

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is made and entered into this 19<sup>th</sup> day of February 2016, by and between THE PARKER WATER AND SANITATION DISTRICT (the "District"), a Colorado special district and political subdivision having an address at 18100 East Woodman Drive, Parker, Colorado 80134; RENATE NIXDORF GMBH & CO. KG, a foreign corporation with an address of Klingenderstrasse 5, Paderborn 33100, Germany ("RNK"); STROH RANCH DEVELOPMENT, LLC, a Colorado limited liability company with an address of 5105 DTC Parkway, Suite 240, Greenwood Village, CO 80111 ("SRD"); and SDI, INC., a Colorado Corporation having the same address as SRD ("SDI") (collectively the "Parties").

### I. RECITALS

A. SRD owns certain property located in the Town of Parker, Colorado legally described on **Exhibit A** ("Hess Property"), together with associated water rights described on **Exhibit B** ("Hess Water Rights"). The Hess Property and Hess Water Rights are encumbered by RNK as the beneficiary of a deed of trust granted by Pivotal Colorado II, LLC on December 9, 2004 and recorded on December 10, 2004 at Reception No. 2004125856 with the Douglas County Clerk and Recorder ("Deed of Trust");

B. The Hess Property is not located within the boundaries of the District, but the District has agreed to serve the Hess Property on terms set forth in the Service Agreement dated August 13, 1992 and recorded with the Douglas County Clerk and Recorder on August 24, 1992 at Page 492 of Book 1081 (the "1992 Service Agreement"), as amended herein below;

C. The District and RNK are currently engaged in litigation styled *Town of Parker and Parker Water and Sanitation District v. Triple M Beteiligungs-GMBH & Co. KG, et al.*, Case No. 2010CV45 in the Douglas County District Court in the State of Colorado (the "Waterline Litigation") which relates, among other issues, to whether a foreclosure commenced by RNK against the Hess Property will extinguish a 24-inch waterline easement benefitting the District (the "Waterline Easement"); and

D. The Parties have reached an agreement with respect to the 1992 Service Agreement and Waterline Litigation and desire to memorialize their agreement as follows:

### II. AGREEMENT

In mutual consideration of the promises and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties incorporate their recitals and further agree as follows:

1. Mutual Release. With the exception of the rights and obligations created pursuant to this Agreement or which arise in connection with the exhibits, instruments of conveyance or other and further documents expressly contemplated herein, the District on the one-hand and RNK, SRD and SDI on the other, hereby mutually release and discharge the other, its predecessors, successors and assigns and their respective officers, directors,

employees, attorneys, other representatives and shareholders, from any and all claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or now has, or claims to have against the other, which relate to or arise out of the Waterline Litigation.

2. Dismissal of Waterline Litigation. Upon execution of this Agreement, the District and RNK shall cause to be filed, with the consent of all parties to the Waterline Litigation, a Stipulation for Dismissal With Prejudice in the form attached hereto as **Exhibit C**. Upon dismissal of the Waterline Litigation by the Douglas County District Court, the District will file and record its Release of Lis Pendens and take all necessary action to effect a release of the Notice of Lis Pendens it filed with the Douglas County Clerk and Recorder on June 6, 2014, at Reception #2014031414.

3. Water Service to Filings 1-18 Stroh Ranch. The District agrees and shall take no action inconsistent with its acknowledgment that SRD, SDI and their successors and assigns from any transfers or sales prior to December 9, 2004, have fully satisfied their obligations under the 1992 Service Agreement to dedicate water rights required by the District to serve the property in Stroh Ranch Filings 1-18 of the Stroh Ranch Development and that the District is obligated to serve the developed and undeveloped property in Stroh Ranch Filings 1-18; provided that the District retains its right to require the dedication of additional water rights from successors-in-interest if the density of property in Stroh Ranch Filings 1-18 is increased through any future rezoning duly approved by the Town of Parker (in which case, the District can require additional water rights, per the District's Rules and Regulations, from the owner of the property who is changing the density) and, further, that nothing in this Agreement will prevent the District from continuing to deny water service to those portions of Stroh Ranch Filings 17-18 sold by SDI and/or SRD to third parties on December 9, 2004, and not presently owned by SRD or SDI, until adequate water rights are dedicated for such properties. The Parties acknowledge and agree that the right of the District to deny water service to those portions of Stroh Ranch Filings 17-18 sold by SDI and/or SRD to third parties on December 9, 2004, and not presently owned by SRD or SDI, is a matter between the District and such third parties and their successor and assigns, and the preceding sentence is not intended to imply that the District does or does not have the right to continue to deny water service to such property without further conveyance of water rights.

4. Foreclosure. RNK shall pursue to completion its foreclosure action in Douglas County Public Trustee Sale No. 2015-0252 with due diligence. The District shall cooperate with RNK in its efforts to conclude the foreclosure. RNK shall use its best efforts to duly complete the foreclosure. If RNK does not pursue its foreclosure with due diligence and in a timely manner, the District may, in addition to any other remedy available at law or equity, file an injunctive action to enforce its rights to have the foreclosure completed by RNK in a timely manner pursuant to this Paragraph 4. For purposes of this entire Agreement, the completion of the foreclosure means the completion of a judicial or public trustee foreclosure or any other act by RNK, excluding its performance of its obligation under Section 6 below, releasing or extinguishing the lien of the deed of trust encumbering the Hess Property.

5. Canyons Water and Sewer Easement and Recreational Trail. Upon execution of this Agreement, the District and SRD shall execute amendments to the waterline and sewer line easements granted by Pivotal Colorado II, LLC on June 30, 2014 and recorded at Reception Nos. 2014039222 and 2014039220. The sewer line easement shall provide that it may be used for a recreational trail on Hess Property. The easements shall be amended as set forth in **Exhibits D and E**.

6. Subordination of Lien Encumbering Waterline Easement. Upon execution of this Agreement, RNK shall execute in recordable form and deliver to the District for recordation a document subordinating the lien of the Deed of Trust to the Waterline Easement that is the subject of the Waterline Litigation at no cost to the District in the form attached hereto as **Exhibit F** (the "Subordination Document"). Upon recordation of the Subordination Document, RNK, SRD and SDI shall not further challenge the priority of the District's Waterline Easement.

7. Inundation Parcel Easement Conveyance. Upon execution of this Agreement, SRD shall place into escrow with First American Title, 399 Perry Street, Suite 320, Castle Rock, Colorado 80104 ("Escrow Company"), at SRD's sole expense, two (2) easements free and clear of all liens and encumbrances over a portion of the Hess Property to allow the District to inundate the easement area with water stored in the District's Rueter-Hess Reservoir and to locate a recreational trail on the easement area located in Town of Parker open space (the "Inundation Easements") in the forms attached hereto as **Exhibits G-1 and G-2**. The Inundation Easements shall be placed into escrow with the Escrow Company; and shall be delivered to the District upon the earlier of the issuance by the Douglas County Public Trustee of a Certificate of Purchase for the Hess Property in RNK's foreclosure action or upon completion of the foreclosure. The District, at its sole cost and expense, shall be responsible for resolving to SRD's reasonable satisfaction any additional requirements imposed by the Town of Parker due to the difference in configuration of the property subject to the Inundation Easements and the configuration of the property shown to be inundated in SRD's rezoning application approved by the Town of Parker on September 21, 2016.

8. Hess 2 Well Easement. Subject to the conditions precedent set forth in paragraph 12 below, and at no cost to the District, the applicable parties shall amend the Easement Agreement dated August 30, 2002 and recorded at Reception No. 2002092203 with the Douglas County Clerk and Recorder (the "Hess 2 Wellsite Easement") to extend the easement boundary to include the property upon which the Hess 2 Well is situated. The amendment shall be in substantially the form attached hereto as **Exhibit H**. Subject to the conditions precedent set forth in paragraph 12 below, SRD hereby waives any existing claims it may have relating to the location of the Hess 2 Well outside of the wellsite easement boundaries. The District shall be solely responsible for obtaining any changes required to permit diversion of the Hess Water Rights from the well located in the extended easement area. The amendment to the Hess 2 Wellsite Easement shall be placed into escrow with the Escrow Company, and shall be delivered to the District upon the earlier of the issuance by the Douglas County Public Trustee of a Certificate of Purchase for the Hess Property in RNK's foreclosure action or upon completion of the foreclosure.

9. First Addendum to 1992 Service Agreement. Subject to the conditions precedent set forth in Paragraph 12, below, SRD and the District shall execute the FIRST ADDENDUM TO 1992 SERVICE AGREEMENT FOR HESS PROPERTY (SOUTHERN PROPERTY) in the form attached hereto as **Exhibit I** (the “First Addendum”).

10. Water Rights Conveyance. Subject to the conditions precedent set forth in Paragraph 12, below, SRD shall convey the Hess Water Rights, as defined in Exhibit B, to the District. The conveyance shall be pursuant to the terms of the First Addendum.

11. Bargain and Sale Deed for Water Rights. Subject to the conditions precedent set forth in Paragraph 12, below, SRD shall execute a bargain and sale deed conveying any interest SRD may have in the ground water rights decreed on February 16, 1996, in Case No. 88 CW 168 by the District Court for Water Division No. 1 (Hess Ranch), the water rights and the water rights associated with the 1,966 ± acre property sometimes known as the Stroh Ranch and Bamford tract, located immediately north of the Hess Property and the groundwater in the Arapahoe Aquifer adjudicated in 98CW264, entered on January 12, 1999 by the District Court for Water Division No. 1 (“Steven Property Arapahoe Aquifer Groundwater”) (collectively, the “Original Water Rights”), in the form of **Exhibit J**. The District acknowledges that in executing the bargain and sale deed (Exhibit J), SRD makes no warranties or representations regarding SRD’s ownership of the Original Water Rights and does not intend to convey any of the Original Water Rights that are not currently owned or subsequently acquired by SRD. The bargain and sale deed is provided to clarify that SRD has no residual claim to the Original Water Rights.

12. Condition precedent. The Parties’ performance pursuant to Paragraphs 8 through 11, above, shall be subject to the following condition precedent: The foreclosure by RNK shall have progressed to the earlier of: (a) issuance by the Douglas County Public Trustee of a Certificate of Purchase; or (b) been otherwise concluded to the satisfaction of RNK or its successors or assigns, if any.

13. Integration. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties and supersedes and replaces all prior negotiations, offers, proposed agreements and agreements, written or oral that relate to the subject matter of this Agreement. The Parties hereto acknowledge and represent that they have not made, nor have their respective representatives, agents or attorneys made, any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce any other party to execute this Agreement, and acknowledge and warrant that this Agreement is not being entered into in reliance on any promise, representation, or warranty not contained herein.

14. Further Assurances.

- a. Following the completion of the foreclosure, and if requested by the District thereafter, RNK, SRD, and SDI shall subordinate any other liens and encumbrances of which they may be beneficiaries that are senior to the Waterline or Inundation Easements.

- b. The District, SRD and RNK shall enter into no agreements that will interfere with their ability to carry out their obligations under this Agreement.

15. Governing Law and Venue. This Agreement is to be governed by, and construed in accordance with, the laws of the State of Colorado. Any action arising out of or relating to this Agreement shall be brought in a court of competent jurisdiction located in the Douglas County, State of Colorado.

16. Binding. This Agreement together with the releases herein contained, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest, and assignees of the respective Parties.

17. Amendments. This Agreement may not be amended or modified other than by an instrument in writing, duly signed by an authorized representative of all Parties.

18. Waiver. A breach of this Agreement may be waived only by an express, written waiver signed by the party granting the waiver. The waiver of any breach shall neither operate nor be construed as a waiver of any other breach of this Agreement or as a continuing waiver.

19. Costs and Attorneys' Fees. Each party hereto shall bear its own costs and attorneys' fees incurred in connection with this Agreement and the Waterline Litigation, the negotiation of this Agreement, and the matters released by this Agreement.

20. Additional Documents. The Parties agree to execute promptly all additional documents necessary to complete and document this Agreement, or to carry out their obligations under this Agreement.

21. Representations. The Parties represent, warrant and agree as follows:

- a. Such party has had an opportunity to seek and has sought legal advice from legal counsel of such party's choice with respect to the advisability of executing this Agreement.
- b. Such party has made such investigation of the facts pertaining to this Agreement as such party deems necessary.
- c. The terms of this Agreement are the result of negotiations among the Parties and are entered into in good faith by the Parties in accordance with Colorado law.
- d. This Agreement has been carefully read by such party and the contents hereof are known and understood by such party.
- e. Such party has not heretofore assigned or transferred any right, claim or matter released by this Agreement or any part or portion thereof. Such party agrees to indemnify and hold harmless the

opposing party from any claims resulting from any such assignment or transfer by such party, or asserted by any assignee or transferee from such party.

- f. The individual executing this Agreement on behalf of each party is duly authorized to bind the party for whom he or she is acting to the terms and conditions of this Agreement.

22. Severability. If any one or more of the covenants, provisions, or terms of this Agreement shall be held invalid for any reason, then such covenants, provisions, or terms shall be deemed severable from the remaining covenants, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the other covenants, provisions, and terms of this Agreement, provided that the invalidation of any such covenant, provision, or term does not materially defeat the consideration to be provided to each Party. If the invalidation of a covenant, provision or term materially defeats the consideration to be provided to each Party, such covenant, provision, or term shall be redrafted to eliminate the reason for its invalidity in a such a manner so as to as closely as possible effectuate the intent of the Parties and provide the contemplated consideration. Each party to this Agreement represents and warrants to the other party that such party does not believe that any covenant, provision, or term of this Agreement is invalid for any reason.

23. Mutual Drafting. This document was mutually negotiated and drafted by the Parties. No provision of this Agreement shall be construed or interpreted for, or against, a party because such party drafted or requested such provision.

24. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original for all purposes. Facsimile or scanned signatures to this Agreement shall for all purposes be deemed originals and shall bind the party delivering such signatures via facsimile or electronic mail ("e-mail").

25. No Admission. Each party hereto expressly agrees and acknowledges that this Agreement represents the settlement and compromise of disputed claims, and that by entering into this Agreement, neither party hereto admits or acknowledges the existence of any liability, obligation, or wrongdoing on its part.

26. Headings for Convenience Only. The headings, captions and titles contained herein are for convenience and reference only and are not intended to enlarge or restrict the content thereof.

27. Incorporation of Exhibits. The Exhibits attached to this Agreement are expressly incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

***[Remainder of page intentionally blank - Signatures appear on following pages ]***

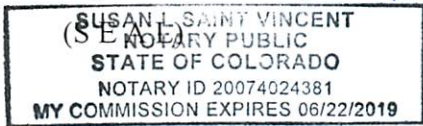
PARKER WATER AND SANITATION DISTRICT,  
a Colorado special district

By: *Darcy Beard*  
Darcy Beard, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 11<sup>th</sup> day of February, 2016, by Darcy Beard, as President of the Parker Water and Sanitation District.

My commission expires: 6/22/2019



*S. Saint Vincent*  
Notary Public

RENATE NIXDORF GMBH & CO. KG, a  
foreign corporation

By: Renate Nixdorf Verwaltungsgesellschaft mbH,  
its general partner

By: \_\_\_\_\_  
Heinz Matthias Nixdorf, Manager

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Heinz Matthias Nixdorf, Manager of Renate Nixdorf Verwaltungsgesellschaft mbH on behalf of Renate Nixdorf GmbH & Co. KG.

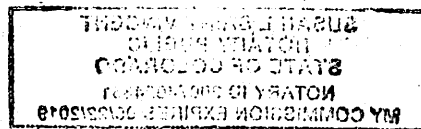
My commission expires:

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF COLORADO  
COUNTY OF \_\_\_\_\_  
NOTARY PUBLIC

*[Signature]*  
Notary Public



\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PARKER WATER AND SANITATION DISTRICT,**  
a Colorado special district

By: \_\_\_\_\_  
Darcy Beard, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Darcy Beard, as President of the Parker Water and Sanitation District.

My commission expires:  
(S E A L)

\_\_\_\_\_  
Notary Public

**RENATE NIXDORF GMBH & CO. KG, a**  
foreign corporation

By: Renate Nixdorf Verwaltungsgesellschaft mbH,  
its general partner

By: Heinz Matthias Nixdorf  
Heinz Matthias Nixdorf, Manager

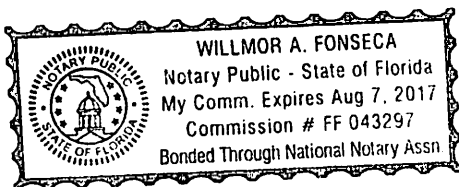
STATE OF Florida )  
 ) ss.  
COUNTY OF Dade )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 12 day of February, 2016, by Heinz Matthias Nixdorf, Manager of Renate Nixdorf Verwaltungsgesellschaft mbH on behalf of Renate Nixdorf GmbH & Co. KG.

My commission expires: 8-07-2017

(S E A L)

Willmor A. Fonseca  
Notary Public



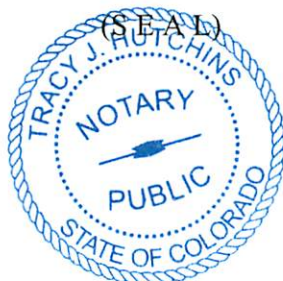
**STROH RANCH DEVELOPMENT, LLC,**  
a Colorado limited liability company

By: *[Signature]*  
Gary Hunter, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17<sup>th</sup> day of February, 2016, by Gary Hunter as a Member of Stroh Ranch Development, LLC.

My commission expires:  
6-1-16



*[Signature]*  
Notary Public

**SDI, INC.,** a Colorado Corporation

By: *[Signature]*  
Gary Hunter, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17<sup>th</sup> day of February, 2016, by Gary Hunter as President of SDI, Inc.

My commission expires:  
6-1-16.



*[Signature]*  
Notary Public