

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter "Agreement") is entered into by and between Plaintiff the City of Redlands (the "City") and Defendant Robert Ward, an individual doing business as The Equity Exchange ("Defendant") for purposes of a comprehensive settlement and release of all claims arising from the facts set forth in San Bernardino Superior Court Case No. SCVSS 94761 entitled *City of Redlands v. Robert Ward, an individual dba The Equity Exchange; Big Star Properties, a California corporation; Joy S. Thompson, an individual; Kumar Industries, LLC, a Nevada corporation dba Kumar Industries LLC; and Does 1 through 30* (hereinafter the "Action"). The previously noted parties are sometimes referred to herein as the "Parties." This settlement is intended by the Parties to be a comprehensive and complete release of claims, and is not intended to be an admission of liability by any party.

RECITALS

A. Between April of 1998 and January 2001, the City entered into various utility contracts with the Defendant, the terms of which required the City to provide Defendant with water, sewer, and trash collection services. The Defendant was required under the contracts to pay for such services.

B. The Defendant breached these contracts by failing to pay the City for the services pursuant to the contracts.

C. Subsequently, on or about September 19, 2002, the City filed the Action against Defendant for breach of written contract, open book account, account stated, and reasonable value of services. The allegations of the complaint filed in the Action are incorporated herein by reference for the purpose of explaining the claims made by the City against Defendant.

D. The Defendant failed to timely respond to the complaint.

E. On March 28, 2003, the Court entered Judgment against the Defendant and in favor of the City in the amount of \$42,521.99.

F. It is the intention of the Parties to fully and finally resolve and settle their disputes and to discharge all claims, demands, causes of action, obligations, damages, and liabilities each of the Parties may have against the other that arise from or are related to the Action in accord with the terms set forth below:

AGREEMENT OF PARTIES

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties acknowledge that the recitals are true and correct and incorporate by reference those recitals into this Agreement.

2. Defendant shall pay the City the sum of \$37,163.62. Such sum shall be due and payable on or before the day the Parties have executed this Agreement. The payment of such sum shall be complete upon the presentation of a valid check made payable to the City in the amount of \$37,163.62.

3. Upon execution of this Agreement and upon receipt of the check described in paragraph 3 above, the City, through its attorneys of record, shall execute and file a Satisfaction of Judgment with the Court within ten days pursuant to Code of Civil Procedure section 724.030.

4. The Parties shall bear their own attorneys' fees and costs incurred in connection with the Action and drafting and execution of this Agreement.

5. Defendant on behalf of himself, his agents, representatives, partners, directors, officers, trustees, attorneys, employees, servants, affiliates, predecessors, successors and assigns, both past and present, and any person or entity acting by, through, under or in concert with each of them, do hereby release, and forever discharge the City and each of its, agents, representatives, partners, attorneys, employees, elected and non-elected officials, successors and assigns, both past and present, and any person or entity acting by, through, under or in concert with each of them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, obligations, rights, breaches of contract, breaches of duty of any relationship, acts, omissions, misfeasance, malfeasance, sums of money, compensation, accounts, contracts, controversies,

promises, losses, damages, costs, attorneys' fees, expenses of any type, kind, nature, description, or character whatsoever, whether known or unknown, claimed or suspected, existing or contingent, and irrespective of how, why or by reason of what facts, or which the Defendant now has, ever had, ever claimed to have had, or that hereafter could, might or may be claimed against City arising out of the Action.

6. Defendant expressly waives the rights afforded under Civil Code section 1542 which provides that:

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

Defendant represents and warrants that he has had the opportunity to receive the advice of an attorney with respect to the advisability of making the release provided for herein, and the meaning of California Civil Code section 1542, and knowingly waives his rights under this statute, as well as any similar rights vested with these parties under theories of law or equity.

7. Defendant acknowledges that he may hereinafter discover facts different from, or in

addition to, those which he now knows to be true with respect to the subject matter of this Agreement, and agrees that this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

8. The Parties to this Agreement represent and warrant to each other that they have not transferred, assigned or hypothecated, or purported to transfer, assign or hypothecate, any of the claims being released hereunder.

9. The Parties to this Agreement acknowledge that in entering into this Agreement they have not relied upon any statement of any other party or any Parties' attorneys, and should any party be mistaken in the Parties' belief with regard to some issue of fact or law regarding the matters herein, this Agreement shall nonetheless remain in full force and effect and be binding as to each and all of the parties.

10. The language in all parts of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party hereto.

11. This Agreement shall be binding upon and inure to the benefit of each party and Parties' respective successors, heirs and assigns.

12. This Release may be executed in one or more counterparts, (including via original or electronic facsimile or telecopier transmission, which shall be conclusively deemed an original

signature or signatures) each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13. If any party hereto brings an action or other proceeding to interpret or enforce any of the terms of this Agreement, or arising out of a breach of this Agreement, then the prevailing party shall be entitled to recover costs and expenses, including reasonable attorneys' fees, in such amounts as may be determined by the Court, having jurisdiction thereof, in addition to any other relief awarded.

14. This Agreement constitutes the entire agreement and understanding among the Parties concerning the subject matter of the Agreement, and supercedes all prior and contemporaneous agreements, statements, understandings, terms, conditions, negotiations, representations and warranties, whether oral or written, made by any of the parties or their attorneys concerning the matters covered by this Agreement.

15. Should any portion or clause of this Agreement be found to be invalid, illegal, void, voidable, or unenforceable for any reason whatsoever, this Agreement shall be read as if it did not contain said portion or clause. The parties intend for such invalid portion or clause to be severable from the remainder. Any clause or portion in its severance shall not affect the validity or affect the remaining provisions of this Agreement.

16. Each of the Parties to this Agreement has had the opportunity to obtain the advice of

legal counsel of their choice with respect to this Agreement.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18. All individuals signing below on behalf of any entity or individual hereby represent and warrant that they have full authority to execute this Agreement on behalf of the entities for which they have signed.

IN WITNESS WHEREFORE, the Parties hereto have executed or caused this Agreement to be executed by their duly authorized representatives.

CITY OF REDLANDS

Dated: May 20, 2003.

By: 
Karl N. Haws, Mayor

ATTEST:

By: 
Beatrice Sanchez, Deputy City Clerk

Dated: _____, 2003.

Robert Ward, an individual dba The Equity Exchange

By: _____
Robert Ward

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CITY OF REDLANDS

Dated: _____, 2003.

By: _____
Karl N. Haws, Mayor

ATTEST:

By: _____
Lorrie Poyzer, City Clerk

Dated: 13 May, 2003.

Robert Ward, an individual dba The Equity Exchange

By: Robert Ward
Robert Ward

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BEST BEST & KRIEGER LLP

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KEVIN T. COLLINS
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FILE NO. 17942.00050

May 15, 2003

**VIA FACSIMILE
AND OVERNIGHT**

Daniel J. McHugh,
City Attorney
City of Redlands
PO Box 3005
Redlands, CA 92373

Re: *City of Redlands v. Robert Ward, et al., Case No. SCVSS94761*

Dear Dan:

Pursuant to your prior approval, we have reached a settlement agreement in the above-entitled action with Mr. Bob Ward, the individual who had the highest outstanding balance in the amount of \$37,163.62. Attached is a copy of the agreement signed by Mr. Ward. As you are aware, Mr. Ward has already paid the City the \$37,163.62 by delivering a check to the City's Utility office on May 7, 2003. In addition to this settlement, Mr. Ward previously made two payments in this matter totaling \$15,647.60.

Once the settlement and release agreement is approved and signed by the City, we will file a satisfaction of judgment with the Court. Please notify our office upon approval and signature so that we may take care of the filing in a timely manner.

If you have any questions or concerns, please do not hesitate to call.

Sincerely,



Kevin T. Collins
for BEST BEST & KRIEGER LLP

KTC:jch
Enclosures
cc: Howard B. Golds