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Arizona Corporation Commission

DOCKETED

NOV 16 2015

DOCKETED BY

8 Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

9  
10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 IN THE MATTER OF THE APPLICATION  
12 OF LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP., AN  
13 ARIZONA CORPORATION, FOR  
AUTHORITY TO ISSUE EVIDENCE OF  
14 INDEBTEDNESS IN AN AMOUNT NOT  
TO EXCEED \$3,400,000.

DOCKET NO: SW-02361A-15-0206

15  
16 IN THE MATTER OF THE APPLICATION  
OF LIBERTY UTILITIES (BLACK  
17 MOUNTAIN SEWER) CORP., AN  
ARIZONA CORPORATION, FOR A  
18 DETERMINATION OF THE FAIR VALUE  
OF ITS UTILITY PLANTS AND  
19 PROPERTY AND FOR INCREASES IN ITS  
WASTEWATER RATES AND CHARGES  
20 FOR UTILITY SERVICE BASED  
THEREON.

DOCKET NO: SW-02361A-15-0207

**NOTICE OF FILING PROPOSED  
SETTLEMENT AGREEMENT**

21  
22 Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain") hereby  
23 provides notice of filing the Proposed Settlement Agreement (the "Agreement") between  
24 Liberty Black Mountain and the Town of Carefree (the "Town"), CP Boulders, LLC dba  
25 Boulders Resort (the "Resort"), Wind P1 Mortgage Borrower, LLC<sup>1</sup> and the Boulders

26 <sup>1</sup> Wind P1 Mortgage Borrower L.L.C. was the prior owner of the Boulders Resort, and as

1 Homeowners Association (collectively, the "Signatories"). The Town and the Resort are  
2 intervenors in this docket. The Agreement (attached as Exhibit A) reflects the  
3 Signatories' agreement to settle and compromise (1) litigation arising out of the  
4 Commission's Phase 2 Decision (Docket No. SW-02361A-08-0609); (2) potential claims  
5 relating to the Phase 1 and Phase 2 decisions (Docket No. SW-02361A-08-0609) and the  
6 Effluent Delivery Agreement between Liberty Black Mountain and the Resort; and  
7 (3) relief sought by Liberty Black Mountain in the instant case related to the closure of the  
8 East Boulders Wastewater Treatment Plant and recovery of closure costs. The terms of  
9 the settlement will be addressed by the Town and the Resort in their direct testimony  
10 filings, and by Liberty Black Mountain in its rebuttal filings.

11 RESPECTFULLY SUBMITTED this 16th day of November, 2015.

12 SHAPIRO LAW FIRM, P.C.

13  
14 By: \_\_\_\_\_

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17 and

18 LIBERTY UTILITIES

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Todd.Wiley@libertyutilities.com

23 Attorneys for Liberty Utilities  
24 (Black Mountain Sewer) Corp.

25 of April 28, 2015 assigned all of its interests in the matters addressed in the Agreement to  
26 the Resort except for its claims for attorney's fees in the appeal currently pending before  
the Arizona Court of Appeals as Case No. 1 CA-CV 14-0643.

1 **ORIGINAL and thirteen (13) copies**  
2 **of the foregoing were delivered**  
3 this 16th day of November, 2015, to:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington Street  
6 Phoenix, AZ 85007

5 **COPY of the foregoing hand-delivered**  
6 this 16th day of November, 2015, to:

7 Sasha Paternoster, ALJ  
8 Hearing Division  
9 Arizona Corporation Commission  
10 1200 W. Washington Street  
11 Phoenix, AZ 85007

10 **COPY of the foregoing emailed and hand-delivered**  
11 this 16th day of November, 2015, to:

11 Robin Mitchell  
12 Wes Van Cleve  
13 Legal Division  
14 Arizona Corporation Commission  
15 1200 W. Washington Street  
16 Phoenix, AZ 85007  
17 rmittell@azcc.gov  
18 wvancleve@azcc.gov

16 **COPY of the foregoing emailed & mailed**  
17 this 16th day of November, 2015, to:

17 Daniel W. Pozefsky  
18 Chief Counsel  
19 Residential Utility Consumer Office  
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10

11 By: Christy Burk

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# **EXHIBIT A**

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

The purpose of this Settlement Agreement (“Agreement”), dated November \_\_, 2015, is to settle certain issues and claims, some of which arise from Arizona Corporation Commission (“Commission”) Docket No. SW-02361A-08-0609 and are currently pending before the Arizona Court of Appeals in Case No. CA-CV 14-0643, and some of which are present in Commission Docket No. SW-02361A-15-0206 & 0207 (“2015 Rate Case”).

This Agreement is entered into by the following entities:

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.

TOWN OF CAREFREE

CP BOULDERS, LLC DBA BOULDERS RESORT AND  
WIND P1 MORTGAGE BORROWER, L.L.C.

THE BOULDERS HOMEOWNERS ASSOCIATION

These entities shall be referred to collectively as ‘Signatories;’ a single entity shall be referred to individually as a “Signatory.”

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

**1 RECITALS**

**1.1 The Parties.**

1.1.1 Liberty Utilities (Black Mountain Sewer) Corp. (“Liberty Black Mountain”) is an Arizona public service corporation providing wastewater utility service to approximately 2,100 primarily residential customers in and around Carefree, Arizona, under a certificate of convenience and necessity issued by the Commission.

1.1.2 The Town of Carefree is an Arizona municipality and wastewater customer of Liberty Black Mountain.

1.1.3 CP Boulders, LLC, a Delaware limited liability company authorized to do business in Arizona, is the current owner of the Boulders Resort, and is referred to in this Agreement as the “Resort.”

1.1.4 Wind P1 Mortgage Borrower L.L.C., a Delaware limited liability company (“Wind P1”), was the prior owner of the Boulders Resort, and as of April 28, 2015 assigned all of its interest in the matters addressed in this Agreement to CP Boulders, LLC, except its claims for attorney’s fees in the Appeal (defined below).

1.1.5 The Boulders Homeowners’ Association is a non-profit homeowners association representing homeowners and customers of Liberty Black Mountain in the Boulders residential community.

**1.2 The East Boulders Wastewater Treatment Plant (“Plant”).**

1.2.1 Liberty Black Mountain owns and operates a single wastewater treatment facility, the Plant. The Plant was built more than 40 years ago and is located adjacent to one of the Resort’s golf courses. It is situated less than 100 feet from three homes and within 1,000 feet of approximately 300 homes. If constructed today, the Plant would require a setback of either 350 feet (for a facility without odor, noise, and aesthetic controls) or at least 100 feet (for a facility with full odor, noise, and aesthetic controls).

1.2.2 The Plant treats up to 120,000 gallons of wastewater each day, which represents roughly 20 percent of Liberty Black Mountain’s daily inflow. The remainder of Liberty Black Mountain’s sewer flow is delivered to the City of Scottsdale (“Scottsdale”) for treatment under that certain Wastewater Treatment Agreement between Liberty Black Mountain and Scottsdale dated April 1, 1996 (“Scottsdale Agreement”).

1.2.3 All effluent produced by the Plant is delivered to the Resort. Liberty Black Mountain and the Resort are or were parties to an Effluent Delivery Agreement dated March 2001 (“EDA”). It is Liberty Black Mountain’s position that its obligation to deliver effluent under the EDA was terminated by Commission Decision No. 73885 (May 8, 2013) (“Phase 2 Decision”). The Resort’s position is that the obligations in the EDA were not terminated by the Phase 2 Decision.

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

1.2.4 Effluent deliveries to the Resort continue, and the Resort has a continuing need for the Plant's effluent to water the Resort golf courses during peak water use times.

1.2.5 The Plant operates in full compliance with any and all applicable laws and regulations.

1.2.6 After the Phase 2 Decision, refined engineering cost estimates for the Plant closure indicate that the costs of closure are significantly higher than estimated at the time of the Phase 2 Decision. A closure date of November 30, 2018 will allow such costs to be placed into customer rates in stages, will address the Resort's need for continued delivery of effluent in the interim, and will provide nearby residents with a date certain for closure.

**1.3 Prior and Pending Proceedings.**

1.3.1 Liberty Black Mountain filed a rate application with the Commission in December 2008. The BHOA intervened as a party, and then, Liberty Black Mountain and the BHOA entered into a Plant Closure Agreement on September 17, 2009. The Town was also a party to the rate case and supported the Plant Closure Agreement.

1.3.2 The Commission issued Decision No. 71865 on September 1, 2010 ("Phase 1 Decision"). Concerning the Plant Closure Agreement, the Commission stated that it was a reasonable resolution of the odor concerns expressed by hundreds of Liberty Black Mountain customers. To facilitate Liberty Black Mountain's funding and recovery of costs associated with closure of the Plant, the Commission also approved a special plant closure cost recovery mechanism in the Phase 1 Decision. The Resort was not a party to the Phase 1 proceedings.

1.3.3 After the Phase 1 Decision, alternatives to the effluent supplied by Liberty Black Mountain to the Resort were considered. When the Resort and Liberty Black Mountain were unable to reach agreement to terminate the EDA in order for the Plant closure to proceed, the BHOA sought and obtained Commission intervention. On January 24, 2012, the Commission reopened Decision No. 71865 for the sole purpose of determining whether it should order Liberty Black Mountain to close the Plant.

1.3.4 The Resort intervened after the matter was reopened and additional hearings took place in May 2012. The Town did not participate as a party but passed a resolution that was filed with the Commission supporting closure of the Plant. The Commission issued the Phase 2 Decision (No. 73885) on May 8, 2013.

1.3.5 In the Phase 2 Decision, the Commission concluded that continued operation of the Plant in the midst of a residential neighborhood would have a detrimental effect on the quality of life for residents within the community. As the Commission held "[t]he record supports a finding that due to its location, the [Plant] can no longer be operated in a manner consistent with the public interest[.]"

1.3.6 The Resort filed a petition for rehearing of the Phase 2 Decision pursuant to A.R.S. § 40-253, which was denied by operation of law. The Resort then appealed the Phase

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

2 Decision pursuant to A.R.S. § 40-254. The Superior Court in Maricopa County Superior Court Case No. CV2013-00784 upheld the Commission's order, finding that the plant closure order was within the Commission's statutory powers. The Resort appealed the Superior Court's decision, which appeal is currently pending before the Arizona Court of Appeals as Case No. 1 CA-CV 14-0643 (the "Appeal"). Oral argument in the Court of Appeals is presently scheduled for December 8, 2015.

**1.4 Status of Plant Closure.**

1.4.1 The engineering of design modifications to Liberty Black Mountain's wastewater transmission system necessary for flows to be delivered to the City of Scottsdale instead of the Plant is substantially complete and the most reasonable alternative is Option 2— City of Scottsdale, Tom Darlington Drive – Single FM w/ Ex as shown in Exhibit 1 to this Agreement. The total estimated cost of the improvements is \$2.6M. The Signatories understand that this is an estimated cost subject to final, actual costs.

1.4.2 Liberty Black Mountain is currently negotiating an amendment to the Scottsdale Agreement that would allow it to close the Plant and purchase additional capacity to replace the current capacity in the Plant. The estimated cost of the replacement capacity is \$10 per gallon for a total replacement capacity cost equal to \$1.2M, which amount is in addition to the estimated costs to upgrade the transmission system addressed in Section 1.4.1 above.

1.4.3 Through September 30, 2015, Liberty Black Mountain's plant closure costs equal \$1,133,080.51.

1.4.4 The Resort has an ongoing need for effluent deliveries from the Plant through November 30, 2018.

**1.5 Pending Rate Case.**

1.5.1 Liberty Black Mountain filed the 2015 Rate Case on June 22, 2015. As stated in Liberty Black Mountain's application and supporting testimony, the rate case was brought (1) because the plans for and estimated costs of the Plant closure had changed since the Phase 1 and Phase 2 Decisions; (2) Liberty Black Mountain has over \$1M of investment in the Plant closure; (3) Liberty Black Mountain has not earned sufficient revenue and returns, and (4) the request and need for a new commercial rate design.

1.5.2 Liberty Black Mountain seeks certain relief, including recovery of Plant closure costs incurred to date in the 2015 Rate Case that impact the interests of the Resort, Town and BHOA. The Resort was granted leave to intervene on July 31, 2015. The Town was granted leave to intervene on October 7, 2015. The BHOA has not intervened but its interests are aligned with the Town.

1.5.3 The Signatories have used the opportunity of the pending rate case to further consider their respective interests, including the interests of the Town's citizens, the BHOA's membership, and Liberty Black Mountain's customers, which include the Resort. As a

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**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

result of these efforts and negotiations, the Signatories have reached this Agreement to settle. The Signatories believe that this Settlement is in the public interest.

**1.6 Nature of Settlement.**

1.6.1 This Agreement reflects the Signatories' agreement to settle and compromise (1) litigation arising out of the Commission's Phase 2 Decision, including the Appeal; (2) claims that have not yet been pursued relating to the Phase 1 and Phase 2 decisions and the EDA; and (3) relief sought by Liberty Black Mountain in the 2015 Rate Case related to the closure of the Plant. The Signatories also intend to set a date certain for closure of the Plant.

1.6.2 This Agreement does not address or resolve any other issue in the 2015 Rate Case except as expressly set forth herein.

**2 SPECIFIC TERMS AND CONDITIONS.**

**2.1 Plant Closure Costs.**

2.1.1 As of September 30, 2015, Liberty Black Mountain has incurred \$1,133,080.51 in closure costs. The Signatories agree that these costs were reasonably and prudently incurred in connection with the closure of the Plant as requested by the majority of the customers and ordered by the Commission. The Signatories further agree that Liberty Black Mountain should recover these closure costs as set forth herein as part of this Agreement.

2.1.2 The amount of plant closure costs incurred through September 30, 2015 and included in Liberty Black Mountain's rate case is \$1,133,080.51. As part of this Agreement, Liberty Black Mountain has agreed not to seek recovery of \$200,000 of legal costs incurred in connection with the Marshall litigation, an action brought by a homeowner against Liberty Black Mountain seeking closure of the Plant.

2.1.3 Of the \$1,133,080.51 of Plant closure costs incurred through September 30, 2015 and included in Liberty Black Mountain's rate application, the Resort has agreed that \$108,000 should be recovered from the Resort as part of the rate for effluent for the remaining months from the date of the Commission's final decision in the ongoing 2015 rate case until the Plant is scheduled to close on November 30, 2018. For example, if the Commission's final rate decision is issued at the end of September 2016, then the effluent rate submitted by Liberty Black Mountain in the final rate schedules would be set at approximately \$635 per acre-foot. No rate of return would be earned by Liberty Black Mountain on the \$108,000. If the \$108,000 is fully recovered before the plant closes, then the tariff will provide that the effluent rate reverts to the current rate of \$150 per acre-foot.

2.1.4 The Signatories agree that the remaining amount, \$825,080.51, are reasonable and prudent costs incurred by Liberty Black Mountain in connection with the closure of the Plant and that such costs should be subject to recovery as requested in Liberty Black Mountain's rate application, as modified herein as part of the consideration for this Agreement.

**PROPOSED SETTLEMENT AGREEMENT**  
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2.1.5 The Signatories agree that the estimated cost of replacement capacity of \$10 per gallon for a total cost of \$1.2M to be paid to Scottsdale following execution of an amendment to the Scottsdale Agreement is known and measurable, reasonable and prudent, and once paid by Liberty Black Mountain, such cost should be subject to cost recovery as contemplated in this Agreement.

2.1.6 Liberty Black Mountain's plan for closure of the Plant is Option 2—City of Scottsdale, Tom Darlington Drive – Single FM w/ Ex Backup as shown in Exhibit 1. The Town, BHOA, and the Resort have reviewed the alignment for that closure option and agree with Liberty's plans for closure and that the \$3,899,700 of estimated costs for closure under Option 2, which amount includes the \$1.2M for replacement capacity discussed in Section 2.1.5 above appear just, reasonable and necessary. The Signatories agree and acknowledge that those costs are still estimates and subject to change.

**2.2 Recovery of Plant Closure Costs.**

2.2.1 The Signatories acknowledge that the Commission approved a Plant closure cost surcharge mechanism in the Phase 1 Decision, however, the Signatories further acknowledge and agree that certain modifications to the prior relief approved by the Commission are necessary and reasonable as some circumstances have changed beyond Liberty Black Mountain's control since the Phase 1 and Phase 2 Decisions were issued.

2.2.2 The Signatories agree that the Plant closure costs should be recovered using a staged surcharge approach as follows:

2.2.2.1 **Stage 1 Surcharge.** A Stage 1 Surcharge estimated at \$6.31 per customer per month for recovery of Liberty Black Mountain's \$825,080.51 of closure costs already incurred pursuant to Section 2.1.4 herein, subject to the provisions above and as requested in the 2015 Rate Case. The first stage of the Plant recovery cost surcharge will go into effect with the new rates approved in the pending 2015 Rate Case.

2.2.2.2 **Stage 2 Surcharge.** A Stage 2 Surcharge of \$7.96 per month, bringing the total estimated Stage 1 and Stage 2 surcharge cost to \$14.27 per customer per month. The Stage 2 Surcharge will go into effect within 90 days of Liberty Black Mountain's payment of up to \$1,200,000 to the City of Scottsdale.

2.2.2.3 **Stage 3 Surcharge.** A Stage 3 Surcharge estimated to be an additional \$16.70 per month, bringing the total of the estimated Stage 1-3 surcharges to \$30.97. That Stage 3 Surcharge is based on estimated costs of closure of the Plant, exclusive of the replacement capacity cost, equal to \$2,699,700 as discussed above in Section 2.1.6. The Stage 3 surcharge would go into effect within 90 days of the Plant being closed on November 30, 2018.

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2.2.2.4 **Removal Costs.** The costs to remove the Plant from its present location and to remediate the site, along with any net proceeds from the sale of the remediated land, are not included in the estimated closure costs discussed in Sections 2.2.2.1, 2.2.2.2, and 2.2.2.3 above and will not be subject to recovery through a Plant cost recovery surcharge mechanism. Instead, Liberty Black Mountain may seek to recover the additional costs of removal in a rate case to be filed as soon as possible after all the costs to close the Plant and remove it and remediate the site have been incurred.

2.2.3 The Signatories acknowledge that the Commission has authority over ratemaking in Arizona, including the ratemaking terms set forth in this Section 2.2 of this Agreement. Should the Commission deem an alternative cost recovery mechanism to be reasonable and in the public interest, and such alternative is acceptable to Liberty Black Mountain, then subject to Section 3.1.3 the Resort, Town and BHOA agree to support such mechanism as an acceptable alternative to the surcharge mechanism agreed to in Section 2.2.2 hereinabove.

**2.3 Additional Joint Obligations.**

2.3.1 The Town and Liberty Black Mountain agree to propose a separate wastewater tariff for light industrial customers, such as breweries, for which water usage greatly exceeds their demand on the wastewater system, and which tariff would not compute wastewater charges based on the customer's water usage, but on some other appropriate basis (e.g. actual wastewater flows). Such tariff shall be filed in the 2015 Rate Case on or before December 22, 2015.

2.3.2 Following execution of this Agreement and submission to the Commission in accordance with Section 3.1.2 below, the Signatories agree to reasonably cooperate in obtaining the agreement of the Commission's Utilities Division Staff and the Residential Utility Consumer Office to the material terms of this Agreement and, if possible, an agreement of all parties to resolve the 2015 Rate Case that is consistent with the rate design presented by Liberty Black Mountain in its rate application.

**2.4 Additional Obligations of Liberty Black Mountain.**

2.4.1 Liberty Black Mountain will take reasonable steps to complete its negotiations with Scottsdale and enter into a revised wastewater treatment agreement that allows Liberty Black Mountain close the Plant and obtain 120,000 gallons per day of replacement capacity at a price not to exceed \$10 per gallon.

2.4.2 Liberty Black Mountain will close the Plant on November 30, 2018, or earlier if all required permits are in place and the Resort agrees to an earlier closure date. Liberty will continue to provide effluent to the Resort until that closure date subject to this Agreement.

2.4.3 Liberty Black Mountain will remove the Boulders WWTP and remediate the site in accordance with applicable environmental standards within a reasonable time after the

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**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

closure of the WWTP. Liberty Black Mountain will comply with all applicable BHOA guidelines in any subsequent development of the site. Roads and property within the Boulders community affected by the construction of Option 2 and the remediation of the site will be restored by Liberty Black Mountain to substantially the same condition as existed prior to the such construction/remediation work.

2.4.4 Following remediation, Liberty shall cause the Plant site to be put up for sale. Liberty, the BHOA and Town will cooperate to determine the sales price and sell the Plant site at the best price available given then current market conditions. Liberty shall have the final decision whether to accept an offer for the Plant site, but must reasonably seek the cooperation and input of the Town and BHOA before accepting any offer on the Plant site.

**2.5 Additional Obligations of the Resort.**

2.5.1 The Resort agrees to continue to take and pay for the full output of effluent from the Plant until the Plant is closed on or before November 30, 2018 at the effluent rate agreed to as part of this Agreement.

2.5.2 Upon the filing with the Commission of the Agreement, Liberty Black Mountain, the Resort, Wind P1, and BHOA will request that the Court of Appeals stay all proceedings in the Appeal pending resolution of the 2015 Rate Case, and if the Settlement Agreement is approved by the Commission in the 2015 Rate Case in accordance with Section 3 below, the Resort and Wind P1 shall file a withdrawal of the Appeal and the Resort and Liberty Black Mountain will forever discharge and release each other from any claims brought or which could have been brought under the EDA in connection with the closure of the Plant.

**3 COMMISSION EVALUATION OF PROPOSED SETTLEMENT.**

3.1.1 The Signatories acknowledge and agree that the determination of Liberty Black Mountain's fair value rate base and the setting of just and reasonable rates thereon will be made by the Commission based upon its own independent evaluation and determination of the record in the 2015 Rate Case.

3.1.2 Following execution by each of the Signatories, the Agreement shall be jointly filed with the Commission along with testimony from Liberty Black Mountain, the Resort, and the Town, and written public comment from BHOA, supporting the Agreement and requesting that the Commission approve the material terms that require Commission approval.

3.1.3 If the Commission fails to issue an order adopting all material terms of this Agreement, or modifies or adds material terms to this Agreement, any or all of the Signatories may withdraw from this Agreement, and such Signatory or Signatories may pursue their respective remedies at law without prejudice. For the purposes of this Agreement, whether a term is material shall be left to the reasonable discretion of the Signatory choosing to withdraw from the Agreement. If a Signatory withdraws from the Agreement pursuant to this Section 3.1.3, and files an application for rehearing with the Commission, the other Signatories shall support the application for rehearing by filing a document to that effect with the Commission.

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

3.1.4 The Signatories agree that this Agreement will not have any binding force and effect until its material terms are adopted in an order of the Commission, except that this provision shall not relieve the Signatories of their obligations pursuant to Section 3.1.2 of this Agreement.

3.1.5 If requested by Liberty Black Mountain, the Signatories agree to support a request for expedited approval of the Agreement and resolution of the 2015 Rate Case.

**4 MISCELLANEOUS PROVISIONS.**

4.1.1 Each Signatory whose signature appears below is fully authorized and empowered to execute this Agreement. Each Signatory has been represented by competent legal counsel and understands all of the terms of this Agreement, has had an opportunity to participate in the drafting of this Agreement and fully review this Agreement with its counsel before signing, and executes this Agreement with full knowledge of the terms of the Agreement.

4.1.2 The acceptance by any Signatory of a specific element of this Agreement shall not waiver or compromise of any claim, issue or position in the 2015 Rate Case not specifically addressed by this Agreement.

4.1.3 This Agreement represents the Signatories' mutual desire to compromise and settle in good faith the issues settled in this Agreement in a manner consistent with the public interest. The Signatories agree that the issues and disputes in the Appeal and in the 2015 Rate Case present a unique set of circumstances that has attracted the interest of a large number of customers. To achieve consensus for settlement, the Signatories are accepting positions that, in any other circumstances, they might be unwilling to accept. They are doing so because the Agreement, as a whole, with its various provisions for settling the unique issues presented by this case, is consistent with their long-term interests and the broader public interest. The Signatories do not intend that their acceptance of a specific provision of this Agreement be considered as precedent for acceptance of that element in any other context. No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.

4.1.4 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.

4.1.5 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable.

4.1.6 The Signatories shall make reasonable and good faith efforts necessary to support and defend this Agreement and obtain a Commission order approving its material terms and, if necessary in court if challenged by another person or entity. Subject to Section 3 above, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue. Nothing in this Section 4.1.6 shall be construed to require a Signatory to fund the defense of any other Signatory. If defense of this Agreement is reasonably

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

needed in any court or other regulatory agency, then each Signatory shall be deemed to have satisfied its duty under this Section 4.1.6 by providing a witness to testify in such action in support of this Agreement, but a Signatory shall not be required to pay an attorney to participate in such action, or to join as a party to such action.

4.1.7 This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.

4.1.8 Under Section 38-511, Arizona Revised Statutes, as amended, the Town may cancel this Agreement within three years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of another Signatory or any entity affiliated with another Signatory through common ownership in any capacity or a consultant to another Signatory with respect to the subject matter of this Agreement. In the event the Town elects to exercise its right under Section 38-511, Arizona Revised Statutes, as amended, the Town will immediately give written notice thereof to the other Signatories and no Signatory shall be bound further by the provisions of this Agreement.

4.1.9 The Recitals set forth in Section 1 of this Agreement are part of this Agreement and fully incorporated into the terms and conditions of the Signatories' agreement to settle as set forth in in this Agreement.

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP.

By: Matthew Gulek  
Its: President UT

CP BOULDERS, LLC dba the BOULDERS  
RESORT

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

TOWN OF CAREFREE

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

WIND PI MORTGAGE BORROWER, L.L.C.

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

BOULDERS HOMEOWNERS  
ASSOCIATION

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

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

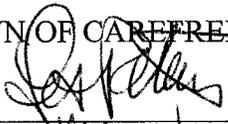
LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP.

CP BOULDERS, LLC dba the BOULDERS  
RESORT

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

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

~~TOWN OF CAREFREE~~

By:  \_\_\_\_\_  
Its: Mayor \_\_\_\_\_

WIND P1 MORTGAGE BORROWER, L.L.C.

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

BOULDERS HOMEOWNERS  
ASSOCIATION

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

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP.

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

CP BOULDERS, LLC dba the BOULDERS  
RESORT

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

TOWN OF CAREFREE

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

WIND P1 MORTGAGE BORROWER, L.L.C.

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

BOULDERS HOMEOWNERS  
ASSOCIATION

By: *Joe Mente*  
Its: PRESIDENT

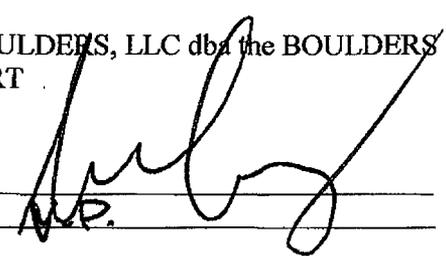
**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP.

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

CP BOULDERS, LLC dba the BOULDERS  
RESORT

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



TOWN OF CAREFREE

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

WIND P1 MORTGAGE BORROWER, L.L.C.

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

BOULDERS HOMEOWNERS  
ASSOCIATION

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

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

LIBERTY UTILITIES (BLACK  
MOUNTAIN SEWER) CORP.

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

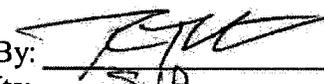
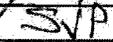
CP BOULDERS, LLC dba the BOULDERS  
RESORT

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

TOWN OF CAREFREE

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

WIND P1 MORTGAGE BORROWER, L.L.C.

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

BOULDERS HOMEOWNERS  
ASSOCIATION

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

**PROPOSED SETTLEMENT AGREEMENT**  
**DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207**

**Exhibit - 1**

Liberty Utilities - Black Mountain Treatment Options after removal of the WRF

Description	Option 1 Town of Cave Creek Cave Creek Road		Option 2 City of Scottsdale TDD - Single FM w/ Ex Backup		Option 3 City of Scottsdale Mule Train-Hayden Rd		Option 4 Boulders Existing FMs w/ New Sewers	
	\$		\$		\$		\$	
Bypass sewers at WRF	\$	240,800	\$	240,800	\$	240,800	\$	240,800
Decommission & remove WRF	\$	439,200	\$	439,200	\$	439,200	\$	439,200
Capital cost for capacity	\$	4,022,225	\$	1,200,000	\$	1,200,000	\$	1,200,000
Additional charges								
Operation charges	\$45 plus \$3 per 1,000 gal		Yes - new connections	No - exist contract	No - exist contract	No - exist contract	No - exist contract	
Commercial LS requires upgrading			Yes	Yes	No	No	No	
Estimated Cost of Upgrade	\$	408,800	\$	411,700	\$	-	\$	-
Ex FM - Future End-of-life Replacement			No	No	Yes - 10,000-ft replace min one FM	Yes - 10,000-ft replace min one FM	Yes - 10,000-ft min one FM	
FM Replacement - Pipe Bursting	\$	-	\$	-	\$	1,160,000	\$	1,160,000
Sendal Rock LS								
Requires upgrades to four LS								
Estimated Cost of Upgrades	\$	1,084,200	\$	-	\$	-	\$	-
Force Main construction								
Requires new force mains			Yes	Yes - single FM	Yes plus gravity line	Yes plus gravity line	No	
Approximate length of FM/SS			1,100-ft	12,900-ft	1,000-ft (FM) + 7,200-ft (SS)	1,000-ft (FM) + 7,200-ft (SS)	No	
Estimated Cost for Force Mains	\$	422,400	\$	990,900	\$	1,320,300	\$	1,320,300
Estimated Cost for Pavement Replmt.				617,000		included w/ FMs		
Estimated Cost 10-ft wide Easements						1,000,000		
Replacement Gravity Sewers - negative slopes, under capacity, and under buildings								
Approximate length of SS								
Estimated Cost for Sewers								5,960-ft
Estimated Cost Pavement Replmt.								1,848,200
Estimated Cost 10-ft wide Easements								712,900
Refinment to Boulders								431,600
Available for purchase			Yes	Yes - through IWDS	Yes - through IWDS	Yes - through IWDS	Yes	
Requires new pipeline			4,000-ft	No	No	No	No	
Estimated cost to construct	\$	974,700	\$	-	\$	-	\$	-
Total Estimated Capital Costs	\$	7,562,425	\$	3,859,701	\$	5,860,400	\$	6,032,900