

IN THE CHANCERY COURT OF CUMBERLAND COUNTY, TENNESSEE  
THIRTEENTH JUDICIAL DISTRICT  
AT CROSSVILLE

TENNESSEE REGULATORY AUTHORITY, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
LAUREL HILLS CONDOMINIUMS )  
PROPERTY OWNERS ASSOCIATION, )  
 )  
Respondent. )

No.2012-CH-560

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ORDER TO SHOW CAUSE

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TO: Laurel Hills Condominiums Property Owners Association.

YOU ARE HEREBY ORDERED AND DIRECTED, AS BY FIAT SIGNED BY THE HONORABLE RONALD THURMAN, TO APPEAR ON THE 9<sup>th</sup> DAY OF June, 2016, AT 9:00 O'CLOCK A.M. (CENTRAL TIME), AT THE Cumberland County Judicial Court Chancery COURTROOM IN Crossville, TENNESSEE, AND SHOW CAUSE, IF ANY YOU HAVE, WHY YOU SHOULD NOT BE PUNISHED FOR CONTEMPT OF COURT, FOR FAILURE TO Comply with the Order Appointing Receivership AS ALLEGED IN THE PLEADINGS.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
SUE TOLLETT, CLERK & MASTER

**OFFICER RETURN**

I HEREBY CERTIFY AND RETURN THAT ON THE \_\_\_\_ DAY OF \_\_\_\_\_,  
20 \_\_\_\_, I SERVED THE FOREGOING ORDER TO SHOW CAUSE, AS  
COMMANDED, UPON \_\_\_\_\_, BY  
PERSONALLY TREADING AND LEAVING A COPY OF SAME AND OF THE  
PETITION WITH SAID \_\_\_\_\_.

\_\_\_\_\_  
**SHERIFF/DEPUTY SHERIFF**

**IN THE CHANCERY COURT OF CUMBERLAND COUNTY, TENNESSEE  
THIRTEENTH JUDICIAL DISTRICT  
AT CROSSVILLE**

**TENNESSEE REGULATORY AUTHORITY** )  
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Petitioner, )  
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v. )  
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**LAUREL HILLS CONDOMINIUMS** )  
**PROPERTY OWNERS ASSOCIATION** )  
 )  
Respondent. )

**No. 2012-CH-560  
Chancellor Thurman**

**PETITION FOR AN ORDER TO SHOW CAUSE**

Comes now Petitioner, Tennessee Regulatory Authority (“TRA” or “Authority”), by and through counsel, and respectfully requests that this Court issue an Order requiring Laurel Hills Condominium Property Owners Association (“Respondent”) appear and show cause why they should not be found in contempt for violation of the October 26, 2015, Order Appointing Receiver and the April 29, 2016, Amended Order Appointing Receiver.

1. On September 25, 2015, the TRA approved a Settlement Agreement and Release as well as First Addendum to Settlement Agreement (“Settlement Agreement”) which is attached hereto as Exhibit 1. The Settlement Agreement was between Respondent and the TRA.
2. The Settlement Agreement required that Respondent “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.<sup>1</sup>”
3. The Settlement Agreement required that Respondent “procure an irrevocable license from the current registered title holder to ensure that the lines, pipes, pump station, and other

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<sup>1</sup> *Settlement Agreement and Release*, ¶III(d).

water system related assets have a valid property right to remain in the locations where they are found on the Effective Date.<sup>2</sup>

4. The Settlement Agreement required that Respondent turn over the water tower and parcel of land with the water tower. The Settlement Agreement allowed that the owner of the water tower could reserve the right to place a "single 911 communications antenna owned, operated, and maintained by Cumberland County."<sup>3</sup>
5. Paragraph 6 of both the October 26<sup>th</sup> Order and the April 29<sup>th</sup> Order contains the same language:

All persons, firms, corporations and associations, including but not limited to Respondent, Laurel Hills, and its officers, directors, stockholders, members, subscribers, agents and all other persons in active concert or participation with it, are prohibited and enjoined from the transaction of further business of the Respondent's water system; from the waste, transfer or disposition of property of the Respondent's water system; from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the receivership properties; from the institution or further prosecution of any actions or proceedings, except within this receivership itself; from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Respondent; from the withholding from the Receiver of books, accounts, documents or the records relating to the business of the Respondent; from any other threatened or contemplated action that might lessen the value of the Respondent's assets or prejudice the rights of investors, creditors or any proceeding under the Receivership; or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Respondent or against its assets or any party thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Respondent, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court; from accelerating the due date of any obligation or claimed obligation; and that

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<sup>2</sup> *Settlement Agreement and Release*, ¶II(f).

<sup>3</sup> *First Addendum to Settlement Agreement and Release*, ¶1

this Court further authorizes the Receiver to apply outside of Tennessee for the relief above described.

6. Respondent delayed for months before turning over executed documents that reflected a transfer of the property. When it finally did so it had failed to transfer items as required by the terms of the Settlement Agreement. Respondent's delays forced the Receiver to perform significant additional work which has resulted in correspondingly significant additional receivership costs and fees.
7. Respondent allowed the irrevocable license to be encumbered by a conservation easement and did not disclose this encumbrance. The uncertainty caused by this encumbrance has resulted in a significant reduction in value of the receivership estate.
8. Respondent has not transferred title to the water tower in a manner consistent with the Settlement Agreement.
9. Upon information and belief Respondent is owner and/or controlled by the same investors who control Moy Toy, LLC, and has colluded with Moy Toy, LLC, to frustrate the purpose of the Settlement Agreement and to thwart the purposes of the Receiver and the intent of the Order Appointing Receiver.
10. Respondent's misconduct and collusion have delayed the efforts of the Receiver as well as the other parties to this litigation. Because of Respondent's interference or deception, the Receiver has been forced to incur costs and fees that would otherwise not have been incurred.
11. Respondent's conduct as outlined in paragraphs 1 – 10 above is in violation of Tenn. Code Ann. §29-9-102(3) & (4).

12. The Tennessee Supreme Court has found that there are four essential elements to a civil contempt case for violation of a Court Order.<sup>4</sup>

First, the order alleged to have been violated must be “lawful.” Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person’s violation of the order must be “willful.”<sup>5</sup>

13. “A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties.”<sup>6</sup> In the present case Respondent has never contested this Court’s jurisdiction or the Order Appointing Receiver.

14. The second element does not require that Order Appointing Receiver identify every manner in which Respondent could have violated it. “Orders need not be “full of superfluous terms and specifications adequate to counter any flight of fancy a contemner may imagine in order to declare it vague.”<sup>7</sup> The Order Appointing Receiver must be analyzed objectively, construing the order as a whole by reviewing “the language of the order and the circumstances surrounding the issuance of the order, including the audience to whom the order is addressed.”<sup>8</sup>

15. The burden of proof for establishing that the Order Appointing Receiver has been disobeyed or resisted is simple preponderance of the evidence.<sup>9</sup>

16. The standard for willfulness in civil contempt is not the same as criminal

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<sup>4</sup> *Konvalinka v. Chattanooga-Hamilton Co. Hosp. Auth.*, 249 S.W. 3d 346, 355 (Tenn. 2008).

<sup>5</sup> *Id.* at 355 - 356

<sup>6</sup> *Vanvabry v. Staton*, 88 Tenn. 334, at 351–52, 12 S.W. 786, 791 (Tenn. 1890).

<sup>7</sup> *Ex parte Blasingame*, 748 S.W.2d 444, 446 (Tex. 1988) (quoting *Ex parte McManus*, 589 S.W.2d 790, 793 (Tex.Civ.App.—Dallas 1979)).

<sup>8</sup> *United States v. Bernardine*, 237 F.3d 1279, 1282 (11th Cir. 2001); *United States v. Young*, 107 F.3d 903, 907–08 (D.C.Cir. 1997).

<sup>9</sup> *Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d 465, 474 (Tenn. 2003).

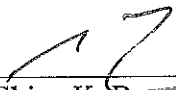
contempt.<sup>10</sup> “a person acts ‘willfully’ if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.”<sup>11</sup> Thus there is no requirement that Respondent have acted with specific intent to violate the Order Appointing Receiver only that their actions were intentional.

WHEREFORE the Tennessee Regulatory Authority respectfully moves this Court to order that pursuant to Tenn. Code Ann. §§29-9-104 & 105:

17. Respondent pay any additional costs or fees incurred because of their actions or omissions;
18. Respondent perform all obligations as agreed under the Settlement Agreement and as ordered in the Order Appointing Receiver or demonstrate by sufficient evidence that such compliance is impossible and that Respondent be ordered to pay damages sufficient to compensate the other parties for the noncompliance; and
19. Respondent pay any and all attorney or expert fees incurred by the parties to this action because of their actions or omissions.

Respectfully submitted,

FOR THE TENNESSEE REGULATORY AUTHORITY

  
\_\_\_\_\_  
Shiva K. Bozarth, BPR No. 22685  
Chief, Compliance Division  
Tennessee Regulatory Authority  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37243

<sup>10</sup> *State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Group Trust*, 209 S.W.3d 602, 612 (Tenn. 2006).

<sup>11</sup> *Id.*

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the forgoing document on the following persons by depositing a copy of same in the U.S. Mail, postage prepaid, addressed to them at the addresses shown below:

Donald Scholes  
Benjamin Gastel  
227 Second Avenue North  
Fourth Floor  
Nashville, Tennessee 37201

Melanie Davis  
329 Cates Street  
Maryville, Tennessee 37801

Vance Broemel  
Consumer Advocate and Protection Division  
Tennessee Attorney General and Reporter  
P.O. Box 20207  
Nashville, Tennessee 37202

Roger York  
456 North Main Street, Suite 201  
Crossville, Tennessee 38555

This the 23<sup>rd</sup> day of May, 2016.

  
\_\_\_\_\_  
Shiva K. Bozarth



# Exhibit 1

**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 Laure 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:**



Benjamin A. Gastel  
Counsel for Laurel Hills



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.

**FIRST ADDENDUM TO  
SETTLEMENT AGREEMENT AND RELEASE**

THIS FIRST ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE is made and entered into this \_\_\_\_ day of August, 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.

Laurel Hills and TRA agree to the following terms and conditions which shall either add to or modify the Settlement Agreement and Release in the following respects:

1. The terms and conditions set out in Section II, Paragraph(g) are hereby modified to the extent Laurel Hills will effectuate the transfer of the water tower and water tower parcel to the Receiver with a modified reverter clause and/or deed restrictions to allow the opportunity for an easement for a single 911 communications antenna owned, operated, and maintained by Cumberland County to be placed on top of the water tank subject to the following conditions:

- (a) the antenna be used solely for emergency communications;
- (b) the antenna be designed, constructed, and installed according to plans and specifications, i.e. height, type, etc. as represented by the County, and approved by the current title holder;
- (c) full compensation (including transaction costs) paid to the current title holder at appraised value for the easement and related easement rights;
- (d) all deed restrictions currently set out in Paragraph(g) above-referenced except as modified herein; and
- (e) the easement document be executed by the current title holder and such transaction be effected before conveyance of the fee title to the water tower and the water tower parcel to the Receiver.

2. Except as amended herein, all terms, conditions, and provisions of the Settlement Agreement and Release shall remain unaffected and in full force and effect as written.

**Approved:**



Benjamin A. Gastel  
Counsel for Laurel Hills



Shiva Bozarth  
Counsel for the Tennessee Regulatory Authority Party Staff

# TENNESSEE REGULATORY AUTHORITY



502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37243

Shiva.Bozarth@TN.gov

May 23, 2016

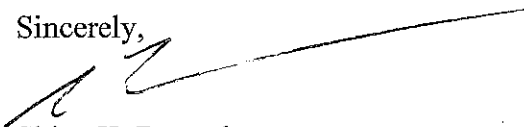
Sue Tollet  
Cumberland County Clerk & Master  
60 Justice Center Drive, Suite 226  
Crossville, Tennessee 38555

Re: *Tennessee Regulatory Authority v. Laurel Hills*, Docket No. 2012-CH-560

Dear Ms. Tollet:

Enclosed please find the originals of a Petition for an Order to Show Cause and an Order to Show Cause for filing in the above docket as well as two copies of each to be stamped and returned. I have also enclosed a return envelope.

Sincerely,



Shiva K. Bozarth  
Chief of Compliance

Enclosure: Petition for an Order to Show Cause  
2 copies  
Return envelope

CC: Chancellor Ronald Thurman  
Ben Gastel (via certified mail)  
Vance Broemel  
Melanie Davis  
Roger York  
Everett Sinor  
Daniel J. Moore (via certified mail)

Reid  
OR  
5/25/16  
RMZ