

Jeffery White

NO. DC-19-00146

CITY OF ROWLETT, TEXAS, § IN THE DISTRICT COURT
§
Plaintiff, §
v. § G-134TH JUDICIAL DISTRICT
§
BAYSIDE DISTRICT PARTNERS, LLC, §
BAYSIDE LAND PARTNERS, LLC, §
WILLIAM KRUSE and TYLER KRUSE, §
§
Defendants. § DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

The City of Rowlett, Texas (“Rowlett”) files this its Original Petition and Request for Disclosure, making the following claims against Defendants Bayside District Partners, LLC (“Bayside District Partners”), Bayside Land Partners, LLC (“Bayside Land Partners”) (collectively, “Bayside”), William Kruse and Tyler Kruse:

I. INTRODUCTION

What is at stake in this lawsuit is Rowlett’s future.

Rowlett is a city of 60,000-70,000 citizens located in Dallas and Rockwall Counties on the eastern side of the Dallas-Fort Worth Metroplex. Rowlett abuts Lake Ray Hubbard, a major reservoir and recreational lake owned by the City of Dallas. Interstate 30 runs immediately to the south of Rowlett. If you drive east on I-30 from downtown Dallas, you cross over Lake Ray Hubbard near the Dallas County/Rockwall County boundary. Shortly after you come to the lake, you drive over a peninsula of land before you get to the larger expanse of the lake. To the right (south) a point of land juts out into the lake. To the left (north) is Rowlett.

Until it was purchased by Rowlett from Dallas in 2015, the land to the south of I-30, and a section of the land to the north, was Dallas’ Elgin B. Robertson Park, a park of approximately

262 acres with waterfront to the east, west, and south. Bisected by I-30, the park was little used, and undeveloped except for a difficult to access marina.

More than fifteen years ago, Rowlett identified this land as a rare and unique opportunity. There is no other comparable property in Rowlett. Rowlett conceived that this acreage could be incorporated into Rowlett and become a signature development, a unique waterfront destination that could rival any development in the United States.

Rowlett then spent years of time and treasure to realize this opportunity. After lengthy and difficult negotiations, Rowlett bought the park from Dallas. Bayside had been informed of every step of Rowlett's dealings with Dallas, because Bayside and Rowlett had entered into an informal public-private development partnership whereby Bayside would be the developer that would buy the land from Rowlett once Rowlett bought the land from Dallas.

Bayside did buy the land from Rowlett, resting on the understanding that Bayside would realize Rowlett and Bayside's mutually agreed plans and vision for the Bayside Project. Prior to receiving title, Bayside signed a development agreement providing exactly this.

The Bayside Project was no small undertaking – this was a billion-dollar development project. Bayside's development plan was designed to build a denser, more urban style residential development (with limited retail) in what was called the North Improvement Area (about 142 acres – the land north of I-30), which would support the unique South Improvement Area (about 119 acres – the land south of I-30), which was to have an 8-acre Crystal Lagoon with sand beaches, a show fountain that could be seen from I-30 and on which images could be projected, a several-hundred room resort, a convention center, a trolley system, luxury condominiums and townhomes, and roughly 1.75 million square feet of commercial space including 250,000 square feet of Class A office space and 500,000 square feet of entertainment and restaurant/retail space.

Rowlett proceeded to do everything it had agreed to do. It established taxing entities and special districts, issued nearly \$50 million in public improvement district bonds, and contracted and cooperated with Bayside to fulfill the jointly developed and agreed plan.

But now, Bayside refuses to abide by its contracts, and even to this day, after demands for compliance by Rowlett, Bayside is obstinate and refuses to proceed. Bayside refuses to build the South Improvement Area as agreed. Bayside refuses to build an 8-acre lagoon with beaches. Bayside refuses to build the show fountain. Bayside refuses to build the office space and retail/entertainment space specified. Bayside refuses to build a trolley system.

Rowlett is a victim of a bait-and-switch scheme. When Rowlett was issuing millions of dollars in bonds to support the Bayside Project, Defendants lied to Rowlett about their intentions. If Bayside had been honest, Rowlett would not have issued the bonds. As part of the bond offering, Defendants attested that they were going to do what they had contracted to do, that is, develop all that is described above to make the South Improvement Area the unique development Rowlett envisioned. Defendants made these attestations at a time when Defendants knew they could not honestly so attest, because they were at the very least contemplating different plans, or, more likely, had already decided to abandon the agreed plan for an entirely new plan.

Then, shortly after receiving several million dollars in bond proceeds, Defendants assured Rowlett that they were still “committed to the vision,” but that they were “tweaking” the plans for the South Development Area. This also was untrue; in fact, Defendants knew they were planning something entirely different and inconsistent with what had been agreed. After repeated and prolonged delays over a period of nearly 10 months, all the while assuring Rowlett that they were committed to the vision embodied in the development agreements, the dishonesty

was made clear when Bayside proposed its completely different plan, which was unanimously rejected by the Rowlett City Council.

This lawsuit is brought only because it had to be brought after repeated efforts by Rowlett to reach a commercially reasonable resolution failed, when Bayside would not enter into good faith negotiations. This lawsuit has to be brought to clear the way for the completion of a project that is at the heart of Rowlett's future.

II. DISCOVERY CONTROL PLAN

1. Discovery in this action should be conducted pursuant to Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure.

III. PARTIES

2. Plaintiff, the City of Rowlett, is a municipal corporation located in Dallas and Rockwall Counties, Texas.

3. Defendant Bayside District Partners, LLC is a limited liability company organized under the laws of the State of Texas with its principal place of business located at 1340 South Main Street, Suite 300, Grapevine, Texas 76051. Service of process can be made on Bayside District Partners through its registered agent for service of process, William Kruse, 1340 South Main Street, Suite 300, Grapevine, Texas 76051. William Kruse is also the Managing Member of Bayside District Partners.

4. Defendant Bayside Land Partners, LLC is a limited liability company organized under the laws of the State of Texas with its principal place of business located at 1340 South Main Street, Suite 300, Grapevine, Texas 76051. Service of process can be made on Bayside Land Partners through its registered agent for service of process, William Kruse, 1340 South Main Street, Suite 300, Grapevine, Texas 76051. William Kruse is also the Managing Member of Bayside Land Partners.

5. Defendant Tyler Kruse is an individual who may be served at 1340 South Main Street, Suite 300, Grapevine, Texas 76051.

6. Defendant William Kruse is an individual who may be served at 1340 South Main Street, Suite 300, Grapevine, Texas 76051.

IV. JURISDICTION AND VENUE

7. This Court has personal jurisdiction over all parties. This Court has subject matter jurisdiction over this lawsuit because the relief sought herein is within the jurisdictional limits of the Court.

8. Venue is proper in this county because all or part of the real property at issue is located in Dallas County and because a substantial part of the events or omissions giving rise to the claim have occurred in Dallas County, and because agreements at issue provide for exclusive jurisdiction in the state courts of Dallas County, Texas.

V. BACKGROUND FACTS

A. THE BAYSIDE AREA AND ROWLETT'S VISION

9. In the early 2000's, Rowlett identified Dallas' Elgin B. Robertson Park, which was adjacent to Rowlett, as offering a singular development opportunity. After Dallas conducted a successful election authorizing the conveyance of the park, Rowlett and Dallas entered into a detailed interlocal agreement whereby the park land would be sold to Rowlett and the land would be moved into Rowlett's city limits. Rowlett and Bayside entered into agreements whereby Bayside would acquire ownership of the land from Rowlett, would follow the requirements imposed on Rowlett in the interlocal agreement, and would create a unique, world-class waterfront development.

B. THE INTERLOCAL AGREEMENT

10. The first major step toward making Rowlett's vision a reality was for Rowlett to acquire the Elgin B. Robertson Park from the City of Dallas. After lengthy and complicated negotiations, Rowlett and Dallas entered into an Interlocal Agreement effective March 18, 2015, pursuant to which Rowlett acquired the approximately 262 acres of parkland. This unique acreage consists of tracts north and south of Interstate 30 with extensive shoreline acreage abutting Lake Ray Hubbard.

11. Pursuant to the Interlocal Agreement, Dallas adjusted its boundary so that the park acreage was placed within Rowlett's city limits. In return, Rowlett agreed, among other things, to pay Dallas the sum of \$31,800,000 and to share with Dallas certain tax revenues from the property, as set forth in the Interlocal Agreement. For 20 years, all tax and other revenues would accrue to Rowlett to support the Bayside Project. After 20 years, Dallas would be entitled to 25% of such revenues except for sales taxes.

12. Rowlett and Dallas made further provision in the Interlocal Agreement to accommodate Rowlett's development plans, including assignment of marina rights and arrangements for continued public safety operations at Lake Ray Hubbard.

C. THE LAND PURCHASE AGREEMENT

13. Rowlett did not purchase the Elgin B. Robertson Park from Dallas without a development partner in place. Bayside was that partner.

14. Dated as of the same date as the Interlocal Agreement – March 18, 2015 – the Agreement to Sell and Purchase Real Estate between Rowlett and Bayside Land Partners (the “Land Purchase Agreement”) was another necessary step toward making Rowlett's vision a reality. In the Land Purchase Agreement, Rowlett agreed to sell to Bayside Land Partners the

tract that Rowlett was to acquire from Dallas, for the price that Rowlett had agreed to pay Dallas, \$31,800,000.

15. The land transactions did not close immediately. Bayside Land Partners was not required to close the transaction unless certain conditions were fulfilled, including the signing of a development agreement with Rowlett, and Rowlett creating a tax increment financing zone and public improvement district to support the development.

D. THE DEVELOPMENT AGREEMENT

16. As anticipated, Rowlett and Bayside then entered into the development agreement contemplated in the Land Purchase Agreement. Specifically, Rowlett and Bayside Land Partners entered into a Development Agreement dated April 14, 2015 (the “Development Agreement”).

17. The recitals to the Development Agreement note the Interlocal Agreement and the Land Purchase Agreement.

18. In the Development Agreement, Bayside Land Partners agreed to “diligently commence” and “diligently pursue the development of” the Bayside Project.

19. The Development Agreement defined the Bayside Project in reference to Exhibit A to such agreement. Exhibit A is a “Bayside District Image Board” identifying multiple features of the plan, including a large man-made lagoon, a showcase fountain, and a trolley. In the recitals to the Development Agreement, Bayside Land Partners represented that it had “prepared plans” and had “the capability” to “design, construct and operate” the Bayside Project.

E. CLOSING

20. The closing contemplated by the Land Purchase Agreement occurred on or about May 14, 2015. Rowlett acquired the acreage from Dallas and immediately transferred it to Bayside Land Partners. Rowlett had created the tax increment financing zone and the public

improvement district, and Bayside had agreed to the Development Agreement requiring it to diligently pursue the Bayside Project.

F. SUBSEQUENT STEPS IN PREPARATION FOR THE BOND OFFERING AND TOWARD MAKING THE BAYSIDE PROJECT A REALITY

21. Bayside recently has denied any duty to build the Crystal Lagoon or indeed any lagoon feature. However, the man-made Crystal Lagoon was a prominent and central feature of the Bayside Project, and Defendant Bayside District Partners specifically contracted to build this lagoon pursuant to a second development agreement. Moreover, Bayside District Partners entered into a Technology Licensing and Services Agreement precisely so as to obtain a license for the Crystal Lagoon technology for the Bayside Project. Bayside District Partners entered into this agreement with Crystal Lagoons U.S. Corp. in a contract dated as of March 29, 2016.

22. Then, approval was sought and obtained from a state regulatory agency for the Crystal Lagoon. In August 2016, Crystal Lagoons U.S. Corp. submitted to the Texas Department of State Health Services a Request for Variance from swimming pool regulation requirements with respect to the Crystal Lagoon feature in the Bayside Project. By letter dated February 26, 2017, Bayside notified the Department of State Health Services that it ratified and adopted the Request for Variance which Crystal Lagoons U.S. Corp. had submitted to the Department in August 2016. And in March 2017, Bayside executed an agreement with the Department of State Health Services, Crystal Lagoons U.S. Corp., and Rowlett concerning certain disinfectant procedures required in the operation and maintenance of the Crystal Lagoon.

23. The lagoon was a highlighted feature at every stage of the Bayside Project's development. A Feasibility Study (Proposed Destination Resort and Convention Hotel) dated December 6, 2016, focused on the hotel-resort aspect of the South Improvement Area, and expressly included consideration of the show fountain, beach and lagoon features. The

Feasibility Study was prepared by HVS Consulting & Valuation, submitted to Bayside Commercial, LLC, and incorporated as Appendix H to the August 15, 2017, Limited Offering Memorandum supporting Rowlett's multi-million-dollar bond offering. The Limited Offering Memorandum is described further below.

24. An appraisal report regarding the Bayside Project and dated May 3, 2017, expressly contemplated the presence of the show fountain, beach and Crystal Lagoon in the valuation. "Bayside is a proposed 262-acre, mixed-use lakefront community offering residents a white sand beach at a proposed eight-acre Crystal Lagoon with a one-acre show fountain, the first in North America." The appraisal report is incorporated as Appendix E into the Limited Offering Memorandum.

25. An engineering report dated May 31, 2017, prepared by HP Civil Engineering contained a visual depiction of the Crystal Lagoon. The engineering report also included a preliminary engineer's estimate of more than \$8 million in licensing fees and construction costs for the Crystal Lagoon. The engineering report is incorporated as Appendix G into the Limited Offering Memorandum.

26. In an updated marketing study dated July 11, 2017, consultant RCLCO "revisit[ed] the residential and commercial market analysis conducted for Bayside in 2015 in the context of the evolving market environment." The updated marketing study was done at Bayside's request. The updated marketing study repeatedly and consistently pointed out the critical importance of the Crystal Lagoon to the success of the Bayside Project, including as follows:

- "On-site and nearby household growth along with the establishment of the Crystal Lagoon[] concept will drive further demand"
- "Creating connections between the employment core and the Crystal Lagoon/Lake Ray Hubbard would further differentiate Bayside."

- The market study gave the Bayside Project a “long-term grade” of “A –,” citing the Crystal Lagoon as a feature that “will drive further demand for a larger offering of lifestyle retail.”
- “Luxury condominiums [and townhomes] only become feasible once the Crystal Lagoon is in place and the lifestyle retail is delivered.”
- “In order to appeal more to potential buyers, the condominiums will likely only become feasible after the delivery of the luxury lifestyle, including the Crystal Lagoon and retail offering.”
- “There is an opportunity at the subject site for between **200,000 and 300,000 square feet** of experiential-oriented retail district over the next decade assuming an on-site Crystal Lagoon[] and resort hotel are delivered.” (emphasis in original)
- The Bayside Project’s “waterfront orientation,” “differentiating” Crystal Lagoon “and ability to deliver a dynamic mixed-use environment presents a unique opportunity for a destination entertainment center focused on experiential retail.”
- “None” of the townhome developments outside of Central Dallas “have offered the unique Crystal Lagoon concept proposed at the subject site. The potential for Bayside’s townhomes to have private and direct access to the Lagoon will provide a product and setting unmatched in the Dallas MSA. Additionally, private docks on the [L]agoon would help differentiate the subject site’s townhome product over competitive housing options.”
- The conclusions in the updated market study by RCLCO were based on the consultant’s analysis of information provided by the Developer, among others. The consultant “assumed[d] that the information is correct, complete, and reliable.”
- The July 11, 2017 updated marketing study by RCLCO was incorporated into the Limited Offering Memorandum as Appendix F.

27. The Service and Assessment Plan dated August 25, 2017, for the Bayside Public Improvement District also specifically and repeatedly references the lagoon. It shows lot number 18 and pod number 22 as dedicated to the lagoon and includes the beach and the lagoon in visual depictions of the Bayside Project. The Service and Assessment Plan dated August 25, 2017, was incorporated as Appendix B to the Limited Offering Memorandum.

G. THE BOND OFFERING MEMORANDUM

28. To support Bayside's development obligations, Rowlett issued its Limited Offering Memorandum dated August 15, 2017, for \$36,450,000 in Special Assessment Revenue Bonds, Series 2017, for the South Improvement Area.

29. Many of the documents discussed above were attached as exhibits supporting the offering. The Limited Offering Memorandum itself highlights the landmark water fountain, beach and Crystal Lagoon as crucial features of the Bayside Project, including as follows:¹

- The “South Improvement Area Concept Plan” shows the “Lagoon District” as one of five distinct development districts.
- The first-listed community amenity within the development is “a multi-acre lagoon (which includes 2 acres of beach frontage).”
- By far, the largest construction budget within the south area of the Bayside Project was dedicated to the fountain, beach and lagoon – with a construction budget of \$100 million. The three other major construction projects stated in the construction budgets for the South Improvement Area – for marina district / restaurants, medical and wellness, and entertainment district – were less than half the amount budgeted for the fountain, beach and lagoon. The construction budget for these three other areas totaled \$47.5 million.
- Likewise, by far the largest amount of square feet for any of the individual projects planned for the South Improvement Area was for the fountain, beach and Crystal Lagoon – 400,000 square feet. The three other construction projects totaled 210,000 square feet.
- The appraisal incorporated into the Limited Offering Memorandum likewise repeatedly highlighted the Crystal Lagoon. *See supra.*
- Similarly, the updated marketing study by RCLCO noted above, and conducted at the Developer's request, was incorporated into the Limited Offering Memorandum. *See supra.*

30. The Limited Offering Memorandum stated that Bayside would proceed with construction of the south improvements, including the fountain, beach and Crystal Lagoon, in the third quarter of 2017, with completion expected in 18 to 24 months.

¹ As indicated below, Bayside endorsed these statements in the Limited Offering Memorandum.

H. INITIAL CERTIFICATIONS BY DEFENDANTS

31. The Limited Offering Memorandum dated August 15, 2017, memorialized that Bayside had reviewed the Limited Offering Memorandum and “warrant[ed] and represent[ed]” the information in such document was “true and correct and [did] not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made [t]herein, in the light of the circumstances in which they [were] made, not misleading.”

I. THE HOTEL PROJECT DEVELOPMENT AGREEMENT

32. After the Limited Offering Memorandum was issued, and before the bond sale was closed, the parties entered into another agreement. The Development Agreement (Bayside Hotel Project) (the “Hotel Project Development Agreement”) was entered into by Rowlett and Bayside District Partners dated September 5, 2017. It again states the parties’ intent and agreement that the distinctive features of the Bayside Project would include a man-made lagoon. The Hotel Project Development Agreement memorializes the parties’ intent and agreement to participate in the development of a minimum 450-room hotel and convention center as well as “a minimum eight-acre man-made lagoon with a beach.” *See* Hotel Project Development Agreement at Section 2.1. Accordingly, the Hotel Project Development Agreement expressly lists construction of such a lagoon as an obligation of Bayside.

J. FURTHER CERTIFICATIONS BY DEFENDANTS AND THE BOND OFFERING

33. Defendants made further certifications dated a month after the date of the Limited Offering Memorandum. These further certifications were dated September 18, 2017 – the same date as the closing date for the bond offering. The certifications were signed by William Kruse for Bayside District Partners and Bayside Land Partners. Tyler Kruse as CEO of Bayside was aware of such certifications. Defendants affirmed that they had reviewed the Limited Offering

Memorandum and that the sections pertaining to Bayside and the South Improvement Area “are materially accurate and correct.” Defendants further affirmed that they “consent[ed] to references to” Bayside in the document. In addition, Defendants affirmed that they had prepared and submitted information for the preparation of the Limited Offering Memorandum and that such information “was, and is as of this date, true and correct.” Defendants also acknowledged that Rowlett was issuing the bonds “in reliance on the [Developer’s and Landowner’s] representations, warranties and certifications contained” in the certificates.

34. The closing date for the bond offering was September 18, 2017.

K. BAYSIDE’S BENEFITS FROM THE BOND OFFERING

35. Bayside had reason to want the bond offering to go forward. The bonds were sold, as planned, and more than \$3 million of the bond proceeds was spent on licensing fees and costs specifically for the Crystal Lagoon, including reimbursement to Bayside for sums previously paid to Crystal Lagoons U.S. Corp. pursuant to the Technology Licensing and Services Agreement dated March 29, 2016.

L. BAYSIDE’S ABOUT-FACE AND ABANDONMENT OF THE VISION

36. Bayside had given no indication to Rowlett that it was going to do anything but press forward as certified and agreed, but immediately after receiving the bond money Bayside in September and October 2017 notified Rowlett first, that it was studying the plans, and second, it had replaced the lead development person on its team, Kent Donahue, with someone else – Tom D’Alessandro. Its report that it was studying the plans came only ten days after it received the bond money and had certified that it was entirely supportive of the agreed vision for the Bayside Project, and would begin immediate construction work on the South Improvement Area.

37. Then, instead of promptly commencing construction of the show fountain, beach, Crystal Lagoon and other features on the south side of the Bayside Project, as represented in the

Limited Offering Memorandum, Bayside began a period of many months of what it claimed was further study concerning the south area. Bayside gave Rowlett no indication or advance warning that the fountain, beach and Crystal Lagoon features were in peril or in question at all. Instead, it said it was only considering “ tweaks,” while repeatedly assuring Rowlett that it was still “ committed to the vision.”

38. Rowlett made repeated requests to Bayside for progress reports and for visible signs of progress on the ground, to no avail.

39. Meanwhile, the land set aside for the show fountain, beach, Crystal Lagoon and other features of the south area sat deserted. However, dense residential construction work on the north side of the Bayside Project, which was the subject of a separate bond offering, has gone forward.

40. After many months, and only after Rowlett issued a pre-default letter in June 2018, Bayside formally presented a vastly different and nonconforming plan to the Rowlett City Council on July 26, 2018. The Council unanimously rejected Bayside’s proposal on September 18, 2018. Since then, Rowlett has tried to resolve this matter in a commercially reasonable way, but Bayside has delayed and refused to negotiate in good faith.

M. DEVELOPMENT OF THE SOUTH IMPROVEMENT AREA STILL AT A STANDSTILL

41. After the successful bond offering, Bayside, instead of proceeding forthwith to meet the announced completion date of the third quarter of 2019, stopped work on the South Improvement Area. The South Improvement Area remains essentially undeveloped land.

N. ROWLETT GIVES BAYSIDE NOTICE OF DEFAULT

42. By letters dated June 15, 2018, and December 26, 2018, Rowlett gave Bayside notice of the breaches and fraud claimed herein, and demanded immediate action by Bayside to cure. Bayside has responded with a flat refusal.

43. Any and all conditions precedent to suit have been satisfied or have been waived.

VI. CAUSES OF ACTION

COUNT I: BREACH OF CONTRACT – BAYSIDE LAND PARTNERS

44. Rowlett hereby incorporates for all purposes the allegations set forth in paragraphs 1-43 above.

45. Rowlett and Bayside Land Partners entered into valid contracts, including, among others, the Development Agreement.

46. Rowlett has fully performed under the terms of the Development Agreement.

47. The Development Agreement requires Bayside Land Partners, *inter alia*, to “diligently commence” the Project and “diligently pursue the development of the Project.” Section 2.2(a). Bayside has breached the Development Agreement. Bayside has not been diligent. Far from it. By way of example only, the third quarter of 2019 was stated, in the bond offering memorandum, as the expected completion date for the South Improvement Area portion of the Bayside Project. It is now the first quarter of 2019, and the South Improvement Area remains as undeveloped land. There is no possibility of completion of the Bayside Project in the timeframe that the parties agreed. This is entirely due to Bayside’s delay. Moreover, Bayside has jettisoned the agreed plan for the South Improvement Area. Bayside has made it clear that it will not perform.

48. Because of Bayside Land Partners’ breach of the Development Agreement, Rowlett has been injured in an amount in excess of the Court’s minimum jurisdiction. In particular, but without limitation, the delay in project completion is costing Rowlett millions in taxes and other revenues.

COUNT II:
BREACH OF CONTRACT – BAYSIDE DISTRICT PARTNERS

49. Rowlett hereby incorporates for all purposes the allegations set forth in paragraphs 1-48 above.

50. Rowlett and Bayside District Partners entered into the Hotel Project Development Agreement.

51. Rowlett has fully performed under the terms of the Hotel Project Development Agreement.

52. The Hotel Project Development Agreement requires Bayside District Partners, *inter alia*, “to develop a hotel project . . . that includes the following . . . a minimum eight-acre man-made lagoon with a beach.” Section 2.1(c). The “lagoon” was a Crystal Lagoon, as presented to Rowlett and as described in multiple documents prior to September 2017 when this agreement was entered. Bayside has used roughly \$3 million in bond proceeds to pay license fees for the Crystal Lagoon. But thereafter, Bayside unilaterally abandoned the Crystal Lagoon and the project that the parties agreed on, which included other distinctive characteristics such as a beach, a showcase fountain and extensive commercial and retail facilities, as well as numerous other southside features and districts.

53. Because of Bayside District Partners’ breach of the Hotel Project Development Agreement, Rowlett has been injured in an amount in excess of the Court’s minimum jurisdiction, including millions of dollars in taxes and other revenues lost because of such breach.

COUNT III:
FRAUD

54. Rowlett hereby incorporates for all purposes the allegations set forth in paragraphs 1-53 above.

55. As noted above, Defendants made multiple, separate certifications to the truth and accuracy of the statements in the Limited Offering Memorandum and the appendices thereto. *See paragraphs 31 and 33 supra.*

56. The Limited Offering Memorandum included multiple statements about the South Improvement Area, which repeatedly highlighted as distinctive features of the development the show fountain, beach, Crystal Lagoon, trolley, luxury resort hotel, and mixed-use commercial and residential development. These statements include:

- (a) The Limited Offering Memorandum defines the “South Improvements” to include “a multi-acre lagoon.”
- (b) The “South Improvement Area Concept Plan” shows the “Lagoon District” as one of five distinct development districts. The first-listed community amenity within the development is “a multi-acre lagoon (which includes 2 acres of beach frontage).”
- (c) By far, the largest construction budget within the South Improvement Area was dedicated to the fountain, beach and lagoon – with a construction budget of \$100 million. The three other major construction projects stated in the construction budgets for the South Improvement Area – for marina district / restaurants, medical and wellness, and entertainment district – were less than half the amount budgeted for the fountain, beach and lagoon. The construction budget for these three other areas totaled \$47.5 million.
- (d) Likewise, by far the largest amount of square feet for any of the individual projects planned for the South Improvement Area was for the fountain, beach and Crystal Lagoon – 400,000 square feet. The three other construction projects totaled 210,000 square feet.

(e) The Limited Offering Memorandum also states that development plans for the “Lagoon District” include a “500-room resort which serve[s] as the anchor for the entire South Improvement Area. . . . [Bayside] anticipates announcing the resort provider in the summer of 2017.”

(f) The Limited Offering Memorandum further states that Bayside is “negotiating with numerous users for entertainment and restaurant uses with a 400,000 square foot lagoon mixed use project.”

(g) The Limited Offering Memorandum additionally states that “[c]ondominiums and an additional full service hotel are also contemplated within the Lagoon District.”

(h) An appraisal report incorporated into the Limited Offering Memorandum and dated May 3, 2017, expressly contemplates the presence of the show fountain, beach and Crystal Lagoon in the valuation. “Bayside is a proposed 262-acre, mixed-use lakefront community offering residents a white sand beach at a proposed eight-acre Crystal Lagoon with a one-acre show fountain, the first in North America.” The appraisal report reflects 16 of the 44 lots in the South Improvement Area – that is, more than one-third of the lots – as comprising the “Lagoon District.” Lot 18 was the specific lot on which the Crystal Lagoon was to be located.

(i) An engineering report incorporated into the Limited Offering Memorandum and dated May 31, 2017, contains a visual depiction of the Crystal Lagoon. The engineering report also includes a preliminary engineer’s opinion of more than \$8 million in licensing fees and construction costs for the Crystal Lagoon. Moreover, the Limited Offering Memorandum states that “[t]he Engineer’s Report concludes that the South Improvement

Area is feasible, practical, and necessary from an engineering standpoint and that the South Improvements will provide benefits to the land within its boundaries.”

57. When certifying the truthfulness and accuracy of these statements identified in Paragraph 56, Defendants already knew, at a minimum, that they were reconsidering the development plans for the South Improvement Area and that there was a distinct possibility, if not a probability, that they would later present to Rowlett a revised plan for the South Improvement Area that did not include these distinctive features. Therefore, Defendants engaged in fraud in certifying these statements.

58. Defendants also approved and certified the timeline for construction and completion of the show fountain, beach, Crystal Lagoon and other features that were stated in the Limited Offering Memorandum materials. These materials affirm that construction on the South Improvement Area was to start in the third quarter of 2017 – in other words, shortly after the issuance of the bonds – and completion was expected in 18 to 24 months – namely, by the third quarter of 2019. Defendants further affirmed that they anticipated announcing the resort provider in the summer of 2017.

59. When certifying the truthfulness and accuracy of the timeline for completion of the Bayside Project, Defendants already knew, at a minimum, that they were reconsidering the development plans for the South Improvement Area and that there was a distinct possibility, if not a probability, that construction in the South Improvement Area would not commence immediately, and the South Improvement Area would not be completed in the timeline represented in the Limited Offering Memorandum materials. Defendants engaged in fraud in certifying the timeline.

60. An updated marketing study conducted for Bayside titled: “Update to Market Analysis and Strategic Development Recommendations for Bayside,” dated July 11, 2017, was attached to the Limited Offering Memorandum, and includes the following statements:

- (a) The updated marketing study repeatedly emphasized the importance of the Crystal Lagoon feature to the success of the South Improvement Area: The updated marketing study gave the “lifestyle retail” component a “long-term grade” of “A –,” citing the Crystal Lagoon as a feature that “will drive further demand for a larger offering of lifestyle retail.”
- (b) The updated marketing study stated further: “Luxury condominiums [and luxury townhomes] only become feasible once the Crystal Lagoon is in place and the lifestyle retail is delivered.”
- (c) “There is an opportunity at the subject site for between **200,000 and 300,000 square feet** of experiential-oriented retail district over the next decade assuming an on-site Crystal Lagoon[] and resort hotel are delivered.” (emphasis in original).
- (d) The Bayside Project’s “waterfront orientation,” “differentiating” Crystal Lagoon “and ability to deliver a dynamic mixed-use environment presents a unique opportunity for a destination entertainment center focused on experiential retail.”
- (e) “[N]one” of the townhome developments outside of central Dallas “have offered the unique Crystal Lagoon concept proposed at the subject site. The potential for Bayside’s townhomes to have private and direct access to the Lagoon will provide a product and setting unmatched in the Dallas MSA. Additionally, private docks on the [L]agoon would help differentiate the subject site’s townhome product over competitive housing options.”

(f) The Limited Offering Memorandum summarized the findings of the updated marketing study as follows: “ . . . the Market Consultant determined, among other things[,] that the development plan for the Development is feasible within the timeframe forecasted by [Bayside].”

61. When certifying that they would be proceeding with the Crystal Lagoon and other features, and not challenging any of the statements in Paragraph 60, which clearly are based on Defendants’ representations that they were in fact proceeding, Defendants were defrauding Rowlett, as they already knew, at a minimum, that they were reconsidering the development plans for the South Improvement Area and that there was a distinct possibility, if not a probability, that they would later present to Rowlett a revised plan for the South Improvement Area that did not include these distinctive features, and that the South Improvement Area would not be completed in the timeline represented in the Limited Offering Memorandum materials.

62. Further, a feasibility study was prepared at Bayside’s request titled: “Proposed Destination Resort and Convention Hotel,” dated December 6, 2016, and attached to the Limited Offering Memorandum.

(a) The feasibility study, though focused on the resort and convention hotel, expressly included in its consideration of the feasibility of that hotel the plans for the South Improvement Area. The study summarized those plans as follows: “The south improvement area will showcase an eight-acre lagoon, inclusive of two acres of beach frontage and an extensive show fountain with video mist screens. The water fountain will rival the Bellagio fountains in Las Vegas. A trolley will provide transportation between the two development areas [*i.e.*, north and south].”

(b) The feasibility study also noted the value-enhancing nature of the lagoon and beach to the resort hotel: “[G]uests of the hotel will have direct access to the adjacent Bayside lagoon, inclusive of two acres of beach frontage.”

(c) The feasibility study noted that the expected opening date for the resort and convention hotel was January 1, 2020.

(d) The Limited Offering Memorandum summarized the findings of the feasibility study as follows: “ . . . the Consultant determined, among other things[,] that the construction of the resort hotel with financing provided by an equity investor is feasible.”

63. When certifying that they would be proceeding with the Crystal Lagoon and other features, and not challenging any of the statements in Paragraph 62, which clearly are based on Defendants’ representations that they were in fact proceeding, Defendants were defrauding Rowlett, as they already knew, at a minimum, that they were reconsidering the development plans for the South Improvement Area and that there was a distinct possibility, if not a probability, that they would later present to Rowlett a revised plan for the South Improvement Area that did not include these distinctive features, and that the South Improvement Area would not be completed in the timeline represented in the Limited Offering Memorandum materials.

64. More fraudulent statements by Defendants relate to a Service and Assessment Plan dated August 25, 2017, for the Bayside Public Improvement District and attached to the Limited Offering Memorandum.

(a) The Service and Assessment Plan specifically and repeatedly referenced the lagoon, and showed lot number 18 and pod number 22 as dedicated to the lagoon.

(b) The plan included the beach and the lagoon in visual depictions of the Bayside Project.

65. When certifying that they would be proceeding with the Crystal Lagoon and other features, and not challenging any of the statements in Paragraph 64, which clearly are based on Defendants' representations that they were in fact proceeding, Defendants were defrauding Rowlett, as they already knew, at a minimum, that they were reconsidering the development plans for the South Improvement Area and that there was a distinct possibility, if not a probability, that they would later present to Rowlett a revised plan for the South Improvement Area that did not include these distinctive features.

66. Defendants' representations described in this count were false when made, and Defendants knew they were false or made the representations recklessly. Moreover, those representations were material to Rowlett's decisions to proceed with the bond offering described above. Rowlett has been damaged, by way of example only, in the amount of approximately \$1 million spent on the bond issuance, which Rowlett would not have spent had Defendants been honest.

67. Despite their knowledge that their representations were false, Defendants made them with the intent Rowlett would rely on them, would not question Defendants' motives, and therefore, would not discover Defendants' deception until it was too late for Rowlett to protect its interests. Defendants intended to deceive Rowlett by making false representations and by conducting a bait-and-switch scheme.

68. Rowlett justifiably relied on the truth of Defendants' representations by proceeding with the bond offering. Rowlett would not have engaged in any of this conduct if not for Defendants' repeated fraudulent statements and assurances.

69. Moreover, Defendants continued their misrepresentations by saying in the months following the bond offering that they only wanted to "tweak" the plan and continued to share

Rowlett's vision. These statements, again, were knowingly and intentionally false and reasonably relied on by Rowlett to its detriment, causing additional damage.

70. Defendants' fraudulent representations proximately caused damages to Rowlett within the jurisdictional limits of the Court. Moreover, Rowlett is entitled to an award of exemplary or punitive damages due to Defendants' conduct.

VII. RESCISSION

71. Rowlett hereby incorporates for all purposes the allegations set forth in paragraphs 1-70 above.

72. Rowlett deeded Bayside the acreage for the Bayside Project for a development that was to include essential and critical elements now abandoned by Bayside. Rowlett has complied with its agreements and has clean hands. Bayside has abandoned the project as contracted for and described in the contracts, bond documents, and other documentation. Defendants' breaches and fraud justify rescission. Rowlett has no adequate remedy at law for being wrongfully deprived of this unique acreage, and Bayside's retention of this unique acreage under the current circumstances is inequitable and wrong. Rowlett hereby tenders the consideration it received for this acreage under the agreements. The Court has the power to do equity and return the property to Rowlett so it can do what Bayside agreed to do but now adamantly and wrongfully refuses to do. The Court should at least order rescission as to the South Improvement Area and return it to Rowlett. That appears to be the only way Rowlett can realize the vision it once shared with Bayside.

VIII. ATTORNEYS' FEES

73. Rowlett hereby incorporates for all purposes the allegations set forth in paragraphs 1-72 above.

74. Rowlett has had to retain counsel due to Defendants' conduct. Rowlett is therefore entitled to an award of its costs and attorney's fees pursuant to applicable law, including, without limitation, Tex. Civ. Prac. & Rem. Code §§ 38.001, *et seq.*

IX. JURY DEMAND

75. Rowlett demands a trial by jury of all issues of fact.

X. REQUEST FOR DISCLOSURE

Pursuant to Tex. R. Civ. P. 194, Rowlett requests each of the Defendants separately to disclose, within fifty (50) days of service of this request, all of the information or material described in Rule 194.2(a)-(l) of the Texas Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Rowlett respectfully prays that:

- Defendants be cited to appear and answer herein;
- Upon final judgment the Court rescind the Land Purchase Agreement and order that the real property constituting at least the South Improvement Area be deeded back to Rowlett, and Rowlett return to Bayside the consideration paid under that agreement for the property returned;
- The Court award Rowlett actual damages, exemplary damages, costs, attorneys' fees, and appropriate interest; and
- The Court grant Rowlett all further and additional relief, in law and in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Michael H. Collins

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