

AGREEMENT OF SETTLEMENT AND
GENERAL RELEASE

1. *PARTIES*: The parties to this Agreement of Settlement and General Release ("Agreement") are Stanton J. Diamond and Leslie W. Diamond, ("Plaintiffs"), and the City of Redlands, ("Defendant").

2. *RECITALS*: This Agreement is made with reference to the following facts:

2.1 Certain disputes and controversies have arisen between the parties hereto.

2.2 Such disputes and controversies include, but are not limited to, the claims, demands and cause or causes of action set forth by the parties hereto in a civil action pending in the San Bernardino County Superior Court and entitled Stanton J. Diamond et al. v City of Redlands, et al., Case No. CIVD 909795.

2.3 It is the intention of the parties hereto to settle and dispose of, fully and completely, any and all claims, demands and cause or causes of action existing as of the effective date of this agreement and arising out of, connected with, or incidental to the dealings between parties hereto to the effective date hereof including, without limitation on the generality of the foregoing, any and all claims, demands and cause or causes of action reflected in the civil action referenced in Paragraph 2.2 above.

3. *DISMISSAL*: Concurrently with the execution of this Agreement, Plaintiffs shall dismiss, with prejudice, the civil action referenced in Paragraph 2.2 above, in exchange for the promises, covenants, conditions and payments set forth in Paragraph Four.

4. *PAYMENT*: Concurrently with the execution of this Agreement, Defendant shall pay to Plaintiffs, the aggregate sum of Fifty Thousand Dollars (\$50,000.00), each side shall bear its own attorney's fees and costs.

5. *GENERAL RELEASE*: In consideration of the mutual general releases contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party hereto, plaintiffs promise, agree and generally release as follows:

5.1 Except as to such rights or claims as may be created by this Agreement, Plaintiffs hereto hereby release, remise and forever discharge Defendant hereto from any and all claims,

demands and cause or causes of action existing as of the effective date and arising out of, connected with or incidental to the dealings between the parties hereto prior to the effective date hereof including, without limitation on the generality of the foregoing, any and all claims, demands and cause or causes of action reflected in the civil action referenced in Paragraph 2.2 above.

5.2 Plaintiffs specifically waive the benefit of provisions of Section 1542 of the Civil Code of the State of California, as follows:

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.

6. *REPRESENTATIONS AND WARRANTIES*: Each of the parties to this Agreement represents and warrants to, and agrees with, each other party hereto, as follows:

6.1 Each of the parties has received independent legal advice from his/her/its attorneys with respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Agreement, and with respect to the meaning of California Civil Code Section 1542.

6.2 No party (nor any officer, agent, employee, representative, or attorney of or for any party), has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation, omission or promise of any other party (or of any officer, agent, employee, representative, or attorney of or for any party), in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

6.3 Each of the parties has made such investigation of the facts pertaining to this settlement and this Agreement, and all the matters pertaining thereto, as it deems necessary.

6.4 Each of the parties have read this Agreement and understands the contents hereof.

6.5 In entering into this Agreement and the settlement provided for herein, Plaintiffs assume the risk of any misrepresentation, concealment or mistake. If Plaintiffs should subsequently discover that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect, plaintiffs shall not be entitled to any relief in connection therewith including, without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the parties hereto, regardless of any claims of misrepresentation, promise made without the intention

to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

6.6 Plaintiffs have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, and cause or causes of action disposed of by this Agreement.

6.7 Each term of this Agreement is contractual and not merely a recital.

6.8 Plaintiffs are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties to fully, finally and forever to settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or heretofore have existed between them. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters, notwithstanding the discovery of existence of any additional or different claims of facts relative thereto.

6.9 The parties will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

6.10 Plaintiffs agree to hold Defendant harmless from, and defend and indemnify Defendant from, the claims of any and all medical care providers and/or lienholders, such as Medicare or MediCal, providing medical services to Plaintiffs as a result of the subject accident.

7. *SETTLEMENT*: This Agreement effects the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party. Each of the parties hereto denies any liability in connection with any claim and intends hereby solely to avoid litigation and buy its peace.

8. *MISCELLANEOUS*:

8.1 This Agreement shall be deemed to have been executed and delivered within the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.2 This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing, signed by the parties thereto.

8.3 This Agreement is binding upon and shall inure to the benefit of the parties hereto,

their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

8.4 Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

8.5 In the event of litigation relating to this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

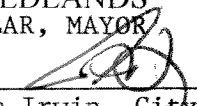
8.6 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties.

8.7 This Agreement, consisting of four pages, is made and entered into on and as of SEPTEMBER __, 2012, in Redlands, California, and is effective as of this date.


STANTON J. DIAMOND


LESLIE W. DIAMOND


CITY OF REDLANDS
PETE AGUILAR, MAYOR

ATTEST: 
Sam Irwin, City Clerk

APPROVED AS TO FORM AND CONTENT:



ESTEY AND BOMBERGER LLP