

BOROUGH OF DEMAREST
ORDINANCE NO. #1111-22

ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF DEMAREST
AUTHORIZING REAL PROPERTY TAX EXEMPTION AND PAYMENTS IN LIEU OF
TAXES FOR PROPERTY KNOWN AS BLOCK 23 LOT 13 & 14 PURSUANT TO THE
LONG TERM TAX EXEMPTION LAW, N.J.S.A. 40A:20-1, *ET SEQ.*

WHEREAS, BCUW/Madeline Housing Partners, LLC (the "Redeveloper") has the right and intends to acquire, property known as Block 23, Lot 13 & 14, on the tax map of the Borough of Demarest, County of Bergen, and State of New Jersey and plans to construct on the Property a 100% affordable housing complex including senior, supportive and unrestricted units for low and moderate income families, which will meet in part the Borough's obligation to provide low and moderate income housing in the Borough; and

WHEREAS, the referenced property was, in part, the subject of a certain litigation entitled In Re Petition of the Borough of Demarest, Bergen County, New Jersey and Sylco Investments 6, LLC, et als. v. Borough of Demarest, et als., BER-L-6301-15 and BER-L-6364-19, seeking, among other things, a judgment of compliance and statutory repose on behalf of the Borough, and related relief; and

WHEREAS, the above captioned litigation was settled, and the Final Order of Compliance and Judgment of Statutory Repose was entered on July 8, 2020 by the Superior Court of New Jersey, Law Division-Bergen County; and

WHEREAS, the Redeveloper has been so designated as the Redeveloper of the referenced property, which has been declared an Area in Need of Rehabilitation by the municipal governing body under laws of the State of New Jersey for the purpose of proceeding with the real property acquisition and construction of the affordable housing development thereon; and

WHEREAS, the proposed development will be constructed by a duly authorized corporate entity or entities eligible to received such benefits and subject to the rules and regulations of the New Jersey Fair Housing Act and the Local Redevelopment and Housing Act; and

WHEREAS, the Long Term Tax Exemption Law of New Jersey, N.J.S.A. 40A:20-1, *et seq.* permits a municipality to enter into a financial agreement exempting real property from tax assessment and accepting payments in lieu of taxes where the property is a qualified low and moderate income affordable housing project including a recognized percentage of unrestricted low and moderate income rental housing for families under the aforesaid statutes; and

WHEREAS, it is has been negotiated and agreed, as part of the Settlement Agreement, that in exchange for certain concessions and improvements to be performed by the Redeveloper, the Borough will prepare, execute and deliver an agreement under the LTTE for a Payment In Lieu Of Taxes program, as duly adopted by Ordinance of the Borough of Demarest.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Demarest as follows:

1. The Borough Council of the Borough of Demarest finds, consistent with the judgment of the Court, that the proposed development will meet an existing housing need pursuant to the provisions of the Fair Housing Act of 1985 and that the development will be an improvement made for the purpose of providing affordable, low and moderate income rental housing to qualified families and residents of the Borough and will serve to meet in part the Borough's obligation to provide low and moderate income housing under its fair share obligations with the New Jersey Council on Affordable Housing, as set forth by the New Jersey Supreme Court in its Mount Laurel IV decision, 221 NJ 1 (2015).

2. The Borough Council makes such determination and findings by virtue of, and pursuant to, and in conformity with the Long Term Tax Exemption Law of the State of New Jersey, N.J.S.A. 40:20-1, *et seq.*

3. The land and the proposed development and improvements, after acquisition by the Redeveloper and construction of the affordable housing development thereon, shall be exempt from real property taxation as provided in N.J.S.A. 40A:20-1, *et seq.*

4. The Clerk of the Borough shall deliver a certified copy of this Ordinance approving the tax exemption and financial agreement to the Tax Assessor.

5. Prior to adoption hereof and execution of the financial agreement hereunder, the Redeveloper, through a qualified entity, shall make the required application under N.J.S.A. 40A:20-8, and provide all of the information under that section for review by the Mayor who shall make the appropriate recommendation to the governing body under that section.

6. Upon adoption of the financial agreement, a certified copy of this Ordinance and the financial agreement shall be transmitted to the Director of the Division of Local Government Services.

7. In lieu of real property taxes, the Redeveloper shall make payment to the Borough of Demarest an annual service charge for municipal services supplied to the housing development, pursuant to N.J.S.A. 40A:20-9, in the amount of: Seven Thousand (\$7,000.00) Dollars per year for a period of fifteen (15) years, and Seven Thousand Five Hundred (\$7,500.00) Dollars per year for a period of ten (10) years thereafter, from operating revenue or from such other source as may be available, said payments to commence upon the final issuance of certificates of occupancy of the development. The Borough shall remit five percent (5%) of this annual service charge to the County of Bergen.

8. The tax exemption from real property taxation hereby granted shall continue for the earlier to occur of (a) the passage of twenty seven (27) years from the execution of the Financial Agreement executed and delivered pursuant to this Ordinance; (b) the expiration of twenty five (25) years from completion of the development, defined as the date of issuance of the final certificate of occupancy for any dwelling unit of the development, (c) a determination by the Redeveloper and the Borough that the development is no longer useful or (d) if any dwelling unit covered hereunder is sold individually or in a group less than the entire inventory of the units referenced herein.

9. The Borough of Demarest shall require of the Redeveloper the following:

- a. A copy of its Certificate of Incorporation be filed with the Borough Clerk;
- b. The Redeveloper shall submit annually, within ninety (90) days after the close of its fiscal year, its auditor's reports to the Mayor and Borough Council of the Borough and to the Director of the Division of Local Government Services in the NJ Department of Community Affairs.
- c. Proof shall be provided to the Borough of adherence to the provisions of any state or federal regulations serving to regulate the operation of the development, including, but not limited to COAH eligibility and selection criteria and reporting requirements. Such proof shall be provided as often as may be reasonably requested but in no case less often than required under COAH or FHA regulations.
- d. The Redeveloper shall, upon request of the Borough, permit inspection of the property, equipment, buildings and other facilities of the entity, and also permit examination and audit of its books, contracts, records, documents,

and papers by authorized representatives of the Borough, the County of Bergen or the State of New Jersey.

10. The Redeveloper, COAH, the Superior Court of New Jersey, or any other interested party, may rely upon this Ordinance for the approval of the an application by the Borough for substantive certification and/or a judgment of repose in its affordable housing obligations under the FHA and court decisions interpreting same.

11. The appropriate Borough officials are hereby authorized and directed to execute a Tax Abatement Agreement reflecting the aforesaid annual service charge in lieu of taxes and the contributions and concessions by the Redeveloper.

12. One copy of this Ordinance shall be placed on file with the Borough Clerk and with the Tax Assessor of the Borough of Demarest.

13. Notice of the adoption of this Ordinance shall be published in a newspaper of general circulation in the Borough of Demarest and in Bergen County.

ON MOTION OF:

Fox

SECONDED BY:

Hamilton

ATTEST:

Adeline M. Hanna
ADELINE HANNA, Deputy Borough Clerk

APPROVED:

Melinda J. Iannuzzi
MELINDA J. IANNUZZI, Mayor

This is to certify that the foregoing Ordinance was passed on Introduction by the Borough Council of Borough of Demarest, New Jersey, at a public meeting duly held in accordance with law on October 18, 2022.

Adeline M. Hanna
Adeline Hanna, Deputy Borough Clerk