

**CITY CLERK
ORIGINAL**

**C-10608
01/22/2016**

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (this "Agreement") is entered into on the date the last party signs this Agreement (the "Execution Date"), and is made by and between Steven Kaufman ("Mr. Kaufman") and William Spanko ("Mr. Spanko"), and the City of Glendale, an Arizona municipal corporation (the "City"). The City, Mr. Kaufman, and Mr. Spanko are collectively referred to in this Agreement as the "Parties."

RECITALS

- A. On November 25, 2014, as a result of calls from neighbors, City of Glendale (the "City") Building Safety Department officials arrived at the single-family home at 6420 North 45th Avenue in Glendale (the "Property") and determined that the Property was unsafe to occupy as a result of conditions at the Property.
- B. Following a hearing on July 23, 2015, the Glendale Building Safety Division Hearing Officer determined that the Property represented an imminent health hazard and a public nuisance, and was therefore subject to abatement by demolition.
- C. Mr. Kaufman, one of the owners of the Property, filed a complaint in Maricopa County Superior Court on August 31, 2015, essentially appealing the Hearing Officer's decision. The case was later transferred to the Lower Court Appeals department of the Maricopa County Superior Court.
- D. On or about September 23, 2015, Mr. Kaufman and his sister Sandra Kaufman conveyed their interest in the Property via quitclaim deed to Mr. Spanko.
- E. The parties have agreed to resolve their differences and to allow Mr. Spanko to attempt to rehabilitate the Property, and for Mr. Kaufman to dismiss the lawsuit.

AGREEMENT

1. **Environmental Report.** Mr. Spanko will hire a licensed environmental engineer or certified industrial hygienist (the "Environmental Professional"). In the event the Environmental Professional is an environmental engineer, the engineer must be licensed by the Arizona State Board of Technical Registration, and in the event the Environmental Professional is an industrial hygienist, the hygienist must possess certification from the American Board of Industrial Hygiene. The Environmental Professional will produce a report determining whether the Property is capable of rehabilitation (the "Environmental Professional's Report"). The Environmental Professional's Report will, at a minimum, contain the following information:

- A description of the home and construction type and materials.
- A description and documentation of the existing conditions of the home along with photographs.
- Identification and documentation of any other potentially hazardous environmental conditions or materials.
- Direction regarding how to properly and safely dispose of all biohazards and possible asbestos-containing materials.
- Direction regarding which materials and/or portions of the structure must be removed, demolished, repaired or replaced.
- Directions and descriptions explaining how the remaining structure must be treated to address the biohazard(s).
- Directions explaining how the surrounding grounds must be treated to treat the biohazard.
- Directions regarding mitigation and elimination of the odors in and around the home. Mr. Spanko acknowledges and agrees that they are required to completely eliminate the odor on the outside of the structure and ensure that the odor will not return after treatment.

The Environmental Professional will submit the Environmental Professional's Report to the City for its review and approval. Mr. Spanko and Mr. Kaufman acknowledge and agree that the City must approve the Environmental Professional's Report before work of any kind can begin at the Property.

2. **Special Inspector.** Mr. Spanko will hire a special inspector to oversee any rehabilitation work at the Property identified in the Environmental Professional's Report (the "Biohazard Rehabilitation Work"). Prior to hiring the Special Inspector, Mr. Spanko will submit to the City the name and relevant credentials of the Special Inspector preferred by Mr. Spanko, and the City may approve or deny the hiring of the Special Inspector in the City's sole and absolute discretion. The Special Inspector will, at a minimum, monitor the Biohazard Rehabilitation Work to confirm that all work is performed in accordance with the Environmental Professional's Report. The Environmental Professional may serve as the Special Inspector, but the Special Inspector may not serve as the contractor performing the rehabilitation work at the Property.
3. **Permits.** No work at the Property, including but not limited to the Biohazard Rehabilitation Work, will commence without the appropriate City permits.
4. **Contractor.** Mr. Spanko will hire a licensed contractor to perform the Biohazard Rehabilitation Work at the Property. Such contractor will provide a warranty for all work in accordance with the workmanship standards of the Arizona Registrar of Contractors. Mr. Spanko and his agents will complete the Biohazard Rehabilitation Work no later than forty-five (45) days after the Execution Date.
5. **Additional Inspection.** Following completion of the Biohazard Rehabilitation Work, the City will conduct an additional inspection of the Property. Mr. Spanko will submit construction drawings,

obtain all necessary building permits, and pass all City inspections to address any building code deficiencies, non-permitted work or necessary restorative construction work. Mr. Spanko acknowledges and agrees that non-conforming work exists at the Property, involving the garage and sunroom at the Property, and that such work will require appropriate permits from the City.

6. **Re-occupancy.** Upon completion of the Biohazard Rehabilitation Work, and the completion of any other necessary rehabilitation work, including but not limited to any rehabilitation work identified as necessary by the City's inspections and the permitting of all non-conforming work at the Property as described in Paragraph 5, the City will allow the re-occupancy of the Property.
7. **Trash removal.** No later than five (5) days after the Execution Date, Mr. Spanko will remove and dispose of the trash in the backyard of the Property. Mr. Spanko will comply with all applicable federal and state laws and regulations during the removal of the trash.
8. **City's Expenses.** Mr. Spanko will reimburse the City for all expenses incurred by the City as a result of this matter, including, but not limited to hearing fees, animal rescue fees, and the cost of any work performed by the City or its contractors in conjunction with the Property. Mr. Spanko also acknowledges and agrees that all costs of rehabilitating the Property, including but not limited to the Environmental Professional and Special Inspector's fees, are solely his responsibility.
9. **Case dismissals.** Promptly following the Execution Date, and in no event later than three (3) days after the Execution Date, Mr. Kaufman will dismiss the instant litigation between him and the City of Glendale in the Maricopa County Superior Court, Lower Court Appeals department, entitled LC2015-000393, by filing with the court (or cooperating with the City to file) the stipulation to dismiss and proposed order attached to this Agreement as Exhibit "A." In addition, Mr. Spanko will dismiss the instant litigation between him and the City of Glendale in the Maricopa County Superior Court, entitled CV2015-010910, as well as the appeal Mr. Spanko filed with Division 1 of the Arizona Court of Appeals, entitled No. 1 CA-CV 15-0692, by filing with the court (or cooperating with the City to file) the stipulation to dismiss and notice of dismissal attached to this Agreement as Exhibit "B."
10. **Demolition.** The City will refrain from taking any further demolition actions against the Property for at least forty-five (45) days following the Execution Date while Mr. Spanko completes his obligations regarding the Biohazard Rehabilitation Work. After forty-five (45) days following the Execution Date, the City will refrain from taking any further demolition actions against the Property as long as Mr. Spanko is working in good faith to perform the Biohazard Rehabilitation Work. In the event the Biohazard Rehabilitation Work is halted at the Property for any reason for more than five (5) consecutive days and Mr. Spanko is no longer working in good faith to perform any remaining Biohazard Rehabilitation Work in the sole and absolute discretion of the City, Mr. Spanko understands and agrees that the City may immediately demolish the Property, and no notice is required to Mr. Spanko. Following completion of the Biohazard Rehabilitation

Work, the City will refrain from demolishing the Property as long as rehabilitation work is proceeding. In the event such rehabilitation work at the Property is halted for more than fifteen (15) consecutive days and Mr. Spanko is no longer working in good faith to perform any remaining rehabilitation work in the sole and absolute discretion of the City, Mr. Spanko understands and agrees that the City may immediately demolish the Property, and no notice is required to Mr. Spanko. In addition, the City may immediately demolish the Property with no notice to Mr. Spanko in the event Mr. Spanko fails to comply with his obligations to dismiss his lawsuit as detailed in Paragraph 9.

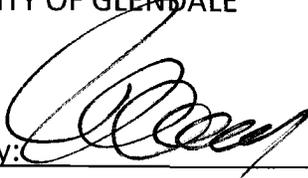
11. **Ownership.** Mr. Spanko and Mr. Kaufman represent and warrant that Mr. Spanko is the owner in fee title of the Property, and that Mr. Spanko has the legal right to take all actions he has promised to take in this Agreement. Based on this understanding, the City releases Mr. Kaufman from all financial liability related to the Property, including but not limited to all responsibility for the costs entailed in any potential demolition of the Property. The parties agree that if this understanding is proven inaccurate, and Mr. Kaufman still is the owner in fee title of the Property, that any release is null and void.
12. **Successors and Assigns.** This Agreement shall be binding on the Parties, their heirs, administrators, executors, and assigns. The Parties covenant and agree that they themselves and their heirs, executors, administrators, and assigns will sign all instruments, releases, assignments, stipulations, and consents that may be reasonably required of them under the provisions of this Agreement.
13. **Voluntary Execution.** All parties are aware of and understand the terms of this Agreement and the legal consequences of this Agreement. The Parties warrant that they had the opportunity to have legal counsel review this Agreement, and the Parties warrant that they have signed the Agreement voluntarily of their own free will and accord and not under duress.
14. **Entirety Clause.** This Agreement supersedes all prior agreements between the Parties and it reflects the entire agreement between the Parties. Any statements, promises, or inducements that are not contained in this Agreement are not valid or binding on the Parties.
15. **Attorneys' Fees.** If any party commences any legal or equitable action or proceeding related to any of the provisions of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and litigation-related expenses in doing so. This paragraph applies, among other things, to any action for declaratory relief or for any other form of relief to enforce, interpret, rescind or in any other manner effect the provisions of this Agreement, as well as an action for the breach of this Agreement. This paragraph further applies to any appellate proceedings that may be brought in connection with such action. The amount of the reasonable attorneys' fees and litigation related expenses shall be determined by the court, arbitrator, or other decision-

maker in the same action or in any separate action brought for that purpose, in addition to any other relief to which any party may be entitled.

16. **Governing Law.** This Agreement shall be construed according to the laws of the State of Arizona.
17. **Jurisdiction and Venue.** The parties to this Agreement hereby consent to the sole and exclusive jurisdiction of any federal or state courts in the State of Arizona over any matter arising out of this Agreement. The parties submit to the personal jurisdiction of the courts in the State of Arizona and agree that all disputes arising hereunder shall be resolved in the Courts located in the State of Arizona, where venue shall be proper.
18. **Signature in Counterpart.** This Agreement may be signed in counterpart and circulated by facsimile or e-mail transmission. Each of the counterparts shall be deemed an original, and all of them shall constitute one and the same instrument. It shall be effective on the date that all parties have signed a copy of this Agreement.
19. **Amendment.** This Agreement shall not be modified or amended except in writing signed by all parties hereto.

[SIGNATURES ON FOLLOWING PAGE]

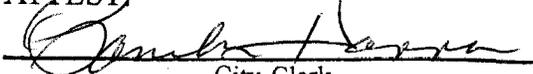
CITY OF GLENDALE

By: 

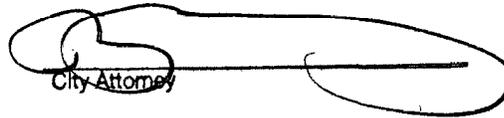
1.22.16

Date

ATTEST


City Clerk

Approved as to form


City Attorney

WILLIAM SPANKO

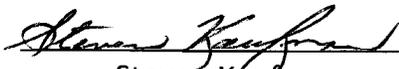


William Spanko

1-20-16

Date

STEVEN KAUFMAN



Steven Kaufman

01/20/2016

Date

Exhibit A

[Stipulation to Dismiss and Proposed Order - LC2015-000393]

Exhibit B

[Stipulation to Dismiss and Notice of Dismissal - CV2015-010910, No. 1 CA-CV 15-0692]

1 Aaron C. Schepler, SBN 019985
James A. Gruber, SBN 023240
2 **OFFICE OF THE CITY ATTORNEY**
CITY OF GLENDALE
3 5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301
4 (623) 930-2930/Fax (623) 915-2391
aschepler@glendaleaz.com
5 jgruber@glendaleaz.com

6 Attorneys for Defendant City of Glendale

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

9 STEVEN KAUFMAN,
10 Plaintiff,
11 v.
12 CITY OF GLENDALE, ARIZONA and DOES
13 1-10,
14 Defendants.

No. LC2015-000393-001 DT
STIPULATION TO DISMISS
(Assigned to the Hon. Crane McClennen)

15
16 The parties hereby stipulate that this case may be dismissed, without prejudice, with each
17 party to bear his or its own attorneys' fees, costs, and litigation expenses.

18 RESPECTFULLY SUBMITTED this ___ day of _____, 2015.

19 STEVEN KAUFMAN

20
21 By _____
Plaintiff, In pro per

22 CITY OF GLENDALE

23
24 By _____
25 Aaron C. Schepler
James A. Gruber
26 Attorneys for Defendant City of Glendale

1 ORIGINAL of the foregoing electronically
2 filed with the Clerk of the Court this
3 ___ day of _____, 2015.

4 COPY of the foregoing mailed this
5 ___ day of _____, 2015:

6 Steven Kaufman
7 c/o William Spanko
8 4608 W. Maryland Ave. #103
9 Glendale, Arizona 85301
10 Plaintiff, In pro per

11 /s/ _____

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1 Aaron C. Schepler, SBN 019985
James A. Gruber, SBN 023240
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aschepler@glendaleaz.com
5 jgruber@glendaleaz.com

6 Attorneys for Defendant City of Glendale

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

9 STEVEN KAUFMAN,
10 Plaintiff,
11 v.
12 CITY OF GLENDALE, ARIZONA and DOES
13 1-10,
14 Defendants.

No. LC2015-000393-001 DT
ORDER
(Assigned to the Hon. Crane McClennen)

15
16 The Court, having reviewed and considered the parties' Stipulation to Dismiss, and good
17 cause appearing,

18 IT IS ORDERED dismissing this case, without prejudice, with each party to bear his or its
19 own attorneys' fees, costs, and litigation expenses.

20 DATED this ___ day of _____, 2015.

21
22
23 _____
Judge of the Superior Court

24
25
26

Exhibit B

[Stipulation to Dismiss and Notice of Dismissal - CV2015-010910, No. 1 CA-CV 15-0692]

Aaron C. Schepler, SBN 019985
OFFICE OF THE CITY ATTORNEY
CITY OF GLENDALE
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301
(623) 930-2930
aschepler@glendaleaz.com
Attorneys for Defendant/Appellee

ARIZONA COURT OF APPEALS
DIVISION ONE

WILLIAM SPANKO,

Plaintiff/Appellant,

v.

CITY OF GLENDALE,

Defendant/Appellee.

No. 1 CA-CV 15-0692

Maricopa County Superior Court
No. CV2015-010910

**STIPULATION TO DISMISS
APPEAL**

In accordance with Rule 26(b) of the Arizona Rules of Civil Appellate Procedure, the parties hereby stipulate that this appeal may be dismissed, without prejudice, with each party to bear his or its own attorneys' fees and costs.

RESPECTFULLY SUBMITTED this ____ day of November, 2015.

WILLIAM SPANKO

By: /s/ William Spanko
William Spanko
Plaintiff/Appellant, In pro per

CITY OF GLENDALE

By: /s/ Aaron C. Schepler
Aaron C. Schepler
Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of November, 2015, I electronically transmitted the attached document to the Clerk's Office using the Court's electronic filing system, and also sent a copy of the attached document by first-class mail, postage prepaid, to:

William Spanko
4608 W. Maryland Ave. #103
Glendale, Arizona 85301
Plaintiff/Appellant, In pro per

/s/ Brittany Lopez