

**Resolution of the Demarest Governing Body**

**Resolution No. 048 -24**

**February 12, 2024**

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

**TITLE: RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE BOROUGH OF DEMAREST AND THE DEMAREST BAPTIST CHURCH AND AUTHORIZING THE BOROUGH ATTORNEY TO INSITUTE A QUIET TITLE ACTION**

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**WHEREAS,** the Demarest Baptist Church (the “Church”) is the owner of real property known as 563 Piermont Rd., designated as Block 67, Lots 5.01 & 6 on the Tax Map of the Borough of Demarest as well as all a building occupied by the Art School at Old Church which may be known as 561 Piermont Road, Demarest, New Jersey (the “Property”); and

**WHEREAS,** the Church seeks to donate the Property to the Borough subject to a quiet title action with respect to confirmation that the covenants restricting any use of the Property have been extinguished; and

**WHEREAS,** the Borough intends to use the Property as a senior center or other public purpose and is desirous of accepting the donation as described herein; and

**WHEREAS,** in furtherance of accepting the donation of the Property, a Memorandum of Understanding has been presented to the Borough for execution outlining each of the parties understanding as to the donation of the Property, including but not limited to that acceptance of

same is subject to successfully instituting and prevailing in a soon to be filed Quiet Title Action confirming any and all covenants restricting any use of the Property have been extinguished; and

**WHEREAS**, it is in the best interest of the Borough to authorize the Mayor to execute the Memorandum of Understanding, annexed hereto, and to authorize the Borough Attorney to institute a Quiet Title Action with respect to the Property.

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Demarest that the Mayor is hereby authorized to execute the Memorandum of Understanding; and

**BE IT FURTHER RESOLVED**, that the Borough Attorney is authorized to institute a Quiet Title Action with respect to the Property.

**APPROVED:**



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Mayor Brian Bernstein

**CERTIFICATION**

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on February 12, 2024



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Julie Falkenstern, Acting Borough Clerk

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ("MOU"), dated as of February \_\_, 2024 between Demarest Baptist Church, having an address at 563 Piermont Rd., Demarest, NJ 07627 (the "Grantor") and the Borough of Demarest, having an address of 118 Serpentine Rd., Demarest, NJ 07627 (the "Grantee").

### WITNESSETH:

1. Grantor shall convey and Grantee shall accept the following (collectively, the "Property" or "Premises"):

(a) All of Grantor's right, title and interest in and to the parcel of land situated in the Borough of Demarest, County of Bergen, and State of New Jersey, known as 563 Piermont Rd., designated as Block 67, Lots 5.01 & 6 on the Tax Map of the Borough of Demarest and more particularly described on Exhibit "A" attached hereto (the "Premises"); and

(b) Together with all right, title and interest, if any, of Grantor, in and to all rights, privileges, easements, licenses, appurtenances and hereditaments relating to the Premises; and all Improvements (the "Improvements") erected on the Land including but not limited to the building occupied by the Art School at Old Church, which may be known as 561 Piermont Rd.

2. The conveyance contemplated by this MOU is a donation by the Grantor subject to a quiet title action with respect to confirmation that the covenants restricting the use of the Property have been extinguished. Grantor and Grantee acknowledge and agree that the Property is intended to be used as a senior center, benefiting the Borough of

Demarest. While no payment is a consideration for the conveyance, the Grantee agrees to pay the Grantor's reasonable legal expenses and costs incurred in connection with the conveyance, which shall be paid within ten (10) days of the entry of a final and unappealable judgment in the quiet title action.

3. Title:

(a) The Property is to be conveyed on the Closing Date, subject to the following (the "Permitted Encumbrances"):

(i) all easements, covenants and restrictions of record provided same do not render title to the Property uninsurable or unmarketable and do not interfere with Grantee's ability to use the Property for a public purpose, in Grantee's reasonable judgment;

(ii) subject to such state of facts as a survey shall disclose; and

(iii) standard printed exceptions in the ALTA form of title insurance policy extant as of the date hereof.

(b) In the event a title search reveals liens, encumbrances, covenants and such other matters of record, other than the Permitted Encumbrances, such that title is not insurable by the title insurance company at regular rates, Grantee shall, within five (5) days of the receipt of the Commitment, provide Grantor with a statement setting forth Grantee's title objections (the "Notice of Title Objections"). Grantor shall have thirty (30) days from the receipt of the Notice of Title Objections within which to take such actions as are necessary

to discharge the objections. In the event the Grantor is unable or unwilling to discharge the objections within the thirty (30) day period (it being understood that those liens and encumbrances capable of being satisfied by the payment of money need not be discharged until Closing), Grantee shall elect to (i) accept such title as Grantor may be able to deliver; or (ii) terminate this MOU by providing Grantor with Notice to Terminate.

4. Contingencies: The only contingencies are (i) final and unappealable judgment in the quiet title action; and (ii) any formal action required by the Demarest Governing Body. Grantee represents that it has obtained a Phase 1 Environmental Site Assessment for the Property, which reflects that there are no Recognized Environmental Conditions.

5. Closing Date: The closing of title (the "Closing") shall take place through the Demarest Borough Attorney's office on or about fifteen (15) days following the receipt of final and unappealable judgment in the Quiet Title action. Any and all references to "Closing Date" in this MOU shall be deemed to mean and include, as appropriate, all closing dates as the same shall have been accelerated, adjourned or extended.

6. The Closing: At the Closing

(a) Grantor will transfer ownership of the Property to Grantee by Bargain and Sale Deed with Covenants Against Grantor's Acts, duly executed and acknowledged by Grantor, in form reasonably satisfactory to Grantee, conveying to Grantee fee simple title to the Property and any Improvements, subject only to the applicable taxes required hereunder.

This transfer of ownership will be free of all claims and rights of others except for "Permitted Encumbrances". In addition to the Deed, Grantor will deliver to Grantee the following:

- (i) Residency Certification/Exemption (Form GIT/REP3) and, if applicable, a Nonresident Grantor's Tax Declaration (Form GIT/REP1);
- (ii) Affidavit of Consideration, if applicable;
- (iii) Grantor's Affidavit of Title;
- (iv) all keys to the Premises in Grantor's possession, if applicable;
- (v) all original permits, certificates and licenses issued in respect of the Premises, in Grantor's possession (or, if Grantor does not possess the original, but does possess a copy, then a copy certified to be true of any such original permit, certificate or license), if applicable;
- (vi) a Certification that Grantor is not a foreign person pursuant to the Internal Revenue Code of 1986;
- (vii) Property shall be delivered vacant and free of any occupants;
- (viii) FIRPTA Certification;

- (ix) a reaffirmation of the Representations set forth in Paragraph 8(a) below;
- (x) an Estoppel Certificate from the Art School at Old Church in form attached hereto; and
- (xi) such other documents as may reasonably be requested by Grantee's title insurance company and customarily delivered in similar transactions; and

(b) Grantee shall be responsible for the payment of all recording fees in respect of the Deed for the Property and the costs of any title insurance Grantee may obtain. Grantor shall be responsible for the costs of discharging all mortgages and encumbrances which are not Permitted Encumbrances and the payment of the realty transfer tax, if any. Grantee shall pay Grantor's reasonable attorney's fees (at a rate not to exceed \$325.00/per hour). Grantor shall be responsible for any other professional fees it may incur in respect of this transaction.

(c) Grantor will not be responsible to obtain the Certificate of Occupancy, Smoke Detector/Carbon Monoxide Detector Certificate or any other required municipal or governmental certificate unless required to transfer the Property.

7. Representations: (a) Grantor represents and warrants as follows:

- (i) Grantors have full power and authority, in accordance with law, to enter into this MOU and to carry out the transactions provided

for herein. Neither the execution and delivery of this MOU nor the consummation of the transactions provided for herein will constitute a violation or breach by Grantor of any provisions of this MOU or other instrument to which Grantor is a party, or will result in or constitute violation or breach of any judgment, order, writ, injunction or decree issued against, or binding upon Grantor;

- (ii) this MOU is a valid and binding MOU of Grantor, enforceable in accordance with its terms;
- (iii) Grantor is not a party to any litigation, arbitration or administrative proceeding with any person concerning any aspect of the Property or which affects Grantor's right to the Property or Grantor's ability to perform its obligations under this MOU; and Grantor has not received any notice of pending or threatened litigation, arbitration or administrative proceeding affecting or questioning Grantor's right to acquire title to, or use of, the Property or any part thereof;
- (iv) no other person or entity has any right or option to acquire all or any portion of the Property;

- (v) there are no leases or occupancy rights affecting all or a portion of the Property and there are no occupants other than Grantor and the Art School at Old Church pursuant to a month-to-month tenancy with the Art School with rent being paid by the Art School in the amount of \$3,000.00 per month;
- (vi) Property is not located in a flood zone;
- (vii) Grantor has not filed and is not aware of the filing by any party of a petition in bankruptcy with respect to Grantor or for an arrangement or for reorganization of Grantor pursuant to the Federal Bankruptcy Code or any similar law, federal or state, has not been adjudicated a bankrupt or declared insolvent by decree of a court of competent jurisdiction, has not made an assignment for the benefit of creditors, has not admitted in writing its inability to pay its debts generally as they become due, and has not consented to the appointment of a receiver or receivers of all or any part of the Property;
- (viii) Grantor has not caused nor knowingly permitted any "Hazardous Material" (as hereinafter defined) to be placed, held, generated, treated, located or disposed of on, under or at the Property or any part thereof or from the Property into the atmosphere or any water

course, body of water or wetlands, except in compliance with governing laws and has no knowledge of any violation of any environmental law, rule or regulation. As used herein, the term "Hazardous Materials" shall refer to all materials and substances which are defined as such in (or for purposes of) or are otherwise regulated, controlled or within the scope of The Comprehensive Environmental Response, "superlien" law, the Toxic Substance Control Act, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree by any Governmental Entity regulation, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereinafter in effect or any other hazardous, toxic or dangerous waste, substance or material; and

(ix) Neither Grantor, nor to the best of Grantor's knowledge, person or entity holding legal or beneficial interest whatsoever (whether directly or indirectly) in it or the real property, is named on any list of persons, entities and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury pursuant to Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten

to Commit or Support Terrorism, as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America.

Grantee's obligation to close pursuant to this MOU shall be subject to the above representations and warranties being materially correct as of the Closing Date.

- (b) Grantee represents and warrants as follows:
  - (i) Grantee has full power, in accordance with law, to enter into this MOU and to carry out the transactions provided for herein. Neither the execution and delivery of this MOU nor the consummation of the transactions provided for herein will constitute a violation or breach by Grantee of any provisions of any MOU or other instrument to which Grantee is a party or to which Grantee may be subject although not a party, or will result in or constitute violation or breach of any judgment, order, writ, injunction or decree issued against, or binding upon Grantee;
  - (ii) this MOU is a valid and binding MOU of Grantee, enforceable in accordance with its terms; and
  - (iii) Neither Grantee nor, to the best of Grantee's knowledge, any person or entity holding legal or beneficial interest whatsoever (whether directly or indirectly) in it or the real property, is named

on any list of persons, entities and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury pursuant to Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism, as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America; and

8. Apportionments: The following are to be apportioned as of the close of business the day immediately preceding the Closing Date (as may be adjourned from time to time pursuant to Paragraph 6 hereof): NONE

9. Property Conveyed "As Is" Grantee acknowledges that it has been afforded an opportunity to inspect the Property, including environmental inspection, and agrees that it will accept the Property based upon such inspection in as-is, where-is condition, including both latent and patent defects and without warranty of any kind and subject to wear, tear and natural deterioration between the effective date and the Closing. Notwithstanding, Grantor shall transfer to the Grantee the sum of \$\_\_\_\_\_ to be used to repair, renovate and improve any of the improvements located on the Property.

Grantee has not relied on any representations, warranty, promise or statement, express or implied, of the Grantor, or anyone acting for or on behalf of the Grantor, other

than as expressly set forth in this MOU, and all matters concerning the Property have been or shall be independently verified by the Grantee and the Grantee shall purchase the Property on the Grantee's own prior investigation and examination of the Property (or the Grantee's election not to do so).

10. Casualty

In the event of fire or other casualty resulting in a loss or damage to the Improvements or any portion thereof, this MOU shall nevertheless remain in full force and effect subject to Grantee's right to terminate.

11. Grantor's Inability to Convey Title: If through no fault of the Grantor, Grantor shall be unable to convey, or caused to be conveyed as the case may be, insurable title at standard rates in accordance with this MOU, Grantee shall have the right to terminate or to accept such title as Grantor may have.

12. Remedies Upon Default: (a) If on the Closing Date, Grantee shall fail to consummate the transaction contemplated in this MOU for any reason, Grantor shall have the right to terminate this MOU or to compel Grantee to specifically perform but in no event shall Grantor be entitled to damages.

(b) In the event of a default hereunder by Grantor, Grantee shall be entitled to all remedies at law and equity including to compel Grantor to specifically perform hereunder.

13. Broker: Grantee represents to Grantor and Grantor represents to Grantee that it has not dealt with any broker, agent or finder in connection with this transaction. Each

Party shall protect, indemnify and hold the other harmless, including reasonable attorneys' fees, from and against any claim by any broker, agent or finder.

14. Notice: Any notice, request, consent or other communication under this MOU (a "Notice") shall be in writing and shall be given by Federal Express or similar overnight national courier, or by email provided that any notice with a legal effect and served by email shall be immediately followed by overnight courier, addressed to the parties at the addresses hereinabove set forth (any notice to the Grantee shall be addressed to the attention: Borough Clerk). An additional copy of any notice intended for Grantee shall be sent to:

Paul Kaufman, Esq. And  
Deena Rosendahl, Esq.  
Kaufman, Semeraro & Leibman, L.L.P.  
Two Executive Drive, Suite 530  
Fort Lee, New Jersey 07024  
Fax: 201-947-2402  
Email: [pkaufman@decotiislaw.com](mailto:pkaufman@decotiislaw.com);  
[drosendahl@decotiislaw.com](mailto:drosendahl@decotiislaw.com)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed to be delivered upon receipt. Either party may, upon fourteen (14) days' notice to the other, change the address to which notices to such party shall thereafter be given.

15. Assignment: Neither Grantor nor Grantee shall assign this MOU and any assignment shall be void ab initio.

16. Binding Effect: This MOU shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

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

18. Entire Agreement: All understandings and agreements heretofore had between the parties are merged in this MOU, which alone fully and completely expresses their MOU, and it is entered into after full investigation, neither party relying upon any statement or representations, not embodied in this MOU, made by the other.

19. Waiver of Conditions: Grantee and Grantor shall have the right, in the sole and absolute discretion, to waive any of the terms of this MOU which are strictly for their respective benefits and to close title in accordance with the terms and conditions hereof which have not been so waived. Unless otherwise specifically provided herein, any such waiver shall be effective and binding only if made in writing and delivered at or prior to Closing.

No waiver by either party or any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by the other party to so comply.

20. Severability: The terms, conditions, covenants and provisions of this MOU shall be deemed to be severable. If any clause or provision of this MOU shall be deemed to be invalid or unenforceable by a Court of competent jurisdiction or by operation of any applicable law, the same shall be deemed to be severable and shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect, unless such provisions shall relate to the Purchase Price or other monies to be paid hereunder. In such event, Grantor, on not less than ten (10) days' notice to Grantee, shall have the right to terminate this MOU on the date specified in such notice, the Deposit shall be returned to the Grantee and neither party shall have any further obligation to the other.

21.. Further Assurances: After the Closing Date, Grantor and Grantee shall (without additional cost or liability) cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order fully to carry out the intent and purposes of the transactions contemplated hereby.

SIGNATURES ARE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date first written above.

WITNESS:

GRANTOR:  
DEMAREST BAPTIST CHURCH

\_\_\_\_\_

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

ATTEST:

GRANTEE:  
BOROUGH OF DEMAREST

\_\_\_\_\_  
, Clerk

BY: \_\_\_\_\_  
Brian Bernstein, Mayor

EXHIBIT "A"

LEGAL DESCRIPTION