

STATE OF NEW YORK
SUPREME COURT COUNTY OF FULTON

BALBOAA LAND DEVELOPMENT
CORPORATION,

ORDER

Plaintiff,

Index No.: 07599
RJI No.: 17-1-2018-03394

-against-

Assigned Judge:
Richard A. Kupferman

TOWN OF CAROGA,

Defendant.

WHEREAS, the Plaintiff having brought the above-captioned action by way of Summons and Complaint duly filed on July 25, 2019, and the Defendant having filed a Verified Answer and Counterclaim on August 15, 2019, and to which the Plaintiff submitted a Verified Reply to Counterclaim on or about August 27, 2019; and

WHEREAS, this matter having been assigned to the Court and a conference having originally been scheduled for October 30, 2019 and having been rescheduled for October 25, 2019 whereupon counsel for the Plaintiff and counsel for the Defendant were present; and

WHEREAS, at the October 25, 2019 conference the counsel for the Plaintiff and for the Defendant, respectively, advised the Court that the parties had entered into a Stipulation and Agreement resolving the underlying issue of the instant litigation and were desirous of the Court to review and approve same; and now

Upon the Court's review of the pleadings and submissions by counsel for the Plaintiff and Defendant, the proposed Stipulation and Agreement and its attached exhibits as well as the Resolution of the Defendant's Town Board giving authority of the Defendant to enter into said Stipulation and Agreement, as well as oral argument having been heard from counsel for the

Plaintiff and Defendant, on October 25, 2019, in support of accepting the Stipulation and Agreement, it is hereby:

ORDERED, that the October 25, 2019 Stipulation and Agreement between the parties is hereby APPROVED in its entirety; and it is further

ORDERED, that per the terms of the October 25, 2019 Stipulation and Agreement shall be immediately binding upon the parties, and the parties are to collaboratively endeavor to promptly satisfy the mutual and individual obligations and responsibilities thereunder; and it is further

ORDERED, that per the terms of the October 25, 2019 Stipulation and Agreement the substantive issues giving rise to the instant litigation are considered RESOLVED, and the original cause of action and counterclaim are considered DISCONTINUED and WITHDRAWN for consideration before this Court; and it is

SO ORDERED.

ENTER:

DATED: October 28, 2019



Hon. Richard Kupferman
Acting Supreme Court Justice
Fulton County Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF FULTON

BALBOAA LAND DEVELOPMENT
CORPORATION,

Index No.: 07599

Plaintiff,

STIPULATION AND AGREEMENT

vs.

TOWN OF CAROGA,

Defendant.

WHEREAS the Plaintiff Balboaa Land Development Corporation, by and through its attorney Robert Abdella of Abdella & Sise, LLP, brought the above captioned action by way of summons and complaint duly filed on August 15, 2019; and the Defendant having served an Answer to said complaint along with a counterclaim, and the Plaintiff having submitted a reply thereto; and

WHEREAS, the Parties are mutually desirous of a resolution to the pending litigation in which the Plaintiff alleges that the Defendant Town of Caroga has been unable to fulfill its obligations under the terms of the Donation Agreement agreed upon by George Abdella, on behalf of Balboaa Land Development Corporation and Ralph Ottuso, Town Supervisor, on behalf of the Town of Caroga on December 29, 2014, which was later ratified by the Town of Caroga Board on March 11, 2015, (Exhibit "A") ; and

WHEREAS, the Town of Caroga acknowledges that it has had difficulty maintaining the property donated in conformance with the covenants set forth in the Donation Agreement and that it will be difficult if not impossible for the Town of Caroga to maintain the property in conformance with the Donation Agreement in the future; and

WHEREAS, the Parties agree that the original signatories to the Donation Agreement and the Town Board which later ratified the Donation Agreement made the mutual mistake of believing that the Town of Caroga was capable and willing to care for and maintain the property and otherwise be bound by all of the conditions related to the property as specified in the Donation Agreement; and

WHEREAS, the Town of Caroga is desirous of being relieved of the financial obligations and responsibilities necessary to fulfill all of the conditions under the original Donation Agreement; and,

WHEREAS, counsel for the Defendant has had the opportunity to convey the within stipulation and agreement to the Town Board and counsel represents that he has by resolution of a majority of the council members of the Town Board the full authority to present this Stipulation and Agreement to the Court for entry upon the record and/or as an Order of the Court, and

WHEREAS both Parties agree that the within stipulation and agreement is in the best interest of the Town of Caroga and its citizens; and

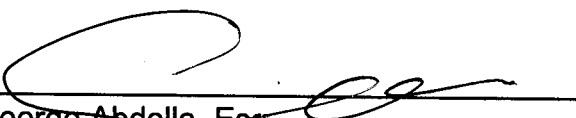
WHEREAS, the Parties wish to avoid the uncertainties and expense of further litigation and consider the following Stipulation and Agreement to be equitable to both Parties; it is hereby **STIPULATED AND AGREED**, that:

1. The Donation Agreement (attached hereto as Exhibit "A") and subsequent transfer of the property to the Town of Caroga, shall be mutually rescinded and the parties shall be restored to their original positions prior to the Donation

Agreement insofar as all properties, both real and personal and as referenced in said agreement (Exhibit "A"), as well as the deed conveyed which is attached hereto as Exhibit "B", shall be returned to the Plaintiff Balboa Land Development Corporation.

2. The Plaintiff agrees to waive any claim for damages, both now and in the future, whether such damages are yet realized, based upon the Town of Caroga's difficulty or inability to maintain the property during the period of the Town's ownership of said property.
3. Both Parties shall execute any and all documents necessary to affect the full transfer of the real and personal property which was the subject of the Donation Agreement back to the Plaintiff which shall include a Bargain & Sale Deed conveying the real property listed in the Donation Agreement back to the Plaintiff.
4. The Parties shall execute mutual releases of any and all claims which are the subject of the within litigation and each party shall discontinue all causes of action and counterclaims.

So Stipulated this 25th day of October, 2019.



George Abdella, Esq.

ABDELLA & SISE, LLP.

Principle Owner – Balboa Land Development Corporation

TOWN OF CAROGA, a New York Municipality

By


James Long, Deputy Supervisor

SO ORDERED:

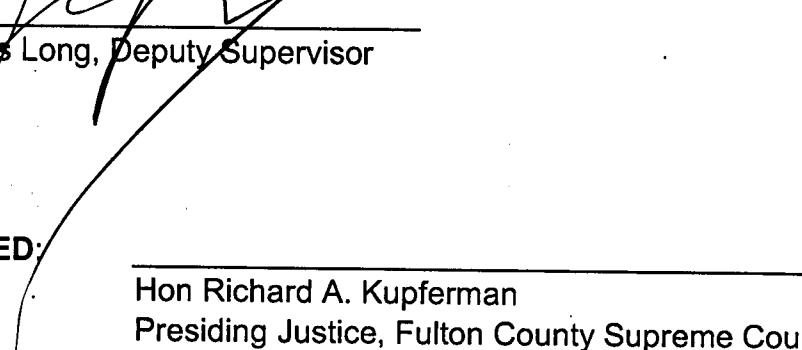

Hon Richard A. Kupferman
Presiding Justice, Fulton County Supreme Court

EXHIBIT "A"

DONATION AGREEMENT

This Donation Agreement was entered into on this 29th day of DECEMBER, 2014 by and between Balboa Land Development having its office at 4 West Fulton Street, Gloversville, NY 12078 (DONOR) and the Town of Caroga (TOWN) having its principle office at 1840 State Highway 10, Caroga Lake, NY 12032.

WITNESSETH

WHEREAS, the DONOR acquired the former Sherman's Amusement Park property in 1989 to protect and preserve an important landmark in the TOWN, and

WHEREAS, the DONOR ~~has~~ ^{has} invested significant funds into rehabilitating and restoring the Sherman's Amusement Park property to protect and preserve an important piece of the history of the TOWN, and

WHEREAS, the DONOR ~~desire~~ ^{desires} to donate the Sherman's Amusement Park property to the TOWN for the TOWN to continue to protect and preserve, in perpetuity, this landmark, and

WHEREAS, the DONOR ~~have~~ ^{has} maintained this property with great pride and desires the TOWN to continue to maintain this property with the same pride, and

WHEREAS, the TOWN graciously accepts from the DONOR its donation of the Sherman's Amusement Park property and assures the DONOR that the TOWN shall forever maintain the buildings and grounds to the same high standards the DONOR have maintained this property.

NOW, the DONOR and the TOWN do hereby mutually agree as follows:

1. PROPERTY:

- A. The DONOR agrees to donate to the TOWN, at no cost, the following parcels of land located in the Town of Caroga on the south side of NYS Route 10 as identified on the Attached Exhibit 1:

68.18-1-23

68.18-1-22

83.6-1-1 (portion north of Bath Avenue)

83.6-1-4

- B. The DONOR agrees to donate to the TOWN, at no cost, that portion of Parcel 83.6-1-1 located in the Town of Caroga between Bath Avenue and Grove Avenue as shown on Exhibit 1.
- C. The DONOR agrees to donate to the TOWN, at no cost, that portion of Parcel 68.-1-46.1 located in the Town of Caroga on the north side of NYS Route 10 as shown on Exhibit 1.
- D. The DONOR agrees to provide a 20' right-of-way across parcel 68.18-1-21 as shown on Exhibit 1 for the wastewater line that crosses this parcel going to the Wastewater Treatment System on the north side of NYS Route 10.

- E. The DONOR shall retain ownership of approximately 20' of beach along West Caroga Lake as shown on Exhibit 1.
- F. The DONOR agrees that the following items located on these parcels shall also be donated to the TOWN:

- All buildings and building contents
- Ferris Wheel
- Carousel
- Beach (except for 20')
- Groundwater Well and piping
- Wastewater Collection, Pumping and Treatment System

- G. The DONOR agrees to execute a Bill of Sale with the TOWN for each of items listed in E above.

2. DONATION:

- A. The appraised value of the Property to be donated by the DONOR to the TOWN is
~~\$1,700,000~~ 2,200,000

3. POSSESSION:

- A. The DONOR shall deliver possession and occupancy of the Property at the time of closing of the donation.

4. DONORS' CONDITIONS:

- A. The TOWN agrees and stipulates to the following DONORS' conditions to the donation:

1. The TOWN shall never sell the Property.
2. The TOWN shall, at all times, maintain the Property to the highest of standards.
3. The TOWN may lease the Property in accordance with all applicable laws.
4. The TOWN shall, to the best of its ability, open to and make available to the public the beach along West Caroga Lake on Parcel 68.18-1-23 as shown on Exhibit 1 and to maintain the Beach within accordance with NYS Department of Health and all other applicable local and State rules and regulations.
5. The TOWN shall provide access to West Caroga Lake from the properties on the north side of NYS Route 10 identified on Exhibit 1 as parcels:

68.-1-46.1

68.18-1-16.1

- ANY AND ALL LAWFUL USES INCLUDING BUT NOT LIMITED TO
6. The DONOR reserves the right to use the two (2) parcels identified in Paragraph 5 above for a Recreational Vehicle Camp/Park and all other uses allowed by the Town of Caroga's Zoning Ordinance and the Adirondack Park Agency.
7. The DONOR reserves the right to have access to and use of the Wastewater Treatment System the DONOR is donating to the TOWN. The TOWN shall make capacity available in the System to any future use of the two (2) parcels identified in Paragraph 5

above subject to the approvals of the Town of Caroga, NYS Department of Health, NYS Department of Environmental Conservation and the Adirondack Park Agency.

8. The DONOR reserves the right to use the existing groundwater well and electrical system located in the Blue Building on the north side of NYS Route 10 for any future development of the parcels identified in Paragraph 5 above.
9. The TOWN shall maintain, to the best of its abilities, the existing windows in the Pavilion and Carousel Buildings.

5. TOWN'S CONDITIONS:

- A. The DONOR agrees and stipulates that it shall transfer over to the TOWN, at the Closing, all permits and approvals issued by local, New York State or federal agencies, departments or jurisdictions the DONORS possess to operate the Groundwater Well and Wastewater Collection, Pumping and Treatment System.

6. ADJUSTMENTS:

- A. DONOR agrees that all taxes, water and sewerage bills, if any, against the Property have been or will be paid at date of closing.
- B. Such bills shall be apportioned between DONOR and TOWN as of date of closing, unless agreed otherwise.

7. PROPERTY LINE SURVEY:

- A. The TOWN shall prepare a property line survey, prepared by a New York State licensed land surveyor of the Property to be donated to the TOWN.

8. TITLE PROVISIONS:

- A. On closing, the DONOR shall furnish a 5-year tax search, an Abstract and a Warranty Deed of marketable title, which shall be free of liens or encumbrances, except for utility easements and existing deed restrictions.

9. EXISTING CONDITIONS:

- A. The DONOR shall donate the Property as is.
- B. The DONOR shall donate the Property subject to all covenants, conditions, restrictions and easements of record; zoning and environmental protection laws; any unpaid installments of street and improvement assessments payable after the date of transfer of title to the premises.

10. DONORS' REPRESENTATIONS:

- A. The DONOR represents and warrants to the TOWN that the DONOR is the sole owner of the Property and has the full right, power and authority to donate the Property in accordance with the terms of this Donation Agreement.

- B. Except as otherwise expressly set forth in this Donation Agreement, none of DONORS' covenants, representations, warranties or other obligations contained in this Donation Agreement shall survive closing.

11. BINDING AGREEMENT:

- A. The TOWN and DONOR agree that they, their heirs, legal representatives, successors and/or assigns will be bound under this Donation Agreement.
B. This Donation Agreement cannot be assigned without the written consent of DONOR.

12. ENTIRE AGREEMENT:

- A. This Donation Agreement may only be modified by a written instrument signed by both parties.

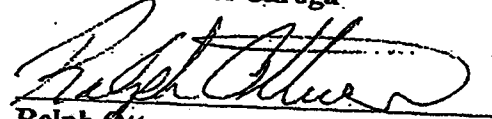
13. CLOSING:

- A. The closing shall be held at ABDELLA OFFICE on or before 45 days after the acceptance of this Donation Agreement.

DONOR: Balboa Land Development

By: 
George Abdella, President

TOWN: Town of Caroga

By: 
Ralph Ottuso
Town Supervisor

Approved as to Form:

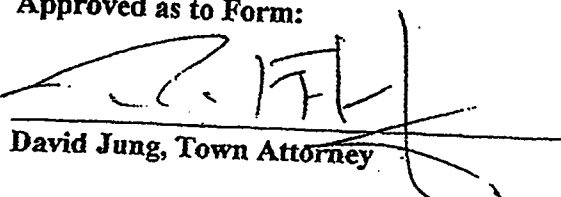

David Jung, Town Attorney

EXHIBIT "B"



FULTON COUNTY - STATE OF NEW YORK
ANN NICKLOY, COUNTY CLERK
223 West Main Street, Johnstown, NY 12095

COPY

COUNTY CLERK'S RECORDING PAGE
THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



INSTRUMENT #: 2014-29646

Receipt#: 2014277464
Clerk: FC
Rec Date: 12/31/2014 02:29:51 PM
Doc Grp: RP
Descrip: DEED
Num Pgs: 3
Rec'd Frm: DAVID JUNG

Party1: BALBOAA LAND DEVELOPMENT INC
Party2: CAROGA TOWN OF
Town: CAROGA

Recording:

Cover Page	5.00
Recording Fee	30.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
Notations	0.50
TP584	5.00
RP5217 - County	9.00
RP5217 All others - State	241.00

Sub Total: 310.50

Transfer Tax
Transfer Tax 0.00

Sub Total: 0.00

Total: 310.50

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: 808
Transfer Tax
Consideration: 0.00

Total: 0.00

Record and Return To:

DAVID JUNG
BOX

This sheet constitutes the Clerk endorsement required by
section 316A (5) for the Real Property Law of the State of
New York

Ann Nickloy
Fulton County Clerk

THIS IS NOT AN INVOICE

WARRANTY DEED

COPY

This Indenture, made the 30th day of December, Two Thousand Fourteen

Between

BALBOAA LAND DEVELOPMENT, INC., having an office at 8 W. Fulton Street, Gloversville, New York,

Party of the first part, and

THE TOWN OF CAROGA, a Municipal Corporation with offices at 1840 St Hwy 10, P.O. Box 328, Caroga Lake, New York,

Party of the second part,

Witnesseth that the party of the first part, in consideration of ONE DOLLAR (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors, heirs and assigns forever,

ALL OF THAT TRACT OR PARCEL OF LAND, situate in the Town of Caroga, County of Fulton and State of New York, being more particularly described as follows:

PARCEL 1 BEGINNING at the intersection of the southerly line of Bath Avenue and the southwesterly line of State Route 10, being the northeast corner of the lands of M & E Caroga Corp., running thence along the southerly line of Bath Avenue, being the northerly line of the lands of M & E Caroga Corp., the lands of the State of New York, the lands of Balboaa Land Development Inc., the lands of Martha R. Mongato and through other lands of Balboaa Land Development, Inc., S72°51'50"W 369.01' to the centerline of Caroga Lake Shore Drive, thence along the center of the road S06°12'26"W 103.46' thence through the lands of Balboaa Land Development, Inc. S68°42'57"W 45.90' to the shoreline of West Caroga Lake, thence along the shoreline of West Caroga Lake the following fourteen courses; N00°52'08"E 185.75', N13°37'00"W 40.01', S85°45'12"W 10.76', N42°04'10"W 153.39', N43°59'56"W 86.68', N42°46'11"E 10.39', N43°12'35"W 37.94', N35°56'35"W 96.65', N58°31'17"W 28.86', N44°00'49"W 48.34', N22°51'40"W 52.03', N39°08'01"W 75.05', N72°48'15"W 97.59' and N82°04'42"W 16.94' to an iron rod set, thence along the southerly line of the lands of James J. & Thelma A. Subik N70°44'37"E 416.31' to an iron rod set in the southwesterly line of State Route 10, thence along the southwesterly line of State Route 10 the following three courses; S37°35'23"E 32.69', S07°48'36"W 49.89' to a highway monument, and S38°49'36"E 14.00' to the center of Mead Creek and the northeast corner of the lands of Kandyce E. Sprung, thence along the northwesterly, southwesterly and southeasterly lines of the lands of Sprung the following three courses; S59°08'46"W 114.61' along the center of Mead Creek, S37°57'00"E 105.54' to an iron pipe found, and N57°30'33"E 149.18' to an iron rod found in the southwesterly line of State Route 10, thence along the southwesterly line of State Route 10 S39°03'38"E 83.46' and continuing along State Route 10 S40°27'22"E 521.61' to the point of beginning containing 5.754 acres.

EXCEPTING and reserving any and all right title and interest that others may have to Caroga Lake Shore Drive and to Bath Avenue.

PARCEL 2 BEGINNING at an iron rod set in the northeasterly line of State Route 10 at the southwesterly corner of the lands of Mark Kane, thence along the southeasterly line of the lands of Mark Kane N49°35'50"E 225.00' to an iron rod set, thence along the northeasterly line of the lands of Kane and the lands of James J. & Thelma M. Subik N40°40'49"W 220.00' to an iron rod set, thence through the lands of Balboaa Land Development, Inc. N49°35'50"E 96.90' to an iron rod set, thence along the southerly line of other lands of Balboaa Land Development, Inc. S79°18'16"E 559.65' to an iron rod set, thence through the lands of Balboaa Land Development, Inc. S49°08'51"W 412.43' to an iron rod set in the northeasterly line of the lands of Dimark Development Northville, LLC, thence along the northeasterly line of the lands of Dimark Development Northville, LLC and continuing through the lands of Balboaa Land Development, Inc. N40°51'09"W 145.86', thence continuing through the lands of Balboaa Land Development, Inc. the following two courses; N84°07'04"W 27.03', S56°29'09"W 241.95' to

an iron rod set in the northeasterly line of State Route 10, and thence along the northwesterly line of State Route 10 N40°02'14"W 24.37' to the point of beginning, containing 2.806 acres.

ALSO INCLUDING AN EASEMENT for ingress and egress by foot or vehicle over a 20' wide strip of land more particularly described as follows: Beginning at a steel fence post in the northeasterly line of State Route 10 at the northwest corner of the lands of Raymond & John R. Allen, running thence along the northeasterly line of State Route 10 N38°20'27"W 20.00', thence through the lands of Balboaa Land Development, Inc. the following two courses N50°10'09"E 139.20' and S78°00'26"E 185.21' to the northwesterly line of the above described parcel, thence along said northwesterly line S49°35'40"W 25.24' to an iron rod set at the northeast corner of the lands of James J. & Thelma M. Subik, thence through the lands of Balboaa Land Development, Inc. N78°00'26"W 160.10', thence continuing through the lands of Balboaa Land Development, Inc. and along the northwesterly line of the lands of Raymond & John R. Allen S50°10'09"W 130.00' to the point of beginning.

EXCEPTING and reserving the right to use an existing gravel roadway passing over a portion of parcel 2 above described for ingress and egress by foot and vehicle to the remaining lands of Balboaa Land Development, Inc.

BEING a portion of the property conveyed to Balboaa Land Development, Inc., by Referee's Deed dated September 19, 1989 and filed in the Fulton County Clerk's Office on October 3, 1989 in Book 656 of Deeds at Page 273.

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, its successors, heirs and assigns forever.

And said party of the first part covenants as follows:

First, That the party of the second part shall quietly enjoy the said premises;

Second, That said party of the first part will forever **Warrant** the title to said premises.

Third, That in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set its hand and seal the day and year first above written.

In presence of

BALBOAA LAND DEVELOPMENT, INC.

By:

GEORGE ABDELLA

State of New York)

ss: