

SETTLEMENT AGREEMENT

This Agreement is effective upon the date of the last signature below ("Effective Date") and is by and between Open Studios, Inc. a Colorado not-for-profit company having a principal place of business at 1301 Spruce Street Boulder, Colorado ("OS") and Boulder Metalsmithing Association, a Colorado Not-for-Profit company having a place of business at 4919 Broadway, Unite 14, Boulder, Colorado ("BOMA").

WHEREAS, OS filed a complaint against BOMA in the United States District Court for the District of Colorado under *Open Studios, Inc. v. Boulder Metalsmithing Association*, case number 1:16-cv-02002-WJM-KLM (the "Lawsuit") claiming exclusive rights to the trademark "Open Studios" and alleging trademark infringement, unfair competition and deceptive trade practices against BOMA for use of the term "open studio" in connection with its studio access and art studio membership program;

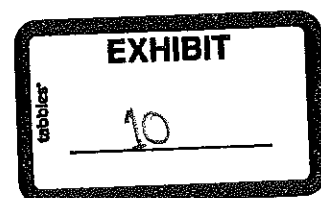
WHEREAS, BOMA responded to the OS complaint with a motion to dismiss alleging the terms "Open Studio" and "Open Studios" are generic; and

WHEREAS, the parties mediated this case on October 13, 2016 and arrived at a settlement which is finalized in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties agree as follows:

1. BOMA agrees to only use the phrase "open studio" in digital and print media and/or advertising to indicate that its metalsmithing art studio is open to the public and/or various artists for any reason (e.g. learning, practicing, creating, displaying and/or studying art.) BOMA agrees not to use the words "open studio" with the capital letters "Open Studio." BOMA further agrees not to use the phrase "open studio" to denote an event.

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that this Agreement should not be construed as an admission or acknowledgment of liability or responsibility whatsoever on the part of any individual, person, corporation, agent, servant, employee or representative thereof, herein



released, by each of whom all liability or responsibility is expressly denied.

3. Within twenty (20) days of the Effective Date, the parties shall dismiss the Lawsuit with prejudice in the format attached as Exhibit A, hereto.

4. The Parties, in either their individual or representative capacities, do hereby release, acquit and forever discharge each other and each, every and all of their officers, directors, shareholders, agents, servants, employees, representatives, attorneys, successors and assigns, from all claims, demands, attorney fees, costs or expenses, of whatever kind or nature, whether known or unknown, including any claims arising out of, alleged in or related to the consolidated civil action pending in the Lawsuit.

5. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and all prior agreements, understandings and negotiations are merged into this Agreement. This Agreement shall not be modified except in writing signed by the parties.

6. Waiver of any breach of this Agreement shall be ineffective unless it is in writing and signed by the party waiving compliance, and shall not be considered a waiver of any other breach.

7. This Agreement shall be binding on the parties and their successors and assigns, affiliates, subsidiaries, officers, servants, employees, agents, representatives, licensees, shareholders and all parties in active participation with any of them.

8. The parties agree not to disparage each other. The parties agree to notify each other if one of them believes a disparaging remark is made by providing written notice of the remark considered disparaging along with the basis for such claim to the alleged disparaging party pursuant to the Notice to Cure provision set forth below. Upon receipt of the information from the alleged disparaged party, the alleged disparaging party shall have seven (7) business days to review and respond to the disparaging remarks. This section is not intended nor should it violate either party's right under the First Amendment of the U.S. Constitution. Should the parties continue to disagree over the disparaging remark and its removal, the parties agree to first mediate

their disagreement with a mutually agreed upon mediator. If the parties cannot resolve their dispute in mediation, then they shall have the right to move forward with arbitration.

9. Notice to Cure. A party shall be in default under this Agreement if it fails to perform any material obligation in a timely manner. If either party is in default under this Agreement, the non-defaulting party shall deliver written notice specifying the default to the defaulting party. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. All notices shall be in writing and mailed to such address as is designated in writing and sent by United States certified or registered mail, return receipt requested, or delivered by a national overnight express service, with proof of delivery, email with proof of delivery, or personal delivery and shall be effective upon receipt by the party for whom intended. Notices shall be delivered to the respective registered agent for the parties. Either party may, by notice properly delivered as provided above, change the names and addresses to which future notices and deliveries to that party shall be made.

10. Arbitration. Any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, excluding any dispute relating to infringement, which have not been resolved by good faith negotiations between the parties or through mediation, shall be resolved by final and binding arbitration in Colorado under the rules of one of the following arbitration groups: AAA, JAMS or JAG. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this Agreement. Any award rendered in such arbitration may be enforced by either party in either the federal or state courts of Colorado.

11. The parties represent and warrant that they have full authority to enter into this Agreement.

12. The rule of construction that interprets contracts against the drafter shall not apply to this Agreement.

13. This Agreement and all issues that arise herein shall be governed by and construed under the laws of the State of Colorado except that any questions governed by and determined under the statutes of the United States of America shall be governed

by and determined under such statutes. Jurisdiction, venue and choice of law with respect to all matters between the Parties relating to this Agreement shall reside exclusively with the United States District Court for the District of Colorado. In the event the Federal Court does not have jurisdiction, then the matter may be brought in any other court in Colorado where jurisdiction is proper.

14. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one agreement.

BOULDER METALSMITHING ASSOCIATION

OPEN STUDIOS, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____