



NASSAU CAPITAL ADVISORS, LLC

August 14, 2020

Robert Spolzino, Esq.
Abrams Fensterman
81 Main Street – Suite 306
White Plains, NY 10601

Via Email Transmission Only

*Re: Sinclair Haberman and Belair Building, LLC, Petitioners-Plaintiffs
Against
Zoning Board of Appeals of the City of Long Beach, et. al., Respondents-Defendants*

*Supreme Court of the State of New York – County of Nassau
Index No. 1138/2004
Hon. Jack L. Libert*

Dear Mr. Spolzino:

I have had the benefit over the past several weeks of reviewing materials on the litigation matter captioned above, and discussing the case with you as counsel to Respondents-Defendants in the matter. At your request, I am pleased to provide you with this letter agreement outlining a proposed scope of work and compensation arrangement pursuant to which I would agree to serve as an expert witness in this matter on behalf of Respondents-Defendants on a variety of issues related to the case.

Scope of Work

Among the many issues to be litigated in this matter will be the following:

- (i) an assessment of the financial damages, if any, Petitioners-Plaintiffs suffered as a result of the actions of Respondents-Defendants;
- (ii) a determination of the appropriate time frame(s) any such damages are deemed to have occurred, and
- (iii) a determination of the most appropriate standard or methodology for calculating the present value of such damages (if any) to the present date.

I propose to undertake a review of the file materials on the matter that have been prepared for Respondents-Defendants by the firm KPMG, as well as additional financial and valuation information provided by additional experts you and your defense team may engage. On the basis of my review of these materials, I will undertake my own analysis of the damages issue, including the most appropriate and credible method for assessing such damages, and provide one or more written reports to you.

As the same time, I will undertake an analysis of the most appropriate and reasonable methods for calculating the present value of past damages, if any. Petitioners-Plaintiffs have asserted that the preferred methodology for adjusting past damages to present value is to utilize a blend of returns on investment reported by real estate investment trusts (REITs), including publicly-held REITs. I will include such a methodology in my own analysis

12 VANDEVENTER AVENUE • P.O. BOX 1475 • PRINCETON, NJ 08542 • (609) 430-9700 • FAX (609) 430-9702
www.nassaucap.com • Licensed Real Estate Broker

of appropriate methodologies for making such adjustments to damages. In connection with this portion of my scope of work, I will provide a separate report with my findings and conclusions.

I understand expert reports in this matter are due to be filed with the court by September 11, 2020. I am confident I will be able to complete my initial research and analysis of these matters and provide one or more reports by that date.

If requested, I will be available to provide testimony to the Court in connection with my findings and conclusions. For research and report preparation, I will be assisted in this matter by my associate, Mr. Gerry Doherty, who has worked closely with me on dozens of similar matters over the past several years.

Qualifications:

I previously gave forwarded to you a summary of my professional qualifications as real estate financial advisor and expert witness work in similar matters.

Compensation:

Our compensation for these services will be based on our time devoted to the matter, based upon our hourly rates. My current rate is \$345.00 per hour for research, meeting attendance and report preparation, and \$375.00 per hour for depositions and testimony in court proceedings. Mr. Doherty's rate is \$290.00 per hour for research, meeting attendance and report preparation. I will be the principal in our group that is available for testimony in this matter.

Our fees will cover all routine office and reproduction expenses. Our travel costs will be billed at the current IRS mileage allowance for business travel, plus tolls and parking. We will invoice the City of Long Beach monthly for our services, and payment will be due within 30 days of an invoice.

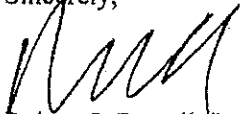
Our compensation is not contingent upon achieving a particular outcome in this matter.

This agreement may be terminated by either party, without cause, upon providing two-week advanced written notice. In the event of termination, we will submit an invoice for work performed up to the date of termination, and upon payment of that invoice, neither party shall have any further obligation to the other.

Attached hereto is an Addendum which supplements and is a part of this Agreement.

We are available to begin work on this matter immediately. If this letter accurately summarizes our agreement, please indicate by having an authorized representative of the City of Long Beach sign in the space provided below and return a copy for my files. We look forward to working with you and your colleagues on this matter.

Sincerely,

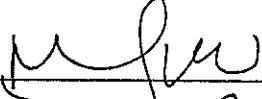


Robert S. Powell, Jr.
Managing Director

Attachment: Addendum

Agreed:

City of Long Beach, New York

By: 
Name: DONNA M GRUDDEN
Title: CITY MANAGER
Date: 8/14/2020

Addendum

This addendum supplements, and is a part of, the agreement between Nassau Capital Advisors, LLC and the City of Long Beach

Payments

Payments shall be made to the arrears and shall be expressly contingent upon (i) the submission of a claim form (the "Claim Form") in a form satisfactory to the City, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with the terms of this Agreement, and (c) is accompanied by documentation satisfactory to the City supporting the amount claimed, and (ii) review, approval and audit of the Claim Form by the City and/or the Comptroller. Draw downs for the payment of eligible expenses shall be made against the activities specified herein and in accordance with applicable performance requirements. Claims shall be made no more frequently than once a week and no later than three (3) months following the City's receipt of the services that are the subject of the claim. Any claims submitted in violation of this paragraph shall not be due and payable by the City and Nassau Capital Advisors expressly waives any and all rights thereto.

Insurance

Nassau Capital Advisors agrees to procure and maintain, with a carrier holding an "A" rating from AM Best Company or its equivalent, the following insurance policies during the term of this Agreement and furnish proof of its procuring of the following insurance policies, or such other documents as are set forth hereunder:

- (a) commercial general liability insurance covering the liability of the Nassau Capital Advisors and indemnifying and holding harmless the City, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a combined single limit (bodily injury/property damage) of Two Million Dollars (\$2,000,000). The City shall be named as additional insured on said policy, however nothing hereunder shall obligate Nassau Capital Advisors and its agents to insure the Indemnitees from and against any claims arising from the negligence or willful misconduct of the Indemnitees; and
- (b) professional errors and omissions insurance in the minimum amount of One Million Dollars (\$1,000,000); and
- (c) workers' compensation insurance if and as required by the State of New Jersey (the only state in which Nassau Capital Advisors has employees) or proof of its not being required to secure same;
- (d) disability benefits insurance if and as required by the State of New Jersey (the only state in which Nassau Capital Advisors has employees) or proof of its not being required to secure same.

The City shall be entitled to thirty (30) days advance written notice of the cancellation or termination of any and all policies listed above at (a) through (d).

Records

Nassau Capital Advisors shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the City Comptroller, including a contemporaneous record of work indicating in brief summary, a description of the work performed. Such books and records shall be retained for a period of six (6) years and shall at all times be available for audit and inspection by the City Comptroller, the City's auditor or a duly designated City representative.