

## GENERAL RELEASE & WAIVER

This General Release & Waiver (the "Agreement") is made this 31 day of April, 2019, by the TOWN OF CAROGA and BALBOAA LAND DEVELOPMENT INC, its assigns and successors-in-interest, predecessors, divisions, affiliates, parent corporations, subsidiary corporations, successors, assigns, and all of its current and former partners, directors, officers, trustees, employees, and agents (in their individual and representative capacities) and any and all spouses, heirs, executors, administrators, and assigns of any of said parties in their individual capacities, upon all of the conditions and responsibilities of the parties to the aforesaid donation agreement as defined more completely in the donation agreement dated December 29, 2014, which agreement is annexed hereto and made part hereof.

### RECITALS

WHEREAS, Balboaa Land Development Inc., and the Town of Caroga entered into a Donation Agreement dated December 29, 2014 whereby Balboaa Land Development Inc., donated certain real property, improvements and personal property associated with and/or known to be or belong to the former Sherman's Amusement Park (hereinafter the "Premises") to the Town of Caroga upon the condition that the Town of Caroga never sell the Premises; and,

WHEREAS the Town of Caroga and Balboaa Land Development Inc., have in the past disputed whether the prohibition against sale of the Premises is binding upon the Town of Caroga;

WHEREAS despite said dispute regarding whether said prohibition against sale is binding or enforceable against the Town of Caroga, the Parties have now determined that is in their respective best interests to approve the sale of said Premises by the Town of Caroga only to the Caroga Arts Collective, a New York Not-For-Profit Corporation; and,

WHEREAS, the Parties further agree that the sale of the Premises by the Town of Caroga to the Caroga Arts Collective, will not damage their rights under and/or defeat the purpose of the Donation Agreement, but instead promote and advance the same,

WHEREAS, The aforesaid donation agreement signed by George Abdella on behalf of Balboa Land Development, Inc., and by Ralph Ottuso as chairman of the Board of Supervisors of the Town of Caroga and the Town of Caroga having thereafter in March of 2015 having affirmed and ratified all the terms and conditions of the aforesaid donation agreement including the provision that the Town takes the property in perpetuity and agreed never to sell or otherwise demise or transfer the property.

**NOW, THEREFORE**, in consideration of the foregoing:

1. Balboaa Land Development Inc., hereby consents to the sale of the Premises by the Town of Caroga to the Caroga Arts Collective upon terms and conditions acceptable to the Town of Caroga and the Caroga Arts Collective.

2. This General Release and Waiver is to take effect only upon the actual transfer of the aforesaid property by the Town of Caroga to the Caroga Arts Collective. Such transfer shall occur within thirty (30) days after a successful vote on referendum or within ninety (90) days from the date of execution hereof, in the event a referendum vote shall not be taken and/or required. Balboaa Land Development, Inc. and the Town of Caroga, by its duly authorized representative, will also sign this release and will acknowledge thereby that the Town Representatives are fully familiar with the terms and conditions of this General Release and Waiver and that until the above referenced transfer is completed Balboaa Land Development, Inc., reserves all its rights and remedies to enforce the terms of the donation agreement dated December 29, 2014.

3. Upon consummation of and/or closing of the sale of the Premises by the Town of Caroga to the Caroga Arts Collective, Balboaa Land Development, Inc., shall and hereby forever release and discharge the Town of Caroga from any promise, warranty, guarantee, duty, responsibility, obligation and/or restriction set forth in the Donation Agreement dated December 29, 2014, or made contemporaneously therewith, whether written or oral, including but not limited to the condition and/or prohibition never to sell the Premises.

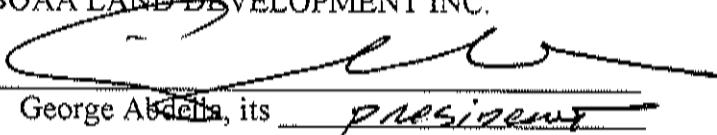
4. Upon consummation of and/or closing of the sale of the Premises by the Town of Caroga to the Caroga Arts Collective, Balboaa Land Development, Inc., shall and hereby forever

waive any and all claims, complaints, charges, causes of action, demands or rights it may have whatsoever, now or in the future, to enforce any term or condition of the Donation Agreement or any other promise, warranty, guarantee, duty, responsibility, obligation and/or restriction imposed, made and/or assumed by the Town of Caroga under said Donation Agreement, or made contemporaneously therewith, whether written or oral, in consideration of receipt of the donation of the Premises to the Town of Caroga.

5. The release, discharge and waiver provided by Balboaa Land Development, Inc., in this General Release and Waiver shall survive consummation of and/or closing of the sale of the Premises by the Town of Caroga to the Caroga Arts Collective, notwithstanding any act or occurrence requiring the Town of Caroga to retake the Premises as a result of: 1) the insolvency and/or bankruptcy of the Caroga Arts Collective; 2) a default by the Caroga Arts Collective in the terms of payment to the Town of Caroga subsequent to closing of the sale of the Premises; 3) a tax foreclosure sale of the Premises; and/or, 4) the exercise of a right of first refusal or first option to purchase the Premises from the Caroga Arts Collective.

IN WITNESS WHEREOF, Balboa Land Development, Inc., has signed this Release on this 30<sup>th</sup> day of April, 2019.

BALBOAA LAND DEVELOPMENT INC.

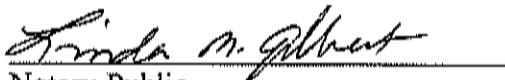
By 

George Abdella, its President

STATE OF NEW YORK )  
COUNTY OF Fulton )ss.:

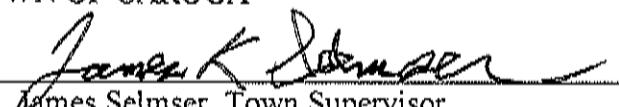
On this 30<sup>th</sup> day of April, 2019, before me, personally appeared GEORGE ABDELLA, President of BALBOAA LAND DEVELOPMENT, INC., to me personally known and known to me to be the same person described in and who executed the foregoing General Release and Waiver, and duly acknowledged to me that he executed the same.

LINDA M. GILBERT  
Notary Public, State of New York  
No. 01G15077557  
Qualified in Fulton County  
Commission Expires May 12, 2019

  
Notary Public

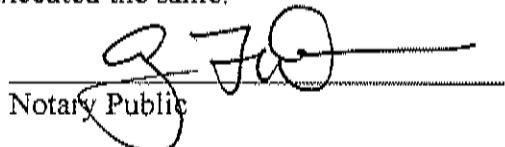
IN WITNESS WHEREOF, the TOWN OF CAROGA has signed this Release on this 23<sup>rd</sup> day of APRIL, 2019.

TOWN OF CAROGA

By   
James Selmsen, Town Supervisor

STATE OF NEW YORK )  
COUNTY OF MONTGOMERY )ss.:

On this 23<sup>rd</sup> day of APRIL, 2019, before me, personally appeared JAMES SELMSER, Town Supervisor of the TOWN OF CAROGA to me personally known and known to me to be the same person described in and who executed the foregoing General Release and Waiver, and duly acknowledged to me that he executed the same.

  
Notary Public  
  
GREGORY T. DUNN  
Notary Public, State of New York  
No. 02DU6257388  
Qualified in Montgomery County  
Commission Expires 3/12/2020