

GENERAL RELEASE AND SETTLEMENT STATEMENT

RECITALS

1. Ronald Dwayne Brown and any and all of their heirs, personal representatives, executors, administrators, attorneys, successors, and assigns are hereinafter collectively referred to as "**RELEASOR**."

2. The CITY OF COLORADO SPRINGS ("CITY") and any of its current or former entities, officials, employers, successors, assigns, attorneys, employees, agents, servants, insurers, volunteers, and reinsurers, if any, are hereinafter collectively referred to as "**RELEASEES**."

3. **RELEASOR** and **RELEASEES** are collectively referred to as "the Parties."

4. With the entry of this General Release and Settlement Statement ("General Release"), **RELEASOR** has stipulated to the release of any and all claims against **RELEASEES**, pled or unpled, between any named or potential parties to any potential litigation arising from any facts, acts or omissions occurring on or before the date of the Agreement. **RELEASOR** filed his original Complaint (Doc. 1) in this matter on May 27, 2014 in the United States District Court for the District of Colorado against **RELEASEES** in Case Number 14-cv-01471-RPM and his Amended Complaint (Doc. 10) on August 26, 2014 hereinafter referred to as "the Civil Action." The Civil Action arose out of events occurring on or about May 29, 2012 in which **RELEASOR** was arrested at his home located at 4854 Rusty Nail Point #102, Colorado Springs, Colorado ("the Incident"). The factual allegations and claims made by **RELEASOR** were and continue to be denied and disputed by **RELEASEES** in the Civil Action.

5. Prior to the entry of this General Release, **RELEASOR** has stipulated to the dismissal with prejudice of the Civil Action, each party to pay his/its own costs and attorney's fees, and an order of dismissal has entered on that stipulated motion.

6. **RELEASOR** has decided to enter into this General Release on the terms set out in these recitals and agreement below and to reach a complete resolution of any claims or potential claims arising out of any and all claims of any kind **RELEASOR** may have against **RELEASEES** and for any damages and/or injuries of any kind, known and unknown, foreseen and unforeseen. For the purpose of this General Release, all actual or potential claims or disputes among the Parties shall be referred to hereafter collectively as the "Claims" or "Potential Claims."

7. In entering into this General Release, it is acknowledged that **RELEASOR** and **RELEASEES** have incurred and expect to incur considerable costs and fees in pursuing and defending any litigation and enter into this agreement, in part, to avoid the

cost of further litigation. It is further acknowledged that this General Release is entered into in good faith for the purpose of avoiding further costs and fees of litigation and shall not be construed as any sort of an admission or concession of liability, cause, injury or responsibility by **RELEASEES** and is not intended to be used and may not be used as evidence of liability or wrongdoing of **RELEASEES**.

RELEASE

Release, Covenant Not to Sue, Hold Harmless, and Indemnification.

8. **RELEASOR** agrees irrevocably and unconditionally to discharge and does release and forever discharge **RELEASEES** from any and all claims and any and all damages and/or injuries pursuant to any federal or state statute, constitution, common law, contract or otherwise, known and unknown, foreseen and unforeseen, including but not limited to those which may now or hereafter arise out of, or result in any way from the Incident described in the recitals and/or the Civil Action and/or which have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof.

9. **RELEASOR** understands and agrees that this General Release prevents any appeal of any of the dismissals, stipulated or otherwise, against any parties or for any claims made in the Civil Action.

10. **RELEASOR** represents and warrants that, other than that which is set forth in the Recitals to this General Release, he has not filed or caused to be filed or asserted any claim in or with any court or agency based on related to the Incident or the Claims and agrees that he will not file any claim or charge in or with any court or agency based on or related to the Incident or the Claims against **RELEASEES** and will indemnify **RELEASEES** for attorney's fees and costs incurred by **RELEASEES** should such claim or charge be made or filed by **RELEASOR**.

11. Pursuant to the Medicare, Medicaid, and SCHIP Extension Act of 2007, **RELEASOR** hereby certifies and affirmatively represents and warrants as follows: (1) at the time of the accrued claims, he was not a Medicaid recipient; (2) he has never received Medicaid benefits for his alleged damages; and (3) he is not now receiving nor has he ever received Medicare benefits. **RELEASOR** further certifies he is not now receiving nor has he ever received Social Security Disability Benefits. In the event **RELEASEES** are subject to any further claims or demands under such actual or purported benefit assignment, lien, subrogation, or other right of substitution for such benefits, **RELEASOR** will defend, indemnify, and hold **RELEASEES** harmless from such claims or demands.

12. **RELEASOR** acknowledges the provisions of the Colorado Medicaid Lien Statute, C.R.S. § 25.5-4-301, and that the State of Colorado has an automatic statutory lien for all medical assistance furnished to or on behalf of **RELEASOR** and that no settlement may be satisfied without first satisfying the State's lien and that **RELEASOR**

may not receive distribution of any monetary consideration until such time as the State has issued a final demand letter or its equivalent setting out the amount the State will accept as payment for full and final satisfaction of the State's Medicaid lien.

13. **RELEASOR** hereby declares and represents that, with the exception set out herein, no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the claim or claims made or which could have been asserted, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed. **RELEASOR** hereby discloses the possibility of a lien for medical expenses. In the event **RELEASEES** are subjected to further claims by any person, firm, or corporation under any actual or purported lien or right of substitution, including any lien for medical expenses, **RELEASOR** will hold **RELEASEES** harmless from any such claims or demands and indemnify **RELEASEES** for any judgment obtained by reason of such purported lien or right of substitution.

14. **RELEASOR** understands and agrees that he is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this General Release and the monetary consideration provided to him pursuant to it. **RELEASOR** agrees that **RELEASEES** have provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or his tax reporting or payment obligations for the monetary consideration set out herein.

15. **RELEASOR** further warrants that he fully realizes that he may have sustained unknown and unforeseen losses; fees; costs; expenses; damages; liabilities; claims; bodily, personal, or psychological injuries; damage to property; business losses; or rights of restitution, and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by **RELEASOR**, which resulted or may result any claims or potential claims, and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this General Release was executed without reliance upon any statement or representation by **RELEASEES**, and that **RELEASOR** is legally competent to execute this General Release. **RELEASOR** accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, including any mistake in medical diagnosis or prognosis for any injuries, known or unknown, sustained as a result of the above-mentioned Incident and all matters incident and related thereto applicable to the Claims and any potential claims **RELEASOR** has or may have against **RELEASEES**.

Consideration.

16. **RELEASEES** agree to pay **RELEASOR** the amount of One Hundred Sixty Thousand Dollars (\$160,000.00) by tendering respective checks totaling that amount to **RELEASOR'S** attorneys, payable to Ronald Dwayne Brown, Shimon Kohn, P.C. and

Barker and Tolini, P.C. **RELEASEES** will send the checks within twenty (20) calendar days of the execution of this General Release.

17. It is agreed that consideration for this General Release as set forth herein, including dismissal of the remaining claim in the Civil Action with prejudice, and includes the above monetary consideration which shall be full and final payment for all claims released herein and all claims that might have been asserted in any state or federal judicial or administrative forum up to the date of execution of this General Release, including any claims for attorney's fees and costs.

18. **RELEASOR** and his attorneys agree that the monetary consideration described in this General Release will be held in trust by his attorneys and that his attorneys will not distribute the monetary consideration described in this General Release until such time as all liens or interests in such monetary consideration are satisfied, including but not limited to any Medicaid liens, and that his attorneys will, before distribution of the monetary consideration, obtain a written final demand letter or its equivalent setting out the amount the State will accept as payment for full and final satisfaction of the State's Medicaid lien.

19. The Parties acknowledge that the monetary consideration in this matter is far less than the damages alleged by the **RELEASOR** and that they each seek to enter into this General Release, in part, to prevent incurring further costs and fees for trial which are projected to be significant. **RELEASOR** acknowledges, however, that the consideration paid by **RELEASEES** is to secure a full and final release for any and all claims that he may have arising out of the Incident and as described herein.

Non-Disparagement and Confidentiality

20. To the extent permitted by law, **RELEASOR** agrees not to disparage or to assist another in disparaging **RELEASEES** regarding any issue, matter or factual allegation made a subject of or arising out of the claims made in the Civil Action. Should **RELEASOR** violate this paragraph of this General Release, **RELEASOR** will be liable for liquidated damages in the amount of \$5,000 including reasonable attorney's fees and costs incurred by **RELEASEES** should **RELEASEES** successfully establish such violation. Notwithstanding the provisions of this paragraph, **RELEASOR** is relieved from the non-disparagement provision should **RELEASEES** first disparage **RELEASOR**.

21. To the extent permitted by law, neither **RELEASOR** nor any other person under **RELEASOR'S** control or direction will disclose the negotiations related to this Agreement or facts learned or documents disclosed during the negotiations that are not in the public record. **RELEASOR** may disclose such information to as required by subpoena or law, or to an attorney or accountant to the extent necessary to obtain professional advice. The Parties acknowledge the City is subject to the Colorado Open Records Act ("CORA"). **RELEASOR** represents and warrants to the **RELEASEES** that, prior to the date **RELEASOR** signs this Agreement, **RELEASOR** did not disclose the

terms of this Agreement to any person other than to **RELEASOR'S** tax advisor, and/or counsel. Nothing in this provision will be interpreted to restrict **RELEASEES** counsel's right to practice in violation of Rule 5.6(b) of the Colorado Rules of Professional Conduct.

Voluntariness, Denial of Liability, Entire Agreement.

22. **RELEASOR** has carefully read the above and foregoing General Release and knows and understands the contents thereof and has signed the same as his free and voluntary act for the purpose of making a full and final settlement of any and all claims, disputed or otherwise, known and unknown, and after having the opportunity to have the same explained by counsel. **RELEASOR** expressly states that he has been advised of his right to consult additional professionals of his choice, including physicians, lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatsoever kind and nature, which **RELEASOR** may have or will incur, whether suspected or unsuspected. **RELEASOR** further expressly understands and agrees that the signing of this General Release shall be forever binding and no rescission, modification, or release of **RELEASOR** from the terms of this General Release will be made for any mistake.

23. It is expressly understood and agreed that the acceptance of the above-mentioned consideration is in full accord and satisfaction of any potential disputed claims and that payment of said sum is not to be construed in any way as an admission of liability on the part of **RELEASEES**, but, on the contrary, **RELEASEES** specifically deny any wrongdoing, misconduct, or liability on account of said Claims or any matters related or incidental hereto, or otherwise. It is further understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and that the terms of this General Release are contractual and not mere recitals.

24. This General Release is not intended to be an admission of any fact or issue alleged by any party relating to the potential Claims and, with the exception of a claim related to breach or enforcement of this agreement, this General Release is not intended to be evidence in any other matter.

25. **RELEASOR** understands and agrees that all agreements and understandings between the Parties are embodied and expressed herein, that the recitals set forth herein are intended to be part of the terms of this General Release, and that the terms of this General Release are contractual and not mere recitals.

26. **RELEASOR** certifies that he has fully read and understands the foregoing General Release and hereby affixes his signature this 9th day of June, 2018, as his own free and voluntary act.

