

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 26th day of May, 2020 by and between Broken Arrow Investments, LLC ("BAI"), whose address is 801 8th Street, Suite 130, Greeley, Colorado 80631; Loloff Construction, Inc. ("Loloff"), whose address is 801 8th Street, Suite 130, Greeley, Colorado 80631; Global Asset Recovery, LLC ("GAR"), whose address is 6530 Constitution Dr., Fort Wayne, Indiana 46804, collectively the "Companies," and Jerry Winters and Dixie Ann Hoffner (who shall jointly be referred to as "Winters/Hoffner"). The Companies and Winters/Hoffner shall be jointly referred to as the "Parties" in this Agreement. BAI, Loloff, and GAR shall be deemed one entity for purposes of this Agreement and each shall be responsible for its own obligations and liabilities, and also obligated and liable for each other's entity's obligations and liability that are included as "Companies".

RECITALS

1. The Companies have common, though not identical, interest in the matters addressed by this Agreement.
2. Loloff owns and operates the Loloff Sand and Gravel Pit ("Loloff Pit") located directly across North Balsam Avenue from the Derr Pit, which is described in the following recital. Loloff operates the Loloff Pit as an active sand and gravel mine under Permit No. DRMS M-1985-112, issued by the Colorado Division of Reclamation, Mining, and Safety ("DRMS"). A slurry wall liner was installed around the Loloff Pit in 2017.
3. GAR owns the Derr Sand and Gravel Pit ("Derr Pit") located at 590 North Balsam Avenue in Weld County, Colorado. BAI operates the Derr Pit as an active sand and gravel mine under Permit No. DRMS M-2008-017.
4. DRMS amended Permit No. DRMS M-2008-017 for the Derr Pit on June 27, 2018 ("Revision No. AM01") to allow BAI to expand mining into an area north and west of the existing Derr Pit boundary, as shown in Exhibit A ("Amendment Area").
5. BAI also requires Weld County approval to expand mining operations into the Amendment Area. As part of this approval, Weld County granted a zoning change on September 11, 2019 for the Amendment Area, which BAI recorded on December 4, 2019. BAI is in the process of amending the Weld County Use by Special Review Permit, 2MJUSR19-08-1660 ("USR Amendment Application"), as the final authorization necessary to begin mining the Amendment Area.
6. Winters/Hoffner owns Parcel No. 096103000044 at 21138 County Road 62 and Parcel No. 080334000019 ("Winters Hoffner Property"), which lies east and north of the Amendment Area, on which property is situated two groundwater wells permitted for irrigation use, and represented by Well Permit Nos. 13200-F and 13199-R, collectively the "Winters/Hoffner Wells."

7. Winters/Hoffner, through its representative Melvin Bickling ("Bickling"), have opposed BAI's USR Amendment Application through oral testimony, written statements, or both before the Weld County Board of County Commissioners, and in letters submitted to Weld County Planning Department staff which have been entered into the record as part of the USR Amendment Application.
8. Winters/Hoffner's opposition to the USR Amendment Application is related to, in part, concerns regarding the potential impacts of dewatering activities within the Derr Pit and Amendment Area on the Winters/Hoffner Wells.
9. The Companies and Winters/Hoffner disagree as to whether and to what extent existing mining operations at the Loloff Pit and Derr Pit have impacted the Winters/Hoffner Wells, and disagree further as to whether and to what extent future mining in the Amendment Area will impact the Winters/Hoffner Wells.
10. In an effort to resolve that disagreement, as well as address all other remaining concerns of Winters/Hoffner related to operation of the Loloff Pit, Derr Pit, and the Amendment Area, and allow BAI to obtain approval of the USR Amendment Application, as well as address Winters/Hoffner's objections to Weld County regarding the USR Amendment Application, the Companies and Winters/Hoffner desire to enter into this Settlement Agreement.

THEREFORE, in consideration of the mutual promises and obligations stated herein, and the mutual benefits to be derived therefrom, the Companies and Winters/Hoffner agree as follows:

COVENANTS AND CONDITIONS

1. Purpose of Agreement

The purpose of this Agreement is to address Winters/Hoffner's concerns related to BAI's and Loloff's existing and planned mining operations at the Loloff Pit and the Derr Pit and Amendment Area, such that Winters/Hoffner, either directly or through Bickling, formally withdraw their opposition to BAI's efforts to get approval of the USR Amendment Application.

2. Identification of Concerns

Winters/Hoffner identify the following concerns ("Concerns") as the basis for their objection to USR Amendment Application, some of which relate to existing operations at the Derr Pit and Loloff Pit.

- A. Noise - concerns about noise that will be generated by operations in the Amendment Area.

- B. Dust - concerns about dust that will be generated by operations in the Amendment Area.
- C. Traffic - concerns about increased traffic generated by operations in the Amendment Area and the travel routes of the mine-related vehicles.
- D. Water Wells – concerns that the Winters/Hoffner Wells will be negatively impacted by the operations at the Derr Pit, including the Amendment Area.

3. Obligations of the Parties

In an effort to resolve Winters/Hoffner's Concerns regarding BAI's and Loloff's past and planned mining operations at the Loloff Pit, Derr Pit, and BAI's expansion of operations into the Amendment Area, the Companies and Winters/Hoffner agree to the following mitigation efforts to address the Concerns:

A. BAI and Loloff

1. Noise

- a. BAI shall comply with all applicable noise requirements contained in amended USR Permit No. 2MJUSR19-08-1660, State laws, and local ordinances. BAI will further prohibit the use of compression release braking (Jake Brake) by vehicles servicing the Derr Pit, including the Amendment Area.
- b. Loloff shall comply with all applicable noise requirements contained in USR Permit No. AM USR-690, State laws, and local ordinances. Loloff will further prohibit the use of compression release braking (Jake Brake) by vehicles servicing the Loloff Pit.
- c. BAI shall install and maintain a berm around the active mining areas within the Amendment Area. The berm area shall be planted with trees and native grasses. The trees shall be irrigated by a drip irrigation system and the native grasses will be irrigated by a temporary sprinkler system.

2. Dust

- a. BAI shall comply with all applicable dust requirements contained in amended USR Permit No. 2MJUSR19-08-1660, State laws, and local ordinances. BAI shall also comply with its Colorado Air Pollution Control Division permits for the Derr Pit, including the Amendment Area, which specifically address particulate emissions (dust) from the pit and associated mining equipment.

- b. Loloff shall comply with all applicable dust requirements contained in USR Permit No. AM USR-690, State laws, and local ordinances. Loloff shall also comply with its Colorado Air Pollution Control Division permits for the Loloff Pit, which specifically address particulate emissions (dust) from the pit and associated mining equipment.

3. Traffic

- a. BAI will comply with all applicable traffic requirements contained in amended USR Permit No. 2MJUSR19-08-1660, State laws, and local ordinances. BAI will ensure that drivers servicing the Derr Pit utilize only designated haul routes.
- b. Loloff will comply with all applicable traffic requirements contained in USR Permit No. AM USR-690, State laws, and local ordinances. Loloff will ensure that drivers servicing the Loloff Pit utilize only designated haul routes.
- c. No mining equipment or heavy truck and construction traffic shall exit, enter or access the Amendment Area via Cherry Avenue.

4. Water Wells

- a. BAI has submitted a technical revision to DRMS for the Derr Pit, including the Amendment Area ("Derr Technical Revision"), a copy of which is attached hereto as **Exhibit B**. The Derr Technical Revision shall include, among other items, the following mitigation items:
 - i. The Winters/Hoffner Wells (among others) shall be included as "Permanent Man-Made Structures within 200 Feet of the Affected Land" as that phrase is used within Permit No. DRMS M-2008-017.
 - ii. BAI, or its selected third-party representative, shall perform monthly groundwater monitoring at each of the groundwater wells identified in **Exhibit C**. The monthly monitoring data shall be submitted to Winters/Hoffner and the DRMS on a monthly basis. The groundwater wells to be included within this monitoring program specifically include the Winters/Hoffner Wells, and Winters/Hoffner agree to grant access to BAI, or its selected third-party representative to the Winters/Hoffner Wells for purposes of such monitoring.

If such access is denied in the future, then BAI shall be relieved of the requirements of 3(A)(4)(a)(ii)-(iii) and 3(A)(4)(b) of this Agreement. Access for monitoring shall remain in effect unless revoked in writing by Winters/Hoffner to BAI, or a representative of the Companies.

- iii. If the results of the monitoring data referenced in the preceding paragraph demonstrate that there has been greater than a two (2) foot drop in the groundwater levels over the historic average groundwater levels for the month in which the level was measured at the Winters/Hoffner Wells in two consecutive months, which reduction is proximately caused by dewatering at the Derr Pit, including the Amendment Area, then BAI shall, within seven (7) days submit a mitigation plan to Winters/Hoffner and DRMS. Such mitigation plan is only required if the two (2) foot drop in groundwater levels causes a material decrease in the pumping flow rate of the Winters/Hoffner irrigation well, and such mitigation plan may include, but is not limited to the following mitigation efforts: (a) enhanced recharge operations around the Amendment Area or Derr Pit; (b) resetting of existing well pumps on the advice and recommendation of an agreed upon company with expertise in such fields; (c) rehabbing the existing well on the advice and recommendation of an agreed upon company with expertise in such fields; and (d) provide sufficient Colorado-Big Thompson or equivalent surface water for the Winter/Hoffner farm crops at BAI's sole cost. The two (2) foot drop in static water table that is the trigger for the obligations of this paragraph shall be measured against the baseline data collected by BAI through its third party representative since 2019. If there is a question as to whether dewatering at Derr Pit is the proximate cause of the reduction in groundwater levels that require the mitigation plan described in this paragraph, then BAI and Winters/Hoffner agree to work together in good faith to resolve such question. If they are unable to resolve such question between themselves within the next seven (7) days, they agree that the Colorado State Engineer Office ("SEO") is the state agency with expertise in determining such matters and both BAI and Winters/Hoffner shall seek the determination of whether the groundwater level declines in the monitoring wells are proximately caused by the

dewatering activities at Derr Pit. If the SEO does not resolve the issue within thirty (30) days from receiving notice of the dispute by the Parties, then the Parties shall be free to take such legal actions they deem necessary to protect their interests.

- b. If, after performing the reasonable mitigation efforts described in 3(A)(4)(a)(iii) above, Winters/Hoffner fail to produce a crop yield on the 80 acres historically irrigated on the Winters/Hoffner Property. The Companies shall compensate Winters/Hoffner for any crop loss or other damages in amount and such other relief as the parties agree. If there is no resolution within ten (10) days, Winters/Hoffner may contact governmental authorities and take such other action they may choose including any legal and equitable remedy provided by law.
- c. BAI shall install a slurry wall liner around the existing Derr Pit. BAI shall, in accordance with the terms and conditions of Revision No. AM01, install a slurry wall liner around the area to be mined within the Amendment Area *prior* to exposing groundwater within the Amendment Area. BAI shall continue to have access to the Winters/Hoffner Wells for purposes of gathering water level data, which monitoring data shall continue to be collected and reported monthly until the data shows that the water level is gaining for three consecutive months, at which point the monitoring data shall be collected quarterly until such time as the DRMS releases the bond associated with the Derr Pit mining permit.

B. Winters/Hoffner

- 1. On the same day of the execution of this Agreement, Winters/Hoffner, either directly or through Bickling or another authorized representative, shall provide the Weld County Board of County Commissioners a letter withdrawing all objections to BAI's efforts to amend the USR Permit Application. The withdrawal letter shall be substantively similar to the draft letter contained in **Exhibit D** to this Agreement.
- 2. Winters/Hoffner shall fully consent to and support BAI's efforts to gain governmental approval to expand mining operations into the Amendment Area.
- 3. For the Term of this Agreement, Winters/Hoffner shall coordinate and permit BAI representatives access to the Winters/Hoffner Wells during reasonable business hours to perform the monitoring required under 3(A)(4)(a)(ii) hereof.

4. For the Term of this Agreement, except in an emergency that presents an imminent threat to life or property, Winters/Hoffner and its representatives, including Bickling, shall first contact Loloff or BAI with any issues or concerns regarding operations at the Loloff or Derr Pits, including the Amendment Area, before contacting any Government Authority. The purpose of this initial contact is to allow Loloff or BAI to address the issues or concerns before involving others. If Loloff or BAI fail to respond within ten (10) days of receiving notice from Winters/Hoffner, or Loloff and BAI fail to diligently pursue the concern raised by Winters/Hoffner, then Winters/Hoffner may initiate an action in law or equity. Loloff and BAI designate the following individual as the contact person for purposes of this provision:

Kelly A. Hodge
kahodge1@comcast.net
970-566-5090

or if not available, any other representative of the Companies

4. Conditions Precedent

BAI's and Loloff's obligation to perform the tasks identified in Paragraphs 3(A)(1) through 3(A)(3), hereof, to the extent not already required by applicable law, shall commence upon execution of this Agreement, except that obligations relating to the Amendment Area shall be triggered by commencement of mining operations therein.

5. No Admissions

By entering this Agreement, no Party makes any admissions as to the possible effects of existing and planned mining operations on the Winters/Hoffner Wells.

6. Term and Survival of Claims

The Term of this Agreement shall be from its execution until DRMS releases the reclamation bonds on the Loloff and Derr Pits, including the Amendment Area. Obligations created herein relating to only one of the pits shall terminate with the release of the reclamation bond for that pit. Any claims shall survive the termination of this Agreement.

7. Preservation of Future Claims

Nothing in this Agreement shall constitute a waiver by the Parties of any claims, causes of action, defenses, and any other action, and all such claims, causes of action, and defenses are preserved by the Parties.

8. General Provisions

- A. This Agreement shall be construed according to the applicable laws of the State of Colorado. Proper venue for any action to enforce the terms, or arising from the breach, of this Agreement is in Weld County, Colorado.
- B. Failure of any Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not waive such term, covenant, condition, or right with respect to future performance.
- C. Partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- D. This Agreement has been negotiated between and among the Parties, each of whom had adequate opportunity to consult legal counsel. Therefore, this Agreement shall not be interpreted against any Party as the "drafter," but shall be construed in a neutral manner.
- E. This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior negotiations, understandings, conversations, correspondence, and agreements between the Parties. Unless otherwise set forth herein, this Agreement may not be modified or amended, except by a writing signed by all Parties.
- F. This Agreement shall be binding on and inure to the benefit of the Parties, their successors, assigns, heirs, and personal representatives. The Parties agree to provide notice to each of other assignment of this Agreement.
- G. This Agreement may be executed in one or more counterparts, each of which shall be considered an original but all of which taken together shall constitute one and the same legal instrument.

IN WITNESS WHEREOF, the Parties have caused this instrument to be duly executed on the date first written above.

BROKEN ARROW INVESTMENTS, LLC

BY: _____

TITLE: _____

LOLOFF CONSTRUCTION, INC.

BY:

TITLE:

GLOBAL ASSETS RECOVERY, LLC

BY:

TITLE:

JERRY WINTERS AND DIXIE ANN HOFFNER

BY:

(Jerry Winters)

BY:

(Dixie Ann Hoffner)

Mr. Mike Freeman
Board of County Commissioners
Weld County, Colorado
1555 North 17th Avenue
Greeley, CO 80631
mfreeman@weldgov.com

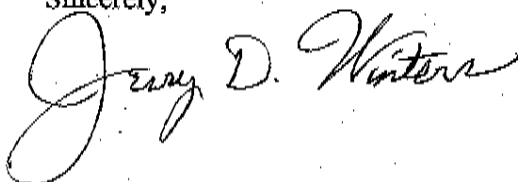
Via Email

RE: 2MJUSR19-08-1660 -- Derr Sand and Gravel Mine
Broken Arrow Investments, LLC Co/ Randy Geist, Global Asset Recovery LLC

Dear Commissioner Freeman:

This letter is to formally withdraw my opposition to Broken Arrow Investments, LLC's ("BAI") application to amend Use by Special Review ("USR") Permit No. USR-1660 to allow expansion of the Derr Sand and Gravel Pit at 590 North Balsam Avenue. I had previously opposed this USR amendment in oral testimony before the Weld County Board of County Commissioners and in a written statement that was submitted to Weld County and entered into the record for the USR permit amendment proceedings. I have resolved my concerns regarding the mine expansion with BAI and related parties and now wish to withdraw my previous opposition.

Sincerely,

A handwritten signature in cursive script that reads "Jerry D. Winters". The signature is written in dark ink and is positioned below the word "Sincerely,".

cc: Kim Ogle, Weld County Planning Services (via email)