

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (the “Agreement”) is entered into by and between XXXX (“XXXX”) and XXXXX (“XXXX”) (collectively, XXXX and XXXX may be referred to as the “Parties”).

R E C I T A L S

WHEREAS, the Parties have a bona fide dispute regarding

[INSERT THE FACTS OF YOUR DISPUTE]

WHEREAS, the parties continue to dispute the allegations and denials made by the other, and enter into and execute this Agreement without admitting or conceding the truth or legal sufficiency of any of the allegations and denials made by the other, but rather in order to completely resolve their differences and disputes with each other.

NOW THEREFORE, in order to avoid further litigation expenses and uncertainties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all of the parties agree as follows:

1. Payment. XXXXXX agrees to pay XXXXXX the sum of \$XXXXXX (within 5 business days of both parties executing the settlement agreement), and such settlement check will be made payable to XXXXXXXX and shall be mailed to the following address:

[INSERT MAILING ADDRESS]

The receipt of this payment at the above address, along with funds being sufficient and clearing the above bank account, will settle and resolve the dispute in full. If payment is not made as agreed herein, this Agreement shall be null and void and XXXXX shall retain all rights and causes of action.

2. Tax Reporting. The parties agree to handle and resolve any tax issues that may be related in regard to this payment and settlement.

3. Representation by Counsel. The parties to this Agreement each represent and acknowledge that they are represented by counsel of their own choosing in connection with the negotiation, review, and execution of this Agreement and the accompanying releases contained herein. As such, no ambiguities in this Agreement shall be construed against either party.

4. No Liability for Attorney’s Fees. Upon the execution of this Agreement, the Parties and his/her/their counsel shall release and forever discharge the other from any and all liability for attorneys’ fees, expenses and costs in any way arising from or relating to this dispute.

5. Confidentiality. Except as required by law or to enforce the terms hereof, the parties agree not to disclose:

- (i) the terms, conditions, and/or contents of the settlement or this Agreement;
- (ii) the substance of any negotiations, discussions, communications, or correspondence between the Parties and/or their respective counsel with respect to any matter relating to the settlement or the terms hereof; or
- (iii) the substance of any documents produced in connection with settlement negotiations, discussions, communications, or correspondence between the Parties, their respective counsel or any other advisors or agents who assisted the Parties in connection with respect to any matter relating to the settlement,

other than: (1) as may be required by law; (2) to accounting professionals or tax advisors who may be retained by any of the parties, or (3) the parties attorneys, all of whom will be bound by the same confidentiality requirements as imposed upon the Parties herein. The Parties to this Agreement represent, warrant, agree and acknowledge that irreparable injury will result from any breach of this Paragraph, and that the non-breaching party will be entitled to an immediate injunction against the breaching party to prevent further injury.

6. Non-Disparagement. The parties agree that they will not disparage, deprecate, denigrate or criticize each other from the date of this Agreement forward. It is understood that this provision is not intended to prevent, limit or restrict any party to this Agreement from testifying truthfully pursuant to a lawfully issued subpoena.

7. No Admission. This Agreement is made as a compromise and settlement of disputed claims, resulting from arms-length negotiations. For these and other reasons, this Agreement: (a) shall not be presumptively construed against any party, even if a court determines that the Agreement or provision thereof was drafted by one party; (b) shall not be admissible in any proceeding as evidence of, and shall not under any circumstances be considered an admission of the truth or legal sufficiency of, any or all of the arguments, allegations, claims and/or other matters asserted in the Demand and related Denial; and (c) is entered into without prejudice or precedential value.

8. Choice of Law and Forum. This Agreement is entered into in the State of California. This Agreement and any rights, remedies, or obligations provided for in this Agreement shall be construed and governed by the procedural and substantive laws enforced in accordance with the laws of the State of California without regard to the conflicts provisions thereof. The Parties agree pursuant to *California Code of Civil Procedure §664.6*, that the Superior Court, County of Orange shall retain jurisdiction over this matter for the purpose of enforcing this Agreement.

9. Severability. The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

10. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and/or detriment of the parties and their respective heirs, beneficiaries, guardians, administrators,

trustees, executors and executrixes, agents, principals, representatives, successors, and assigns.

11. Merger and Integration. The parties to this Agreement represent and acknowledge that this Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between and among the parties and regarding the releases set forth herein, and that all prior agreements, contracts, negotiations, promises, offers, acceptances, representations, warranties, covenants and understandings in any way relating to this Agreement and the releases set forth herein are merged and integrated into the terms and conditions of this Agreement.

12. Counterparts. This Agreement may be executed in multiple counterparts. Copies and facsimile copies of signature pages shall be deemed to be originals for any and all purposes.

13. Amendments. This agreement may only be amended or modified in writing signed by the party against whom enforcement of such amendment or modification is sought.

14. Headings. The underlined headings for each numbered Paragraph of this Agreement are used for organizational and reference purposes only, and shall not be used to interpret or construe the language of the terms and conditions of this Agreement.

15. Time. The parties acknowledge that time is of the essence in performance of the obligations of this Agreement.

16. Waiver of California Civil Code Section 1542. The Parties acknowledge and agree that this Agreement applies to all claims, losses, damages and causes of action, whether known or unknown, of whatever nature, whether these damages or losses are known or unknown, foreseen or unforeseen, or patent or latent, which they may have against any of the other Parties.

The Parties specifically waive application of California Civil Code Section 1542 and certifies that they have read the following provision of California 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”

The Parties understand and acknowledge that the significance and consequence of this waiver of *California Civil Code Section 1542* includes that even if they should eventually suffer additional injuries or damages relating in any to or arising in any way out of the Demand and/or the dispute set forth above, they will not be able to make any claim for those injuries or damages. The Parties acknowledge that they intend these consequences even as to claims for injuries or damages that may exist as of the date of this Agreement but which they do not know exist, and which, if known, would materially affect their decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

17. Execution. IN WITNESS WHEREOF, the Parties hereby acknowledge that they have read, understood and agreed to be bound by the terms and conditions of this Agreement:

Dated: _____

XXXXXXXX

By: _____

Its: _____

Dated: _____

XXXXXXXX

By: _____

Its: _____