

## Exhibit 2

### SETTLEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into this <sup>4<sup>th</sup></sup> day of ~~APRIL~~ <sup>APRIL</sup>, 2020, by and between the City of Fort Collins, a Colorado home rule municipality ("Fort Collins"), the Town of Timnath, a Colorado home rule municipality ("Timnath"), the Timnath Development Authority, a Colorado urban renewal authority (the "TDA"), Compass Mortgage Corporation, an Alabama corporation ("Compass") and Eric Sutherland, also known as William Eric Sutherland, ("Sutherland"). Fort Collins, Timnath, the TDA, Compass and Sutherland are hereafter sometimes referred to collectively as the "Parties" and individually as "Party."

### RECITALS

WHEREAS, on April 26, 2018, Sutherland filed in Larimer County District Court (the "District Court") his "Unamended Complaint for Declaratory Judgment and Equitable Relief" (the "Sutherland Complaint") styled as *Sutherland v. The City of Fort Collins, et al.*, 2018CV149 (the "First Lawsuit"); and

WHEREAS, the Sutherland Complaint asserts eight (8) causes of action against Fort Collins alleging, among other things, that the Fort Collins Electric Utility Enterprise Board failed to comply with certain legal requirements in adopting its Ordinance No. 003 on April 3, 2018, to authorize the issuance and sale of certain revenue bonds (the "Enterprise Bond Ordinance") and in adopting its Ordinance No. 004 on April 3, 2018, to authorize the Fort Collins Electric Utility Enterprise (the "Enterprise") to defease the Enterprise's Series 2010B taxable revenue bonds (the "Enterprise Defeasance Ordinance"); and

WHEREAS, the Sutherland Complaint asserts eleven (11) other causes of action against the TDA, Compass, Steve Miller as the Larimer County Assessor ("Miller") and Irene Josey as the Larimer County Treasurer ("Josey") alleging, among other things, that the TDA's Board of Commissioners was not lawfully constituted under the Colorado Urban Renewal Law when it approved its Resolution No. TDA 04 2018 on March 27, 2018 ("TDA Resolution No. 04"); and

WHEREAS, Sutherland's causes of action in the Sutherland Complaint against the TDA, Compass, Miller and Josey are unrelated to his causes of action in the Sutherland Complaint against Fort Collins; and

WHEREAS, on June 5, 2018, the TDA filed in the First Lawsuit its answer to the Sutherland Complaint and its counterclaims against Sutherland for abuse of process and intentional interference with contractual relations (the "TDA Counterclaims"); and

WHEREAS, on June 7, 2018, Timnath and the TDA filed in District Court their "Complaint" styled as *The Town of Timnath, Colorado; Timnath Development Authority v. Eric Sutherland*, 18CV30567, which "Complaint" was subsequently amended by Timnath's and TDA's "Amended Complaint" filed in District Court on November 7, 2018 (the "Second Lawsuit"); and

WHEREAS, the Second Lawsuit asserts claims against Sutherland for abuse of process by him arising from his filing of the First Lawsuit and sought monetary damages as well as injunctive relief barring Sutherland from filing *pro se* lawsuits in the courts of the Eighth Judicial District of

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### RECITALS

WHEREAS, on April 26, 2018, Sutherland filed in Larimer County District Court (the "District Court") his "Unamended Complaint for Declaratory Judgment and Equitable Relief" (the "Sutherland Complaint") styled as *Sutherland v. The City of Fort Collins, et al.*, 2018CV149 (the "First Lawsuit"); and

WHEREAS, the Sutherland Complaint asserts eight (8) causes of action against Fort Collins alleging, among other things, that the Fort Collins Electric Utility Enterprise Board failed to comply with certain legal requirements in adopting its Ordinance No. 003 on April 3, 2018, to authorize the issuance and sale of certain revenue bonds (the "Enterprise Bond Ordinance") and in adopting its Ordinance No. 004 on April 3, 2018, to authorize the Fort Collins Electric Utility Enterprise (the "Enterprise") to defease the Enterprise's Series 2010B taxable revenue bonds (the "Enterprise Defeasance Ordinance"); and

WHEREAS, the Sutherland Complaint asserts eleven (11) other causes of action against the TDA, Compass, Steve Miller as the Larimer County Assessor ("Miller") and Irene Josey as the Larimer County Treasurer ("Josey") alleging, among other things, that the TDA's Board of Commissioners was not lawfully constituted under the Colorado Urban Renewal Law when it approved its Resolution No. TDA 04 2018 on March 27, 2018 ("TDA Resolution No. 04"); and

WHEREAS, Sutherland's causes of action in the Sutherland Complaint against the TDA, Compass, Miller and Josey are unrelated to his causes of action in the Sutherland Complaint against Fort Collins; and

WHEREAS, on June 5, 2018, the TDA filed in the First Lawsuit its answer to the Sutherland Complaint and its counterclaims against Sutherland for abuse of process and intentional interference with contractual relations (the "TDA Counterclaims"); and

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WHEREAS, the Second Lawsuit asserts claims against Sutherland for abuse of process by him arising from his filing of the First Lawsuit and sought monetary damages as well as injunctive relief barring Sutherland from filing *pro se* lawsuits in the courts of the Eighth Judicial District of

Colorado (the “Eighth Judicial District”); and

WHEREAS, on July 11, 2018, District Court Judge Gregory M. Lammons (“Judge Lammons”) issued an order in the First Lawsuit granting the TDA’s and Compass’s joint motion to dismiss the First Lawsuit with regard to all the causes of action asserted in the Sutherland Complaint against them (the “TDA Dismissal Order”); and

WHEREAS, on September 5, 2018, Judge Lammons issued an order granting Fort Collins’ motion to dismiss the First Lawsuit regarding all the causes of action asserted in the Sutherland Complaint against Fort Collins (the “Fort Collins Dismissal Order”); and

WHEREAS, the Fort Collins Dismissal Order also granted Miller’s and Josey’s motion to dismiss the First Lawsuit regarding all the causes of action asserted in the Sutherland Complaint against them; and

WHEREAS, on September 10, 2018, Judge Lammons issued his order in the First Lawsuit granting the TDA and Compass a judgment against Sutherland for \$2,155.00 in costs and \$43,458.55 in attorney fees that the TDA and Compass incurred in defense of the First Lawsuit for a total judgment of \$45,613.55 (the “TDA First Judgment”); and

WHEREAS, on October 9, 2018 and February 22, 2019, the TDA recorded with the Larimer County Clerk and Recorder at Reception numbers 20180064216 and 2019000895 its transcript of judgment for the TDA First Judgment to encumber with a judgment lien any real property interests owned by Sutherland in Larimer County (the “TDA First Judgment Lien”); and

WHEREAS, on October 23, 2018, Sutherland filed his Notice of Appeal in the First Lawsuit with the Colorado Court of Appeals (“Court of Appeals”) in Case No. 2018CA1993 appealing, among other things, the TDA Dismissal Order and the Fort Collins Dismissal Order, but on April 26, 2019, the Court of Appeals dismissed the appeal without prejudice; and

WHEREAS, on December 21, 2018, Compass assigned all of its rights under the TDA First Judgment to the TDA; and

WHEREAS, on March 14, 2019, Senior District Court Judge J. Robert Lowenbach (“Judge Lowenbach”) issued in the Second Lawsuit his “Findings of Fact, Conclusions of Law and Order” awarding Timnath and the TDA a judgment for monetary damages in the amount of \$25,000 (the “TDA Second Judgment”); and

WHEREAS, on March 15, 2019, Judge Lammons issued his order dismissing the TDA Counterclaims without prejudice (the “Order Dismissing TDA Counterclaims”); and

WHEREAS, on March 28, 2019, Judge Lowenbach issued in the Second Lawsuit an injunction permanently enjoining Sutherland from filing any *pro se* civil claims or petitions in the Eighth Judicial District without first getting court approval (the “Permanent Injunction”); and

WHEREAS, on March 29, 2019, Timnath and the TDA recorded with the Larimer County Clerk and Recorder at Reception #20190015695 its transcript of judgment for the TDA Second

Judgment to encumber with a judgment lien any real property interests owned by Sutherland in Larimer County (the "TDA Second Judgment Lien"); and

WHEREAS, on April 2, 2019, Judge Lammons issued his order in the First Lawsuit granting Fort Collins a judgment against Sutherland for \$2,295.77 in costs and \$37,947.50 in attorney fees that Fort Collins incurred in defense of the First Lawsuit for a total judgment of \$40,243.27 (the "Fort Collins First Judgment"); and

WHEREAS, on April 23, 2019, Fort Collins recorded with the Larimer County Clerk and Recorder at Reception #20190020316 its transcript of judgment for the Fort Collins First Judgment to encumber with a judgment lien any real property interests owned by Sutherland in Larimer County (the "Fort Collins First Judgment Lien"); and

WHEREAS, on May 3, 2019, Sutherland filed his "Second Notice of Appeal" in the First Lawsuit with the Colorado Court of Appeals in Case No. 2019CA800 appealing, among other things, the Timnath Dismissal Order, the Fort Collins Dismissal Order, the TDA First Judgment and the City First Judgment, but on January 17, 2020, the Court of Appeals dismissed this appeal without prejudice; and

WHEREAS, on June 17, 2019, Sutherland filed his Notice of Appeal in the Second Lawsuit with the Court of Appeals in Case No. 2019CA1107 appealing, among other things, the TDA Second Judgment and the Permanent Injunction (the "Appeal"); and

WHEREAS, on August 15, 2019, Judge Lowenbach issued in the Second Lawsuit his "Order on Motion for Costs" awarding Timnath and the TDA their costs for a judgment in the amount of \$11,258.48 (the "TDA Third Judgment"); and

WHEREAS, on August 29, 2019, Timnath and the TDA recorded with the Larimer County Clerk and Recorder at Reception #20190051477 their transcript of judgment for the TDA Third Judgment to encumber with a judgment lien any real property interests owned by Sutherland in Larimer County (the "TDA Third Judgment Lien"); and

WHEREAS, on August 30, 2019, Timnath and the TDA filed in the Second Lawsuit their Second Motion to Issue Writ of Execution to enforce the TDA Second Judgment and TDA Third Judgment and on September 25, 2019, the Clerk of the Court issued the requested Writ of Execution ("Second Lawsuit Writ of Execution"); and

WHEREAS, Timnath and the TDA have used the Second Lawsuit Writ of Execution to request and schedule on April 2, 2020, a sheriff's sale of Sutherland's residence at 3520 Golden Currant Boulevard, Fort Collins, Colorado 805251, to foreclose on the TDA Second Judgment Lien and TDA Third Judgment Lien (the "Sheriff's Sale Proceedings"); and

WHEREAS, on January 13, 2020, Judge Lowenbach issued his order staying any executions to collect the TDA Second Judgment and the TDA Third Judgment conditioned on Sutherland filing a \$45,323.10 supersedeas bond with the District Court; and

WHEREAS, on January 14, 2020, Judge Lammons issued in the First Lawsuit his order

granting Fort Collins a second judgment against Sutherland for \$1,284.13 in additional costs and \$21,495.26 in additional attorney fees that Fort Collins incurred in defense of the First Lawsuit for a total judgment of \$22,779.39 (the "Fort Collins Second Judgment"); and

WHEREAS, on January 15, 2020, Timnath and the TDA filed in the First Lawsuit their Motion to Issue Writ of Execution to enforce the TDA First Judgment (the "First Lawsuit Motion for Writ of Execution"); and

WHEREAS, on January 30, 2020, Sutherland posted with the Court Clerk in the Second Lawsuit his cash supersedeas bond in the amount of \$45,323.10 (the "Supersedeas Bond"); and

WHEREAS, on February 7, 2020, Judge Lammons issued his order granting the First Lawsuit Motion for Writ of Execution and the Clerk of the Court issued the Writ of Execution (the "First Lawsuit Writ of Execution"); and

WHEREAS, on February 14, 2020, Fort Collins recorded with the Larimer County Clerk and Recorder at Reception #20200010303 its transcript of judgment for the Fort Collins Second Judgment to encumber with a judgment lien any real property interests owned by Sutherland in Larimer County (the "Fort Collins Second Judgment Lien"); and

WHEREAS, the Parties now wish to end their respective disputes in the First Lawsuit, the Second Lawsuit and the Appeal, and avoid further litigation, by entering into this Settlement Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants hereafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### **I. Stipulated Motion for Court to Make this Agreement an Order of the Court**

Sutherland, Fort Collins, TDA and Compass agree to jointly file in the First Lawsuit their "Stipulated Motion for Settlement Order" attached hereto as **Exhibit "A"** (the "First Lawsuit Settlement Motion") asking the District Court to issue, within fourteen (14) calendar days after the filing of the First Lawsuit Settlement Motion, the "Settlement Order" attached hereto as **Exhibit "B"** (the "First Lawsuit Settlement Order") making this Agreement an order of the District Court and enforceable as such. Once the First Lawsuit Settlement Order is issued, the Parties agree that this Agreement shall go into full effect and the Parties shall be bound by all of the terms and conditions of this Agreement and the First Lawsuit Settlement Order, unless this Agreement terminates as provided below in Section IX. of this Agreement, and each Party waives any right to judicially challenge the legal validity of this Settlement Agreement or the First Lawsuit Settlement Order in any court or appeal the First Lawsuit Settlement Order to any court. The Parties further agree that the District Court shall retain jurisdiction to enforce the First Lawsuit Settlement Order and this Agreement.

#### **II. Dismissal of the Appeal and Resolution of Second Lawsuit**

- A. Within seven (7) calendar days after Judge Lammons issues the First Lawsuit Settlement Order, Sutherland, Timnath and the TDA shall file in the Appeal, under Rule 27(b) of the Colorado Appellate Rules, the “Stipulated Motion for Remand to District Court for Settlement” attached hereto as **Exhibit “C”** requesting the Court of Appeals to issue a remand order returning the proceedings in the Second Lawsuit to the District Court to allow Sutherland, Timnath and the TDA to request the District Court to issue the “Settlement Order” as provided in Section II.B. below.
- B. Within seven (7) calendar days after the Court of Appeals issues its remand order as contemplated in Section II.A. above, Sutherland, Timnath and the TDA shall file in the Second Lawsuit the “Stipulated Motion for Settlement Order” attached hereto as **Exhibit “D”** (the “Second Lawsuit Settlement Motion”) asking Judge Lowenbach to issue, within twenty-one (21) calendar days after the filing of the Second Lawsuit Settlement Motion, but no later than June 15, 2020, the “Settlement Order” attached hereto as **Exhibit “E”** (the “Second Lawsuit Settlement Order”) to provide that all the orders issued by the District Court in the Second Lawsuit, except as expressly provided in Section IV. of this Agreement, shall become final and unappealable court orders, which shall include, without limitation, the Permanent Injunction. The Parties agree that the Permanent Injunction shall remain in full force and effect after execution of this Agreement and issuance of the Second Lawsuit Settlement Order. It is further agreed by the Parties that the District Court shall retain jurisdiction in the Second Lawsuit to enforce the Permanent Injunction.
- C. Within seven (7) calendar days after the District Court issues the Second Lawsuit Settlement Order, Sutherland, Timnath and the TDA shall file in the Appeal, under Rule 42 of the Colorado Appellate Rules, the “Stipulated Motion for Dismissal of Appeal” attached hereto as **Exhibit “F”** requesting the Court of Appeals to dismiss the Appeal with prejudice.

### **III. Fort Collins Forbearance, Satisfaction of Judgments & Release of Liens**

- A. Fort Collins agrees to forebear from taking any action to enforce the Fort Collins First Judgment and the Fort Collins Second Judgment (jointly, the “Fort Collins Judgments”) or to take any other action to collect the amounts awarded to Fort Collins pursuant to the Fort Collins Judgments.
- B. Fort Collins agrees to file in the First Lawsuit, within seven (7) calendar days after Judge Lowenbach issues the Second Lawsuit Settlement Order, an “Acknowledgment of Full Satisfaction of Judgment” (the “Acknowledgement”) for each of the Fort Collins Judgments to obtain from the Clerk of the Eighth Judicial District (“Court Clerk”) for each of the Fort Collins Judgments a “certificate of satisfaction for the judgment” (“Certificate of Satisfaction”). The Acknowledgement shall state: “For and in consideration of the sum of \$6,000, and other good and valuable consideration, the Defendant City of Fort Collins, by and through its undersigned counsel of record, acknowledges full satisfaction of the judgments, including costs and interest, entered in the District Court in the above-

entitled action on April 2, 2019, and on January 14, 2020, in favor of Defendant City of Fort Collins against Plaintiff Eric Sutherland, as recorded in the records of the Court, and hereby authorizes and directs the Clerk of the Court to enter a full satisfaction of the judgment of record in this action for these judgments and requests that the Clerk issue a certificate of satisfaction for each judgment.”

- C. In order to release the Fort Collins First Judgment Lien and the Fort Collins Second Judgment Lien, Fort Collins agrees to record the Certificates of Satisfaction it obtains from the Court Clerk with the Larimer County Clerk and Recorder within seven (7) calendar days after Fort Collins receives them from the Court Clerk.

**IV. Timnath, TDA and Compass Forbearance, Satisfaction of Judgments & Release of Liens**

- A. Timnath, the TDA and Compass agree to forbear from taking any action to enforce the TDA First Judgment, the TDA Second Judgment and the TDA Third Judgment (collectively, “TDA Judgments”) or to take any other action to collect the amounts awarded to Timnath, the TDA and Compass pursuant to the TDA Judgments, which shall include, without limitation, terminating the Sheriff’s Sale Proceedings and taking no further collection actions under the First Lawsuit Writ of Execution and the Second Lawsuit Writ of Execution.
- B. Timnath, the TDA and Compass agree to file in the First Lawsuit and Second Lawsuit, as applicable, within seven (7) calendar days after Judge Lowenbach issues the Second Lawsuit Settlement Order an Acknowledgment using the format set out in Section III.B. above for each of the TDA Judgments to obtain from the Court Clerk for each of the TDA Judgments a Certificate of Satisfaction.
- C. In order to release the TDA First Judgment Lien, the TDA Second Judgment Lien and the TDA Third Judgment Lien, Timnath, the TDA and Compass agree to record the Certificates of Satisfaction they obtain from the Court Clerk with the Larimer County Clerk and Recorder within seven (7) calendar days after Timnath and the TDA receive them from the Court Clerk.
- D. Within seven (7) calendar days after Judge Lowenbach issues the Second Lawsuit Settlement Order, Timnath and the TDA shall notify the Larimer County Sheriff in writing to terminate the Sheriff’s Sale Proceedings. They shall also file in the First Lawsuit a motion to terminate the First Lawsuit Writ of Execution and file in the Second Lawsuit a motion to terminate the Second Lawsuit Writ of Execution.

**V. Sutherland’s Payments to Fort Collins and Timnath**

Sutherland shall pay six thousand dollars (\$6,000.00) each to Fort Collins and Timnath. This payment shall be made by Sutherland to Fort Collins and Timnath in separate bank cashier’s checks physically delivered to Fort Collins and Timnath within three (3) calendar days after Judge Lowenbach issues the Second Lawsuit Settlement Order.

## **VI. Sutherland's Release of Claims and Forbearance Obligation**

For and in consideration of the mutual promises described herein, Sutherland, for himself, his predecessors, successors, attorneys, heirs, personal representatives, conservators and assigns, does hereby and forever release and absolutely discharge Fort Collins, the Enterprise, Timnath, the TDA and Compass, and their respective past, present and future governing bodies, elected and appointed officials, officers, employees, agents, affiliated governmental entities, successors, attorneys, assigns, insurers and third-party contractors and administrators (collectively, the "Released Parties") from any and all disputes, causes of action, claims, expenses, losses, differences, damages, attorney fees, costs, pre-judgment interest, demands, sanctions, grievances and causes of action or suits of any kind, at law or in equity or based on any constitutional, statutory, charter or code provision, known or unknown, suspected or unsuspected, from the beginning of time to the date hereof, including, without limitation, any causes of actions or claims related to the Enterprise Bond Ordinance, the Enterprise Defeasance Ordinance, TDA Resolution No. 04 and whether the TDA Board of Commissioners is lawfully constituted under the Colorado Urban Renewal Law (collectively, the "Released Claims").

Sutherland agrees to forbear from causing any third party or affiliate to file any suit, claim, or action of any kind against the Released Parties regarding the Released Claims. Sutherland further agrees to forbear from providing any support, assistance, counsel, advice or recommendations of any kind to any third party or affiliate who has filed or is contemplating filing a suit, claim or action of any kind against the Released Parties regarding the Released Claims, including but not limited to legal advice, drafting assistance, strategic guidance, or financial support.

Sutherland recognizes that he may hereafter discover claims or facts in addition to or different from those which he now knows or believes to exist with respect to any matter addressed in this Agreement or the Settlement Orders in the First and Second Lawsuits, which, if known or suspected at the time of executing this Agreement, may have materially affected his decision to enter into this Agreement or his stipulation to the Settlement Orders. Nevertheless, Sutherland hereby waives any rights, claims or causes of action that might arise as a result of such different or additional claim or facts.

## **VII. Dismissal with Prejudice of Claims in First Lawsuit**

Sutherland agrees, as reflected in the First Lawsuit Settlement Motion, that Judge Lammons's timely issuance of the First Lawsuit Settlement Order and Judge Lowenbach's subsequent timely issuance of the Second Lawsuit Settlement Order shall result in the dismissal with prejudice of all claims and causes of action asserted in the Sutherland Complaint against the Parties and that all orders issued by Judge Lammons in the First Lawsuit, except as expressly provided in Sections II. and III. of this Agreement, shall become final and unappealable court orders, which shall include, without limitation, the TDA Dismissal Order and the Fort Collins Dismissal Order. The Parties also acknowledge and agree that the TDA Counterclaims dismissed without prejudice in the Order Dismissing TDA Counterclaims shall be dismissed with prejudice in the First Lawsuit Settlement Order as provided in the First Lawsuit Settlement Order.



**VIII. Sutherland Agreements Not to File Certain Judicial Actions**

- A. Sutherland agrees not to file any future judicial actions or appeals, regardless of procedural form used, in any of the courts of the United States, Colorado and/or Fort Collins or any further motions or other pleadings in the First Lawsuit (except as expressly authorized in this Agreement) against Fort Collins, the Enterprise, any of Fort Collins' other enterprises, the Fort Collins Urban Renewal Authority, the Fort Collins Downtown Development Authority, the Platte River Power Authority and/or the Poudre Fire Authority, or against their past, current and future governing bodies, elected officials, appointed officials, officers and employees, challenging their legal authority concerning any past or future official or formal action or to challenge the legality of any official or formal action they have taken or may take. Sutherland further agrees that if he violates this provision, Fort Collins shall be entitled, in addition to all other legal and equitable remedies available to it under this Agreement and/or the First Lawsuit Settlement Order, to apply by motion to the District Court in the First Lawsuit asking it to enter a fifty-thousand dollar (\$50,000.00) judgment against Sutherland in favor of Fort Collins.
- B. Sutherland agrees not to file any future judicial actions or appeals, regardless of procedural form used, in any of the courts of the United States, Colorado and/or Timnath or any further motions or other pleadings in the First Lawsuit and/or the Second Lawsuit (except as expressly authorized in this Agreement) against Timnath, its enterprises, the TDA, the Timnath Landings GID, the Timnath Foundation and/or Compass, or against their past, current and future governing bodies, elected officials, appointed officials, directors, shareholders, officers and employees, challenging their legal authority concerning any past or future official or formal action or to challenge the legality of any official or formal action they have taken or may take. Sutherland further agrees that if he violates this provision, the TDA shall be entitled, in addition to all other legal and equitable remedies available to it under this Agreement and/or the First Lawsuit Settlement Order, to apply by motion to the District Court in the First Lawsuit asking it to enter a fifty-thousand dollar (\$50,000.00) judgment against Sutherland in favor of the TDA.
- C. Sutherland agrees, consents and stipulates that the District Court shall enter the judgments provided for in Sections VIII.A. and VIII.B. if the motion filed includes all of the following: (a) a statement that Sutherland has filed a judicial action or motion in a court against an entity or person in violation of Sections VIII.A. and/or VIII.B.; (b) fully signed copies of the following are attached to the motion: this Agreement, the First Lawsuit Settlement Order and the complaint, petition, motion or other pleading Sutherland has filed causing the violation; and (c) affidavit(s) attached attesting to Sutherland's violation. The Parties also agree that nothing herein shall prohibit any Party from appealing, as provided in the Colorado Appellate Rules, the District Court's decision on the motion.
- D. As used in Sections VIII.A. and VIII.B. above, the phrase "official or formal action" shall mean any legislative, quasi-judicial and/or administrative decision or action taken or not taken by the entities, governing bodies and/or the individual

persons identified in these Sections.

**IX. Termination of Agreement**

This Agreement shall terminate, become null and void, and the Parties shall be released from all obligations hereunder if either of the following occurs: (a) Judge Lammons does not issue the First Lawsuit Settlement Order within fourteen (14) calendar days after the filing of the First Lawsuit Settlement Motion as provided above in Section I. of this Agreement; or (b) Judge Lowenbach does not issue the Second Lawsuit Settlement Order within twenty-one (21) calendar days of the filing of the Second Lawsuit Settlement Motion as provided above in Section II.B. of this Agreement. In addition, if the Second Lawsuit Settlement Order has for any reason not been issued on or before June 15, 2020, this Agreement shall terminate, become null and void, and the Parties shall be released from all obligations hereunder. If the Second Lawsuit Settlement Order is issued within twenty-one (21) calendar days of the filing of the Second Lawsuit Settlement Motion, as provided above in Section II.B. of this Agreement, and this issuance date is on or before June 15, 2020, the Settlement Agreement shall continue in full force and effect thereafter.

**X. No Other Actions, No Assignment**

Sutherland hereby represents that he has not commenced or submitted to any court any new civil action against any of the Released Parties.

Sutherland hereby represents that he has not assigned or otherwise transferred to any third party any past or existing claim or cause of action (or part thereof) against the Released Parties.

**XI. Authority to Execute and Advice of Counsel**

**THE PARTIES EACH REPRESENT THAT THEY HAVE THE SOLE RIGHT AND EXCLUSIVE AUTHORITY TO EXECUTE THIS AGREEMENT.**

**THE PARTIES EACH REPRESENT THAT THEY HAVE HAD THE OPPORTUNITY TO SEEK THE BENEFIT OF CONSULTATION WITH LEGAL COUNSEL CONCERNING THE EXECUTION OF THIS AGREEMENT.**

**FURTHER, THE PARTIES EACH REPRESENT THAT THEY HAVE READ AND FULLY UNDERSTAND THE TERMS OF THIS AGREEMENT; THAT THEY HAVE EACH FREELY AND VOLUNTARILY ENTERED INTO AND EXECUTED THIS AGREEMENT BASED ON THEIR OWN JUDGMENT WITHOUT THE UNDUE INFLUENCE OF ANY PERSON; AND THAT THEY HAVE EACH ENTERED INTO AND EXECUTED THIS AGREEMENT WITHOUT RELYING ON ANY PROMISES, CONDITIONS, TERMS, STATEMENTS OR REPRESENTATIONS NOT EXPRESSLY CONTAINED HEREIN.**

**XII. Binding Effect**

The Parties understand and agree that this Agreement and its terms are contractual, binding, and not mere recitals.

### **XIII. Entire Agreement**

The Parties agree that this Agreement constitutes the Parties' entire agreement with respect to the subject matter of it and supersedes all prior and contemporaneous agreements or understandings, including any oral representations. Any amendment, modification, change or supplement to this Agreement shall not be valid or binding unless it is in writing and executed by all the Parties. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Party to which performance is to be rendered.

### **XIV. Execution**

This Agreement may be executed in one or more counterparts (including multiple signature pages), all of which shall be deemed to be one instrument. True and correct copies of this Agreement may be referenced in lieu of the original copy.

### **XV. Construction and Applicable Law**

All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties shall be governed by the laws of the State of Colorado.

The section headings are for the convenience of reference only and are not a substantive part of this Agreement.

This Agreement and its wording have been freely negotiated by all Parties. In the event of any dispute arising out of this Agreement, including a breach of it, no Party will have any right to argue any rule of construction or interpretation against any other Party claiming the benefit or detriment of being a draftsman.

### **XVI. Unknown Facts**

With the exception of the express representations and warranties made in this Agreement, each Party agrees and acknowledges that he or they may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the matters that are the concern of this Agreement and the claims released herein. Each Party agrees that this Agreement shall be, and will remain, effective in all respects regardless of such different or additional facts.

It is the intention of the each of the Parties to fully, finally, and forever settle and release all such matters and all claims which do now exist, may exist in the future or existed relating to or arising out of the First Lawsuit and the Second Lawsuit.

### **XVII. Enforceability**

Each covenant and agreement herein is a material condition to the effectiveness and enforceability of this Agreement. Notwithstanding the preceding, if any provision of this Agreement is held invalid under any applicable law(s), such invalidity shall not affect any other provision of the Agreement that can be given effect without the invalid provision, and to this end,

the provisions herein are severable.

The provisions of this Agreement shall be deemed to obligate and extend to the legal successors, assigns, transferees, heirs, personal representatives, guardians, conservators and grantees of the Parties hereto who may assume any or all the above-described capacities subsequent to the execution and effective date of the Agreement.


Should a lawsuit be brought to enforce or construe this Agreement, the prevailing Party in such a suit shall be awarded reasonable attorneys' fees and costs for the defense or prosecution thereof.

No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement except by written instruments signed by the Party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or to any act other than that which was specifically waived.

Each Party has waived the right to trial by jury regarding any action to enforce this Agreement, as set forth above.

The Parties may enforce this Agreement using any remedies available at law and/or in equity and as authorized in the First Lawsuit Settlement Order and in the Second Lawsuit Settlement Order.

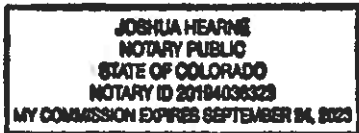
**IN WITNESS WHEREOF**, the Parties have entered into this Settlement Agreement as of the day and year first above written.

  
Eric Sutherland, also known as William Eric Sutherland

State of Colorado )  
County of Laurel ) ss:

The foregoing Settlement Agreement was acknowledged before me this 4<sup>th</sup> day of April, 2020, by Eric Sutherland, also known as William Eric Sutherland.

Seal



  
Notary Public

**City of Fort Collins**

DocuSigned by:  
By: Darin Atteberry  
Darin A. Atteberry, City Manager

DocuSigned by:  
By: Travis Storin  
M. Travis Storin, Interim Chief Financial Officer

Attest:  
DocuSigned by:  
Delynn Coldiron  
Delynn Coldiron, City Clerk

Approved as to form:  
DocuSigned by:  
Carrie M. Daggett  
Carrie M. Daggett, City Attorney

**Timnath Development Authority**

By: \_\_\_\_\_  
Jill Grossman-Belisle, Chair

Attest:

By: \_\_\_\_\_  
Melissa Peters, Clerk

**Town of Timnath**

By: \_\_\_\_\_  
Jill Grossman-Belisle, Chair

Attest:

By: \_\_\_\_\_  
Melissa Peters, Clerk

Approved as to form:

By: \_\_\_\_\_  
Robert Rogers, Contract Town Attorney

**City of Fort Collins**

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

By: \_\_\_\_\_  
Travis Storin, Interim Chief Financial Officer

Attest:

\_\_\_\_\_  
Delynn Coldiron, City Clerk

Approved as to form:

\_\_\_\_\_  
Carrie M. Daggett, City Attorney

**Timnath Development Authority**

By: DocuSigned by:  
*Jill Grossman-Belisle*  
\_\_\_\_\_  
2338F920EE4340D  
Jill Grossman-Belisle, Chair

Attest:

By: DocuSigned by:  
*Milssa Peters-Garcia*  
\_\_\_\_\_  
07A0AF3B02114B7  
Melissa Peters, Clerk

**Town of Timnath**

By: DocuSigned by:  
*Jill Grossman-Belisle*  
\_\_\_\_\_  
2338F920EE4340D  
Jill Grossman-Belisle, Chair


Attest:

By: DocuSigned by:  
*Milssa Peters-Garcia*  
\_\_\_\_\_  
07A0AF3B02114B7  
Melissa Peters, Clerk

Approved as to form:

By: DocuSigned by:  
*Robert Rogers*  
\_\_\_\_\_  
F483E8AD57124AB  
Robert Rogers, Contract Town Attorney

**Compass Mortgage Corporation  
n/k/a BBVA Mortgage Corporation**

By:   
\_\_\_\_\_  
Matthew J. Chorske,  
Senior Vice President

**Exhibit "A"**

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO  Court Address: 201 La Porte Avenue  Fort Collins, CO 80521  Phone Number: (970) 494-3500</p>	
<p><b>Plaintiff:</b> ERIC SUTHERLAND, <i>pro se</i>  v.  <b>Defendants:</b> THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p><b>Indispensable Parties:</b> THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Eric Sutherland, <i>Pro Se</i> Plaintiff  3520 Golden Currant Boulevard  Fort Collins, CO 80521  970-224-4509  <a href="mailto:sutherix@yahoo.com">sutherix@yahoo.com</a></p> <p>Attorneys for Defendant City of Fort Collins:  John W. Mill (#22348)  Sherman &amp; Howard L.L.C.  633 17th Street, Suite 3000  Denver, CO 80202  Phone Number: (303) 297-2900  Email: <a href="mailto:jmill@shermanhoward.com">jmill@shermanhoward.com</a></p> <p>Carrie M. Daggett, #23316  John R. Duval, #10185  Fort Collins City Attorney's Office  300 LaPorte Avenue  Fort Collins, CO 80522-0580  970-221-6520  Email: <a href="mailto:cddaggett@fcgov.com">cddaggett@fcgov.com</a>, <a href="mailto:jduval@fcgov.com">jduval@fcgov.com</a></p> <p>Attorneys for Defendants Town of Timnath, Timnath Development Authority and Compass Mortgage Corporation:  Eric R. Burris, <i>admitted pro hac vice</i>  Chloe Mickel, #50437  Jesse D. Sutz, #52395  BROWNSTEIN HYATT FARBER SCHRECK, LLP</p>	<p>Case No.: 2018CV149</p> <p>Courtroom/Division: 3C</p>



201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770 Email: <a href="mailto:eburris@bhfs.com">eburris@bhfs.com</a> ; <a href="mailto:cmickel@bhfs.com">cmickel@bhfs.com</a> ; <a href="mailto:jsutz@bhfs.com">jsutz@bhfs.com</a>	
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<b>STIPULATED MOTION FOR SETTLEMENT ORDER</b>
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Come now the *pro se* Plaintiff Eric Sutherland (“Sutherland”); the Defendant City of Fort Collins (“Fort Collins”), by through its attorneys Sherman & Howard and the Fort Collins City Attorney’s Office; and the Defendants the Timnath Development Authority (the “TDA”) and Compass Mortgage Corporation (“Compass”), by and through their attorneys Brownstein Hyatt Farber Schreck, LLP, and hereby stipulate, agree and move that, within fourteen (14) calendar days of the filing of this Stipulated Motion for Settlement Order (“Stipulated Settlement Motion”), the Court issue as its order the “Settlement Order” attached hereto as **Exhibit “1”** (“Settlement Order”) and, as grounds therefor, state to the Court as follows:

1. As required by C.R.C.P. Rule 121, Section 1-15, Counsel for Fort Collins has conferred with the Larimer County Attorney, who represents the Defendants Steve Miller and Irene Josey (jointly, the “County Defendants”) in this action, concerning the filing of this Stipulated Settlement Motion, and the County Defendants do not object to the Court granting the relief requested herein.

2. On \_\_\_\_\_, 2020, Sutherland, Fort Collins, the TDA and Compass (collectively, the “Parties”) entered into the fully executed Settlement Agreement attached hereto as **Exhibit “2”** (“Settlement Agreement”).

3. Section I. of the Settlement Agreement reads:

Sutherland, Fort Collins, TDA and Compass agree to jointly file in [Case No. 2018CV149] their “Stipulated Motion for Settlement Order” attached hereto as Exhibit “A” (the “First Lawsuit Settlement Motion”) asking the District Court to issue, within fourteen (14) calendar days after the filing of the First Lawsuit Settlement Motion, the “Settlement Order” attached hereto as Exhibit “B” (the “First Lawsuit Settlement Order”) making this Agreement an order of the District Court and enforceable as such. Once the First Lawsuit Settlement Order is issued, the Parties agree that this Agreement shall go into full effect and the Parties shall be bound by all of the terms and conditions of this Agreement and the First Lawsuit Settlement Order, unless this Agreement terminates as provided below in Section IX. of this Agreement, and each Party waives any right to judicially challenge the legal validity of this Agreement or the First Lawsuit Settlement Order in any court or appeal the First Lawsuit Settlement Order to any court. The Parties further agree that the District Court shall retain jurisdiction to enforce the First Lawsuit Settlement Order and this Agreement.

4. The Parties have entered into the Settlement Agreement in order to resolve all disputes between them in this action and between the Town of Timnath (“Timnath”), the TDA and

Sutherland in the civil action Timnath and the TDA filed in Larimer County District Court Case No. 2018CV30567, (the “Second Lawsuit”) but the Court’s issuance of the Settlement Order within fourteen (14) calendar days of the filing of this Stipulated Settlement Motion is required before the Settlement Agreement will be fully in effect. However, Section IX. of the Settlement Agreement provides that the Settlement Agreement will terminate, become null and void, and the Parties and Timnath will be released from all obligations under the Settlement Agreement if either this Court does not issue this Settlement Order within fourteen (14) calendar days after the filing of this Stipulated Settlement Motion or Senior District Court Judge J. Robert Lowenbach (“Judge Lowebach”) does not timely issue in the Second Lawsuit the “Second Lawsuit Settlement Order” as contemplated in Section II.B. of the Settlement Agreement. Also, if for any reason the Second Lawsuit Settlement Order is not issued on or before June 15, 2020, the Settlement Agreement will terminate.

5. The Court has the authority under Rule 41 of the Colorado Rules of Civil Procedure to issue the Settlement Order as an order of this Court and to retain jurisdiction to enforce it and the Settlement Agreement. Under Rule 41, a “district court may issue an order dismissing a case with prejudice while retaining jurisdiction over a settlement agreement resolving the underlying dispute.” *EnCana Oil & Gas (USA), Inc. v. Miller*, 405 P.3d 488, 493 (Colo. App. 2017). For this proposition in *EnCana*, the Court of Appeals cites the United States Supreme Court’s decision in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). In *Kokkonen*, the Supreme Court states the following with regard to the application of Rules 41(a)(2) and 41(a)(1)(ii) of the Federal Rules of Civil Procedure, which are, respectively, the federal versions of Rules 41(a)(2) and 41(a)(1)(B) of the Colorado Rules of Civil Procedure:

If the parties *wish* to provide for the court’s enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to Federal Rule of Civil Procedure 41(a)(2), which specifies that the action “shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper,” the parties’ compliance with the terms of the settlement contract (or the court’s “retention of jurisdiction” over the settlement contract) may, in the court’s discretion, be one of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties’ stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree. (Emphasis in original.) 511 U.S. at 381-82.

Accordingly, this Court can issue the Settlement Order incorporating the Settlement Agreement and retain jurisdiction to enforce it and the Settlement Agreement as needed.

6. Pending Judge Lowenbach’s issuance of the Second Lawsuit Settlement Order, the Parties agree to this Court holding and not deciding any of Sutherland’s pending motions. The Parties also agree that once Judge Lowenbach has timely issued the Second Lawsuit Settlement Order as provided in Section II.B. of the Settlement Agreement, that all of the Parties’ pending motions and responses to those motions in this action, including, without limitation, Sutherland’s “Amended Motion for Reconsideration of Order Granting Fort Collins’ Second Motion for Attorneys’ Fees & Costs” filed in this action on January 27, 2020, shall be deemed withdrawn.

7. The Parties also agree that the counterclaims previously asserted in this action by the TDA against Sutherland, and which the Court dismissed *without* prejudice in its order dated March 15, 2019, may now be dismissed by the Court *with* prejudice once Judge Lowenbach has timely issued the Second Lawsuit Settlement Order as provided in Section II.B. of the Settlement Agreement.

8. The Parties further agree to be responsible for their own attorney fees and costs once Judge Lowenbach has timely issued the Second Lawsuit Settlement Order as provided in Section II.B. of the Settlement Agreement and agree that regardless Sutherland’s previously posted \$250.00 cash appeal bond be released to him.

WHEREFORE, the Parties respectively request the Court to issue the Settlement Order as its order within fourteen (14) calendar days of the filing of this Stipulated Settlement Motion.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Eric Sutherland, *Pro Se*  
Plaintiff

SHERMAN & HOWARD L.L.C.

By: \_\_\_\_\_  
John W. Mill (#22348)  
633 17th Street, Suite 3000  
Denver, CO 80202  
Telephone: (303) 297-2900  
Email: [jmill@shermanhoward.com](mailto:jmill@shermanhoward.com)  
ATTORNEYS FOR DEFENDANT  
CITY OF FORT COLLINS

FORT COLLINS CITY ATTORNEY’S OFFICE

By: \_\_\_\_\_  
John R. Duval, Esq., #10185  
of City of Fort Collins  
300 LaPorte Avenue  
Fort Collins, CO 80521  
970-221-6520  
[cdaggett@fcgov.com](mailto:cdaggett@fcgov.com)  
[jduval@fcgov.com](mailto:jduval@fcgov.com)  
ATTORNEYS FOR DEFENDANT  
CITY OF FORT COLLINS

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By: \_\_\_\_\_  
Eric R. Burris, *admitted pro hac vice*  
Chloe Mickel, #50437  
Jesse D. Sutz, #52395  
201 Third Street NW, Suite 1800 Albuquerque, NM 87102  
Telephone: 505.244.0770  
[eburris@bhfs.com](mailto:eburris@bhfs.com); [cmickel@bhfs.com](mailto:cmickel@bhfs.com); [jsutz@bhfs.com](mailto:jsutz@bhfs.com)  
Attorneys for The Timnath Development Authority and  
Compass Mortgage Corporation

**CERTIFICATE OF SERVICE**

I hereby certify on the \_\_ day of \_\_\_\_\_, 2020, that a true and correct copy of the foregoing **STIPULATED MOTION FOR SETTLEMENT ORDER** was served via ICCES e-filing system, upon the following:

Jeannine S. Haag, Esq.  
George H. Hass, Esq.  
Larimer County Attorney's Office  
224 Canyon Ave., Suite 200  
Post Office Box 1606  
Fort Collins, Colorado 80522

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Cary Carricato, Paralegal

**Exhibit "B"**

DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 LaPorte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500	
<b>Plaintiff:</b> ERIC SUTHERLAND, <i>pro se</i> <b>v.</b> <b>Defendants:</b> THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and  <b>Indispensable Parties:</b> THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case No.: 2018CV149  Courtroom/Division: 3C
<b>SETTLEMENT ORDER</b>	

On \_\_\_\_\_, 2020, the Plaintiff Eric Sutherland ("Sutherland"), the Defendant City of Fort Collins ("Fort Collins"), the Defendant the Timnath Development Authority (the "TDA") and Defendant Compass Mortgage Corporation ("Compass") filed with the Court their Stipulated Motion for Settlement Order asking the Court to issue this Settlement Order to resolve all disputes between Sutherland, Fort Collins, the TDA and Compass (collectively, the "Parties") in accordance with the terms and conditions of the Settlement Agreement attached as Exhibit "A" to the Stipulated Motion for Settlement Order ("Settlement Agreement"). The Court hereby grants the Stipulated Motion for Settlement Order, and in doing so:

IT IS HEREBY ORDERED THAT,

1. The Settlement Agreement is incorporated into this Settlement Order and the Parties shall comply with all applicable terms and conditions of the Settlement Agreement.

2. When Senior District Court Judge J. Robert Lowenbach timely issues in Larimer County District Court Case No. 18CV30567 the "Second Lawsuit Settlement Order," as contemplated in Section II.B. of the Settlement Agreement, the following orders shall go into effect:

A. All of the Parties' pending motions and responses to those motions in this action are deemed withdrawn by the Parties, including, without limitation, Sutherland's "Amended Motion for Reconsideration of Order Granting Fort Collins' Second Motion for Attorneys' Fees & Costs" filed in this action on January 27, 2020;

B. All of Sutherland's causes of actions and claims asserted in this action against Fort Collins, the TDA and Compass are dismissed with prejudice;

C. The TDA's counterclaims against Sutherland previously dismissed without prejudice by the Court in its March 15, 2019, order, are dismissed with prejudice; and

D. Each of the Parties shall be responsible for their own costs and attorney fees.

3. This Court shall retain jurisdiction to enforce the Settlement Agreement and this Settlement Order.

4. Sutherland's previously posted \$250.00 appeal bond is hereby released to him.

5. In the event Judge Lowenbach does not issue the "Second Lawsuit Settlement Order" within 21 calendar days as contemplated in Section II.B. of the Settlement Agreement or if for any reason the Second Lawsuit Settlement Order has not been issued on or before June 15, 2020, this Settlement Order shall be deemed vacated by the Court and no longer in effect and this action shall thereafter proceed as if this Settlement Order had not been issued, except that regardless of whether or not the Second Lawsuit Settlement Order is timely issued, Sutherland's previously posted \$250.00 bond is to be released to him.

Date:

BY THE COURT:

\_\_\_\_\_  
Gregory M. Lammons  
District Court Judge

**EXHIBIT "C"**

Colorado Court of Appeals 2 East 14 <sup>th</sup> Avenue Denver, CO 80203	
<b>Plaintiffs – Appellees: TOWN OF TIMNATH COLORADO AND TIMNATH DEVELOPMENT AUTHORITY</b>  <b>v.</b>  <b>Defendant - Appellant: ERIC SUTHERLAND</b>	<b>▲ COURT USE ONLY ▲</b>
Eric Sutherland, <i>pro se</i> Defendant-Appellant 3520 Golden Currant Boulevard Fort Collins, CO 80521 970-224-4509 <a href="mailto:sutherix@yahoo.com">sutherix@yahoo.com</a>  Attorneys for Plaintiffs-Appellees: Eric R. Burris, <i>admitted pro hac vice</i> Chloe Mickel, #50437 Jesse D. Sutz, #52395 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Telephone: 303-223-1100 Email: eburris@bhfs.com	Case No.: 2019CA1107
<b>STIPULATED MOTION FOR REMAND TO DISTRICT COURT FOR SETTLEMENT</b>	

Come now the *pro se* Appellant Eric Sutherland (“Sutherland”) and the Appellees Town of Timnath (“Timnath”) and the Timnath Development Authority (the “TDA”) by and through their attorneys Brownstein Hyatt Farber Schreck, LLP, and pursuant to C.A.R. 27(b) hereby stipulate and move that the Court issue a remand order returning these proceedings to the Larimer County District Court (the “District Court”) to allow Sutherland, Timnath and the TDA (collectively, the “Parties”) to resolve and settle in the District Court all disputes between them in these proceedings, and as grounds therefor, state:

- On \_\_\_\_\_, 2020, the Parties entered into the Settlement Agreement attached hereto as **Exhibit “1”** (the “Settlement Agreement”) setting out a framework within which the Parties intend to resolve and settle all disputes between them in these proceedings and in Larimer County District Court Case No. 2018CV149, a separate lawsuit, which Settlement Agreement they intend to present to the District Court as provided in Section II.B. of the Settlement Agreement once this Court issues its order remanding these proceedings to the District Court for settlement.



2. C.A.R. 27(b) authorizes this Court to “act on a stipulated motion signed by all parties . . . at anytime without awaiting a response.” This Motion has been signed by all the parties to this appeal.
3. While Sutherland’s filing of his notice of appeal in this appeal divested the District Court of jurisdiction to consider matters with regard to the substantive issues that are the subject of this appeal, this Court has the authority to issue the remand order requested here to allow the Parties to pursue and finalize their settlement in accordance with the terms and conditions of the Settlement Agreement. *See, Molitor v. Anderson*, 795 P.2d 266 (Colo. 1990).
4. Section II.B. of the Settlement Agreement provides that, within seven (7) calendar days after this Court issues its remand order as requested in this Motion, the Parties shall file in the District Court the “Stipulated Motion for Settlement Order” attached Exhibit “D” to the Settlement Agreement asking the District Court to issue, within twenty-one (21) calendar days after the filing of such Stipulated Motion for Settlement Order, the “Settlement Order” attached as Exhibit “E” to the Settlement Agreement. However, Section IX. of the Settlement Agreement provides that if the District Court does not issue the Settlement Order within this twenty-one (21) day period or, at the latest, on or before June 15, 2020, the Settlement Agreement shall terminate and become null and void.
5. If the District Court does timely issue the Settlement Order, the Parties have agreed in Section II.C. of the Settlement Agreement to file with this Court, within seven (7) calendar days after the District Court issues said Settlement Order, the Parties’ “Stipulated Motion for Dismissal of Appeal” attached as Exhibit “F” to the Settlement Agreement asking the Court to dismiss this appeal with prejudice.

WHEREFORE, the Parties respectively request the Court to issue a remand order returning these proceedings to the District Court to allow the Parties to resolve their disputes under the Settlement Agreement and that the Court issue such other orders as it deems necessary and appropriate to allow these appeal proceedings to continue in the event the District Court does not timely issue the Settlement Order as provided in Section II.C. of the Settlement Agreement.

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Eric Sutherland, *Pro Se* Defendant-Appellant

By: \_\_\_\_\_

Eric R. Burris, *admitted pro hac vice*

Chloe Mickel, #50437

Jesse D. Sutz, #52395

410 Seventeenth Street, Suite 2200

Denver, CO 80202-4432

Telephone: 303-223-1100

Email: [eburris@bhfs.com](mailto:eburris@bhfs.com); [cmickel@bhfs.com](mailto:cmickel@bhfs.com); [jsutz@bhfs.com](mailto:jsutz@bhfs.com)

Attorneys for Town of Timnath Colorado and the Timnath Development Authority

**Exhibit "D"**

DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500	<b>▲ COURT USE ONLY ▲</b>
<b>Plaintiffs:</b> THE TOWN OF TIMNATH, COLORADO; TIMNATH DEVELOPMENT AUTHORITY, AN URBAN RENEWAL AUTHORITY;  <b>v.</b>  <b>Defendant:</b> ERIC SUTHERLAND	
Attorneys for Plaintiffs: Eric R. Burris, <i>admitted pro hac vice</i> Chloe Mickel, #50437 Jesse D. Sutz, #52395 BROWNSTEIN HYATT FARBER SCHRECK, LLP 201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770 Email: <a href="mailto:eburris@bhfs.com">eburris@bhfs.com</a> ; <a href="mailto:cmickel@bhfs.com">cmickel@bhfs.com</a> ; <a href="mailto:jsutz@bhfs.com">jsutz@bhfs.com</a>  Eric Sutherland, <i>Pro Se</i> Defendant 3520 Golden Currant Boulevard Fort Collins, CO 80521 970-224-4509 Email: <a href="mailto:sutherix@yahoo.com">sutherix@yahoo.com</a>	Case No.: 2018CV30567  Courtroom/Division: 3C
<b>STIPULATED MOTION FOR SETTLEMENT ORDER</b>	

Come now the Plaintiffs Town of Timnath ("Timnath") and the Timnath Development Authority (the "TDA"), by and through their attorneys Brownstein Hyatt Farber Schreck, LLP, and the *pro se* Defendant Eric Sutherland ("Sutherland") (collectively, the "Parties") and the Parties hereby stipulate, agree and move that the Court issue as its order the "Settlement Order" attached hereto as **Exhibit "1"** ("Settlement Order") within twenty-one (21) days of the filing of this Stipulated Motion for Settlement Order ("Stipulated Motion"), but in no event later than June 15, 2020, and, as grounds therefor, state to the Court as follows:

1. On \_\_\_\_\_, 2020, the Parties entered into the fully executed Settlement Agreement attached hereto as **Exhibit "2"** ("Settlement Agreement") and are filing this Stipulated Motion as agreed in Section II.B. of the Settlement Agreement.

2. The Parties have entered into the Settlement Agreement in order to resolve all disputes between them in this action and between Sutherland, the City of Fort Collins and the TDA in the civil action Sutherland filed against them in Larimer County District Court Case No. 2018CV149.

3. On \_\_\_\_\_, 2020, the Colorado Court of Appeals issued its remand order attached hereto as **Exhibit “3”** returning these proceedings to this Court to allow the Parties to file with the Court this Stipulated Motion asking the Court to issue the Settlement Order.

4. Section II.B. of the Settlement Agreement reads:

Within seven (7) calendar days after the Court of Appeals issues its remand order as contemplated in Section II.A. [of the Settlement Agreement], Sutherland, Timnath and the TDA shall file in [2018CV30567] the “Stipulated Motion for Settlement Order ” attached hereto as Exhibit “D” (the “Second Lawsuit Settlement Motion”) asking Judge Lowenbach to issue, within twenty-one (21) calendar days after the filing of the Second Lawsuit Settlement Motion, but no later than June 15, 2020, the “Settlement Order” attached hereto as Exhibit “E” (the “Second Settlement Order”) providing that all the orders issued by the District Court in [2018CV30567], except as expressly provided in Section IV. of this Agreement, shall become final and unappealable court orders, which shall include, without limitation, the Permanent Injunction. The Parties agree that the Permanent Injunction shall remain in full force and effect after the full execution of this Agreement and the issuance of the Second Lawsuit Settlement Order. It is further agreed that the District Court shall retain jurisdiction to enforce the Permanent Injunction. (Emphasis added.)

5. In Section IV. of the Settlement Agreement, Timnath and the TDA agree to forbear from taking any action to enforce against Sutherland the monetary judgments they have been awarded in this action and to file with the Court an “Acknowledgement of Full Satisfaction of Judgment” for each of these judgments.

6. On March 28, 2019, this Court issued its “Permanent Injunction” permanently enjoining Sutherland from filing any *pro se* civil claims or petitions in Colorado’s Eighth Judicial District without first getting court approval (the “Permanent Injunction”). It is this Permanent Injunction that the Parties have agreed in Section II.B. of the Settlement Agreement shall become a final and unappealable order and over which the Court is to retain jurisdiction to enforce.

7. The Court has the authority under Rule 41 of the Colorado Rules of Civil Procedure to issue the Settlement Order as an order of this Court and to retain jurisdiction to enforce the Permanent Injunction. Under Rule 41, a “district court may issue an order dismissing a case with prejudice while retaining jurisdiction over a settlement agreement resolving the underlying dispute.” *EnCana Oil & Gas (USA), Inc. v. Miller*, 405 P.3d 488, 493 (Colo. App. 2017). For this proposition in *EnCana*, the Court of Appeals cites the United States Supreme Court’s decision in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). In *Kokkonen*, the Supreme Court states the following with regard to the application of Rules 41(a)(2) and 41(a)(1)(ii) of the Federal Rules of Civil Procedure, which are, respectively, the federal versions of Rules 41(a)(2) and 41(a)(1)(B) of the Colorado Rules of Civil Procedure:

If the parties *wish* to provide for the court’s enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to Federal Rule of Civil Procedure 41(a)(2), which specifies that the action “shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper,” the parties’ compliance with the terms of the settlement contract (or the court’s “retention of jurisdiction” over the settlement contract) may, in the court’s discretion, be one

of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties' stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree. (Emphasis in original.) 511 U.S. at 381-82.

Accordingly, this Court can issue the Settlement Order and retain jurisdiction to enforce it and the Permanent Injunction as needed.

8. On January 30, 2020, Sutherland posted with this Court his supersedeas bond in the amount of \$45,323.10 (the "Bond"). The Parties agree to the Court releasing the Bond to Sutherland.

9. The Parties also agree to be responsible for their own attorney fees and costs and that Sutherland's previously posted \$250.00 cash appeal bond be released to him.

10. Section IX. of the Settlement Agreement provides that if this Court does not issue the Settlement Order within twenty-one (21) days of the filing of this Stipulated Motion or if for any reason the Settlement Order is not issued on or before June 15, 2020, the Settlement Agreement shall terminate and become null and void.

WHEREFORE, the Parties respectively request the Court to issue within twenty-one (21) days of the filing of this Stipulated Motion, but no later than June 15, 2020, the Settlement Order as its order and to retain jurisdiction to enforce the Permanent Injunction.

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Eric Sutherland, *Pro Se*  
Defendant

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: \_\_\_\_\_  
Eric R. Burris, *admitted pro hac vice*  
Chloe Mickel, #50437  
Jesse D. Sutz, #52395  
201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770  
[eburris@bhfs.com](mailto:eburris@bhfs.com); [cmickel@bhfs.com](mailto:cmickel@bhfs.com); [jsutz@bhfs.com](mailto:jsutz@bhfs.com)  
Attorneys for the Plaintiffs

**Exhibit "E"**

DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 LaPorte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500		
<b>Plaintiffs:</b> THE TOWN OF TIMNATH, COLORADO; TIMNATH DEVELOPMENT AUTHORITY, AN URBAN RENEWAL AUTHORITY,  <b>v.</b>  <b>Defendant:</b> ERIC SUTHERLAND.		<b>▲ COURT USE ONLY ▲</b>  Case No.: 2018CV30567  Courtroom/Division: 3C
<b>SETTLEMENT ORDER</b>		

On \_\_\_\_\_, 2020, the Plaintiffs Town of Timnath ("Timnath") and the Timnath Development Authority (the "TDA") and the Defendant Eric Sutherland ("Sutherland") filed with the Court their Stipulated Motion for Settlement Order asking the Court to issue this Settlement Order in accordance with the terms and conditions of Section II.B. of the Settlement Agreement attached as Exhibit "A" to the Stipulated Motion for Settlement Order ("Settlement Agreement"). The Court hereby grants the Stipulated Motion for Settlement Order, and in doing so, IT IS HEREBY ORDERED THAT:

1. As provided in Section II.B. of the Settlement Agreement, all orders issued in this action, except as expressly provided in Section IV. of the Settlement Agreement, shall be final and unappealable court orders, which shall include, without limitation, the Permanent Injunction issued by the Court on March 28, 2019;
2. The \$45,323.10 cash supersedeas bond filed by Sutherland with the Clerk of the Court on January 30, 2020, is hereby ordered released to Sutherland;
3. The \$250.00 cash appeal bond previously filed by Sutherland with the Clerk of the Court is hereby ordered released to Sutherland;
4. Each of the Parties shall be responsible for their own costs and attorney fees; and
5. This Court shall retain jurisdiction to enforce this Settlement Order and the Permanent Injunction.

Date:

BY THE COURT:

\_\_\_\_\_  
 J. Robert Lowenbach  
 Senior District Court Judge

**EXHIBIT "F"**

Colorado Court of Appeals 2 East 14 <sup>th</sup> Avenue Denver, CO 80203	
<b>Plaintiffs – Appellees: TOWN OF TIMNATH COLORADO          AND TIMNATH DEVELOPMENT AUTHORITY</b>  <b>v.</b>  <b>Defendant - Appellant: ERIC SUTHERLAND</b>	<b>▲ COURT USE ONLY ▲</b>
Eric Sutherland, <i>pro se</i> Defendant-Appellant 3520 Golden Currant Boulevard Fort Collins, CO 80521 970-224-4509 <a href="mailto:sutherix@yahoo.com">sutherix@yahoo.com</a>  Attorneys for Plaintiffs-Appellees: Eric R. Burris, <i>admitted pro hac vice</i> Chloe Mickel, #50437 Jesse D. Sutz, #52395 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Telephone: 303-223-1100 Email: eburris@bhfs.com	Case No.: 2019CA1107
<b>STIPULATED MOTION FOR DISMISSAL OF APPEAL</b>	

Come now the *pro se* Appellant Eric Sutherland (“Sutherland”) and the Appellees Town of Timnath (“Timnath”) and the Timnath Development Authority (the “TDA”) by and through their attorneys Brownstein Hyatt Farber Schreck, LLP, and pursuant to C.A.R. 42, respectively request the Court to dismiss this appeal with prejudice, and as grounds therefor, state:

1. On \_\_\_\_\_, 2020, Sutherland, Timnath and the TDA (collectively, the “Parties”) entered into a Settlement Agreement that resolved all disputes between them in this appeal.
2. On \_\_\_\_\_, 2020, this Court entered its order remanding these proceedings to the District Court for its consideration of the Parties’ proposed settlement.
3. On \_\_\_\_\_, 2020, the District Court issued the Settlement Order attached hereto as **Exhibit “1”**.
4. As provided in Section II.C. of the Settlement Agreement, the Parties are filing this Stipulated Motion for Dismissal of Appeal to dismiss this appeal with prejudice.

5. The Parties have also agreed to be responsible for their own attorney fees and costs in this appeal.

WHEREFORE, the Parties respectively request that this appeal be dismissed with prejudice and with each of the Parties to pay their own attorney fees and costs.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Eric Sutherland, *Pro Se* Defendant-Appellant

By: \_\_\_\_\_  
Eric R. Burris, *admitted pro hac vice*  
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