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| To: | <u>Mark King</u> | From: | <u>Peter B. Grinstein, Attorney</u> |
| Company: | <u></u> | Date: | <u>04/26/2019</u> |
| Phone: | <u>330-720-8860</u> | Re: | <u>City of Youngstown</u> |
| Fax: | <u>330-536-8486</u> | Total pages (Including cover sheet): | 8 |
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955441

MUTUAL SETTLEMENT, COMPROMISE AND RELEASE AGREEMENT

THIS MUTUAL SETTLEMENT, COMPROMISE AND RELEASE AGREEMENT (hereinafter referred to as the "Agreement") is made by and between **Mark King a/k/a Mark R. King**, of 146 South State Line Road, Lowellville, Ohio 44436 (hereinafter referred to as "King"), and the **City of Youngstown**, of City Hall, 26 South Phelps Street, Youngstown, Ohio 44503 (hereinafter referred to as "Youngstown").

WITNESSETH:

THAT, WHEREAS, various business transactions and dealings have taken place between King and Youngstown, including, but not limited to, issues concerning demolition of properties, grass cutting, boarding up of properties, and water and sewer bills through the Youngstown Water Department; and,

WHEREAS, numerous and diverse controversies and differences have arisen between said parties with reference thereto; and,

WHEREAS, Youngstown alleges that King owes Youngstown the sum of Six Hundred Forty-Seven Thousand Eight Hundred Twenty-One and 47/100 Dollars (\$647,821.47); and,

WHEREAS, Youngstown has obtained various judgment liens against King; and,

WHEREAS, King vigorously contests and opposes Youngstown's allegations concerning amounts owed by King to Youngstown; and,

WHEREAS, the parties have agreed to compromise, settle and adjust all of said controversies and differences presently existing between the parties by the execution of this Agreement, the payment of certain sums from King to Youngstown, and the other considerations referred to herein; and,

WHEREAS, this Agreement contains the complete understanding of the parties and except as otherwise provided herein, it is a settlement of all known and unknown claims which either party may have through and including March 31, 2019; and,

WHEREAS, this Agreement is not intended to be construed as an admission of any liability on the part of any party in that they have denied and still deny any liability to each other; and,

WHEREAS, each of the parties hereto warrants that they are authorized to settle this matter on behalf of themselves, as well as their respective officers, agents, representatives, attorneys, principals, employees, personal representatives, heirs, successors and assigns, and Youngstown's Board of Control.

NOW, THEREFORE, it is hereby agreed, with the intent of being legally bound thereby, that in consideration of this Agreement, of the foregoing recitals and premises, of the financial and other considerations required to be paid and/or observed by the parties and the sum of one dollar and other good and valuable considerations (\$1.00 and O.V.C.) flowing from each of the parties to the other, receipt of which considerations are all hereby acknowledged, as follows:

1. **Financial Considerations**

A. King agrees to pay Youngstown a lump-sum payment of Forty Thousand Dollars (\$40,000.00) immediately following delivery to King's counsel of a fully executed copy of this Agreement; and

B. King further agrees to pay Youngstown the sum of Two Hundred Twenty-Two Thousand Dollars (\$222,000.00) by means of one hundred twenty (120) consecutive equal monthly payments of One Thousand Eight Hundred Fifty Dollars (\$1,850.00) per month, commencing thirty (30) days after the full execution and delivery of this Agreement by the parties and the payment by King to Attorneys Millstone and Kannensohn as counsel to Youngstown of the \$40,000.00 lump-sum payment referred to in paragraph A above. King may prepay or otherwise make any additional payments to Youngstown in care of Attorneys Millstone & Kannensohn under this obligation without penalty.

The payments of the amounts set forth in paragraphs A and B above constitute the full, complete, and total amounts due Youngstown under the parties' dispute concerning property demolition, grass cutting, boarding up of properties, water and sewer bills, or otherwise through and including March 31, 2019.

2. **Release of Claims** – Upon the payment of the financial consideration to be paid by King to Youngstown under paragraph 1 above, each of the parties does hereby irrevocably and unconditionally release, acquit and forever discharge the other, his, its or their affiliated and/or related companies, and his, its or their respective officers, agents, representatives, members, attorneys, principals, employees, personal representatives, heirs, successors and assigns, as the case may be, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs actually incurred), of any nature whatsoever, known or unknown (hereinafter referred to individually as "Claim" or collectively as "Claims"), arising from the beginning of the world to the date of these presents, including, but not limited to, any and all Claims or issues associated with King's properties with respect to demolition, grass cutting, boarding up, and water and sewer bills. The parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims which they do not know or expect to exist in their favor which have accrued at the time of the execution of this Agreement and through and including March 31, 2019, and that this Agreement contemplates the extinguishment of any such Claim or Claims.

3. **Escrow Security Deposit** – In order to avoid these issues in the future, King agrees to deposit on behalf of Youngstown the sum of Ten Thousand Dollars (\$10,000.00) in escrow with Attorneys Millstone and Kannensohn ("Escrow Agent") immediately upon the execution of this Agreement by Youngstown and delivery to King's counsel, and an additional Ten Thousand Dollars (\$10,000.00) to be deposited with Attorneys Millstone and Kannensohn no later than September 1, 2019.

Commencing at the time that the aforesaid total of \$20,000.00 has been deposited in escrow, but no later than September 1, 2019, Youngstown and King shall reconcile all of King's accounts with Youngstown for accruals starting on or after April 1, 2019, and continue such a reconciliation on March 1 and September 1 of each succeeding year, and whatever amount is agreed to be past due for more than thirty (30) days shall be paid to Youngstown from the escrow, in which event, King shall immediately replenish the escrow to a level of \$20,000.00. This process shall continue until the ten (10) year settlement has been paid as set forth in paragraph 1B above, or until King has earlier otherwise paid Youngstown the \$222,000.00, at which time the \$20,000 or amount remaining in the escrow account shall be immediately returned to King. In the event King shall sell or otherwise dispose of his properties located in the City of Youngstown, pursuant to the provisions of **5. Sale of Properties** and upon notification thereof to Youngstown and the escrow agent, a final reconciliation will be conducted by the parties and any remaining funds in the escrow account shall immediately be returned to King. In the event the escrow agent no longer represents Youngstown, the escrow will continue with Youngstown's new counsel under the same terms, conditions and provisions.

4. **Judgment Liens** – Upon Youngstown's receipt of the \$222,000.00 payment referred to in paragraph 1B above, any and all judgment liens in favor of Youngstown and against King will be immediately and without further notice satisfied and discharged of record.

5. **Sale of Properties** – In the event that King shall wish to sell any property for good and valuable consideration at fair market value, the net proceeds after deduction of all real estate commissions and closing costs, shall be distributed as follows:

- A. Sale of 1st two (2) properties – 100% of the net proceeds to King, and
- B. Sale of any remaining properties-distribution of the net proceeds shall be 50% to King and 50% to Youngstown which shall be applied by Youngstown to the last remaining payments due on the one hundred (120) consecutive equal monthly payment schedule referenced in 1 B. Such payments shall not relieve King of his responsibility to continue making the monthly payments pursuant to the payment schedule referenced in paragraph 1B.
- C. In the event of a sale of any of King's properties, Youngstown agrees, upon notification by King and in order to clear title, to furnish a partial release of any and all judgment liens affecting said properties being sold.

6. **Demolition; Grass Cutting; Board-Up; Water and Sewer** – In a further attempt to avoid disputes over these issues in the future, the parties hereby agree as follows:

- A. **Demolition** – There are nine (9) properties to be demolished, the details of which are set forth on **Exhibit A** attached hereto. The parties agree that seven (7) of such properties shall be demolished by King through a certified demolition company on or before April 1, 2020. Youngstown agrees not to take any action to demolish said properties unless said properties are not demolished by April 1,

2020. In the event that the City of Youngstown Fire Chief shall re-classify any of the seven (7) properties as an Emergency Demolish, King shall comply with the notice of the Emergency Demolition requirements or waive his right to proceed with demolition of the property. The remaining two (2) properties: 195 Hilton Ave. and 124 E. Judson Ave. have been designated by the City of Youngstown Fire Chief as Emergency Demolitions and will be demolished by King through a certified demolition company on or before June 1, 2019. Youngstown agrees not to take any action to demolish the two properties unless said properties are not demolished by June 1, 2019.

- B. **Grass Cutting** – King will pay to Youngstown the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) concurrent with the payment by King to Youngstown as set forth in 1A and 3 upon the execution and delivery of this Agreement to King's counsel, which amount will be used by Youngstown to cover King's grass cutting obligations for the 2019 season. Youngstown agrees to accept said \$12,500.00 payment as King's only 2019 grass cutting obligation, and Youngstown agrees not to charge any grass cutting expense to King's account nor otherwise bill King for any grass cutting expense for the 2019 season. Each year thereafter, King will negotiate with Youngstown the amount of his grass cutting expense for that season, on or before April 1st of each year. If King and Youngstown are able to successfully negotiate a grass cutting fee agreement for a calendar year on or before April 1st in a year, then in that event upon payment of the negotiated amount by King to Youngstown, Youngstown agrees not to charge any grass cutting expense to King's account nor otherwise bill King for any grass cutting expense for that year.

7. **Default** – In the event of default by King in any scheduled payment in paragraph 1 above, and such default continues for more than fifteen (15) days after written notice from Youngstown to King with a copy of such written notice to Brouse McDowell, Attention: Peter B. Grinstein or Timothy M. Reardon, Youngstown shall have the option to declare King's performance in the agreement in default and terminate it with all monies paid to date being pro-rated and credited to the balance of all outstanding claims and judgments. In the event that Youngstown exercises the option to terminate the agreement, Youngstown shall have the right to exercise all of its statutory rights and remedies relative to its outstanding claims and judgments against King.

8. **Non-Assignment** - Youngstown represents that it has not heretofore assigned or transferred and will not assign or transfer to any person or entity any Claim or Claims or any portion thereof or interest therein.

9. **Representations** - The parties represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any representation or statement made by either of the parties or by any of the parties' agents, representatives or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

10. **Binding** - This Agreement shall be binding upon and shall inure to the benefit of each of the parties and its or their respective heirs, administrators, personal representatives, executors, successors and assigns, including Youngstown's Board of Control.

11. **Designation of Law** - This Agreement is made and entered into in the State of Ohio and shall in all respects be interpreted, enforced and governed by the laws of the State of Ohio.

12. **Dispute Resolution** - The parties hereto agree to submit any and all disputes hereunder, including disputes regarding release of the escrow funds to (i) the jurisdiction of the Common Pleas Court in Mahoning County, Ohio, or (ii) any arbitration or mediation forum as to which the parties to such dispute shall agree in writing. Trials to a jury are hereby waived by the parties.

13. **Consultations** - The parties declare, represent and agree that they have carefully read this Agreement; that they have been represented by counsel - Fredric A. Kannensohn of the law firm of Millstone & Kannensohn of Youngstown, Ohio, representing Youngstown, and Timothy M. Reardon and Peter B. Grinstein of the law firm of Brouse McDowell, LPA of Canfield, Ohio, representing King; and that they know and understand the contents hereof and sign the same knowingly and voluntarily as their free act and deed, as well as the free act and deed of Youngstown's Board of Control, on the dates set forth below their respective signatures.

14. **Recitals** - The parties agree that the recitals contained in this Agreement are a part of and survive this Agreement.

15. **Separation** - Should any provision of this Agreement be declared to be or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

16. **Merger** - This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

17. **Authorization** - The undersigned signatories on behalf of King and Youngstown represent and warrant that the execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been authorized by King and by all necessary Youngstown action and constitute a valid obligation of these parties.

18. **No Admission** - The execution of this Agreement by the parties is not deemed to be an admission of wrongdoing or default by any party to this Agreement.

19. **Counterparts** - This Agreement may be executed by the parties in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement intending to be legally bound thereby on the date set forth below their respective signatures.

IN THE PRESENCE OF:

[Signature]
[Witness Signature]
Patric B. Grinstein
[Witness-Print Name]

[Signature]
MARK KING a/k/a MARK R. KING
Date: 4/12/19

CITY OF YOUNGSTOWN ⁴⁻¹⁸⁻¹⁹
BOARD OF CONTROL ₁₉₋₂₉₉

[Signature]
[Witness Signature]
Erica Avery
[Witness-Print Name]

By: [Signature]
Mayor
Date: 4-18-19

[Signature]
[Witness Signature]
Erica Avery
[Witness-Print Name]

By: K. Miank
Finance Director
Date: 4-18-19

[Signature]
[Witness Signature]
Erica Avery
[Witness-Print Name]

By: [Signature]
Law Director
Date: 4-18-19

EXHIBIT A

| TWO (2) HOUSES THAT NEED DEMOLISHED BY JUNE 1, 2019 | |
|---|-------------------|
| ADDRESS | PARCEL NUMBER |
| 195 HILTON | 53-118-0-389.00-0 |
| 124 E. JUDSON | 53-118-0-418.00-0 |

| SEVEN (7) HOUSES THAT NEED DEMOLISHED BY APRIL 1, 2020 | |
|--|-------------------|
| ADDRESS | PARCEL NUMBER |
| 27 HILTON | 53-118-0-147.00-0 |
| 67 E. JUDSON | 53-118-0-184.00-0 |
| 127 E. RAVENWOOD | 53-118-0-355.00-0 |
| 1527 OAK LANE | 53-102-0-181.00-0 |
| 245 PASADENA | 53-114-0-155.00-0 |
| 1535 RAVINE | 53-104-0-136.00-0 |
| 1514 REPUBLIC | 53-104-0-081.00-0 |