

## MUTUAL FULL AND FINAL RELEASE AND SETTLEMENT OF CLAIMS

THIS MUTUAL FULL AND FINAL RELEASE AND SETTLEMENT OF CLAIMS is made this 18<sup>th</sup> day of December 2010 between the Parties, TORI McMECHAN ("Plaintiff") and TOWN OF NUNN, BOARD OF TRUSTEES OF TOWN OF NUNN, and JENNY JOHNSON (collectively referred to herein as "Defendants").

WHEREAS, the Parties desire to settle all claims asserted or that could have been asserted against each other in the civil action entitled *McMechan v. Town of Nunn, et al.*, United States District Court for the District of Colorado, Civil Action No. 10-cv-01045-MSK-MJW ("Civil Action"), and to enter into various agreements relating to the Civil Action and the matters giving rise thereto, in accordance with the provisions and upon the terms and conditions hereinafter set forth;

FOR good and valuable consideration, as described herein, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby promise and agree as follows:

1. Plaintiff shall be paid the sum of Twenty Five Thousand Dollars (\$25,000.00) on behalf of the Defendants.

2. The Plaintiff does hereby release, acquit and forever discharge the Defendants and their affiliated entities, successors, insurers, principals, agents, attorneys, employees, employers, servants, partners, officers, directors, board members and elected officials (collectively referred to as "Releasees") of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, subrogated interests, liens, or other derivative claims, administrative actions, expenses, fees, interest, compensation, judgment, and any and all consequential and punitive damages, of whatsoever kind and nature, either in law or in equity, contractual or extra-contractual, whether pled or unpled, which exist or might exist, whether known or unknown, including, but not limited to, those claims related to or arising from the alleged claims or litigation identified as the Civil Action and the events that gave rise to the Civil Action. This release is further intended to and does release, acquit and forever discharge any and all claims for attorneys' fees or other litigation expenses that might exist with regard to the Civil Action.

3. The Defendants do hereby release, acquit and forever discharge Plaintiff and her agents and attorneys (collectively referred to as "Releasees") of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, subrogated interests, liens, or other derivative claims, administrative actions, expenses, fees, interest, compensation, judgment, and any and all consequential and punitive damages, of whatsoever kind and nature, either in law or in equity,

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contractual or extra-contractual, whether pled or unpled, which exist or might exist, whether known or unknown, including, but not limited to, those claims related to or arising from the alleged claims of misappropriation, theft, conversion of public property, and any other alleged claims related to or arising from the events that gave rise to the Civil Action. This release is further intended to and does release, acquit and forever discharge any and all claims for attorneys' fees or other litigation expenses that might exist with regard to the Civil Action.

4. The Parties acknowledge that a portion of the consideration given for the Mutual Full and Final Release and Settlement of Claims is being given for the full and final release of any and all unknown losses, claims, injuries, costs, expenses, and damages which either may have occurred in the past and are not yet known, or which may occur in the future and are not presently known, related to or arising from the alleged claims or litigation identified as the Civil Action and the events that gave rise to the Civil Action. The Parties agree voluntarily and knowingly to assume the risk of any mistake of fact or law, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages, and the Parties shall not, under any circumstances, seek to present further claims on behalf of themselves or their agents, attorneys, servants, employers, employees, heirs, executors, administrators, insurers, successors, assigns and subrogees against the persons and entities hereby released.

5. The Parties agree that this Mutual Full and Final Release and Settlement of Claims and the terms thereof shall be binding on their agents, attorneys, servants, employers, employees, former employees, principals, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, and any and all other persons or entities which have or may have any claim on behalf of themselves or be entitled to share in any settlement thereof. The Parties expressly understand and agree that the signing of the Mutual Full and Final Release and Settlement of Claims shall be forever binding, and that no rescission, modification or release of themselves from the terms of this Mutual Full and Final Release and Settlement of Claims will be made for any mistakes, as set forth therein.

6. It is further understood and agreed that this Mutual Full and Final Release and Settlement of Claims is intended to discharge forever any and all subrogated interests, liens, or other derivative claims that might exist relating to the events that gave rise to the Civil Action or arising from the alleged claims or litigation identified as the Civil Action, and forever discharge any and all claims for attorney's fees or other litigation expenses which might exist with regard to the allegations that gave rise to the Civil Action. The Plaintiff agrees to indemnify and hold harmless Releasees from any and all further claims, damages, actions, causes of action, expenses, compensation or attorney's fees, whether known or unknown, which may be asserted by parties with

subrogated interests, liens, or other derivative claims, including, but not limited to, any worker's compensation lien, medical liens, liens and any claims any prior counsel Plaintiff may have.

7. As part of the consideration paid herein, the Plaintiff agrees that the terms of this Mutual Full and Final Release, including the amount of monetary consideration paid on behalf of Defendants as part of the Mutual Full and Final Release and Settlement Agreement, are confidential. The Plaintiff agrees that she shall not disclose the amount of monetary consideration or the contents of this Mutual Full and Final Release and Settlement Agreement to any third party absent a court order to the contrary. This condition of confidentiality precludes the Plaintiff or anyone acting on her behalf from making any such disclosures to any representative of the public or professional press or media. It is further agreed that this condition of confidentiality shall not extend to disclosures made to any accountants or attorneys, as required for the rendition of such professional services, so long as such professional is informed of this confidentiality agreement prior to disclosure of information protected by it. Any necessary disclosure of information regarding the amount of payment, or circumstances of payment, to any taxing authority shall not be deemed a violation of this confidentiality provision.

8. It is further understood and agreed that no promise, inducement or agreement not herein expressed has been made to the Parties or their attorneys. The Parties acknowledge that this Mutual Full and Final Release and Settlement of Claims contains the entire terms of the agreement between the Parties to settle this dispute; that the terms are contractual and not a mere recital; and that this Mutual Full and Final Release and Settlement of Claims shall be construed according to the laws of the State of Colorado.

9. Contemporaneously with the execution of this Mutual Full and Final Release and Settlement of Claims, and as part consideration thereof, the Plaintiff agrees that she shall promptly direct her attorney to execute and file with the court a Stipulation for Dismissal with Prejudice of the claims in the Civil Action. As a term of the Stipulation for Dismissal with Prejudice, and of this Mutual Full and Final Release and Settlement of Claims, the Parties are to pay their own costs and attorney's fees.

10. The Plaintiff hereby expressly warrants that she has not assigned any rights or claims against any other party to this Civil Action that she presently has, or may in the future have, which in any way relate to or arise from the alleged claims or litigation identified as the Civil Action.

11. It is further understood and agreed that payment of said sum is made in

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full settlement of and compromise of the Plaintiffs' claims; that payment is not to be construed as an admission of liability on the part of the Defendants; and that any and all liability by them is expressly denied.

12. The undersigned further declares that they have fully and carefully read the foregoing Mutual Full and Final Release and Settlement of Claims, understand the content thereof, and have signed the same as their own free act. The undersigned also declare that they have sought and received any necessary advice and explanation from their attorney, who approved of this Mutual Full and Final Release and Settlement of Claims as signified by his signature below.

13. This Mutual Full and Final Release and Settlement of Claims shall be deemed to have been mutually drafted by the parties hereto. This Mutual Full and Final Release and Settlement of Claims shall not be interpreted or construed against any party because such party drafted all or some portion of this Mutual Full and Final Release and Settlement of Claims.

14. If any provision of the Mutual Full and Final Release and Settlement of Claims is deemed void or unenforceable, such provision shall be severed from the balance of the Mutual Full and Final Release and Settlement of Claims, and the remaining portions of this Mutual Full and Final Release and Settlement of Claims shall be deemed valid and enforceable.

15. Signatures may be transmitted by fax or electronically, and may be executed in separate parts, and when taken together, shall be considered as one and the same originals.

16. This Mutual Full and Final Release and Settlement of Claims sets forth the full agreement of the Parties, and cannot be changed, except upon the signed written agreement of the parties.



By Thomas O. Bender  
Tom Bender  
On behalf of Town of Nunn and the Board of  
Trustees for the Town of Nunn

STATE OF COLORADO )  
 ) ss:  
COUNTY OF DENVER )

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of  
December, 2010 by Tom Bender.

My Commission Expires  
June 01, 2014

My commission expires: \_\_\_\_\_

Arnie Jozefek  
Notary Public

By Patti A. Norris  
Patti Norris  
On behalf of Town of Nunn and the Board of  
Trustees for the Town of Nunn

STATE OF COLORADO )  
 ) ss:  
COUNTY OF DENVER )

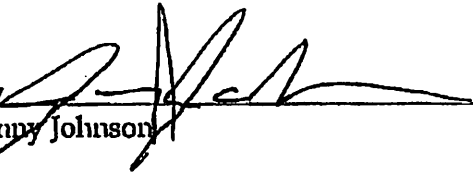
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My commission expires: \_\_\_\_\_

Arnie Jozefek  
Notary Public

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By   
Jenny Johnson

STATE OF COLORADO        )  
  ) ss:  
COUNTY OF DENVER        )

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of  
December, 2010 by Jenny Johnson

My Commission Expires  
June 01, 2014

My commission expires: \_\_\_\_\_

  
Notary Public

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Plaintiffs

\_\_\_\_\_  
Attorney for Defendants