

MARTIN W. KAFAFIAN (NJ, NY, DC BARS)
 ADOLPH A. ROMEI (NJ, NY BARS)
 JOHN J. LAMB (NJ BAR)
 ANTIMO A. DEL VECCHIO (NJ, NY, DC BARS)
 ROBERT A. BLASS (NJ, NY BARS)
 ARTHUR N. CHAGARIS (NJ BAR)
 STEVEN A. WEISFELD (NJ, NY BARS)
 IRA E. WEINER (NJ BAR)
 RENATA A. HELSTOSKI (NJ, NY BARS)
 MICHAEL STERNLIEB (NJ BAR)
 DANIELE CERVINO (NJ, NY BARS)
 ARTHUR M. NEISS (NJ, NY BARS)
 DANIEL L. STEINHAGEN (NJ, NY BARS)
 MARTIN R. KAFAFIAN (NJ, NY BARS)

OF COUNSEL

ROGER W. BRESLIN, JR. (NJ BAR)
 THOMAS W. DUNN (NJ BAR)
 DANA B. COBB (NJ, NY BARS)
 IRA J. KALTMAN (NJ, NY BARS)
 MARY ELLEN B. OFFER (NJ, NY BARS)
 EMERY C. DUELL (NJ, NY BARS)
 JOSEPH A. RIZZI (NJ BAR)
 PATRICK J. MONAGHAN, JR. (NJ, NY BARS)



BEATTIE
 PADOVANO LLC

COUNSELLORS AT LAW
 200 MARKET STREET, SUITE 401
 MONTVALE, NEW JERSEY 07645

(201) 573-1810

www.beattielaw.com

NEW YORK OFFICE:
 99 MAIN STREET, SUITE 319
 NYACK, NEW YORK 10960
 (845) 512-8584

June 25, 2021

COUNSEL TO THE FIRM
 BRENDA J. STEWART (NJ BAR)
 JAMES V. ZARRILLO (NJ, NY BARS)
 JEANETTE A. ODYNSKI (NJ, NY BARS)
 CRISTIN M. KEEGAN (NJ, NY BARS)

MARIYA GONOR (NJ, NY BARS)
 IAN M. EASTWICK (NJ, NY BARS)
 KIMBERLEY A. BRUNNER (NJ, NY BARS)
 JOSEPH A. DIPISA III (NJ, NY BARS)
 JASON A. CHERCHIA (NJ, NY BARS)

RALPH J. PADOVANO (1935-2016)
 JAMES R. BEATTIE (1935-2021)

Reply to New Jersey Office
 Writer's Direct Access
 Email: dsteinhagen@beattielaw.com
 Direct Dial and Fax: (201) 799-2128

Via Email, Facsimile and FedEx

The Borough of Englewood Cliffs
 Borough of Englewood Cliffs
 482 Hudson Terrace
 Englewood Cliffs, NJ 07632

**Re: Settlement Agreement Between 800 Sylvan Avenue, LLC and the Borough of Englewood Cliffs, dated October 7, 2020.
 Notice of Demand Pursuant to Article V, Paragraph 5.4 of the Settlement Agreement**

Dear Sir/Madam:

This firm is co-counsel to 800 Sylvan Avenue, LLC ("800 Sylvan").

As you know, the Borough of Englewood Cliffs and 800 Sylvan entered into a written Settlement Agreement, dated October 8, 2020, concerning the Borough's affordable housing declaratory judgment action and 800 Sylvan's builder's remedy counterclaim (the "Settlement Agreement"). The Settlement Agreement sets forth the rights and obligations of the Borough and 800 Sylvan concerning the development of the 800 Sylvan property.

In light of Judge Farrington's determination on May 21, 2021 that the Borough breached the Settlement Agreement, Article V, Paragraph 5.4 was triggered. That section of the Settlement Agreement provides as follows:

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 costs incurred in connection with the negotiation of this Agreement and any related costs, including but not limited to fees paid to any consultant.

Fifty-One Years of Service

June 25, 2021

Page 2

attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement and/or the approval of the Concept Plan and Perspective.

The Borough did seek relief related to the DJ Action (as same is defined in the Settlement Agreement) when, on April 16, 2021, it filed an Order to Show Cause and Motion that sought to void the Settlement Agreement. The filing of that request for relief was also barred by other provisions of the Settlement, namely Article VII, Paragraph 7.11, by which the Borough and 800 Sylvan waived their rights to challenge the validity of the Settlement Agreement. Yet the Borough's Order to Show Cause/Motion did just that. Judge Farrington determined that the Borough's Order to Show Cause /Motion constituted a breach of the Settlement Agreement.

We hereby place the Borough on notice that due to its breach of the above-quoted provision of the Settlement Agreement, that 800 Sylvan seeks all costs/fees as described in Paragraph 5.4 of the Settlement Agreement, and that immediate payment of same is hereby demanded within seven (7) days of the date hereof. The total costs incurred by 800 Sylvan Avenue since it began negotiating the Settlement Agreement with the Borough on September 30, 2020 is \$1,803,472.03¹.

Demand is hereby made pursuant to the above-cited provision of the Settlement Agreement that the Borough immediately wire the amount of \$1,803,472.03 to Beattie Padovano's account as follows:

Bank of America
80 Chestnut Ridge Road
Montvale, New Jersey 07645
Credit: Beattie Padovano LLC, Attorney Business Account
Account Number: 0154107275
ABA Routing Number: 026009593 (Domestic)
ABA Routing Number: 021200339 (FOR ACH ONLY)

In the event the Borough fails to compensate 800 Sylvan for its breaches in the manner provided by Paragraph 5.4 of the Settlement Agreement with seven (7) days of the date of receipt of this letter, 800 Sylvan shall move, pursuant to Paragraph 3.11(a) of the Settlement Agreement, for enforcement of the Settlement Agreement and for its costs and fees incurred in connection with the enforcement of the Settlement Agreement as described above.

800 Sylvan does, of course, reserve the right to supplement the above figure as the expenditure of additional costs and fees may be required to enforce the Settlement Agreement based upon further breaches by the Borough, including but not limited to the filing of an appeal

¹ This amount includes the gross attorney's fees that were payable to Beattie Padovano, LLC and Hill Wallack, LLP. The Borough was ordered to pay 800 Sylvan's attorney's fees regarding the prior enforcement of the Settlement Agreement, but the amount 800 Sylvan is to be reimbursed has not yet been determined. Upon resolution of the amount of attorney's fees awarded pursuant to Judge Farrington's May 21, 2020 Order, the amount already paid will be credited against the total costs incurred.

June 25, 2021

Page 3

Please be guided accordingly.

BEATTIE PADOVANO, LLC
Co-counsel for 800 Sylvan Avenue, LLC

By: *Antimo A. Del Vecchio*
Antimo A. Del Vecchio

c: Thomas F. Carroll, III, Esq.
Eric M. Bernstein, Esq.
Joshua Bauers, Esq.
Leslie London, Esq.
Mary Beth Lonergan, P.P.