		
TRUEG005	TRUEGREEN COMMERCIAL	24-00538	05/10/24	LAWN SERVICE	Open	1,273.74	0.00		
		24-00539	05/10/24	LAWN PESTICIDE FREE	Open	19.17	0.00		
						<u>1,292.91</u>			
VERAL005	V.E. RALPH & SON, INC	24-00436	04/29/24	I#467157 Medical Supplies 3/18	Open	470.82	0.00		

Vendor #	Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
VEOLI005	VEOLIA (SUEZ) WATER NEW JERSEY	24-00528	05/10/24	April 2024 Water Bill Part#2	Open	429.96	0.00		
VERIZ050	VERIZON	24-00500	05/08/24	A#156-986-386-0001-96 4/27/24	Open	206.52	0.00		
VERIZ020	VERIZON (AMB)	24-00438	04/29/24	A#282509230-00002 2/14-3/13	Open	152.88	0.00		
VERIZ030	VERIZON (CALL FORWARDING)	24-00496	05/07/24	A#755-939-643-0001-08 4/17/24	Open	173.00	0.00		
VERIZ045	VERIZON - FIRE -INTERNET	24-00474	05/06/24	VERIZON INTERNET 4/26-5/25	Open	274.00	0.00		
VICT005	VICTORIAS NURSERY	24-00419	04/22/24	SPRING PLANTING	Open	4,440.00	0.00		
WHALE005	WHALEN & IVES	24-00486	05/07/24	failed pressure temp kit labor	Open	120.00	0.00		
		24-00487	05/07/24	replace failed temp kit	Open	420.00	0.00		
						540.00			

Total Purchase Orders: 101 Total P.O. Line Items: 0 Total List Amount: 2,616,768.51 Total Void Amount: 0.00

Totals by Year-Fund Fund Description	Fund	Budget Total	Revenue Total	G/L Total	Total
	3-01	7,749.50	0.00	0.00	7,749.50
	4-01	145,386.90	0.00	2,444,665.29	2,590,052.19
	4-03	0.00	0.00	133.64	133.64
	4-05	0.00	0.00	75.00	75.00
	4-12	0.00	0.00	200.68	200.68
Year Total:		145,386.90	0.00	2,445,074.61	2,590,461.51
	C-04	6,497.50	0.00	0.00	6,497.50
	T-13	12,060.00	0.00	0.00	12,060.00
Total of All Funds:		171,693.90	0.00	2,445,074.61	2,616,768.51

Resolution of the Demarest Governing Body

Resolution No. 106-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION TO AUTHORIZE CASUAL OFFICE LABOR

WHEREAS, the Borough of Demarest is in need of a Full Time Finance Assistant; and

WHEREAS, Shivam Patel was previously appointed as a Part Time Finance Assistant;
and

WHEREAS, the Borough Administrator and CFO have recommended Shivam Patel has gained the experience and skills to serve as Full Time Finance Assistant; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Demarest, County of Bergen, State of New Jersey that Shivam Patel be hired as Full Time Finance Assistant at an annual salary of \$40,000.00 effective May 15, 2024 and subject to the terms of offer letter dated May 13, 2024.

APPROVED:

Brian Bernstein, Mayor

CERTIFICATION

I, Lee Campbell, 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 May 13, 2024.

Julie Falkenstern, Acting Borough Clerk

Resolution of the Demarest Governing Body

Resolution No. 107 -24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang						
Fox						
Marks						
Slowikowski						
Reiss						
Collins						

TITLE: RESOLUTION AUTHORIZING THE CONSTRUCTION MANAGEMENT FOR 2024 RIVERSIDE COOPERATIVE PAVING

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WHEREAS, the Borough of Demarest has a need for construction management services related to FY2024 Riverside Cooperative Paving; and

WHEREAS, the Borough received a proposal dated April 24, 2024 from Colliers Engineering & Design to provide those services, attached, for the sum of \$45,500.00; 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 in account CIF 04-2250; 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 \$45,500.00 a copy of which is annexed to this Resolution.

APPROVED:

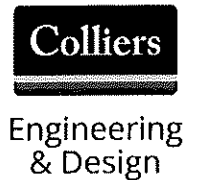
Mayor Brian Bernstein

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 May 13, 2024

Julie Falkenstern, Acting Borough Clerk

400 Valley Road Suite 304
Mt. Arlington New Jersey 07856
Main: 877 627 3772



April 24, 2024

Julie Falkenstern, Borough Administrator
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

2024 Riverside Cooperative Paving Program - Demarest Portion
Professional Engineering Construction Administration Services
Borough of Demarest, Bergen County, NJ
Colliers Engineering & Design Project No. DEB0064P

Dear Mayor and Council,

Colliers Engineering & Design (dba Maser Consulting) is pleased to present the following agreement for construction observation and administration services related to the 2024 Riverside Cooperative Paving Program. Funding will be provided through current bond ordinance(s) and the anticipated capital bond ordinance for capital improvements.

Colliers Engineering & Design has been authorized by the Lead Agency (Northvale) to perform the preparation of specifications for receipt of bids (Riverside Cooperative) on this project. Bids were received on March 28, 2024, and the apparent low bidder is DLS Contracting, Inc. In working specifically with the paving needs identified for Demarest, the Borough's portion of the contract is currently \$316,282.94 based on the bid results.

Section I – Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

TASK I. CONSTRUCTION OBSERVATION AND ADMINISTRATION SERVICES:

Upon award of a contract under the Riverside Cooperative Bid, Colliers Engineering & Design will coordinate a Pre-Construction meeting with the contractor, Borough Officials, and the Department of Public Works (DPW). During construction, Colliers Engineering & Design will monitor the contractor's performance and enforce the adherence to the contract documents and project schedule.

Colliers Engineering & Design will provide the Borough with part-time on-site construction administration services during the concrete work, potential drainage improvements and milling/paving operations. This task should last approximately eight (8) weeks. In addition, Colliers Engineering & Design anticipates that there will be two (2) weeks of part-time construction administration services for the contractor to complete the punch list items. Colliers Engineering & Design will utilize the same construction administrator on the site for the entirety of the project in order to provide consistency for the project. Observation reports will be retained by Colliers Engineering & Design regarding the project. Colliers Engineering & Design will review and prepare contractor's payments as well as change orders (if necessary). If unacceptable work or material is supplied by the contractor, immediate corrective action will be taken by Colliers Engineering & Design on behalf of the Borough. Colliers Engineering & Design

will review the submittals for the projects including shop drawings and as-built drawings provided by the contractor. Prior to completion, a final punch list will be created by the construction administrator and completion deadlines will be scheduled for all open items. Upon completion of the punch list items, a final site visit will be scheduled with the contractor and the Borough to close out the project. Colliers Engineering & Design will prepare the paperwork for final payment for the contractor.

Projected Schedule:

The following is the estimated schedules for the project:

<u>Task</u>	<u>Anticipated Schedule</u>
Construction Contract Award	April 2024
Pre-Construction Meeting	May 2024
Construction Administration Services	Spring/Summer 2024
Project Closeout	Summer/Fall 2024

The goal is to construct the entirety of the project during the 2024 construction season. Please note that this project is weather dependent. Should inclement weather occur, the construction schedule may be altered.

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

Task Name	Fee
Task 1 Construction Observation & Administration Services	\$45,500.00
Total Lump Sum	\$45,500.00

The above services will be provided on a lump sum basis not to exceed the listed amount. This Contract and Fee Schedule is based upon the Borough Engineering Contract authorized by Borough of Demarest (Resolution No. 016-24).

Project Deliverables:

During the contractor payment preparation process, Colliers Engineering & Design will provide the Borough of Demarest with documentation for their review and execution for contractor payment. Certification by the Chief Financial Officer will be required for all closeout documents.

Reimbursable Expenses:

Reimbursable expenses including delivery, printing, copying, postage and other reproducible costs for the above-mentioned deliverables are included within this agreement and are included in the project cost.

Plan Revisions and Extra Services:

Any revision requested by the Borough of Demarest or review agencies that is a major redesign or not an error or omission on the part of Colliers Engineering & Design will be billed on an hourly basis in accordance with our current contract.

Exclusions:

If any item listed herein, or otherwise not specifically mentioned within this agreement or the Borough Engineering Agreement is deemed necessary, then Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra services. Unanticipated additional services will be in accordance with the Schedule of Hourly Rates for the number of hours of effort required. No extra services will be performed without authorization from the Borough.

Please forward a copy of the Resolution of Approval and/or Approved Purchase Order for this agreement to this office. This will constitute approval of the proposed engineering services.

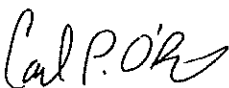
We thank you very much for the opportunity to offer our services and look forward to working with you on this and future projects. In the meantime, should you have any questions regarding this agreement, please feel free to contact me.

Sincerely,

Colliers Engineering & Design



Nick Chelius, P.E.
Borough Engineer



Carl O'Brien, P.E.
Geographic Discipline Leader

cc: Michael Greco (Deputy Borough Clerk)
Deena Rosendahl, Esq. (Borough Attorney)
Peter Suh (Borough CFO)
Jason Gangi (DPW)
Jamie Giurintano, PE (CED)
Robert Culvert (CED)
Marie Raffay, PE (CED)
Craig Zimmermann, PE (CED)
James Priolo, PE (CED)