

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (this “Agreement”) is made and entered into as of the ____ day of _____, 2018, by Plaintiff, **GOTTEMOELLER REAL ESTATE, LTD.**, an Ohio corporation (“Gottemoeller”) and Defendant, **CITY OF AURORA**, an Illinois municipal corporation (“City”), together who may be referred to as the “Parties”.

RECITALS

WHEREAS, Gottemoeller is the owner of certain real property located in unincorporated Kane County, Illinois (the “Subject Property”); and

WHEREAS, the only roadway accessible to the Subject Property is a public street known as Orchard Gateway Road, which is contiguous with the Subject Property along its entire east side; and

WHEREAS, Orchard Gateway Road is a dedicated public roadway within the boundaries of the City of Aurora; and

WHEREAS, on or about October 12, 2016, Gottemoeller submitted a request for an access permit (the “Access Permit”) to the City for a curb cut in order to gain access to Orchard Gateway Road, which the City rejected; and

WHEREAS, following the rejection of Gottemoeller’s request for the Access Permit, Gottemoeller filed suit against the City in the Kane County Circuit Court (Case No. 16 MR 1386); and

WHEREAS, pursuant to its Verified Second Amended Complaint, Gottemoeller (A) requested a declaratory judgment pursuant to 735 ILCS 5/2-701 (Count I) and the issuance of a writ of mandamus directing the City to issue the Access Permit (Count II); and (B) alleged inverse condemnation (Count III) (collectively, the “Claims”); and

WHEREAS, the City has agreed to issue the Access Permit and the City and Gottemoeller have agreed to terms pursuant to which the Subject Property may be annexed to the City of Aurora; and

WHEREAS, in consideration of the foregoing and in order to avoid the uncertainty and expense of litigation, the Parties desire to resolve and settle any and all claims related to the Claims, pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the covenants and consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Issuance of Access Permit.** The City shall issue the Right of Way Permit to Gottemoeller within five (5) days of the date hereof in order for Gottemoeller to install a curb cut at the southwest corner of 2757 Orchard Gateway Road to allow its tenant farmer and others access to the Subject Property. The permit shall allow a cut in the curb as well as the laying of blacktop to facilitate entry into the Subject Property.

2. **Annexation Agreement.** The City shall promptly take all necessary actions in order to approve the Annexation Agreement attached hereto as **Exhibit 1** (the “Annexation Agreement”).

3. **Release of Claims.** In consideration of the City’s (i) issuance of the Access Permit; and (ii) agreement to promptly take all actions necessary to approve the Annexation Agreement, Gottemoeller for itself and its affiliates, related entities, agents, predecessors, heirs, successors, assignors, assignees, beneficiaries, insurers, shareholders, employees, officers and directors (all of the foregoing are hereinafter referred to individually and collectively as “Gottemoeller”), does hereby release and forever discharge the City and its related entities, agents, predecessors, heirs, successors, assignors, assignees, beneficiaries, insurers, employees, officers and directors (all of the foregoing are hereinafter referred to individually and collectively as the “City”) of and from any claims, suits causes of action or liability arising out of, in connection with, or related to the Claims, Gottemoeller’s settlement thereof, or otherwise relating to or arising from the previous refusal of the City to issue the Access Permit.

4. **No Admission of Liability.** Gottemoeller and the City hereby acknowledge that the transactions contemplated herein are agreed upon as a compromise and final settlement of a dispute and that the settlement is not, and may not be construed as, an admission of liability by either party, and is not to be construed as an admission that either party engaged in any wrongful, tortious or unlawful activity.

5. **Dismissal of the Litigation.** Gottemoeller and its counsel shall take whatever actions are necessary to ensure that the Verified Second Amended Complaint is dismissed in its entirety with prejudice and without costs or fees, within sixty (60) days of the date the Annexation Agreement is finally approved and all other deliveries and acts necessary to effectuate this Agreement (or required by this Agreement) are completed.

6. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, (2) sent by a nationally recognized overnight courier service, or (3) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee. All notices shall be sent to the Parties at the following addresses, or such other place as designated by giving notice thereof to the other in conformity with this provision:

If to the City:
Mayor of Aurora
City of Aurora
44 East Downer
Aurora, Illinois 60507
630-256-4636
mayorsoffice@aurora-il.org

With a Copy to:

Aurora Corporation Counsel
City of Aurora
5 East Downer Place, Suite F
Aurora, Illinois 60507

If to Gottemoeller:

Russell Gottemoeller
Gottemoeller Real Estate, Ltd.
4480 State Route 705
Fort Loramie, OH 45845
russ@ceioh.com

With a copy to:

Bruce Goldsmith
Dykema Gossett PLLC
2300 Cabot Drive, Suite 505
Lisle, IL 60532
630-577-2811
bgoldsmith@dykema.com

7. **Authority.** Each individual signing this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he or she has full authority to so execute the Agreement on behalf of the party on whose behalf he or she so signs. Each of the Parties represents that the attorneys and representatives signing this Agreement on their respective behalves have been duly authorized and empowered to do so.

8. **Counterparts.** This Agreement may be executed in duplicate, or with separate signature pages, all copies of which shall be deemed originals for all purposes.

9. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto, and the terms of this Agreement are contractual and not a mere recital.

10. **Reliance on Own Counsel.** In entering into this Agreement, the Parties hereby acknowledge that they have relied upon the legal advice of their respective attorneys, who are the attorneys of its own choosing; that such terms are fully understood and voluntarily accepted by such party; and that, other than the consideration set forth herein, no promises or representations of any kind have been made by either party to the other party. Each party hereby represents and acknowledges that in executing this Agreement such party did not rely, and has not relied, upon any representation or statement, whether oral or written, made by another party or by any other party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

[Signature Page Follows]

EFFECTIVE AS OF THE DATE FIRST WRITTEN ABOVE.

CITY OF AURORA,
an Illinois municipal corporation

GOTTEMOELLER REAL ESTATE, LTD.,
an Ohio corporation

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

FORM OF ANNEXATION AGREEMENT

[See Attached]