

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into as of the last date on the signature page of this Agreement (the "Effective Date"), by and between the CITY OF ST. HELENA (the "CITY"), on the one hand, and TOURIA SCHMIDT and PARADIS ZAS, LLC (collectively, the "SCHMIDT PARTIES"), on the other hand, who are sometimes collectively referred to as the "Parties."

RECITALS

A. The SCHMIDT PARTIES, and each of them, represent and warrant that they are the sole owner of the single-family dwelling located at 1570 Main Street, St. Helena, California (the "Property").

B. The CITY regulates the short-term rental ("STR") of residential properties for fewer than 30 days pursuant to Chapter 17.134 of the St. Helena Municipal Code ("STR Ordinance") and imposes transit occupancy taxes ("TOT") pursuant to Chapter 3.28 of the St. Helena Municipal Code ("TOT Ordinance"). (The STR Ordinance and the TOT Ordinance are collectively referred to as the "City Ordinances".)

C. City alleges that between 2014 and 2016, the SCHMIDT PARTIES rented the Property to third parties for stays of fewer than 30 days without a STR permit having been issued by the CITY pursuant to the STR Ordinance and that the SCHMIDT PARTIES received significant payments ("STR Income") from occupants who rented the Property for stays of fewer than 30 days.

D. On May 18, 2016, the CITY filed a Complaint for Violations of the City Ordinances; Public Nuisance; Money Had and Received; Conversion; and Declaratory Relief against the SCHMIDT PARTIES in Napa County Superior Court, Case. No. 16-CV-000361.

E. On July 6, 2016, the Parties executed a binding Stipulation to Cease and Desist Short Term Rentals Without STR Permit (the "Stipulation").

F. The SCHMIDT PARTIES represent and warrant that, on or about May 17, 2016, they ceased, and did not recommence, renting the Property to third parties for stays of fewer than 30 days.

G. The Parties hereto wish to fully and finally settle their respective rights and liabilities with respect to the matters described above, in lieu of litigation, under the terms and conditions set forth below:

AGREEMENT

Now, therefore, in consideration of the aforementioned Recitals, which are incorporated herein, and the mutual covenants and conditions set forth below, the Parties hereby agree as follows:

1. **Compliance with City Ordinances and Stipulation.**

The SCHMIDT PARTIES shall fully, completely and at all times comply with and abide by the City Ordinances, as they may be amended from time-to-time, including without limitation the STR Ordinance. The SCHMIDT PARTIES shall continue to comply fully with all provisions of the Stipulation.

2. **Payment and Judgment.**

A. The SCHMIDT PARTIES shall pay the CITY a total of \$71,000 (Seventy-One Thousand Dollars) ("Payment") no later than August 18, 2017, time being of the essence. This payment obligation shall be joint and several among the SCHMIDT PARTIES. The SCHMIDT PARTIES shall deliver the Payment to the City Manager, City of St. Helena, 1480 Main Street, St. Helena, CA 94574. The payment shall be by certified or cashier's check, or similar instrument acceptable to CITY.

3. **Notice of Purchase and Escrow Instructions.**

In the event the SCHMIDT PARTIES participate in a transaction that would sell, transfer, convey, or encumber the Property, including, without limitation, entering a purchase and sale agreement or opening escrow for the Property, the SCHMIDT PARTIES covenant and agree to perform the following:

A. The SCHMIDT PARTIES shall immediately notify the CITY, in writing, of any acceptance, agreement, escrow, sale, transfer, conveyance, or encumbrance;

B. The SCHMIDT PARTIES agree to instruct the escrow holder, in writing, to issue the Payment directly to the CITY from the proceeds of any purchase, sale, transfer, conveyance, or encumbrance of the Property;

C. The SCHMIDT PARTIES agree to provide a copy of the signed mutual and conforming escrow instructions to the CITY no later than one business day after they are received.

These obligations shall apply until the SCHMIDT PARTIES pay the Payment to the CITY or August 18, 2017, whichever is earlier.

4. **Stipulation for Entry of Judgment.**

To secure the payment obligation in paragraph 2, concurrently with the execution of this Agreement, the Parties shall execute a Stipulation for Entry of Judgment together with this Agreement, a true and correct copy of which is attached hereto as Exhibit A and incorporated

herein by reference. Said stipulation shall not be filed unless (1) the SCHMIDT PARTIES fail to pay the CITY on time and in full as required herein; or (2) the SCHMIDT PARTIES fail to comply with their obligations in paragraph 3.

5. **Entry of Judgment**

Forthwith upon the CITY's filing of the Stipulation for Entry of Judgment, and without further notice, judgment shall be entered thereon in favor of the CITY and against TOURIA SCHMIDT and PARADIS ZAS, LLC, jointly and severally, in the form attached to the Stipulation for Entry of Judgment and attached hereto as Exhibit B. The Judgment shall be for damages in the total sum of \$71,000. Upon entry of the Judgment, the CITY may pursue enforcement using any means allowed by law.

6. **Release and Discharge of Known and Unknown Claims.**

A. The Parties do hereby and forever completely release and discharge each other from any and all past, present or future causes of action, actions, judgments, liens, debts, contract indebtedness, compensatory damages, punitive or exemplary damages, penalties, losses, claims, liabilities, rights, interests and demands of whatever kind or character, whether based on a tort, contract, statute, ordinance, or other theory of recovery, including but not limited to any claim of bad faith, whether known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity, which they have or may have or which may hereafter accrue or be acquired against each other by reason of any and all acts, omissions, events, circumstances or facts occurring or existing prior to the date hereof, that arise out of, or are related to, the matters described in the Recitals, above.

B. In light of the intention of the Parties that this Agreement extend to any and all claims of whatsoever kind or character, known or unknown, the Parties expressly waive any and all rights granted by California Civil Code section 1542 (or any other analogous federal or state law or regulation). Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7. **Public Information.**

The CITY has informed the SCHMIDT PARTIES that this Agreement is a public record under the California Public Records Act (Gov. Code section 6250, et. seq.). The SCHMIDT PARTIES have requested the CITY not to publicize this Agreement or issue a press release regarding this Agreement, but The CITY reserves the right to provide this Agreement to members of the public and/or to issue a press release or otherwise publicize it as a public record.

8. **Attorneys' Fees and Costs.**

In any action, proceeding, or lawsuit to interpret or enforce this Agreement, the prevailing party in such litigation shall be entitled to recover her or its reasonable attorneys' fees and costs.

9. **No Admissions.**

This Agreement effects the settlement of claims which are denied, disputed and contested, and nothing contained herein shall be construed as an admission of wrongdoing by any party hereto or as an admission of any liability of any kind to any other party.

10. **Notice.**

Any notice required under this Agreement will be in writing and may be given by any commercially acceptable means, including via personal delivery, overnight courier, or first-class, registered or certified mail, postage pre-paid, to the following persons:

To the SCHMIDT PARTIES:

Touria Schmidt
225 Gravatt Drive
Berkeley, CA 94705

With a copy to:

William P. O'Connell, Jr.
O'Connell Law Offices
790 Mission Avenue
San Rafael, CA 94901

and

copy by email to: bill@oconnlaw.com

To CITY:

City Manager
City of St. Helena
1480 Main Street
St. Helena, CA 94574

cc by email to: Thomas Brown, City Attorney, and Albert Tong, at
tbrown@bwslaw.com and atong@bwslaw.com.

11. **Legal Advice.**

The Parties have received or have had the opportunity to receive independent legal advice with respect to the advisability of entering into this Agreement and with respect to the meaning of California Civil Code Section 1542.

12. **Recitals and Paragraph Headings.**

Each term of this Agreement is contractual and not merely a recital. All Recitals are incorporated into and made a part of this Agreement. Captions and paragraph headings are used for convenience only and are not part of this Agreement and shall not be used in interpreting or construing it.

13. **Entire Agreement; Modification; Waiver.**

This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof. There are no other agreements, written or oral, express or implied, between the Parties concerning the subject matter hereof, except as set forth herein. This Agreement may be amended only by an agreement in writing signed by all parties hereto. No waiver of any rights hereunder shall be effective unless made in a writing signed by the party against whom the waiver is to be enforced.

14. **Construction of Agreement.**

Each party hereto has cooperated in the drafting and preparation of this Agreement and, accordingly, this Agreement shall not be construed against any party as the drafter hereof.

15. **California Law.**

The rights and obligations of the Parties under this Agreement shall be construed and enforced under the laws of the State of California without reference to its conflict of laws rules.

16. **Assignment.**

The Parties represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, nor will they assign or transfer in the future, any claims, matters, demands or causes of action that are herein released or discharged for any reason, including by way of subrogation, unless the other party provides its written consent or such assignment or transfer is required by law.

17. **The Parties' Understanding.**

The Parties, by their authorized agents whose signatures appear below, have carefully read this Agreement, have had it fully explained to them by their attorneys, and fully understand the terms hereto and represent that they are signing this Agreement voluntarily.

18. **Counterparts.**

This Agreement may be executed in one or more counterparts, which when fully executed shall constitute one integrated agreement.

19. **Facsimile and Electronic Signatures.**

A facsimile, photocopy or electronic copy of the Agreement with the signatures thereon shall be equivalent to an original.

20. **Authority of Signatories.**

The signatories to this Agreement hereby warrant and represent that they have the authority, on behalf of their respective principals, to enter into this Agreement.

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed as follows:

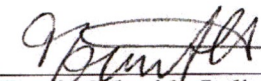
Dated: May 31, 2017

CITY OF ST. HELENA

By: 
City Manager

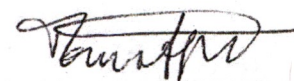
Dated: May 31, 2017

TOURLIA SCHMIDT

By: 
Touria Schmidt, Individually

Dated: May 31, 2017

PARADIS ZAS, LLC

By: 
Touria Schmidt, Managing Member