

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT (the “Agreement”) is entered into on the latest date entered below (the “Effective Date”), by and between Don’t Lien on Us, a Colorado non-profit association (“DLOU”), the Indian Mountain Property Owners Association (“IMPOA”), and the Indian Mountain Metropolitan District (“IMMD”) on the one hand; and Bar Star Land, LLC, a Colorado limited liability company doing business as Bar Star Water (“Bar Star”), on the other hand. DLOU, IMPOA and IMMD and Bar Star shall be referred to collectively as the “Parties,” and each individual or entity shall be separately referred to as a “Party.”

RECITALS

- A. Bar Star is the owner of the augmentation plan decreed in Case No. W-7389, Water Division 1, and the water rights utilized in that augmentation plan (“W-7389 Plan”).
- B. IMPOA is a voluntary property owners association serving the Indian Mountain Subdivision.
- C. IMMD is a metropolitan district serving the Indian Mountain Subdivision. IMMD also operates the Indian Mountain Metropolitan District Water Service Program (“WSP”) pursuant to an intergovernmental agreement with the Headwater Authority of the South Platte.
- D. DLOU is an association whose 111 members are individuals who own one or more lots in the Indian Mountain Subdivision in Park County, Colorado, and who own one or more wells that are currently enrolled in, and augmented under, the WSP. DLOU’s 111 members (“DLOU Member” or “DLOU Members”) are included on the attached Exhibit A.
- E. A lawsuit between the Parties currently exists in Case No. 19CV30036, Park County District Court (“Lawsuit”).
- F. The Parties have reached an agreement to settle the Lawsuit and are desirous of reducing the terms and conditions of their agreement to writing.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions hereinafter set forth below, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, irrevocably agree as follows:

1. **Recitals.** The Parties acknowledge that the above recitals are true and correct and are made a part of this Agreement.

2. **Releases.**

- a. Bar Star agrees to release DLOU, IMMD and IMPOA from any and all claims, demands, actions, causes of action, suits, arbitrations, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, variances, trespasses, damages, judgments, extents, executions, obligations, complaints, and liabilities (collectively, "Claims") whatsoever, whether known or unknown, whether foreseen or unforeseen, whether in law or in equity, whether compulsory or permissive, and whether sounding in tort, contract, statutory or regulatory violation, that Bar Star had or now has against DLOU, IMMD and IMPOA arising out of or related to the facts giving rise to this Lawsuit.
- b. Bar Star agrees to release each DLOU Member listed on the attached Exhibit A from any and all claims for amounts owed or claimed to be owed to Bar Star for augmentation services provided by Bar Star for the time period prior to each DLOU Member's enrolling his/her well or wells in the WSP.
- c. DLOU, IMMD, IMPOA agree to release Bar Star from any and all claims, demands, actions, causes of action, suits, arbitrations, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, variances, trespasses, damages, judgments, extents, executions, obligations, complaints, and liabilities (collectively, "Claims") whatsoever, whether known or unknown, whether foreseen or unforeseen, whether in law or in equity, whether compulsory or permissive, and whether sounding in tort, contract, statutory or regulatory violation, that DLOU, IMMD and IMPOA had or now have against Bar Star arising out of or related to the facts giving rise to this Lawsuit.

3. **Representations and Warranties.**

- a. Bar Star represents and warrants the following to DLOU:
 - i. Bar Star will not appeal the Park County District Court's ruling entered December 11, 2019 in this Case No. 19CV30036, Park County District Court.
 - ii. Bar Star agrees that it will not invoice or seek to collect from any DLOU Member listed on the Attached Exhibit A any amount owed or claimed to be owed to Bar Star by such DLOU Member for augmentation services provided by Bar Star for the time period prior to such DLOU Member enrolling his or her well or wells in the WSP, or the Water Storage Fee or other similar fee to offset the cost of operating the W-7389 Plan while such DLOU Member's well or wells are enrolled in the WSP.

- iii. Bar Star agrees that it will not file a lien or claim the existence of a lien against a lot in the Indian Mountain Subdivision owned by a DLOU Member listed on the attached Exhibit A for any amount owed or claimed to be owed to Bar Star for augmentation services provided by Bar Star for the time period prior to such DLOU Member's enrolling their well or wells in the WSP, or for the Water Storage Fee or other similar fee to offset the cost of operating the W-7389 Plan while such DLOU's Member's well or wells are enrolled in the WSP.
 - iv. Bar Star agrees to enter into a mutually-agreeable settlement agreement to dismiss its appeal in Case No. 2020CV030042, Jefferson County District Court, from the judgment in Case No. 2019C37066, Jefferson County Court, without any adjudication having been made in Case No. 2020CV30042 and without power to reassert the appeal from the county court judgment in Case No. 2019C37066.
- b. Bar Star represents and warrants the following to IMMD:
- i. Bar Star agrees that it will not invoice nor seek to collect from any WSP member the Water Storage Fee or other similar fee to offset the cost of operating the W-7389 Plan while such member's well or wells are enrolled in the WSP.
 - ii. Bar Star agrees that it will not assess a Vacant Lot Water Availability Fee or other similar fee to offset the cost of operating the W-7389 Plan on any lot in the Indian Mountain Subdivision that currently does not have a well ("Vacant Lot") unless the lot owner of the Vacant Lot has entered into a contract with Bar Star that includes such Vacant Lot Water Availability Fee or other similar fee. However, if a Vacant Lot owner has not previously entered into a contract with Bar Star and seeks to use the W-7389 Plan to obtain a permit to drill a well to serve such Vacant Lot, Bar Star reserves the right to seek to require such lot owner to enter into an agreement with Bar Star for augmentation service, to seek to require such lot owner to pay an initiation fee in an amount within Bar Star's complete discretion to enroll the well in the W-7389 Plan, and/or to seek recovery of any fees, charges, or value of services provided by Bar Star if Bar Star is required by the Division Engineer or State Engineer to provide augmentation services for such well serving the Vacant Lot.

- c. IMMD represents and warrants the following to Bar Star:
 - i. IMMD agrees not to purchase any additional water from the Headwater Authority of the South Platte until January 1, 2026, and agrees to limit the total number of wells enrolled into the WSP to 500, until January 1, 2026.
 - ii. IMMD agrees to inform Bar Star whenever a well is enrolled into, or disenrolled from, the WSP.
- d. DLOU, IMMD and IMPOA, jointly and severally, represent and warrant the following to Bar Star:
 - i. If the well or wells of a current or future member of the WSP (including the DLOU Members listed on the attached Exhibit A) are disenrolled or otherwise removed from the WSP and such member does not obtain augmentation water for such well or wells from another source for any reason, with the result that the well or wells owned by such member revert to the W-7389 Plan and Bar Star must provide augmentation water for such well or wells as required by the Division Engineer or State Engineer, DLOU, IMMD, IMPOA agree not to contest any fees and charges for initiation, application, enrollment, annual operations, or other associated fees and charges imposed by Bar Star upon such member, or participate or interfere in any legal proceeding challenging those fees, charges, or value of services provided, or any legal proceeding in which Bar Star seeks to recover such fees, charges or value of services provided by Bar Star.
 - ii. DLOU, IMMD and IMPOA agree that Bar Star is free to seek to enter into contracts with lot owners who have not joined the WSP, and with lot owners who own a Vacant Lot, even if such lot owner has another lot with a well or wells enrolled in the WSP. DLOU, IMMD and IMPOA also agree that Bar Star may seek to charge lot owners in the Indian Mountain Subdivision with whom it has entered into a contract, or who refuse to enter into a contract with Bar Star but for whom Bar Star must provide augmentation services because no other augmentation plan is providing augmentation services, any charges for initiation, application, enrollment, annual operations, or other fees and charges associated with the W-7389 Plan, in an amount within Bar Star's complete discretion. This includes any lot owner who did not enter into a contract with Bar Star for the Vacant Lot Water Availability Fee or other similar fee and who subsequently obtains a well permit and drills a well or wells to serve a Vacant Lot and cannot enroll such well or wells in the WSP or any other alternative augmentation plan and thus must

enroll such well or wells in the W-7389 Plan. DLOU, IMMD, IMPOA further agree that they will not participate or interfere in any legal proceeding challenging those fees, charges or value of services provided, or any legal proceeding in which Bar Star seeks to recover such fees, charges, or value of services provided.

- iii. If after the date of this settlement a lot owner for whom Bar Star is providing augmentation services pursuant to the W-7389 Plan - either under a contract or as required by the Division Engineer or State Engineer if such owner has refused to enter into a contract - joins the WSP, Bar Star shall have the right to seek to recover any unpaid fees and/or recover the value of the services it provided during the time period before the lot owner joined the WSP. DLOU, IMMD, IMPOA agree that they will not participate or interfere in any legal proceeding challenging those fees, charges or value of services provided, or any legal proceeding in which Bar Star seeks to recover such fees, charges or value of services provided.
- iv. Nothing in paragraphs 3.d.i.-iii. above shall be construed as DLOU, IMMD and IMPOA either endorsing or opposing the amount of fees, charges, or value of augmentation services provided that Bar Star may seek to impose, collect or recover pursuant to the terms of this Agreement. Nor does DLOU, IMMD and IMPOA's non-participation in any future legal proceeding between Bar Star and any other party as required by this Agreement constitute any endorsement of or opposition to Bar Star's or any other party's position in such future legal proceeding.
- v. DLOU, IMMD, IMPOA agree that they will not file a statement of opposition or otherwise oppose any future water court case by Bar Star regarding the W-7389 Plan, including but not limited to an application to amend the W-7389 Plan to remove from the W-7389 Plan any well or wells enrolled in the WSP or any other augmentation plan other than the W-7389 Plan, which is not inconsistent with this Agreement.

4. **No Third Party Beneficiaries.** This Agreement is intended for the benefit of the Parties hereto and is not for the benefit of any other Person, with the exception of the release in paragraph 2.b. above, which benefit the 111 DLOU Members included on the attached Exhibit A and no other third parties. Only the Parties to this Agreement may enforce any provision of this Agreement pursuant to paragraph 13 below. Nothing in this Agreement is intended to or does create any rights in third parties not expressly and specifically mentioned herein, including but not limited to any lot owner in the Indian Mountain Subdivision.

5. **Dismissal with Prejudice.** Within three (3) business days of the Effective Date, counsel for the Parties shall file a Stipulated Motion for Dismissal (“Stipulated Motion”) with the Court. The Stipulated Motion shall attach this Agreement and shall request that the Court to dismiss the Lawsuit with prejudice, except for issues relating to enforcement of this Agreement, which any enforcement thereof shall only be pursuant to the terms of this Agreement, and to make this Agreement an order of the Court.

6. **Non-Disparagement.** The Parties agree to work together to issue a mutually-agreed upon joint statement expressing their satisfaction with the fact that the matter has been resolved amicably, stating that all Parties proceeded in good faith during the settlement negotiations, and encouraging their members, employees, and affiliated parties not to make any oral or written statements that malign, disparage, or criticize any Party. However, to the extent a joint statement cannot be agreed upon, such failure to issue such a statement will not constitute a breach of this Agreement. However, Bar Star reserves all future claims and actions, whether in law or equity, against any individuals who may disparage Bar Star in the future.

7. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon any Party except to the extent incorporated in this Agreement.

8. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party or an authorized representative of each Party, or agreed upon and confirmed through reply emails or facsimiles. Scanned documents and facsimile copies shall be sufficient to satisfy the writing requirement.

9. **Rules of Construction.** The Parties hereto agree that this Agreement shall be deemed to have been jointly negotiated, prepared and drafted, and each has had the opportunity to have counsel review this Agreement. Therefore, each of the Parties waives the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

10. **Warranty of Non-Assignment.** Each Party expressly acknowledges that the Party has not assigned or transferred, or purported to assign or transfer any claim covered under this Agreement.

11. **Binding Effect.** This Agreement is binding upon and shall inure to the Parties and their respective heirs, successors and assigns.

12. **Counterparts and Copies.** Duplicate originals of this Agreement may be executed by the Parties. A copy of this Agreement is admissible to the same extent as the original in any subsequent proceeding and has the same force and effect as the original.

13. **Choice of Law, Enforcement, and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Colorado. In the event that any Party believes another Party has breached the terms of this Agreement, before seeking judicial relief the non-breaching Party shall provide written notice to the allegedly-breaching Party as soon as practicable specifically describing the alleged breach. The allegedly-breaching Party shall then have 21 days

to (1) cure, correct, or otherwise mitigate the alleged breach, or (2) respond with specific reasons why the allegedly-breaching Party does not agree that a breach has occurred, after which the Parties agree to meet within seven days and attempt in good faith to resolve the dispute. Only if no resolution is reached shall any of the Parties seek to have a Court determine whether a breach of the Agreement has occurred and any resulting damages from such breach. If allowed by the Court, any Party may then file a motion in Case No. 19CV30036 to administratively reopen Case No. 19CV30036 to seek a determination of whether a breach of the Agreement has occurred and to seek any resulting damages. To the extent the Court does not allow Case No. 19CV30036 to be administratively reopened, venue for any legal action related to this Agreement shall lie in a court of competent jurisdiction located in Park County, Colorado. In the event of any dispute regarding the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs. All Parties agree that a breach of this Agreement does not make the breaching party subject to contempt of court proceedings.

14. **Attorney Fees and Costs.** Unless otherwise provided for in this Agreement, each Party shall bear its own costs, expenses and attorneys' fees arising out of, relating to, or in connection with the Lawsuit. This provision shall not apply to the award of attorneys' fees made by the Court in an order dated March 28, 2022, against Bar Star and in favor of DLOU in the amount of \$12,158.42, which amount has been paid by Bar Star and may be retained by DLOU without any right of recovery or offset by Bar Star.

15. **Authorization.** The persons and Parties signing below represent and warrant that they have the authority to enter into this Agreement on behalf of themselves or the Party for whom they are acting and that they have authority to bind themselves or that Party to this Agreement.

16. **Severability.** The Parties agree that, if any single section or provision of this Agreement should be found unenforceable, it shall be severed, and the remaining sections and provisions shall be enforced in accordance with the terms of this Agreement so long as striking the unenforceable term does not obviate or otherwise frustrate the purpose of this Agreement.

[SIGNATURES ON NEXT PAGE]