

<p>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO</p> <p>Larimer County Justice Center 201 LaPorte Ave., Suite 100 Fort Collins, CO 80521</p>	<p>DATE FILED: May 11, 2015 11:25 AM FILING ID: EA9AAC6E5B65D CASE NUMBER: 2015CV30270</p> <p>▲ COURT USE ONLY ▲</p>
<p>Plaintiff: ED KLEN, LIAM WESTON</p> <p>v.</p> <p>Defendant: CITY OF LOVELAND</p>	<p>Case No. 2015 CV 30270</p> <p>Div.: 5A</p>
<p>The Law Office of Steven J. Dawes, LLC Steven J. Dawes, No. 13193 100 Fillmore Street, Suite 500 Denver, Colorado 80206 Tel.: 303-720-7541 E-mail: steve@sdaweslaw.com <i>Attorney for the Defendant</i></p>	
<p style="text-align: center;">ANSWER AND JURY DEMAND</p>	

Defendant, City of Loveland, by its undersigned attorney, for its Answer and Jury Demand in response to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”), states and alleges as follows.

1. With regard to the allegations of the first sentence of paragraph 1 of the Complaint, Defendant denies that it has given a “grant” or “subsidy”, and Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of said sentence and therefore denies the same. Defendant denies the allegations of the second sentence of said paragraph.

2. With regard to the allegations of the first and fourth sentences of paragraph 2 of the Complaint, said allegations call for legal conclusions to which no answer is required. To the extent answers are required, Defendant asserts that the provisions of the Colorado Constitution speak for themselves and the provisions of Colorado law speak for themselves, and Defendant

denies all allegations inconsistent with the express provisions of the Colorado Constitution and Colorado law. Except for the foregoing, Defendant denies all allegations of said paragraph.

3. With regard to the allegations of paragraph 3 of the Complaint, Defendant asserts that the provisions of the agreements speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the agreements. Defendant admits that the description of “subsidy” or “loan” is wrong. Except for the foregoing, Defendant denies the allegations of paragraph 3 of the Complaint.

4. With regard to the allegations of the first, second, third, fourth, fifth, and eighth sentences of paragraph 4 of the Complaint, Defendant denies said allegations. Defendant admits the allegations of the sixth sentence of said paragraph. With regard to the allegations of the seventh sentence, Defendant asserts that said allegations call for a legal conclusion to which no answer is required. To the extent an answer is required, Defendant asserts that the provisions of state law speak for themselves; Defendant denies all allegations inconsistent with the express provisions of state law.

5. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 5 of the Complaint and therefore denies the same.

6. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 6 of the Complaint and therefore denies the same.

7. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 7 of the Complaint and therefore denies the same.

8. With regard to the allegations of paragraph 8 of the Complaint, Defendant admits that this court has personal jurisdiction over the parties and that venue is appropriate in this court. Except for the foregoing, Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of said paragraph and therefore denies the same.

9. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 9 of the Complaint and therefore denies the same.

10. Defendant denies the allegations of paragraph 10 of the Complaint.

11. Defendant admits the allegations of paragraph 11 of the Complaint.

12. Defendant denies the allegations of paragraph 12 of the Complaint.

13. With regard to the allegations of the first sentence of paragraph 13 of the Complaint, Defendant denies said allegations. With regard to the allegations of the second and third sentences of said paragraph, Defendant asserts that the allegations call for legal conclusions to which no answer is required. To the extent answers are required, Defendant asserts that the

provisions of the cited statute speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of said statute.

14. With regard to the allegations of paragraph 14 of the Complaint, said allegations call for a legal conclusion to which no answer is required. To the extent an answer is required, Defendant asserts that the provisions of the cited statute speak for themselves; and Defendant denies all allegations inconsistent with the express provisions of said statute.

15. With regard to the allegations of paragraph 15 of the Complaint, Defendant asserts that the provisions of the cited statutes speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of said statutes.

16. With regard to the allegations of paragraph 16 of the Complaint, Defendant asserts that the provisions of the cited statute speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of said statute.

17. With regard to the allegations of paragraph 17 of the Complaint, Defendant asserts that the provisions of the agreements entered into by the City speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the agreements. Defendant further denies any agreements provide for a “subsidy.”

18. With regard to the allegations of the first sentence of paragraph 18 of the Complaint, Defendant denies said allegations. With regard to the allegations of the second sentence, Defendant admits said allegations except Defendant denies that there was a proposed “subsidy.” With regard to the allegations of the third sentence, Defendant asserts that the provisions of the Resolution speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Resolution, and Defendant denies all other allegations of said sentence. With regard to the allegations of the fourth sentence, Defendant denies said allegations. With regard to the allegations of the fifth sentence, Defendant denies said allegations except that Defendant admits that the agreement was contingent on the City Council adopting an appropriation ordinance. Except for the foregoing, Defendant denies all allegations of said paragraph.

19. Defendant denies the allegations of paragraph 19 of the Complaint.

20. With regard to the allegations of the first sentence of paragraph 20 of the Complaint, Defendant admits said allegations. With regard to the remaining allegations of said paragraph, Defendant asserts that the provisions of the Resolution speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Resolution.

21. With regard to the allegations of paragraph 21 of the Complaint, Defendant admits that on November 4, 2014 the City Council approved and ordered published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of

Loveland Budget for an Incentive Agreement with Evergreen Development Company. Except for the foregoing, Defendant denies the allegations of said paragraph.

22. With regard to the allegations of the first sentence of paragraph 22 of the Complaint, Defendant denies the allegations. Defendant denies the allegations of the second sentence. With regard to the allegations of the third sentence, Defendant admits that it entered into an Agreement for City Incentive, Fee Waiver, and Construction Materials Use Tax Waiver with Thornton Long Term Investments, L.L.C. for a Sprouts Farmers Market. Defendant asserts that the provisions of the Agreement speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Agreement. Except for the foregoing, Defendant denies the allegations of said sentence. Defendant denies the allegations of the fourth and fifth sentences. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of the sixth sentence and therefore denies the same. Defendant denies the allegations of the seventh and eighth sentences.

23. With regard to the allegations of the first sentence of paragraph 23 of the Complaint, Defendant admits the allegations. Defendant denies the allegations of the second sentence except that Defendants admit that adoption of the Ordinance would fund the Agreement. Defendant denies the allegations of the third and fourth sentences of said paragraph.

24. With regard to the allegations of the first sentence of paragraph 24 of the Complaint, Defendant asserts that the statements of the Mayor speak for themselves, and Defendant denies all allegations inconsistent with the express statements of the Mayor. With regard to the allegations of the second sentence, Defendant asserts that the provisions of the City Charter speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Charter.

25. Defendant denies the allegations of paragraph 25 of the Complaint.

26. With regard to the allegations of the first sentence of paragraph 26 of the Complaint, Defendant denies said allegations. With regard to the allegations of the second sentence, the provisions of the Ordinance speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Ordinance. Defendant denies the allegations of the third sentence, except that Defendant admits there was no motion to amend the text. Defendant denies the allegations of the fourth sentence.

27. Defendant denies the allegations of paragraph 27 of the Complaint except that Defendants admit that the Ordinance passed on a vote of 6-3.

28. With regard to the allegations of the first sentence of paragraph 28 of the Complaint, Defendant denies said allegations except that Defendant admits that subsequent to January 6, 2014 a citizen letter addressed to the Mayor and City Council was received and that Ordinance No. 5905 was placed on the Agenda on January 20, 2015 for possible reconsideration by the City Council. Defendant denies the allegations of the second sentence. With regard to the

allegations of the third sentence, Defendant admits that for the January 20, 2015 meeting Staff distributed a copy of Ordinance No. 5905 with redlined changes. Defendant asserts that the provisions of said Ordinance speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of said Ordinance.

29. With regard to the allegations of the first sentence of paragraph 29 of the Complaint, Defendant admits said allegations. Defendant denies the allegations of the second sentence, except that Defendant admits that the date of final passage of the Ordinance is January 6, 2015.

30. Defendant admits the allegations of paragraph 30 of the Complaint.

31. Defendant incorporates and realleges its answers to those paragraphs incorporated and to paragraph 31 of the Complaint.

32. With regard to the allegations of paragraph 32 of the Complaint, Defendant asserts that the provisions of the Colorado Constitution speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Colorado Constitution.

33. With regard to the allegations of the first sentence of paragraph 33 of the Complaint, Defendant asserts that the provisions of the agreements speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the agreements. Defendant denies the allegations of the second sentence.

34. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 34 of the Complaint and therefore denies the same.

35. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 35 of the Complaint and therefore denies the same.

36. Defendant incorporates and realleges its answers to those paragraphs incorporated and to paragraph 36 of the Complaint.

37. Regard to the allegations of paragraph 37 of the Complaint, Defendant asserts that the provisions of the Colorado Constitution speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Colorado Constitution.

38. Defendant denies the allegations of paragraph 38 of the Complaint.

39. Defendant denies the allegations of paragraph 39 of the Complaint.

40. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 40 of the Complaint and therefore denies the same.

41. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 41 of the Complaint and therefore denies the same.

42. Defendant incorporates and realleges its answers to those paragraphs incorporated into paragraph 42 of the Complaint.

43. With regard to the allegations of paragraph 43 of the Complaint, Defendant asserts that said allegations call for legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies said allegations and asserts that the provisions of Colorado law and the cited statutes speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of Colorado law and the cited statutes.

44. With regard to the allegations of paragraph 44 of the Complaint, Defendant asserts that said allegations call for legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies said allegations and asserts that the provisions of Colorado law and the cited statute speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of Colorado law and the cited statute.

45. Defendant denies the allegations of paragraph 45 of the Complaint.

46. Defendant denies the allegations of paragraph 46 of the Complaint.

47. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 47 of the Complaint and therefore denies the same.

48. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 48 of the Complaint and therefore denies the same.

49. Defendant incorporates and realleges its answers to those paragraphs incorporated into paragraph 49 of the Complaint.

50. Defendant denies the allegations of paragraph 50 of the Complaint.

51. With regard to the allegations of paragraph 51 of the Complaint, Defendant asserts that said allegations call for legal conclusions to which no answer is required. To the extent an answer is required, Defendant asserts that the provisions of the Colorado Constitution and Colorado statutes speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of the Colorado Constitution and Colorado statutes.

52. Defendant denies the allegations of paragraph 52 of the Complaint.

53. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 53 of the Complaint and therefore denies the same.

54. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 54 of the Complaint and therefore denies the same.

55. Defendant incorporates and realleges its answers to those paragraphs incorporated into paragraph 55 of the Complaint.

56. With regard to the allegations of paragraph 56 of the Complaint, Defendant asserts that said allegations call for legal conclusions to which no answer is required. To the extent an answer is required, Defendant asserts that the provisions of Colorado law and the cited statute speak for themselves, and Defendant denies all allegations inconsistent with the express provisions of Colorado law and the cited statute.

57. Defendant admits the allegations of paragraph 57 of the Complaint

58. Defendant denies the allegations of paragraph 58 of the Complaint.

59. Defendant denies the allegations of paragraph 59 of the Complaint.

60. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 60 of the Complaint and therefore denies the same.

61. Defendant is without sufficient information and knowledge to form an opinion as to the truth of the allegations of paragraph 61 of the Complaint and therefore denies the same.

62. Defendant denies all allegations not otherwise expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state one or more claims upon which relief can be granted against the Defendant.
2. Plaintiffs have failed to join a party under Rule 19.
3. Plaintiffs' claims may be barred by lack of standing.
4. Plaintiffs' claims may be barred by lack of subject matter jurisdiction.
5. Plaintiff's claims may be barred by, subject to, and limited by the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.
6. Plaintiffs' claims are barred by the express provisions of the agreements entered into by the Defendant.

7. Plaintiff's claims are barred by, limited by, or subject to the Charter, ordinances, laws, regulations, and Code of the City of Loveland.
8. Plaintiffs' claims are barred by, subject to, and limited by the provisions of the Colorado Constitution and Colorado law.
9. Plaintiffs' claims are barred by, subject to, and limited by the provisions of the Local Government Land Use Control Enabling Act of 1974, C.R.S. § 29-20-101, *et seq.*
10. Plaintiffs' claims are barred by, subject to, and limited by the provisions of C.R.S. §§ 29-1-801, 802, and 803.
11. Plaintiffs' claims may be barred by the doctrine of mootness.
12. Plaintiffs' claims may be barred by the doctrines of waiver and estoppel.
13. Defendant is entitled to an award of its attorney fees against Plaintiffs under Colorado law, including but not limited to §§ 13-17-101, *et seq.*
14. Defendant reserves the right to add additional affirmative defenses upon the completion of discovery and investigation.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant prays that the same be dismissed, with prejudice, and that judgment be entered in favor of Defendant and against Plaintiffs, and that Defendant be awarded its attorney fees, costs, expenses, interest, and such other and further relief as this Court deems just and necessary.

DEFENDANT HEREIN DEMANDS A TRIAL TO A JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

THE LAW OFFICE OF STEVEN J. DAWES, LLC

s/ Steven J. Dawes

Steven J. Dawes

CERTIFICATE OF SERVICE

The undersigned herein certifies that on this 11th day of May 2015 a true and complete copy of the foregoing ANSWER AND JURY DEMAND was served on the parties below via ICCES:

Shawn D. Mitchell, Esq.
Law Office of Shawn D. Mitchell
12530 Newton Street
Broomfield, CO 80020
Attorney for Plaintiff

Michael Roche, Esq.
Keith P. Ray, Esq.
Lathrop & Gage, LLP
950 Seventeenth Street, Suite 2400
Denver, CO 80202
Attorneys for Thornton Long Term Investments, L.L.C.

s/ Steven J. Dawes

ORIGINAL SIGNATURE ON FILE

In accordance with C.R.C.P. 121, section 1-26(7), a printed copy with original signature is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.