



McFARLAND

Charles B. McFarland
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July 26, 2018

Allison Killian
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019



Re: Cause No. 1074704; *Jones Road Project Ltd v. City of Jersey Village Texas.*; County Civil Court at Law No. 3, Harris County, Texas

Dear Allison:

As requested, I have enclosed a fully-executed original of the Settlement Agreement in the above-referenced litigation.

If you have any questions or comments, please do not hesitate to contact me directly at 713.325.9701

Very truly yours,


Charles B. McFarland

Enclosure

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Settlement Agreement**”) is entered into on the date it is signed by the parties as shown below (the “**Signature Date**”) between JONES ROAD PROJECT LTD., a limited partnership, (“**Project**”), and the CITY OF JERSEY VILLAGE, Texas, a Municipal Corporation principally situated in Harris County, Texas, (the “**City**”), acting through its governing body, the City Council of the City of Jersey Village, Texas (hereafter, Project, and the City are collectively referred to as the “**Parties**”).

RECITALS

The Parties agree that the following recitals are included solely as an aid to the proper construction of this Settlement Agreement.

WHEREAS, a dispute arose between Project and the City when the City adopted District D zoning regulations (through Ordinance No. 2011-25), which restricted development in an area of the City encompassing Project’s property;

WHEREAS, Project owns approximately 10.56 acres of vacant land in the City, located south of US 290, on either side of Jones Road (**the “Property”**), more accurately described in the Option Agreement, which is attached to this Settlement Agreement as **Exhibit “A”**;

WHEREAS, Project claims that the City’s enforcement of the District D regulations limits the development of the Property to uses that are not economically viable and amounts to a regulatory taking;

WHEREAS, the City disputes Project’s claims and contends that Project has failed to ripen its regulatory takings claim because it failed to seek a final decision by the City on an application for a special development plan, failed to fully explore any other development options, and failed to explore the City’s amenability to necessary zoning changes;

WHEREAS, in order to resolve the current dispute, representatives of the parties attended a settlement meeting on April 2, 2018 and reached a tentative agreement to settle the case and to fully and finally resolve Project’s claims against the City, contingent upon the approval of this Settlement

Agreement by the City Council of the City, and in accordance with the terms contained herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the Parties mutually agree as follows:

AGREEMENT

1. City's Purchase Option. The City agrees to pay, and Project agrees to accept, the sum of Seventy Thousand Dollars (\$70,000.00) for a six-month option to purchase the Property for the option price of Two Million Nine Hundred and Fifty Thousand Dollars (\$2,950,000.00) as more fully described in the Option Agreement attached as Exhibit A.

2. City's Right to Extend the Purchase Option. The City shall have the right to extend the first purchase option for an additional six months by paying to Project, on or before the date the first option period expires, the additional sum of Seventy Thousand Dollars (\$70,000.00) as more fully described in the Option Agreement attached as Exhibit A.

3. Project's Right to Share in Profits of Sale in Certain Circumstances. In the event that the City, or its assignee: a) exercises an option to purchase the Property as provided under this Settlement Agreement; b) the City grants a variance from the District D regulating plan with regard to the Property (other than a "minor modification" as defined in the District D regulating plan), or changes the zoning of the Property to another district, before the sale or as a condition of the sale; and c) the City realizes gross proceeds from that sale of the Property that exceed Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00), the City shall pay to Project, within thirty (30) calendar days, fifty percent (50%) of that amount of the gross proceeds received by the City from the sale, that exceeds Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00). In the event the City realizes gross proceeds from the sale of the Property in combination with the sale of any other piece of property, Project shall only be entitled to 50% of the gross proceeds attributable to the sale of the Property.

4. Release of Project's claims. Project agrees that its claims against the City, including those claims asserted in Cause No. 1074704; *Jones Road Project Ltd. v. City of Jersey Village, Texas*, in the Harris County Civil Court at Law No. 3 (the "**Lawsuit**"), are released, without further

action of the Parties, when and if either of the following events occur: a) the City, or its assignee, purchases the Property; or b) the City amends its zoning ordinances to rezone the Property to District K, in its current form. The release described in this paragraph shall apply to the City, and its current or former council members, agents, servants, officials, employees, and assigns and shall cover all claims that Project has asserted, or could have asserted as of the date this Settlement Agreement is approved by the City Council, against any of the parties released.

5. Release of City's claims. The City agrees that any claims it has against Project, are released without further action of the parties, when and if Project's claims against the City are released as provided in paragraph 4, above. The release described in this paragraph shall apply to Project, and its current or former principals, agents, servants, employees, or assigns and shall cover all claims that the City could have asserted as of the date this Settlement Agreement is approved by the City Council, against any of the parties released.

6. Dismissal of current lawsuit. Project agrees to non-suit the Lawsuit, without prejudice, within ten (10) business days after the City Council approves this Settlement Agreement. Notwithstanding the dismissal, Project shall have the right to file a new lawsuit, asserting the same or different claims, if the release of those claims does not become effective as described in paragraph 4 above. With respect to the claims or causes of action relating to, arising out of, or in connection with the Lawsuit, the Parties hereby stipulate that any applicable statute of limitations, laches, and other possible time-bars and defenses based in whole or in part on the time which may elapse from the accrual of such claims to the filing of an action shall be deemed tolled from the effective date of this Agreement until 180 days after the date the City notifies Project in writing that the City will not purchase the Property and will not amend its zoning ordinances to rezone the Property to District K, in its current form.

7. Notices. Any formal notices or other communications (“**Notice**”) required to be given by one party to another by this Settlement Agreement shall be given in writing addressed to the party to be notified at the address set forth below for the party, (a) by delivering the Notice in person, (b) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (c) by depositing the Notice with Federal Express or another nationally recognized courier service guaranteeing next day delivery, addressed to the

party to be notified, or (d) by sending the Notice by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after the third business day following the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the Parties, until changed as provided below, shall be as follows:

All Notices required or permitted under this Settlement Agreement shall be in writing and shall be served on the Parties at the following address:

City: City of Jersey Village
ATTN: City Manager
16327 Lakeview Drive
Jersey Village, Texas 77040
(713) 466-2100

Courtesy copy to:
City of Jersey Village
ATTN: City Secretary
16327 Lakeview Drive
Jersey Village, Texas 77040
(713) 466-2100

Project: Jones Road Project Ltd.

12651 Briarforest Dr.
Suite - 300
Houston Tx - 77077

Courtesy copy to:
Charles B. McFarland
811 Louisiana Street, Suite 2520
Houston, Texas 77002
(713) 325-9701

The Parties may from time to time change their respective addresses, and each may specify as its address any other address within the United States of America by giving at least five (5) business days written notice to the other party. If any date or any period provided in this Settlement Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to 5:00 p.m. C.S.T. on the first business day following the Saturday, Sunday or legal holiday.

8. Warranties. Each party or signatory to this Settlement Agreement warrants that the party or signatory has the power to enter into and perform this Settlement Agreement and has not assigned any rights or claims provided or released by this Settlement Agreement; and this Settlement Agreement's execution by such party or signatory has been duly authorized by all necessary action and that this Settlement Agreement constitutes a valid and binding obligation on that party, enforceable in accordance with its terms. Each party and signatory to this Settlement Agreement warrants that it or he has no suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation pending or threatened against any other party, any other party's business or properties, its financial or other condition, or the transactions contemplated under this Agreement.

9. No Admission of Liability. This Settlement Agreement is a compromise of disputed claims and shall not at any time or for any purpose be deemed an admission of liability by any party.

10. Binding Effect. The Parties understand and expressly agree that this Settlement Agreement shall be binding upon and inure to the benefit of the Parties, their successors, agents, servants, employees, attorneys, representatives, independent contractors, or any other individuals or entities acting in privity or concert with them.

11. Modification. This Settlement Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Settlement Agreement shall be binding unless it is in writing and signed by the party to be charged.

12. Merger. This Settlement Agreement constitutes the final, complete, and exclusive statement of the terms of the Settlement Agreement between the Parties pertaining to the subject matter of this Settlement Agreement and supersedes all prior and contemporaneous understandings or

agreements of the Parties. No party has been induced to enter into this Settlement Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Settlement Agreement.

13. Review by Counsel. Each party has participated fully in the review and revision of this Settlement Agreement. Each party has been afforded sufficient time and opportunity to review the Settlement Agreement with legal counsel of its choice. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Settlement Agreement.

14. Headings. The headings in this Settlement Agreement are including principally for convenience and shall not by themselves affect the construction or interpretation of any provision in this Settlement Agreement, nor affect any of the rights or obligations of the Parties to this Settlement Agreement.

15. Further Documents. The Parties agree that at any time after execution of this Settlement Agreement, they will, upon request of the other party, execute and deliver the further documents and do the further acts and things as the other party may reasonably request in order to effectuate the terms of this Settlement Agreement.

16. Incorporation of Other Documents by Reference. All other documents attached to or referred to in this Settlement Agreement are incorporated into this Settlement Agreement by reference for the purposes set forth in this Settlement Agreement.

17. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18. Effectiveness. This Settlement Agreement will become effective on the date it is approved by the City Council.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives and on the dates shown below, signed this Settlement Agreement in multiple copies, each of which shall be an original, as of the date first given above.


[EXECUTION PAGES FOLLOW]

CITY OF JERSEY VILLAGE,
TEXAS

By: Austin Blase

Date: July 19, 2018

ATTEST:



City Secretary, Lorri Coody

APPROVED AS TO FORM:

City Attorney



JONES ROAD PROJECT LTD.

By: M. P. ITHL, -

Name: SOPAL ISATHISA

Title: Manager

Date: 7/23/18

EXHIBIT A
OPTION AGREEMENT

OPTION AGREEMENT

1. **THIS OPTION AGREEMENT** (the "Option Agreement") is entered into as of the date on which the Settlement Agreement, to which it is attached as an exhibit, is approved by the Jersey Village City Council and is made by and between the City of Jersey Village, Texas (the "City"), a home rule municipal corporation, its successors and assigns, and Jones Road Project Ltd., a limited partnership, its successors and assigns ("Project").

2. Project is the owner of 10.56 acres of real property located south of US 290, on either side of Jones Road, in the City (the "Property"). The Property is more specifically described in **Exhibit A-1** attached hereto and made a part hereof.

3. **NOW THEREFORE**, in consideration of the sum of Seventy Thousand Dollars (\$70,000.00) (the "Option Money"), to be delivered to Project upon full execution of this Agreement by the City and Project and approval by the City Council of the City, Project grants to the City, the exclusive assignable right and option (the "Option") to purchase the Property in accordance with the terms and conditions set forth herein. and in the Proposed Real Estate Purchase Agreement to be attached hereto as **Exhibit A-2** (the "Purchase Agreement").

4. **Option Period.** The Option may be exercised at any time within six (6) months from the date City Council approves the Option Agreement (the "Option Period"). At the City's election, and upon the City's written notice to Project prior to expiration of the Option Period, the Option Period may be extended for an additional period of six (6) months, with an additional payment of Seventy Thousand Dollars (\$70,000.00) by the City to Project for the extension of the Option Period. The Option Period shall not extend beyond twelve (12) months unless the Purchase Agreement is executed prior to the end of the Option Period, including any extension, and the Purchase Agreement's feasibility or due diligence period extends beyond twelve (12) months from the date of City Council's approval of this Option Agreement, in which case the Option Period shall be extended for the period of the feasibility or due diligence period that extends beyond the twelve (12) months but not to exceed ninety (90) days. The City agrees to pay Three Hundred and Eighty-Four Dollars (\$384.00) to Project for each day the Option Period is extended beyond twelve (12) months. To the extent a purchase of the Property closes before the end of the Option Period, Project agrees to reimburse the City the amount of \$384.00 for each day from the closing date through the remaining term of the Option Period. If the City chooses not to

exercise the Option within the Option Period, as it may thereafter be extended as provided herein, the Option shall terminate, all rights and privileges granted hereunder shall be deemed completely surrendered, Project shall retain all money paid for the Option except as provided above, and no additional money shall be payable by either party to the other.

5. Delivery of Option Money. Within ten (10) business days of approval by City Council of this Option Agreement, the City shall deliver the Option Money to Project.

6. Assignment. The City may assign any or all of its Option at any time during the Option Period to any entity or entities. An assignment by the City hereunder shall not release the City from any of its obligations to Project pursuant to this Option Agreement, unless the City's assignee assumes the City's obligations under this Option Agreement and Project expressly consents to such assumption.

7. Copy. The City agrees to provide Project with a copy of any real estate purchase agreement for the Property executed by the City or its assignee within seven (7) business days of execution.

8. Title Policy. The City, at the City's option and sole expense, may obtain a title insurance policy, title commitment, title report, abstract, or any other reports to insure the suitability of the Property for development. Project agrees to fully cooperate with the City's efforts to obtain the above mentioned documents or obtain requested documentation as required by the title insurance company. Project represents it owns good and indefeasible title, free and clear of any and all liens.

Title Company: Chicago Title, Houston
Betty Hull

Address: 3700 Buffalo Speedway
Suite 400
Houston, Texas 77098

Phone: 713-248-0880

9. Inspections. Project shall permit the City during the Option Period, and any extension thereof, free ingress, egress and regress to the Property by the City and its employees, agents and contractors to conduct

subsurface boring tests, radio frequency tests, environmental tests and such other tests, investigations and similar activities as the City may deem necessary, at the sole cost of the City. The City and its employees, agents, and contractors shall have the right to bring the necessary vehicles and equipment onto the Property to conduct such tests, investigations and similar activities. Project grants the City the right to clear all trees, tree limbs, undergrowth, or other obstructions which may interfere with, in the City's sole discretion, the City's ability to conduct such tests, investigations and similar activities.

10. Surveys. Project grants to the City the right to conduct surveys of the Property, including any easements, or any portion thereof. Project will provide the City a precise metes and bounds description (the "Legal Description") of the Property, or one shall be obtained from a boundary survey of the Property prepared by a public land surveyor registered in the state in which the Property is located. If necessary, the cost for such survey work shall be borne by the City. Notwithstanding that this Option and the Purchase Agreement may have been fully executed, upon delivery to Project from the City, Project and the City hereby agree that such survey or Legal Description shall be appended hereto, and to the Purchase Agreement, and shall constitute the determinative description of the Property.

11. Exercise of Option. At the City's or the City's assignee's election, the City or the City's assignee shall exercise the Option by written notice to Project, and the notice shall be deemed effective on the date it is posted. In the event the City or the City's assignee exercises the Option as herein provided, the Purchase Agreement shall become immediately effective upon that exercise and upon payment by the City or its assignee to Project of the consideration provided therein to be paid upon such exercise. No further action by Project or the City shall be required in order for the Purchase Agreement to be effective and in full force and effect. The actual Commencement Date of the Real Estate Purchase Agreement shall be the first day of the month during which the Option is exercised. The City and Project further agree that, if necessary, they will formally execute one or more originals of the Purchase Agreement, and prepare and execute such other documents as may be necessary to consummate the purchase of the Property as contemplated in this Option Agreement, in accordance with the agreed terms of that purchase.

12. Option Price. If the City or the City's assignee exercises the Option, the City or its assignee agrees to purchase the Property for Two Million, Nine-Hundred and Fifty Thousand Dollars (\$2,950,000.00) (the "Option Price") in accordance with the Purchase Agreement.

JONES ROAD PROJECT LTD.

By: Gov. P. Bathisa
Printed name: GOV. P. BATHISA
Title: Manager
Date: 7/23/18

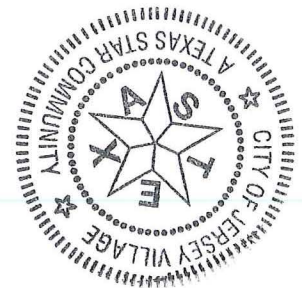
CITY OF JERSEY VILLAGE, TEXAS

By: Austin Bless
Printed name: Austin Bless
Title: City Manager
Date: July 19, 2018

[Signature]

ATTEST:

City Secretary, Lorri Coody



OPTION AGREEMENT

Exhibit A-1

Description of the Property

EXHIBIT A-1

Description of the Property

All of Restricted Reserve "D" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 5.58 acre tract of land described therein.

All of Restricted Reserve "E" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris Count, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 4.98 acre tract of land described therein.

OPTION AGREEMENT

Exhibit A-2

Proposed Real Estate Purchase Agreement

(To be attached at a later date)