

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 10<sup>th</sup> day of April, 2013, between Edward Klen, Stephen Klen, Diverse Construction, Inc., and Holstein Self-Service Storage, LLC (collectively "Plaintiffs") and The City of Loveland (hereinafter "the City"). Plaintiffs and the City are sometimes collectively referred to as "the parties."

### RECITALS

Plaintiffs asserted multiple claims against the City and several individually named City employees in multiple complaints filed in the United States District Court for the District of Colorado, Case No. 07-cv-00347-MSK-MEH (hereinafter "the Litigation").

The parties wish to avoid the expense and vagaries of further litigation in relation to this matter, and the parties intend to settle every aspect of their dispute on the terms set forth in this Agreement, without any admission of liability or wrongdoing by any of the parties or by anyone else, including any individually named City employee.

IN CONSIDERATION of the mutual and unilateral covenants, obligations and promises set out within this Agreement, the parties agree as follows:

### OBLIGATIONS, PROMISES AND COVENANTS OF EDWARD KLEN, STEPHEN KLEN, DIVERSE CONSTRUCTION, INC., AND HOLSTEIN SELF-SERVICE STORAGE, LLC

#### 1. INTENT.

Plaintiffs intend this Agreement as a complete settlement and release of all actual and potential issues, claims and grievances between themselves and the City and every present and former officer, councilmember, employee, agent, representative, insurer and attorney of the City, whether raised in the Litigation or not. Through this Agreement, Plaintiffs express their intent to

resolve all existing and potential disputes derived from their relationship, association, or contact with the City and all such persons. This Agreement concludes every actual or potential dispute, claim and grievance between Plaintiffs and the City and all individuals released in this Agreement, whatever the nature of any such claims, grievances and disputes that may exist as of the effective date of this Agreement.

2. **RELEASE.**

Plaintiffs, on behalf of themselves and all of their successors, assigns, agents, employees, co-owners, partners, and estates, hereby release the City and every present and former officer, councilmember, employee, agent, representative, insurer and attorney of the City (collectively "Released Individuals") from any and all claims, causes of action, grievances, liabilities, expenses and for damages that were or may be asserted against any of them as a result of any acts by the City or any Released Individual that occurred prior to the date this Agreement is executed, as well as respecting any and all omissions by the City and by any Released Individual to perform acts that were to be performed prior to the date of this Agreement, whether raised in the Litigation by Plaintiffs or not. Specifically, but not by way of limitation, this release includes any and all claims under the following: (a) Any United States or Colorado constitutional provision, including the First Amendment to the U.S. Constitution; (b) Any federal statute, as amended, including 42 U.S.C. §§ 1981, 1983, and 1988; (c) any civil rights law, including the Civil Rights Act of 1991; (d) any claim of retaliatory treatment pursuant to the law of any jurisdiction; (e) any claim, whether brought as a class action or otherwise, challenging in any way how the City determines, calculates, adopts, imposes or collects any capital expansion fee

authorized in City Code Chapter 16.38; and (f) any other claim of any type whatsoever, arising under federal law, the common law of any state, any state statute or any local law.

3. **COVENANT NOT TO SUE AND DISMISSAL OF THE LITIGATION.**

The Plaintiffs hereby agree and covenant that all individual Defendants, including each of the individuals currently named in the Litigation, Thomas Hawkinson, Greg George, John Duval and David Sprague, (collectively "Individual Defendants"), shall be dismissed with prejudice from the Litigation, with each of the parties to bear his, her, or their, own costs and fees, including attorney fees, as the initial condition precedent to the implementation of this Agreement. The Individual Defendants' counsel is hereby authorized to file with the Clerk of the Court an unopposed motion for dismissal with prejudice respecting each and every Individual Defendant named in the Litigation, including without being limited to Thomas Hawkinson, Greg George, John Duval and David Sprague, at the first opportunity following the complete and full execution of this Agreement.

Plaintiffs further agree and covenant they will not sue, appeal, make claims, make grievances, or assert any federal or state cause of action, at law or in equity, whether before a court of law or an administrative or other governmental agency, against the City or any Released Individual, including, without limitation, all of the Individual Defendants, with respect to any claims, causes of action, liabilities, grievances, expenses or damages arising out of any act or omission by any such person or entity arising out of, or relating to Plaintiffs' prior relationship, association or contact with the City or any Released Individuals, that occurred prior to the date this Agreement is fully executed, or respecting any omissions by the City or any Released Individual to perform acts that were required to be performed prior to the date of this Agreement

arising out of, or related to Plaintiffs' contact of any kind or nature whatsoever with the City and the Released Individuals, whether raised by Plaintiffs to date or not.

By their signatures on this Agreement, Plaintiffs authorize their counsel to enter into, execute and arrange for filing in the Litigation, a joint stipulated motion to dismiss all otherwise persistent claims in the Litigation, with prejudice, following delivery of the settlement payment described in paragraph 8 below, to Plaintiffs' attorney, Ingrid DeFranco.

4. **AGREEMENT RESPECTING TAXES.**

Plaintiffs agree that, in the event any part of any money paid in settlement of any claim resolved by this Agreement is determined to be taxable by any taxing authority, Plaintiffs shall be solely responsible for any tax liability arising therefrom related to taxes, penalties, and fines owed by Plaintiffs based on the characterization of the settlement payment in paragraph 8 below. If the City or any Released Individual is ever found responsible for any tax liability arising from any failure to satisfy any tax liability on any payment attributable to Plaintiffs described herein, Plaintiffs agree to indemnify and hold the City and any such Released Individual harmless for such claims

5. **NO ASSIGNMENT: HOLD HARMLESS AGREEMENT.**

Plaintiffs declare and represent that no other person, entity or association received any assignment, subrogation or other right of substitution to any claim or claims made or asserted in connection with this matter or pertaining to their relationship, association or contact with the City or any Released Individual or to any proceeds of such claim(s) obtained or that could have been obtained in connection with any claim they made or could make, and that in the event that the City or any Released Individual is subjected to any other or further claims of any type by any

person or entity, under any actual or purported right of substitution, Plaintiffs agree to hold the City and all Released Individuals harmless from any and all such claim

6. **THIRD PARTY BENEFICIARIES.**

Plaintiffs declare and represent that, except as expressly provided hereafter in this Section 6., no other person, entity or association is or is intended to be a third party beneficiary with respect to any element of this Agreement. Notwithstanding the foregoing, the parties agree that the Released Individuals, including, without limitation, all Individual Defendants, are and are intended to be, and shall be third-party beneficiaries to and under this Agreement.

7. **DISSEMINATION OF AGREEMENT.**

Plaintiffs agree that they and anyone acting on their behalf, including their attorneys, will not cause to be made public or release to any news media or to any other person any comments about the terms of this Agreement, except only (a) to members of the individual Plaintiffs' immediate family and to Plaintiffs' professional advisors, all of whom Plaintiffs' agree to advise of this confidentiality provision and of their obligations under this Agreement or (b) to the extent required by a final and binding court order.

**OBLIGATIONS, PROMISES AND COVENANTS OF  
THE CITY OF LOVELAND, COLORADO**

8. **SETTLEMENT PAYMENT**

Within fourteen (14) business days following receipt from Plaintiffs and their counsel of a fully executed and properly notarized original of this Agreement, as well as a fully executed IRS form W-9 for each individual or entity to be named a payee on the payment instrument, the City will pay Plaintiffs, or such individual or entity as they designate, a total of Four Hundred Ninety Five Thousand Dollars (\$495,000.00) which payment, along with the provisions of

Paragraph 10 below, is made in full settlement of all claims, disputes and grievances Plaintiffs asserted or might have asserted in the Litigation against the City and any Released Individual in connection with the Litigation. The City will withhold no federal, state and local taxes from this payment. The City or their insurer may report the payment as appropriate to the proper taxing authorities. Plaintiffs will be solely responsible for any and all tax consequences or any tax liability attributable to them caused by any allocation of the settlement payment they may make.

9. **CITY RELEASE**

The City hereby releases Plaintiffs from any and all claims, causes of action, liabilities, expenses and for damages that may have been asserted by the City against Plaintiffs as a result of any acts by Plaintiffs as related to the Litigation that occurred prior to the date this Agreement is fully executed.

10. **PLAINTIFFS' PROPOSED EXPANDED USE OF THE 697 NORTH DENVER AVENUE BUILDING**

Plaintiffs propose a future expansion of their existing pistol range into a second floor unfinished 8700 square foot portion of the Anasazi Park Phase 2 building located at 697 North Denver Avenue, Loveland, Colorado, which was designated as an area for potential expansion of the pistol range in Plaintiffs' original submission and marked as "Expansion Area" on **Exhibit A** attached hereto and incorporated herein by reference (the "Expansion"). The parties acknowledge that the Plaintiffs must submit and get City approval of an application for a tenant finish building permit for the Expansion in accordance with the City's Municipal Code and regulations.

The City acknowledges and confirms that the following was recommended to the City of Loveland City Council on February 19, 2013 and agreed to by the City of Loveland City Council:

a. Provided the Plaintiffs' proposed Expansion, when submitted to the City, is in substantial compliance with the currently approved "Anasazi Park Phase 2 - Major Amendment to Special Review No. 835" ("Special Review No. 835") and consists of expansion of their existing pistol range into the Expansion Area and reconfiguration of the facilities located on the first floor of the area identified as the "Pistol Range", as identified on Exhibit A, no additional special review or modification of a special review as otherwise required under City Code Title 18 and City Special Review No. 835 shall be required. The Plaintiffs proposal to construct 10 shooting lanes in the second floor Expansion Area in lieu of the "tactical training facility" identified on Special Review No. 835 and to rearrange the location of various facilities on the first floor and second floor of the area identified as the Pistol Range is consistent with the use permitted by Special Review No. 835. Further, the City acknowledges that Special Review No. 835 has not terminated pursuant to Loveland Municipal Code Section 18.40.060 because the right to use the area identified therein as a pistol range has been established by completion of the existing improvements and operation of the pistol range, thereby vesting the right to continue such use, subject to the permissions and conditions set forth therein. The conditions of Special Review No. 835 shall remain applicable to the Expansion.

b. Provided that the proposed Expansion, as described above and as hereafter submitted to the City by the Plaintiffs, is in substantial compliance with Special Review No. 835, that the existing capital expansion fee credits held by the City with respect to the

Anasazi Park Phase 2 building located at 697 North Denver Avenue will suffice to cover all capital expansion fees owed for the Expansion and, therefore, that no further capital expansion fees will be owed by the Plaintiffs to the City for the Expansion.

c. That the City will enter into a services contract to be reviewed yearly for a five-year period (subject to annual appropriation as required by City Charter Section 11-6(b) and Section 20, Article X of the Colorado Constitution) between the City and Plaintiffs for the Loveland Police Department's use of Plaintiffs' pistol range in the Anasazi Park Phase 2 building for training purposes, provided such contract is at the same cost as the original 2008 contract, \$47,870 per year (prorated at \$3,989.17 per month), which was entered between the City and the previous pistol range operator to become effective by May 1, 2013. This services contract shall include such other applicable terms and conditions as the City customarily now includes in similar services contracts and shall be completed in accordance with the City's current purchasing requirements.

## GENERAL PROVISIONS

### 11. INTEGRATION

The parties understand, acknowledge and agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter and transactions referred to herein. The parties understand, acknowledge and agree that the terms of this Agreement are contractual in nature and not mere recitals. As such, the parties understand, acknowledge and agree that this Agreement is fully integrated and supersedes all previous oral or written agreements of the parties.

**12. BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, all the successors, assigns, personal representatives and heirs of the parties.

**13. HEADINGS**

The headings used in this Agreement are for the convenience of the parties only. As such, these headings shall not have any legal effect whatsoever or in any other way alter or modify the meaning or interpretation of this Agreement.

**14. ADDITIONAL ASSURANCES.**

This Agreement is intended to be self-operative. Notwithstanding the foregoing, the parties agree that, at the reasonable request of the other party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Agreement.

**15. SEVERABILITY**

If any provision of this Agreement should ever be declared to be unenforceable, with the exception of Plaintiffs' release of any and all claims as set forth in this Agreement, then the remainder of this Agreement shall continue to be binding upon the parties. Plaintiffs' release of any and all claims arising out of their prior association with and contact with the City as well as all the Released Individuals, as set forth in this Agreement, is an integral part of this Agreement and is not severable.

**16. FEES AND COSTS.**

All parties to this Agreement shall bear all of their own costs and fees, including all attorney fees, incurred prior to the date this Agreement takes effect, whether or not such fees or costs were incurred in connection with reaching this Agreement.

**17. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall have full force and effect upon complete execution by all parties to this Agreement.

**18. WARRANTIES**

The parties expressly warrant that they carefully and completely read the terms of this Agreement. The parties expressly warrant that they were afforded the opportunity to consult with legal counsel prior to executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. The parties expressly acknowledge that they believe the terms of this Agreement are appropriate to reach a full and final settlement of these matters. The parties expressly understand and agree that their signatures on this Agreement shall be forever binding, and no rescission, modification or release of the parties from the terms of this Agreement will be made for mistake or any other reasons. The parties represent that they are legally competent to read, understand, enter into and execute this Agreement and to accept full responsibility and assume the risk of any mistake of fact as to any damages, losses, or injuries, whether disclosed or undisclosed, sustained or claimed to be sustained as a result of Plaintiffs' claims against the City or any claim brought or that could be brought, or any other matter between the parties occurring up to the date of signing this Agreement. The parties further warrant and

acknowledge that no promise or inducement was offered except as set forth herein and that this Agreement was executed by them without reliance upon any statement or representation by any persons or parties released or any representatives of such persons or parties concerning the nature or extent of any damages or any legal liability therefor. The parties acknowledge that entering into this Agreement is not an admission by either party of any wrongful or improper actions, but rather reflects the parties' desire to resolve this matter amicably without additional expense or litigation.

**19. AMENDMENT**

This Agreement may not be amended except in a writing setting forth such amendment and executed by all parties.

**20. ENFORCEABILITY, CONSTRUCTION, INTERPRETATION.**

The parties expressly acknowledge that this Agreement shall be governed by the laws of the State of Colorado. Any dispute arising out of this Agreement shall be brought in the United States District Court for the District of Colorado. All parties, by and through counsel, participated in the preparation of this Agreement, and no rules of construction or interpretation based upon which party drafted any portion of the Agreement shall be applicable or invoked.

AGREED AND ACCEPTED this 10<sup>th</sup> day of April, 2013.

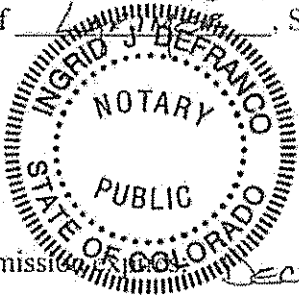
READ CAREFULLY BEFORE SIGNING:

EDWARD J. KLEN

*E. J. Klen*  
Edward J. Klen

Acknowledged before me by the person known to me as Edward J. Klen, in the County of La Plata, State of Colorado, this 10<sup>th</sup> day of April, 2013.

[SEAL]



*Ingrid J. DeFranco*  
Notary Public

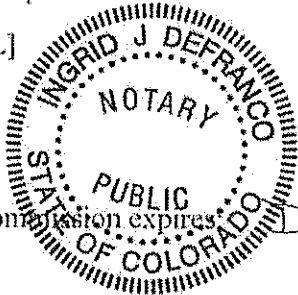
My Commission expires December 27, 2015

STEPHEN J. KLEN

*Stephen J. Klen*  
Stephen J. Klen

Acknowledged before me by the person known to me as Stephen J. Klen, in the County of La Plata, State of Colorado, this 10<sup>th</sup> day of April, 2013.

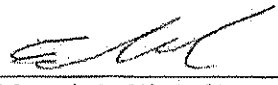
[SEAL]



*Ingrid J. DeFranco*  
Notary Public

My Commission expires December 27, 2015

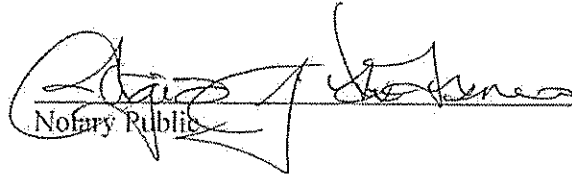
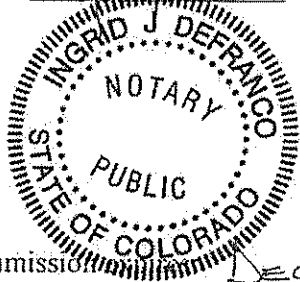
HOLSTEIN SELF-SERVICE STORAGE, LLC



Edward J. Klen for Holstein Self-Service Storage,  
LLC

Acknowledged before me by the person known to me as Edward J. Klen, in the  
County of Larimer, State of COLORADO, this 10<sup>th</sup> day of April,  
2013.

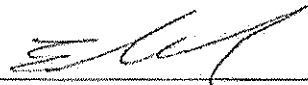
[SEAL]



Ingrid J. DeFranco  
Notary Public

My Commission Expires December 27, 2015

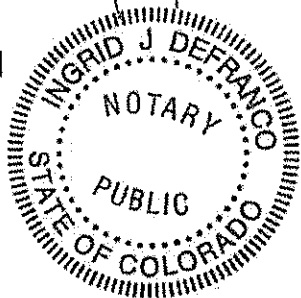
DIVERSE CONSTRUCTION, INC.



Edward J. Klen for Diverse Construction, Inc.

Acknowledged before me by the person known to me as Edward J. Klen, in the  
County of LARIMER, State of COLORADO, this 10<sup>th</sup> day of April,  
2013.

[SEAL]



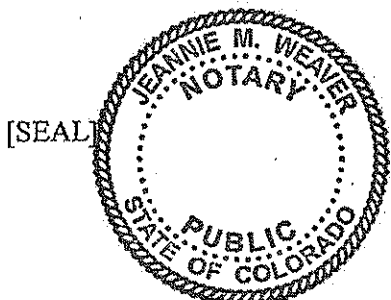
Notary Public


My Commission expires: ~~December~~ 27, 2015

THE CITY OF LOVELAND

  
William D. Cahill, City Manager

Acknowledged before me by a person known to me to be William D. Cahill in the County of Larimer, State of Colorado, this 12<sup>th</sup> day of April, 2013.



  
Notary Public

My Commission expires: 9-11-15

APPROVED AS TO FORM:

BY:



Ingrid J. DeFranco, Esq.  
Law Offices of Ingrid J. DeFranco  
P. O. Box 128  
Brighton, CO 80601-0128  
Phone: (303) 443-1749

BY:



John Kenneth Pineau, Esq.  
John Kenneth Pineau, P.C.  
2305 Broadway  
Grill Mansion  
Boulder, CO 80304  
Phone: (303) 440-4444

ATTORNEYS FOR PLAINTIFFS

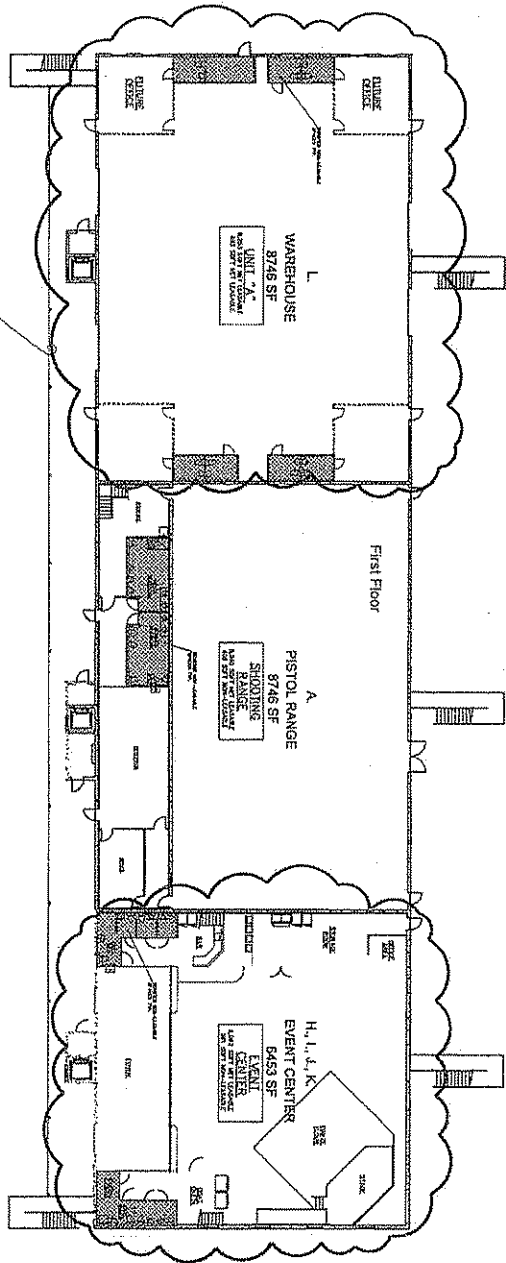
BY:



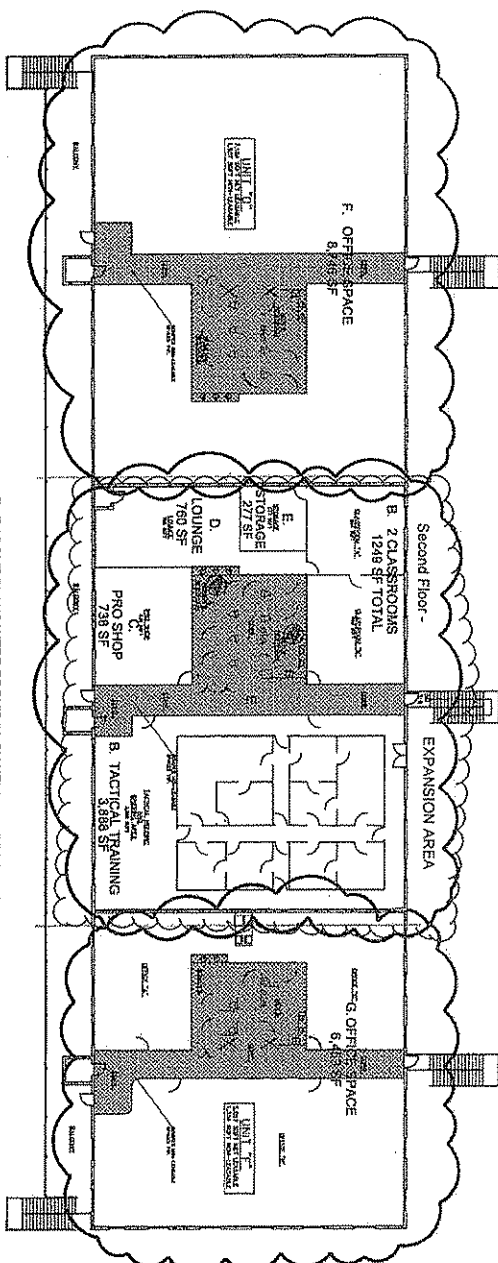
Thomas J. Lyons  
Lance E. Shurtleff  
Hall & Evans, L.L.C.  
1125 17<sup>th</sup> Street, Suite 600  
Denver, Colorado 80202-2052  
(303) 628-3300

ATTORNEYS FOR THE CITY OF LOVELAND

**EXHIBIT A**



AREAS INCLUDING CHANGES DESCRIBED ON SHEET 1 OF 4, TYPICAL.



THE ABOVE PLANS WERE PROVIDED BY KENNETH ASSOCIATES.

**ANASAZI PARK PHASE 2  
AMENDMENT TO SPECIAL REVIEW NO. 835**

**SPACE USAGE, LOWER AND UPPER LEVELS**

REGISTERED ARCHITECT  
**The Fredrickson Group**  
 ARCHITECTS / LANDSCAPE ARCHITECTS  
 1111 N. STATE ST. SUITE C  
 LOVELAND, CO 80538  
 (970) 687-8535

CLIENT  
**ED AND STEVE KIEN**  
 HOLSTEIN STORAGE, LLC  
 699 SIEMON COURT  
 LOVELAND, CO 80538  
 (970) 687-8535

No.	Revised/Date	By
1		
2		
3		
4		

DATE: DECEMBER 13, 2007

4 OF 4