

Memorandum

Date: November 9, 2021

To: President Charlot and Members of the Village Board
R. Drew Irvin, Village Administrator

From: Village Attorney
Peter M. Friedman
Hart M. Passman

Re: Stonebridge Litigation
Settlement Agreement

This memorandum summarizes the key terms and provisions of a Settlement Agreement between the Village and SB 2011 LLC (the owner of the Stonebridge Property). The Settlement Agreement is subject to Village Board review and approval pursuant to a vote at a meeting open to the public.

We have prepared this memorandum not only for the Board but also with the expectation that it will be shared publicly to provide additional information to Lake Bluff residents and other interested parties regarding the terms and conditions of the Settlement Agreement and the related Restrictive Covenant.

A. **Dismissal of Lawsuits; Mutual Release.** Within 30 days after the effective date of the Settlement Agreement, the complaint brought by SB 2011 against the Village and the complaint brought by the Village against the property owner will each be voluntarily dismissed with prejudice, with each party to bare its own legal fees. The Circuit Court would retain jurisdiction to enforce the terms of the Settlement Agreement. Each party would also provide the other party with a general release of all claims related to the litigation.

B. **Rezoning of the Property.** The Stonebridge Property is currently governed by (i) a Planned Residential Development ("PRD") approved by the Village in 2006 (Ordinance No. 2006-28), as amended in 2011 (Ordinance No. 2011-07), and (ii) a 2006 Development Agreement. The underlying zoning of the Property is E-1 Estate Residence District. Under the Settlement Agreement, following the required public hearing, the Village will be required to revoke the PRD Ordinance, terminate the Development Agreement, and confirm that the Property will be rezoned to the underlying E-1 Zoning District. No other zoning relief is being considered or granted as part of the Settlement Agreement. The Village has made no commitments with regard to density or other zoning approvals that may be requested as part of future development proposals for the Property.

C. **Resubdivision.** The Village will also resubdivide the Property into a new five-lot subdivision that generally divides the Property into the parts delineated by the current right-of-

way created by the existing subdivision plat. All of the individual lots currently created for residential structures will be eliminated as part of the Resubdivision.

D. **Demolition of Historic Structures.** The Manor House and Gatehouse on the Subject Property are designated Village Landmarks. The property owner previously applied for demolition permits for both structures and completed the advisory review process required under the Village historic preservation regulations. The current PRD Ordinance and the Development Agreement both prohibit the demolition of these structures. Accordingly, with the revocation of the PRD Ordinance and the termination of the Development Agreement, the owner of the property will have the legal right to demolish the structures, and the owner has indicated that it will proceed to do so as part of the implementation of the Settlement Agreement.

Nevertheless, there are some preconditions and requirements set forth in the Settlement Agreement that must take place before demolition can occur.

1. **Manor House.** The Manor House can only be demolished after a 90-day period during which the Village will have the opportunity to identify and remove specific types of architectural artifacts (exterior ornaments, front and interior doors, light fixtures, stain glass windows, and the main room and library fireplaces). The Village is responsible for the cost of removal but not for the value of the artifacts removed. The property owner can extend the time for identification and removal of artifacts if reasonably necessary.

Further, the Village may publicize the pending demolition of the Manor House in order to provide interested parties what would likely be a last opportunity to make an offer to the property owner for the Property or to otherwise save the Manor House from demolition. Under the Settlement Agreement, the property owner must notify the Village within five business days if it receives any offers to sell the Property that contemplate preservation of the Manor House. However, the property owner is not itself required to market the Property for preservation or to accept such an offer.

2. **Gatehouse.** The Gatehouse can only be demolished after a five-month period during which the property owner must market the Property and the Gatehouse for redevelopment or reuse. The marketing will be managed by a national real estate brokerage firm agreed to by the parties. The marketing effort will identify that (i) the front 10 acres are protected from development by the existing Conservation Easement, the Gatehouse is a legal nonconforming structure in the E-1 Zoning District, and the remainder of the Property is in the E-1 Zoning District. The marketing firm must provide the Village with the marketing materials and, upon the Village's request, updates on sales efforts, purchase offers, and similar information. The property owner is not required to accept offers that it may receive during the five-month marketing period.

The property owner has expressed its belief that marketing efforts with regard to the Manor House and the Gatehouse will not be successful. The Village should anticipate that as a result of Settlement Agreement, the Manor House and the Gatehouse will likely be demolished.

E. **Protection of the Front 10 Acres.** Currently, the eastern most 10 acres of the property ("***Front 10 Acres***") are protected from development by a Conservation Easement that was recorded against the property as part of the original development approvals. The property owner desires to extinguish the Conservation Easement as part of its effort to sell or otherwise redevelop the property. It should be noted that the specific terms of the Conservation Easement

are tied directly to the previously approved and now failed residential development on the Property.

The Settlement Agreement provides that the Village will not object to the termination of the Conservation Easement. At the same time, however, the Agreement requires the property owner to execute a new Restrictive Covenant and allow the Village to record the Covenant against the Front 10 Acres. The Restrictive Covenant prohibits construction, installation, or maintenance of any buildings on the Front 10 Acres. It also requires that the Front 10 Acres be maintained by the owner of the property, at the owner's expense, in accordance with the agreed upon maintenance requirements that are attached to the Restrictive Covenant.

While the Village will record the Restrictive Covenant immediately after the Settlement Agreement is approved, the Restrictive Covenant will not take effect until the Conservation Easement is terminated, extinguished, or otherwise no longer effective, and the documents are written so that there will be no gap between the Conservation Easement and the Restrictive Covenant. Further, the Settlement Agreement also contains maintenance requirements for the Front 10 Acres for the period of time after the Settlement Agreement has been approved but before the Conservation Easement has been extinguished.

As explained further below, the Restrictive Covenant will remain in effect unless and until (i) the Village approves a new PRD for the property or (ii) the Village denies a new PRD for the property but that denial is overturned by a court that orders the Village to allow the proposed PRD. In all circumstances, the Village and the owner have the authority to agree otherwise with respect to the termination or continuation of the Restrictive Covenant.

F. **Future Development of the Property.** There are several provisions in the Settlement Agreement related to how the Village will handle future development proposals, as summarized below.

1. Future development of the Property may be by right under the E-1 Zoning without variations or other zoning relief, or through a PRD in any zoning district.

2. For development in the E-1 Zoning District without a PRD, the Restrictive Covenant will remain.

3. For development through a PRD, the Restrictive Covenant would terminate as of the effective date of the new PRD Ordinance.

4. For a new PRD proposal, the Village and the owner/developer must treat the application and the proposed development without regard to the Restrictive Covenant. In other words, the Village cannot refuse to consider a new PRD proposal simply because it does not contemplate the continuation of the Restrictive Covenant that has already been recorded against the property. Likewise, the Village may not use the absence of the Restrictive Covenant as a basis to deny a new PRD proposal. However, the Village may still require the same or similar protection as that afforded by the Restrictive Covenant as a condition of its approval of a new PRD for the property.

5. For a new PRD proposal, the Settlement Agreement sets forth specifically the materials that the applicant will be required to provide in order for the Village to consider preliminary approval of the PRD. This list of required submittals is more comprehensive than the current list of required submittals in the Village Zoning Regulations.

6. At the property owner's request, the Settlement Agreement contains a provision to provide additional certainty regarding the timing of consideration of a new PRD request. The provision requires the Village, at the applicant's request, to ensure that the Board or Commission considering the proposal must vote on the proposal within 30 days after the second meeting at which the matter was considered by that Board of Commission. This time requirement only applies if specifically requested by the applicant.

7. With regard to how the Village's impact fees and land dedication requirements might apply to a future development, the Settlement Agreement simply requires that the Village will consider in good faith how the specific impact fee / land dedication requirements will apply to a new proposed development on the property. Further, the new lots created by the subdivision approved as part of the Settlement Agreement will not affect the impact fees and land dedication requirements that applicable to a new development.

8. The specific procedural requirements for how the Village will consider a new development proposal will terminate once a new development is approved.

G. **Additional Provisions.** The Settlement Agreement contains the following additional provisions:

1. The property owner will provide a replacement letter of credit in the amount of \$135,000 to secure maintenance of the Front 10 Acres, stormwater infrastructure, and roadways and utilities on the property. This would replace the existing \$2.7 million letter of credit.

2. The property owner must pay the full demolition permit fee for the Manor House but not for the Gatehouse and other structures on the property.

3. The property owner must install a new fence to replace the old West Witchwood Lane Fence within 60 days after Village approval of the proposed fence, unless delayed by material or contractor delays.

4. The property owner has the right to install temporary construction fences around the perimeter of the construction / demolition sites.

5. The property owner may complete the entry bridge, subject to Village plan approval.

6. The property owner must maintain and annually flush the water system on the property until the system is dedicated and accepted by the Village in the context of a new development on the property.