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T.R.A. DOCKET ROOM

IN RE:)
)
PETITION TO SHOW CAUSE WHY A CEASE AND) **DOCKET NO. 12-00077**
DESIST ORDER AND CIVIL PENALTIES &)
SANCTIONS SHOULD NOT BE IMPOSED)
AGAINST LAUREL HILLS CONDOMINIUM)
PROPERTY OWNERS ASSOCIATION)

PETITION TO ADOPT SETTLEMENT AGREEMENT

Comes now Tennessee Regulatory Authority (“TRA” or “Authority”) Staff acting as a Party (“Party Staff”) appointed in Docket No. 12-00030 and Laurel Hills Condominium Property Owner’s Association (“Laurel Hills”) to respectfully request that the Authority adopt the Settlement Agreement attached hereto as Exhibit 1. In support of this Petition to Adopt Settlement Agreement (“Petition”) the parties would show as follows:

Procedural History

1. On April 10, 2012, Laurel Hills filed a Petition for a Certificate of Public Convenience and Necessity (“CCN”) to operate a water system on Renegade Mountain in Cumberland County, Tennessee.¹
2. On July 7, 2012, the Authority issued an Order requiring Laurel Hills to show cause why a cease and desist order, civil penalties, and other sanctions should not be levied against

¹ *Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Convenience and Necessity*, Docket No. 12-00030, April 10, 2012.

them for violations of state law.²

3. On April 18, 2013, after a full hearing the Authority issued an Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System (“April 18th Order”) denying Laurel Hills’ petition for a CCN and ordered that Laurel Hills divest itself of the water system.³
4. The Authority determined that Laurel Hills lacked the managerial and financial capability to operate the water system.⁴
5. On June 14, 2013, Laurel Hills appealed the April 18th Order to the Tennessee Court of Appeals.
6. On April 14, 2014, the Tennessee Court of Appeals upheld the Authority’s April 18th Order.⁵
7. The Court of Appeals found that the TRA had the authority to order Laurel Hills to divest itself of the water system.⁶
8. Laurel Hills has to date been unable to find a new owner for the system.
9. At this time Laurel Hills is willing to voluntarily place the water system into receivership in order to comply with the Authority’s requirement that Laurel Hills divest itself of the water system.
10. A voluntary receivership would reduce costs to the Authority compared to forcing laurel Hills into receivership and has the potential to shorten the time frame during which the system would need to be operated in a receivership.

² *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause why a Cease and Desist Order and Civil Penalties & Sanctions Should not be Imposed Against it for Violations of State Law*, July 7, 2012.

³ *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of the Water System*, April 18, 2013.

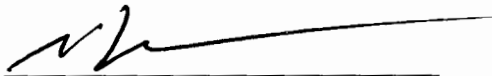
⁴ *Id.* at pp 9 - 16

⁵ *Laurel Hills Condominiums Property Owners Ass. v. TRA*, 2014 WL 1494126, *1 (Middle Dist., 2014).

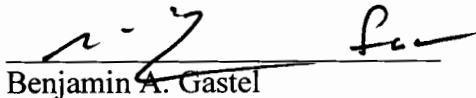
⁶ *Id.* at p. 6.

Wherefore, the parties respectfully request that the Authority approved the attached Settlement Agreement.

Respectfully Submitted,



Shiva K. Bozarth, BPR No.22685
Counsel for Party Staff
Tennessee Regulatory Authority
502 Deaderick Street
Nashville, Tennessee 37243



Benjamin A. Gastel
Counsel for Laurel Hills Condominiums Property Owners Association
Branstetter, Stranch, & Jennings, PLLC
227 2nd Avenue North, Suite 400
Nashville, TN 37201

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into this 27th day of July, 2015, by, between, and among Laurel Hills Condominiums Property Owners Association ("Laurel Hills"), a Tennessee non-profit corporation, on the one hand, and the Tennessee Regulatory Authority ("TRA" or "Authority") Staff acting as a Party ("Party Staff") appointed in Docket No. 12-00030, on the other hand.

The TRA currently has a docket pending (Docket Number 12-00077, the "Show Cause Proceeding") against Laurel Hills relating to Laurel Hills alleged violation of state law in the operation of a water system located on Renegade Mountain (the "Renegade Mountain Water System"). In the Show Cause Proceeding, Party Staff seeks to fine Laurel Hills for these alleged violations.

On April 13, 2013, in a separate but related proceeding (Docket Number 12-00030, the "CCN Proceeding"), the TRA denied Laurel Hills a certificate of public convenience and necessity to operate the Renegade Mountain Water System and ordered Laurel Hills to divest the water system. The CCN Proceeding has not resulted, to date, in Laurel Hills divesting the Renegade Mountain Water System.

Recognizing that bona fide disputes and controversies exist as to the claims against and the liability of Laurel Hills, the undersigned have entered into this Settlement Agreement and Release in order that each and every aspect of such disputes and controversies and all claims can be resolved between Party Staff and Laurel Hills and that the risk and cost of any further litigation between them can be forever avoided.

IT IS THEREFORE AGREED AS FOLLOWS:

I.

RELEASE, ACQUITTAL, AND DISCHARGE

In consideration of the items fully detailed in Section II below, the TRA hereby completely releases, acquits, and forever discharges the following:

- (a) Laurel Hills and its employees, representatives, attorneys, assigns, predecessors, successors, corporate parents, subsidiaries, affiliates, divisions, officers, members, managers, and/or directors.

All of the individuals or entities named or referred to above are hereinafter collectively referred to as the “Released Parties.” The Released Parties are completely released, acquitted, and discharged from the following claims:

- (a) All claims that are asserted in the Show Cause Proceeding or in any way related to any TRA proceeding against Laurel Hills; and
- (b) Any and all known or unknown claims related to the Show Cause Proceeding or the construction, ownership, and operation of the Renegade Mountain Water System by the Released Parties that have accrued as of the Effective Date.
- (c) The Released Claims shall include all claims pending in Cumberland County Chancery Court, Dkt. No 2012-CH-560 (the “Cumberland County Proceeding”).

All of the aforementioned claims are referred to as the “Released Claims.” The Released Claims shall not include any breach of this Settlement Agreement and Release.

II.

PAYMENTS AND CONSIDERATION

As consideration for the promises, agreements, obligations, releases, and representations, and any and all other undertakings included in this Settlement Agreement and Release, Laurel Hills and TRA agree to the following terms:

- (a) Laurel Hills shall agree to place the Renegade Mountain Water System into voluntary receivership and forever remove itself from the operations and management of the Renegade Mountain Water System;
- (b) Laurel Hills shall agree to place the Renegade Mountain Water System into voluntary receivership and agree to the TRA's choice of receiver (the "Receiver");
- (c) Laurel Hills shall agree to make all records Laurel Hills has related to the water operations available on the Effective Date to the Receiver. Such records shall include a list of all current customers and contact information, all current accounting records, all current maps and schematics related to the Renegade Mountain Water System, and generally all records Laurel Hills has necessary for the efficient management of the Renegade Mountain Water System. Such records shall be made available to the Receiver immediately;
- (d) Laurel Hills shall agree to transfer title to all assets identified on Schedule A and execute any document reasonably necessary to effectuate such transfer of legal title to said assets.

- (e) Laurel Hills shall agree to cooperate with the Receiver and make any personnel reasonably available to the Receiver in order to ensure the orderly transfer and continued operation of water service during the transfer process to the Receiver.
- (f) Laurel Hills shall procure an irrevocable license from the current registered title holder to ensure that the lines, pipes, pump station, and other water system-related assets have a valid property right to remain in the locations where they are found on the Effective Date.
- (g) Laurel Hills shall effectuate the transfer of the water tower and water tower parcel located on Renegade Mountain from the current title holder to the Receiver subject to the following conditions:
 - 1. The deed of conveyance containing a reverter clause for the parcel to revert to the current title holder if the water tower or any replacement thereof is not used for water utility purposes or if the parcel ceases to be used as part of the Renegade Mountain Water System for utility purposes. However, the TRA, the receiver, and their successors in title are not obligated to utilize the water tower in utility operations;
 - 2. The deed containing a deed restriction calling for the use of a standard or neutral color scheme for the painting of the water tower, routine maintenance of the water tower parcel to include its landscaping, restricting such activities as chain link/barb wire fencing and, buildings or structures unrelated to utility purposes or structures not required for the support or maintenance of the water tower;

3. The subsequent conveyance of an easement or license to the current title holder as the developer of Renegade Mountain to use the water tower for placement of the name of the development and to light the tower at the sole cost and expense of the developer.
- (h) The parties agree that the legal fees awarded to Laurel Hills in the TRA Order of April 13, 2013 in the CCN Proceedings which are currently included in the water rate may continue to be part of the rate charged in the future as provided in said order if subsequently approved by the Authority in a new rate case.
- (i) The parties agree, except as provided in this agreement, that the payment of their respective attorneys' fees and costs, including referral fees, and the repayment or compromise of any and all claims and liens, including but not limited to subrogation, property damage, and attorneys' liens or claims, or any other liens or third-party claims, will be the sole responsibility of each party.
- (j) The parties agree that Laurel Hills will continue to pay the water bills owing to Crab Orchard Utility District up to the Effective Date.. All outstanding bills owed to Crab Orchard Utility District or any other utility service provider on the date of transfer of the water system shall be the responsibility of Laurel Hills and all accrued accounts receivable owed by water customers to Laurel Hills as of the date of transfer of the water system shall be collected by the Receiver and paid to Laurel Hills.

III.

DISMISSAL WITH PREJUDICE AND COSTS

The parties hereby agree to execute through their respective attorneys an Agreed Order of Dismissal with Prejudice dismissing with prejudice the Show Cause Proceeding upon completion of Laurel Hills' obligations under this Agreement..

The parties acknowledge that the Cumberland County proceeding will only be dismissed upon full and final transfer of ownership of the Renegade Mountain Water System to the Receiver. Upon transfer of the Renegade Mountain Water System to the Receiver, counsel for Laurel Hills and counsel for the TRA shall mutually agree to negotiate in good faith the orderly dismissal of the claims in the Cumberland County Proceeding.

V.

**REPRESENTATIONS AND WARRANTIES
OF THE LAUREL HILLS**

The Laurel Hills expressly warrants and represents to the TRA that:

1. It is legally competent to execute this Settlement Agreement and Release.
2. It is the legal owner of the Renegade Mountain Water System.
3. It understands and agrees that this Settlement Agreement and Release is in its best interest.
4. It understands and agrees that this Settlement Agreement and Release terminates the Show Cause Proceeding.
5. It has had the benefit of professional advice of attorneys of its own choosing, and it is fully satisfied with that advice, and has relied solely and completely upon its own judgment, together with that professional advice.
6. No promise or representation of any kind has been expressed or implied to it by the TRA, or by anyone acting for them, except as is expressly stated in this Settlement Agreement and Release.

7. It is not relying upon any advice of the TRA, or of their counsel or representatives, as to the legal and tax consequences of this Settlement Agreement and Release.
8. It has read, had explained to it by its attorney to its satisfaction, and understands the dismissal with prejudice to be entered in the Show Cause Proceeding, and has authorized its entry.

VI.

ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basis and intent of this Settlement Agreement and Release.

VII.

SEVERABILITY

A determination that the application of any provision of this Settlement Agreement and Release to any person or circumstance is unenforceable, invalid, or illegal shall not affect the enforceability, validity, or legality of such provision as it may apply to other persons or circumstances.

VIII.

ENFORCEMENT

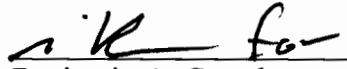
The parties acknowledge and agree that they shall have available to them all remedies at law and in equity to enforce the terms of this Agreement, including, but not limited to, the contempt powers of the courts.

IX.
EFFECTIVENESS

This Settlement Agreement and Release shall become effective immediately upon approval by the Authority.

SIGNATURE ON FOLLOWING PAGE

Approved:

A handwritten signature in black ink, appearing to read "B. A. Gastel", written over a horizontal line.

Benjamin A. Gastel
Counsel for Laurel Hills

A handwritten signature in black ink, appearing to read "Shiva Bozarth", written over a horizontal line.

Shiva Bozarth
Counsel for the Tennessee Regulatory Authority Party Staff

SCHEDULE A

LIST OF ASSETS TO BE CONVEYED TO THE RECEIVER

1. All water transmission lines;
2. All water service lines;
3. All water meters and valves;
4. The pumping station;
5. The water storage tank located on Renegade Mountain (subject to the conditions set forth in the above agreement);
6. All other tangible assets used in the Renegade Mountain Water System (as defined above);
7. All accounts receivable;
8. All rights under any contracts related to water service;
9. All service rights;
10. All other general intangible rights related to the provision of water service.