

STATE OF INDIANA) MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NO. 53C08-1912-MI-002936

JUDIE BAKER & DAVID HOLDMAN,)
)
 Plaintiffs,)
)
 v.)
)
 TERRI PORTER, in her capacity as Director of the)
 City of Bloomington Planning and Transportation)
 Department,)
 Defendant.)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made this 6th day of August, 2021, by and among Judie Baker and David Holdman (“Plaintiffs”), and Terri Porter, in her official capacity as Director of the City of Bloomington Planning and Transportation Department (“Defendant”) (collectively, “the Parties”).

RECITALS

WHEREAS, on December 17, 2019, Plaintiffs filed a Complaint for Mandate seeking to obtain an order from the Court directing the issuance of a Certificate of Zoning Compliance by Defendant; and

WHEREAS, after extensive briefing and argument, on April 21, 2021, the Court issued an order denying both Parties’ motions for summary judgment; and

WHEREAS, the Parties, without admitting liability or violations of any local, state, or federal law or regulation, now wish to resolve the above-captioned lawsuit and all disputes related thereto on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Defendant’s Obligation to Plaintiffs.** The Defendant, by the predecessor Director of the City of Bloomington Planning and Transportation Department, shall issue a certificate of zoning compliance to the Plaintiffs authorizing the demolition of structures at 523 W. Seventh Street, Bloomington, Indiana. The Plaintiffs initially requested a permit for said demolition on May 17, 2019. Said

certificate of zoning compliance shall be issued within seven (7) days after the execution of this Agreement.

2. **Plaintiffs' Obligation to Defendant.** The Plaintiff shall file a voluntary motion to dismiss the above-captioned lawsuit. The Defendant shall stipulate to the dismissal of the same. Said motion shall be filed within thirty (30) days after the issuance of the certificate of zoning compliance.
3. **Release of the Plaintiffs.** In consideration for the promises contained within this Agreement as well as the release described below, Defendant Terri Porter in her official capacity, and by extension the City of Bloomington ("City"), promise and agree to release and forever discharge the Plaintiffs from all claims, actions, causes of action, demands, debts, liabilities and other obligations, including all potential penalties and fines resulting from violations of the Bloomington Municipal Code, related to the above-captioned lawsuit and/or the demolition of structures at 523 W. 7th Street, Bloomington, on or about September 27, 2019. Defendant further and explicitly agrees that the activity forming this basis for this lawsuit does not trigger Bloomington Municipal Code § 20.06.100(b)(6) and that Plaintiffs are permitted to submit standard petitions for developing the property at 523 W 7th Street, Bloomington, at any time. This release includes all claims arising among the Parties to the date of this Agreement, whether or not now known or unknown.
4. **Release of the Defendant.** In consideration for the promises contained within this Agreement as well as the release described below, Plaintiffs shall forever release, hold harmless, and discharge Defendant, including the City from all claims, actions, causes of action, demands, debts, liabilities and other obligations related to the above-captioned lawsuit and/or the demolition of structures at 523 W 7th Street, Bloomington, on or about September 27, 2019. This release includes all claims arising among the Parties to the date of this Agreement, whether or not now known or unknown.
5. **Attorney's Fees and Costs.** The Parties agree that they are each solely responsible for paying any attorneys' fees and costs they have or will incur and that neither Party nor its attorney(s) will seek any award of attorneys' fees or costs from the other Party.
6. **Effective Immediately.** This Settlement Agreement shall be effective immediately upon it being executed.
7. **Enforcement.** This Settlement Agreement may be pleaded as a full and complete defense to, and may be used as a basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or maintained in breach of this Settlement Agreement. If either party must bring suit to enforce any provision of this Settlement Agreement or if they are required to defend any action in connection therewith, the defense to which is any provision of this

Settlement Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and court costs incurred in the prosecution or defense of such action.

8. **Governing Law and Forum.** This Settlement Agreement shall be governed by the laws of the State of Indiana. Any action to enforce this Agreement shall be brought in the Monroe County Circuit Court.
9. **Counterparts.** This Settlement Agreement may be prepared and signed in multiple counterparts, each of which shall be deemed as an original and all such counterparts together shall constitute one Settlement Agreement. A telecopied, facsimile, or electronic signature shall be binding as if it were the original signature.
10. **Advice of Counsel.** The Parties have read this Settlement Agreement, have consulted with counsel concerning the Settlement Agreement, and know and understand its content.
11. **Authority to Bind.** The persons signing this Agreement represent and warrant that they are duly authorized and have the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
12. **Binding effect of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective heirs, successors, and assigns.
13. **No Presumption against Drafter.** In view of such reading, counseling and understanding, and since the Parties have had the opportunity to negotiate fully the terms of this Settlement Agreement, its terms shall be interpreted and construed without any presumption or inference based upon or against the party or parties causing the Settlement Agreement to be drafted. The Parties are freely and voluntarily executing this Settlement Agreement after having been apprised of all relevant information to such Settlement Agreement.
14. **Reliance.** The Parties, in executing the Settlement Agreement, do not rely upon any inducement, promises, or representations made by either party to the other party or to their respective representatives, successors and assigns, or to any attorney acting in an advisory capacity outside of the representations set out in this Settlement Agreement. The Parties have read this Settlement Agreement and the terms herein, and the consequences hereof have been explained to them.
15. **New or Different Facts: No Effect.** This Agreement shall be, and remain, in effect despite the discovery or existence of any new or additional fact, or any fact

different from that which either Party now knows or believes to be true. Notwithstanding the foregoing, nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

16. **Severability.** If any provision of this Settlement and Release or any construction or application of any provision of this Settlement Agreement is held to be unenforceable or invalid for any reason, then the validity of all of the remaining provisions shall not be affected, and the validity of any remaining construction or application of the provision shall not be affected, and the rights or obligations of the Parties shall be construed and in force as if the Settlement Agreement did not contain such invalid provision or, as the case may be, invalid construction or application of such provision(s); provided, however, that such resulting construction and enforcement shall be generally consistent with the basic purpose of this Settlement Agreement. For this purpose "provision" refers to any word, phrase, part, term or other portion of this Settlement Agreement.
17. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties, and supersedes any and all prior agreements or understanding between the Parties pertaining to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day(s) and year noted below, intending to be forever bound thereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

DEFENDANT

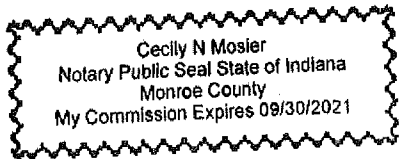
City of Bloomington, Indiana

Phillippa M. Guthrie
By: Phillippa M. Guthrie
Its: Corporation Counsel

8-11-21

Date

STATE OF INDIANA)
) SS:
COUNTY OF Monroe)



SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said County and State, this 11th day of August 2021.

Cecily N. Mosier

NOTARY PUBLIC

Cecily N. Mosier

Notary's Name Printed

My Commission Expires: 9/30/2021
Resident of Monroe County.

Commission No. 01047918

[ADDITIONAL SIGNATURE PAGE TO FOLLOW]

PLAINTIFFS

David Holdman
David Holdman

8-6-21
Date

Judie Baker, As
Judie Baker) attorney
) in fact

8-6-2021
Date

STATE OF INDIANA)
) SS:
COUNTY OF Monroe)

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said County and State, this 6th day of August 2021.

Allison Weber
NOTARY PUBLIC
Allison Weber
Notary's Name Printed

My Commission Expires: 12/7/24
Resident of Monroe County.

Commission No. NPO694078

