

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** ("Agreement") made this \_\_\_\_\_ day of October 2020 by and between:

**BOROUGH OF ENGLEWOOD CLIFFS**, a municipal corporation of the State of New Jersey, County of Bergen, having an address at 482 Hudson Terrace, Englewood Cliffs, NJ 07632, (hereinafter the "Borough");

And

**800 SYLVAN AVENUE, LLC**, a New Jersey corporation having an address of 53 Maple Avenue Morristown, NJ 07960 (hereinafter "800 Sylvan" or "Developer");

Collectively, the Borough and 800 Sylvan shall be referred to as the "Parties."

It is expressly understood that the Planning Board of the Borough of Englewood Cliffs is not a party to this Agreement.

**WHEREAS**, on or about July 1, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Englewood Cliffs, County of Bergen, Docket No. BER-L-6119-15 in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related relief (hereinafter "DJ Action"); and

**WHEREAS**, on November 29, 2017, 800 Sylvan filed a motion to intervene in the Borough's DJ Action and, on January 5, 2018, Judge Toskos granted that motion; and

**WHEREAS**, on January 3, 2018, 800 Sylvan filed a builder's remedy suit entitled 800 Sylvan Avenue, LLC v. Borough of Englewood Cliffs, et al; Docket No. BER-L-000069-18; Docket No. A-004019-17, and, on February 13, 2019, Judge Toskos dismissed that lawsuit; and

**WHEREAS**, Judge Toskos transferred the DJ Action to Judge Farrington, and, on March 19, 2018, Judge Farrington entered a Case Management Order to establish a process for mediation with the Borough, 800 Sylvan and FSHC; and

**WHEREAS**, mediation did not culminate in a settlement resulting in Judge Farrington scheduling a trial date and establishing a schedule (a) for the Borough to provide a housing element and fair share plan and supporting expert reports; (b) for Sylvan and FSHC to object; and (c) for the Special Master to make recommendations; and

**WHEREAS**, on January 7, 2019 the Borough of Englewood Cliffs Planning Board held a public hearing to consider adopting a Housing Element and Fair Share Housing Plan ("HEFSP") of the Borough of Englewood Cliffs Master Plan and approved a Resolution adopting the HEFSP; and

**WHEREAS**, on January 24, 2019, the Borough of Englewood Cliffs Council adopted a Resolution endorsing the HEFSP; and

**WHEREAS**, on August 27, 2019, the Court declined to extend immunity to the Borough from builder's remedy lawsuits and subsequently entered an Order on August 30, 2019 that permitted 800 Sylvan to file a Builders Remedy claim ("BRC"); and

**WHEREAS**, 800 Sylvan filed its BRC on August 30, 2019; and

**WHEREAS**, trial of Phase 1 began on October 11, 2019 to evaluate whether the Borough's HEFSP was compliant and by decision rendered and Order entered on January 17, 2020, the Court determined that the Borough's affordable housing compliance plan as set forth in the HEFSP did not satisfy its affordable housing obligations and ordered 800 Sylvan's property be rezoned; and

**WHEREAS**, trial of Phase 2 began on January 22, 2020 to evaluate whether 800 Sylvan should be awarded a builder's remedy, and by decision rendered and Order entered on February 12, 2020 the Court awarded 800 Sylvan a Builders' Remedy directing the Borough to rezone 800 Sylvan's property, which is formally known and designated as Block 910, Lot 1 on the Tax Assessment Maps of the Borough of Englewood Cliffs and commonly known as 800 Sylvan Avenue to allow for 600 units; and

**WHEREAS**, by order entered on April 17, 2020, the Court designated a Special Hearing Officer to review the application to be filed by 800 Sylvan in connection with the development of 800 Sylvan and voided the zoning ordinances of the Borough of Englewood Cliffs; and

**WHEREAS**, the April 17, 2020 order directed 800 Sylvan to submit zoning regulations with its site plan application to the Special Hearing Officer (“SHO”) to be the standards applied to 800 Sylvan’s Site Plan; and

**WHEREAS**, the Honorable Maurice J. Gallipoli, A.J.S.C. (ret.) was appointed as the SHO and adopted a Procedural Memorandum (“PM”) to govern the site plan hearings and also required the submission of zoning regulations; and

**WHEREAS**, prior to the start of the proceedings before Judge Gallipoli further settlement discussions occurred and those discussions have culminated in the within agreement (“Agreement” or Settlement Agreement”) and a separate agreement with FSHC (“FSHC SA”); and

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations 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, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

### **ARTICLE I – PURPOSE**

1.1 The purpose of this Agreement is to create a realistic opportunity for the development of up to ninety (90) affordable rental units available to the region’s low and moderate income households, pursuant to the applicable affordable housing laws and in accordance with the terms set forth herein.

### **ARTICLE II – THE PROCEDURE**

2.1 Upon the execution of this Agreement and the entry of the Consent Order (“CO”) to which this Agreement is to be attached and to which the Parties agreed to the entry thereof, the Parties and/or the Court-appointed Master shall immediately so notify the Court, and request that the Court conduct a joint fairness and compliance hearing within 30 days from publication of a notice, and by no later than December \_\_\_\_ 2020, to determine whether (a) this Settlement Agreement and the FSHC SA are fair and reasonable to low and moderate income households, and (b) to enter a final judgment of compliance and repose (“JOR”). The Parties will request that the Court take action simultaneous with its review of the Settlement Agreement and the FSHC SA to approve the recommendation of the SHO

regarding the 800 Sylvan Property, as defined below in Section 2.2 of this Agreement.

2.2 The zoning standards controlling the future zoning to be applicable to Block 910, Lot 1 ( the "800 Sylvan Property") implementing this Settlement Agreement rezoning the 800 Sylvan Property ("ZS", a copy of which is attached hereto as **Exhibit A**) shall be effective for any application to the SHO and shall be implemented by the Court as part of the fairness and compliance hearing proceedings seeking a JOR.

### **ARTICLE III – SYLVAN OBLIGATIONS**

#### **3.1 Obligation To Limit The Number of Units Constructed**

A. The ZS shall provide the land use controls for the 800 Sylvan Property which will permit the construction of up to 450 units consisting of affordable units and market units, as detailed below, on the portion of the 800 Sylvan Property, consisting of approximately 20 acres, illustrated on the Concept Plan attached hereto as **Exhibit B**. For ease in reference, the roughly 8 acre parcel as shown on Exhibit B shall be referred to as the "R&D parcel" and the roughly 20 acre parcel as shown on Exhibit B shall be referred to as the "Subject Property". The R&D parcel and the Subject Property are illustrated on the Concept Plan attached hereto as **Exhibit B**. If 450 units are constructed, no more than 115 units shall be townhouses and the balance shall be multifamily units, subject to the qualifications and limitations below, with 90 of the multifamily units or 20% of the total units, being affordable units, also subject to the qualifications and limitations below.

B. 800 Sylvan shall also be entitled to subdivide the property and construct a parking structure on the R&D Parcel in accordance with the Concept Plan attached hereto as **Exhibit B**.

#### **3.2 Obligation To Submit Concept Plan for approval by the SHO and Court.**

A. 800 Sylvan shall file and seek approval of its Concept Plan (**Exhibit "B"**) and the Perspective (subject to the perspective being modified to reflect the footprint reflected in the Concept Plan), (attached hereto as **Exhibit C**) by the SHO and the Court.

B. Notwithstanding the foregoing, the Parties acknowledge that 800 Sylvan has not yet engineered the Concept Plan nor have construction drawings been prepared and that, upon engineering the Concept Plan, developing construction drawings, and submission of the Concept Plan, it

may become necessary to seek reasonable waivers, variances, and/or other relief from the ZS to construct the Concept Plan. Further, 800 Sylvan shall have the right to request that the Court amend the ZS to allow for the development envisioned in this Concept Plan, and the Borough hereby commits to consenting to such amendments promptly and expeditiously provided that no use not otherwise permitted in the ZS is requested.

### **3.3 Design Standards and Consent to Extinguish Deed Restriction.**

800 Sylvan shall adhere to the following design standards:

1. Vehicular access to/from the property will be permitted to/from Floyd Street for the townhouse component, pedestrian access and bicycle access shall also be allowed and shall be provided from the portion of the 800 Sylvan Property improved with Townhomes.
2. The Multifamily building will include an interior Kid's room and Fitness room available to residents of the Multifamily units as set forth in the ZS.
3. The access points and circulation, setbacks, parking, and the landscaped areas are to be installed as shown on the Concept Plan, subject to review and approval by state and other agencies having applicable jurisdiction, such as the New Jersey Department of Transportation.
4. Modifications to the R&D Parcel portion of the site shall be permitted as shown on the Concept Plan. Parking shall be permitted on a portion of the front yard in front of the research and development facility as illustrated on the Concept Plan with limited incursion into the portion of the property in front of the proposed apartment building as shown on the Concept Plan. In furtherance of, and in addition to, all other terms of this Agreement the parties acknowledge the existence of a deed restriction encumbering the 800 Sylvan Property contained in a deed dated September 11, 1986 from and to T.J.L. Properties, Inc. recorded in the Bergen County Clerk's Office in Book 7051, beginning at Page 840 (the "DR"). The Parties further agree that: (1) the Court has the "inherent equitable power" to eliminate the DR based on changed circumstances. American Dream at Marlboro, L.L.C. v.

Planning Bd. of Tp. of Marlboro, 209 N.J. 161, 169-170 (2012); and (2) the Court should eliminate the DR because the development pattern in the surrounding area now features front yard parking lots with much smaller setbacks throughout the Sylvan Avenue corridor, including on properties directly adjacent to the 800 Sylvan Property. Therefore, this Settlement Agreement is conditioned upon the Court entering an order in this action that eliminates the DR, which order may be recorded by 800 Sylvan in the County Clerk's office. In addition the Borough agrees to cooperate in connection with, and to facilitate and support, the extinguishment of the DR in this and any other action filed by or defended by 800 Sylvan.

5. An overall multifamily parking ratio of no more than 1.7 parking spaces per apartment unit shall be required, provided that nothing herein shall prevent 800 Sylvan from requesting that the SHO approve a multifamily parking ratio higher than 1.7 parking spaces per apartment unit. To the extent required, the Borough consents to and supports any relief required (if any) to approve and/or construct the improvements depicted on the Concept Plan as shown, to be requested from the SHO, from the RSIS, including by way of example and not limitation the use of a 1.7 parking ratio.
6. The townhouse community shall meet the RSIS parking standards.

### **3.4 Obligation To Deed-Restrict Up To 90 Affordable Units.**

A. 800 Sylvan shall have an obligation to generate up to 90 affordable units.

B. If fewer than four hundred and fifty (450) total units are approved on the 800 Sylvan Property, 800 Sylvan shall be required to maintain a 20 percent set aside of what is approved and constructed.. 800 Sylvan's provision of affordable units under this Agreement shall be its sole obligation with respect to affordable housing, and no municipal affordable housing development fees shall be imposed against the development to take place on the 800 Sylvan property pursuant to this Agreement and the Concept Plan attached hereto provided that 800 Sylvan elects to develop the Subject Property as an inclusionary project in accordance herewith. Nothing

herein is intended to waive or relieve any obligations created by the Nonresidential Development Fee Act.

### **3.5. The Bedroom Distribution of the Affordable Units and the Very Low, Low and Moderate Income Distribution.**

As to the 90 affordable units, the Uniform Housing Affordability Controls (“UHAC”) standards will dictate bedroom distribution and income distribution, except that 13% or 12 affordable units will be family very-low income units at 30% of the regional median income per the FHA.

### **3.6. The Phasing Requirement**

For purposes of phasing, the Townhouse and Apartment components of the project shall be treated as one project, with the COAH “Second Round” regulations phasing formula, N.J.A.C. 5:93-5.6(d), to be applied as follows:

<u>Minimum Percentage of Low and Moderate Income Units Completed</u>	<u>Percentage of Market Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	<u>90</u> 100

The issuance of a CO shall determine when a unit, affordable or market, is complete.

### **3.7 Obligation Regarding Market Housing**

A. None of the market rate townhouses will contain more than 3 bedrooms.

B. The market rate multifamily units will consist of at least 40% of the market apartments being studio units and/or one bedroom units (“One Bedroom Units”). The selection of studios vs one bedroom units shall be at 800 Sylvan’s sole discretion with respect to this 40% limit. No more than 60% of the market apartments shall be two bedroom units (with or without den) and there shall be no market apartments with 3 or more bedrooms.

The bedroom distribution for all affordable units shall be as required by UHAC. The very low and low income units shall be proportionally distributed across each bedroom size.

### **3.8 Obligation To Support Borough's Application for A Grant of A Judgment of Compliance and Repose**

If the Borough has not breached this Settlement Agreement or the FSHC SA, 800 Sylvan shall support the Borough's efforts to secure a JOR consistent herewith.

### **3.9 Obligation To Maintain The Creditworthiness of The Affordable Units**

A. As the affordable units provided for in this Agreement must be deed restricted for at least 30 years per UHAC, the owner(s) of the apartments, including all market and affordable apartments (hereinafter "Apartment Complex Owner"), shall be responsible for maintaining the creditworthiness of all of the affordable units during this Deed Restriction period. The Apartment Complex Owner shall contract with an experienced administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period and to administer the deed restriction to ensure the continuing creditworthiness of the units.

B. If 800 Sylvan does not contract with the Borough's appointed administrative agent, the Borough has the right to approve 800 Sylvan's proposed administrative agent which approval shall not be unreasonably withheld, delayed or conditioned. The Borough pre-approves Piazza & Associates, Inc. and CGP&H, LLC to serve as administrative agent.

### **3.10 Obligation To Supply Such Documentation As The Borough May Require**

A. The owner(s) of all of the affordable units and their Administrative Agent in each of these cases shall work with the Borough and the Borough's Administrative Agent regarding any affordable housing monitoring requirements imposed by the Council on Affordable Housing ("COAH") or the Court.

B. Upon written notice, the owner(s) of all of the affordable units and/or the owner's Administrative Agent shall provide detailed information requested by the Borough or the Borough's Administrative Agent, within 30



days concerning the owner's compliance with UHAC and other applicable laws.

### **3.11 Breach of this Settlement Agreement by the Borough**

If the Borough breaches this Agreement, 800 Sylvan may elect on seven (7) days' notice to the Borough of the breach and give it an opportunity to cure and if it does not cure to:

- a. Seek enforcement of this Agreement and the CO to be entered by way of a motion to enforce litigant's rights or any other action/request to be filed with the Court. If successful, the Borough shall be required to reimburse 800 Sylvan for its reasonable attorney fees and all reasonable costs; or
- b. Terminate this Agreement and reinstate all prior orders entered by the Court in full, to date including but not limited to the orders awarding 800 Sylvan a builder's remedy consisting of 600 units and appointing a SHO. Upon doing so, 800 Sylvan shall request the SHO to reschedule and resume the proceedings authorized by the Court's April 17, 2020 Order as modified by the procedures set forth in the CO for the Concept Plan approval by the SHO.

### **3.12 Obligation To Cooperate**

800 Sylvan agrees to cooperate with the intent and purpose of this Agreement and to develop the 800 Sylvan Property consistent herewith.

## **ARTICLE IV - OBLIGATIONS OF THE BOROUGH**

### **4.1 Obligations To Comply With the Settlement Agreement.**

The Borough shall comply with all provisions of this Agreement

### **4.2 Obligation To Preserve The ZS.**

The ZS to be implemented by this Agreement and CO shall not be amended or rescinded, without the approval of 800 Sylvan or order of the Court.

### **4.3 Obligation To Cooperate With 800 Sylvan's Efforts to Secure Approvals And Applicable Permits:**

The Borough shall not directly or indirectly object to, interfere with or delay and shall fully cooperate with 800 Sylvan's efforts to secure final unappealable approvals and/or permits for the development of the Sylvan Property, including the R&D Parcel, as shown on the Concept Plan and Perspective, attached hereto. Nothing herein shall be construed to require the Borough to participate in the ongoing litigation between 800 Sylvan and the Borough Planning Board captioned: 800 Sylvan Avenue, LLC v. Planning Board of the Borough of Englewood Cliffs, bearing docket Nos: Ber-L-9088-17 and A-003558-18. The Borough shall, through its agents, servants and/or employees promptly (but in no event in more than 21 days) act to provide any requested information or take any requested action in connection with 800 Sylvan's request for the execution, endorsement and/or issuance of any approval, permit, support or action needed to permit or facilitate the construction of the Concept Plan or this Agreement. Should the Borough fail to timely review and/or issue any construction permit, 800 Sylvan shall be entitled to request and the Borough does hereby consent to the Court's appointment of a either the State Department of Community Affairs or (at 800 Sylvan's Option) a private or other firm or agent or agency possessing the needed licenses from the State to perform any needed plan review and issue any needed permits to allow for construction of the Concept Plan ("Alternate Building Department"). The cost for the Alternate Building Department shall be paid by the Borough.

#### **4.4 Obligation To Cooperate In 800 Sylvan's Efforts To Secure Approval For Left Turn To/From Route 9W (Sylvan Avenue)**

Subject to the trial court approving this Agreement at a duly noticed fairness and compliance hearing and entering a JOR, the Borough shall fully cooperate with and support 800 Sylvan's request for and applications seeking all required approvals to permit a left turn in and/or out of their property to/from Sylvan Avenue/Route 9W. However, acquisition of said approvals is not a required element, and the development envisioned by this Agreement may nonetheless proceed if such approvals are not acquired. Furthermore, 800 Sylvan shall pay all fees and costs associated with this traffic improvement.

#### **4.5 Obligation To Cooperate In 800 Sylvan's Efforts To Secure The Right To Provide Parking Primarily in Front of the Research and Development Facility**

Provided that 800 Sylvan seeks to develop the 800 Sylvan Property as an inclusionary project, the Borough shall consent by way of the CO toto the extinguishment of the prior deed restriction on parking in the front yard.

#### **4.6 Obligation To Prevent Expenditure of Municipal Funds By Borough of Englewood Cliffs Planning Board In DJ Action**

The Borough agrees to prevent the expenditure of any municipal funds, revenue, or other municipal resources by the Borough of Englewood Cliffs Planning Board for any purpose in or related to the obligations to 800 Sylvan that are related to or arise from the DJ Action, this Agreement, the CO and/or the Sylvan Property. Upon the entry of the CO, the Borough shall notify the Borough of Englewood Cliffs Planning Board that the Borough will not provide any funds to pay any bills, invoices or other costs incurred by the Planning Board in connection with any proceeding in or related to 800 Sylvan that are related to or arise from the DJ Action, this Agreement, the CO and/or the Sylvan Property. This provision does not impact the Borough's obligation to appropriate funds for the normal expenses of the Borough of Englewood Cliffs Planning Board, and the Borough is not obligated to discontinue funding for such normal expenses associated with customary operations of the Borough of Englewood Cliffs Planning Board for matters including, but not limited to, employing a secretary and professionals to attend meetings and consider applications for development other than those arising out of this Agreement, the CO and/or the Sylvan Property. This obligation to prevent the expenditure of municipal funds, revenue or resources is specifically applicable to any permit sought by 800 Sylvan or any judicial proceeding arising therefrom. Notwithstanding the provisions in this section, the Borough may provide to the Borough of Englewood Cliffs Planning Board with funds in an amount not to exceed \$10,000 for the purposes of reviewing the ZS, the Concept Plan, or any other aspect of 800 Sylvan's development of the Sylvan Property.

### **ARTICLE V – MUTUAL OBLIGATIONS**

#### **5.1. Obligation To Comply with State Laws**

The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the proposed project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement. Provided that any of these laws have waiver provisions or the ability to seek relief is otherwise available, nothing herein shall be interpreted to prevent 800 Sylvan from requesting relief from any such laws in order to develop the Property as set forth in this Agreement.

## **5.2 Mutual Good Faith, Cooperation and Assistance.**

The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement and the entry of any necessary orders or actions to be entered and/or directed by the Superior Court, the implementation of the ZS, the development of the 800 Sylvan Property as an inclusionary project consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

## **5.3 Application Of Affordable Housing Credits**

The Parties acknowledge that the Borough intends to seek ninety (90) affordable housing credits towards addressing its unmet need. Upon written notice, 800 Sylvan agrees to supply the Borough all documents within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units and bedrooms as the case may be.

## **5.4 Waiver of Appellate Rights**

In mutual consideration for the execution of this Agreement and subject to the trial court approving this Settlement Agreement and the FSHC SA at a duly notice fairness and compliance hearing and entering a JOR, the Parties agree to waive any and all appellate rights that they may have as well as any rights they may have to bring claims related to or arising out of the DJ Action in any court of competent jurisdiction. Specifically, subject to any rights under this Agreement, the FSHC SA and any JOR, the Parties voluntarily agree to waive and surrender any and all claims arising out of any order, decision, opinion or ruling, or any failure to enter any order, or make any decision, opinion or ruling in the DJ Action and agree not to seek any relief, of any kind, regarding any order, decision, opinion or ruling in the DJ Action in the Superior Court of New Jersey, Appellate Division, the Supreme Court of New Jersey, or any court established pursuant to Article III of the United States Constitution. In waiving their appellate rights, the Parties acknowledge that a change in political control of the Borough Council may occur, but such a change would not constitute a change in circumstances that would warrant a retraction of the waiver of the right to appeal. In the event that either Party files an appeal or seeks any relief related to the DJ Action in any court of the State of New Jersey or in any court established pursuant to Article III of the United States Constitution, the non-breaching Party may move to enforce this provision of the Agreement and the breaching Party shall be liable for all legal fees incurred. Additionally, the breaching Party shall be liable to the other party for all costs incurred in connection with the negotiation of this Agreement

and any related costs, including but not limited to fees paid any consultant, attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement and/or the approval of the Concept Plan and Perspective

### **5.5 Defense Of Agreement And ZS.**

Each party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement or defending the Court's approval if appealed by a third party. The Parties shall diligently and vigorously defend any such challenge.

## **ARTICLE VI - NOTICES**

### **6.1 Notices**

Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the 800 Sylvan Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effectuated as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

**TO 800 SYLVAN:**            **800 Sylvan Avenue, LLC**  
Giorgios L. Vlamis  
Stephen J. Cusma, Esq.  
c/o Senlac Ridge Partners  
53 Maple Avenue  
Morristown, NJ 07960

**WITH COPIES TO:**       **Hill Wallack LLP**  
Attention: Thomas F. Carroll, III, Esq.  
21 Roszel Rd.  
Princeton, NJ 08540  
Fax: (609) 452-1888

**Beattie Padovano, LLC**

Attention: Antimo A. Del Vecchio, Esq.  
50 Chestnut Ridge Road, Suite 208  
Montvale, New Jersey 07645  
E-Fax: (201) 642-5307

**TO THE BOROUGH OF  
ENGLEWOOD CLIFFS:**

**The Borough of Englewood Cliffs**

Attention: Lisette Duffy  
Borough of Englewood Cliffs  
482 Hudson Terrace  
Englewood Cliffs, NJ 07632  
Fax: (201) 569-4356

**WITH COPIES TO:**

**Surenian Edwards & Nolan, LLC**

Attention: Jeffrey R. Surenian, Esq.  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Fax: (732) 612-3101

**AND TO:**

**Albert H. Wunsch, III, Esq.**

400 Sylvan Ave., #2  
Englewood Cliffs, NJ 07632  
Fax: (201) 541-0606

**Chiesa Shahinian & Giantomasi, P.C.**

Thomas J. Trautner, Jr. Esq.  
1 Boland Drive  
West Orange, NJ 07052  
Fax: (973) 530-2279

**Joseph R. Mariniello, Jr.**

Mariniello & Mariniello PC  
265 Columbia Ave.  
Fort Lee, NJ 07024  
Fax: (201) 947-6605

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

**ARTICLE VII - MISCELLANEOUS**

**7.1 Severability**

Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

## **7.2 Successors Bound**

The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the 800 Sylvan Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

## **7.3 Governing Law**

This Agreement shall be governed by and construed by the laws of the State of New Jersey.

## **7.4 No Modification**

This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

## **7.5 Recording**

800 Sylvan may record this Agreement in the Clerk's Office of Bergen County within 30 days from approval of this Agreement by the Superior Court following a duly noticed fairness hearing.

## **7.6 Effect of Counterparts**

This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

## **7.7 Voluntary Agreement**

The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each Party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

### **7.8 Interpretation**

Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

### **7.9 Entire Agreement**

This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

### **7.10 Conflict Of Interest**

No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law, absent the need to invoke the Rule of Necessity.

### **7.11 Waiver**

Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

### **7.12 Captions**

The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.



### **7.13 Default**

In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within seven (7) days. In the event the defaulting Party fails to cure within seven (7) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available or obtain other relief as provided for in this Agreement. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

### **7.14 Notice of Actions.**

The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

### **7.15 Construction, Resolution of Disputes.**

This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Bergen County. Service of any complaint may be effected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

### **7.16 Conflicts.**

The Parties acknowledge that this Agreement will be effectuated by the entry of a CO entered in the DJ Action. The Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement.

### **7.17 Effective Date**

This Agreement shall be effective upon the entry of the CO entered by the Court.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

**800 SYLVAN AVENUE, LLC**

By: Giorgios L. Vlamis

\_\_\_\_\_

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

Giorgios L. Vlamis

Dated: October \_\_\_\_\_, 2020

Witness/Attest:

**BOROUGH OF ENGLEWOOD CLIFFS**

By: Council President, Gloria Oh

\_\_\_\_\_

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

Gloria Oh, Council President

Dated: October \_\_\_\_\_, 2020

**EXHIBIT A**  
**Zoning Standards**

**EXHIBIT B**  
**Concept Plan**

**EXHIBIT C**  
**The Perspective**