

RELEASE AND SETTLEMENT AGREEMENT

OCT 1 1999

THIS RELEASE AND SETTLEMENT AGREEMENT (the "Release") is made on this the 22d day of JULY, 1999, by and between Douglas Bryant, an individual resident of Kenton County, Kentucky with an address at 1719 Highwater Road, Ludlow, Kentucky 41016 ("Plaintiff"); the City of Bromley, a city of the Fifth Class, and the individual members of the Bromley City Council consisting of: Mayor Jim Miller, Patty Grimes, Joe Tewes, Dave Radford, Charlie Foulks, Sharon Hamilton, Dan Gardiner, and City Attorney R. Kim Vocke ("hereinafter referred to collectively as Defendants"); and the Northern Kentucky Water Service District, an entity subject to the provisions of KRS Chapters 74 and 278, ("Third Party Defendant").

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WITNESSETH:

WHEREAS, the parties hereto are parties to a lawsuit styled Douglas Bryant v. The City of Bromley v. Northern Kentucky Water Service District, Civil Action No. 96-CI-01349, currently pending in the First Division of Kenton Circuit Court, (the "action"), which was originally brought in the Kenton Circuit Court, but was removed by the Defendants to the United States District Court for the Eastern District of Kentucky at Covington in the case styled Douglas Bryant v. The City of Bromley, et. al., Case No. 96-172, where Defendants Motion to Dismiss Plaintiffs' federal claims was granted and the remaining state law claims were remanded back to the Kenton Circuit Court;

WHEREAS, in the action Plaintiff has asserted disputed state law claims of malicious prosecution and trespass/taking against the City of Bromley seeking monetary damages and equitable relief in the form of continuing water service through an unauthorized, self-administered tap onto the City of Bromley's 8-inch water line which runs just outside the City limits adjacent to Plaintiff's property line; and

WHEREAS, in the action Defendants have asserted disputed claims of indemnity from the Third Party Defendant.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto now desire to compromise and settle their respective claims and to dismiss the action, pursuant to the following terms and conditions:

(A) The parties agree that upon execution of this agreement Plaintiff will become a retail customer of the Third Party Defendant, [REDACTED] and Plaintiff will hereafter pay the Northern Kentucky Water Service District for his water usage in accordance with the Northern Kentucky Water Service District's rates, rules and regulations.

(B) The Northern Kentucky Water Service District agrees to service Plaintiff with water as a retail customer in accordance with its rates, rules and regulations at any one or all of his parcels of land situated along Highwater Road outside the City of Bromley's boundaries. The Northern Kentucky Water Service District shall have no obligation to service Plaintiff as a retail customer if Defendant City of Bromley fails to provide adequate water supply to Plaintiff's parcels.

(C) The Northern Kentucky Water Service District agrees hereafter not to charge the City of Bromley for any amounts of water actually used by Plaintiff on each parcel of his land that is serviced by a tap onto the City's 8-inch water line, such actual usage being measured by an appropriate water meter, nor for any amount of water reasonably attributable to leakage or waste occurring on any parcel of Plaintiff's land serviced by such a tap.

(D) Plaintiff agrees to pay the City of Bromley, upon execution of this Agreement, all sums due and owing for water received and used by him since the date of his unauthorized, self-administered tap onto the City's 8-inch water line up to and including the present date, and he shall receive credit for all amounts he has paid to the City heretofore for such water usage. The amount of such sum to be paid by Plaintiff to the City shall be \$553.34 for past water usage. Plaintiff further agrees to allow the City the right to fully inspect, and conform to requisite tap and meter standards, the present self-administered tap that Plaintiff has made to the City's 8-inch water line. In lieu of a customary tap-in fee, Plaintiff agrees to reimburse the City for such reasonable inspection and conformation expenses that are actually incurred by the City due to its agents or employees inspecting and conforming the Plaintiff's tap to appropriate standards, but in no event shall such amount exceed \$1,000, the reimbursement of which expenses shall be made by Plaintiff within 30 days after presentation of an invoice for same from the City.

(E) The City of Bromley agrees to allow Plaintiff to tap onto the City of Bromley's 8-inch water line, which runs adjacent to Plaintiff's properties along Highwater Road, under the following terms and conditions:

(1) For the privilege of tapping onto the City of Bromley's 8-inch water line, Plaintiff agrees to pay to the City, on or before the 5th day of each month, a fee of \$25.00 per month for each municipally unincorporated parcel of land owned by him which establishes a connection to the City's water line. The City of Bromley, in consideration of such payment, hereby grants to Plaintiff a revocable license to tap onto its 8-inch water line, but the City maintains the right to disconnect any such tap if Plaintiff fails to comply with any of the terms or conditions contained in this Paragraph (E) or fails to make the monthly payment herein prescribed for any parcel of land serviced by such tap(s).

(2) Plaintiff agrees not to run any extender water lines between any parcels of land owned by Plaintiff or to any other parcel of land, customer, person, or entity, without first notifying the City of any desire to run any such extender lines, and if the City agrees to same, making arrangements for the payment of any additional amount such as that set out in paragraph (1) above for any such lines.

- (3) The parties expressly recognize that the City of Bromley shall have a right to inspect any tap onto the City's water line and the right to conduct a reasonable inspection of exterior portions of any of Plaintiff's parcels of land for the purpose of locating any unauthorized extender lines referred to in subparagraph (2) above.
- (4) Plaintiff agrees that if the City of Bromley has to disconnect any tap servicing a parcel of land belonging to Plaintiff pursuant to subparagraph (1) above, such disconnection may be effected in accordance with all applicable rights and privileges that a private utility possesses to disconnect a non-paying customer from utility services, including any and all self-help remedies which may legally be utilized, with or without notice to Plaintiff. Plaintiff further agrees that if the City of Bromley has to litigate with Plaintiff (a) to collect any past due monthly payment as set out in subparagraph (1) above; (b) to protect or fully exercise its inspection rights as set out in subparagraph (3) above; or (c) to defend any exercise of its right to disconnect a tap servicing Plaintiff as set out in subparagraph (1) above, and the City prevails in any respect in such litigation, the City shall be entitled to such reasonable attorneys fees and costs as it may incur in establishing its prevailing position in such litigation.
- (5) The license granted to Plaintiff in subparagraph (1) above is personal to Plaintiff, but may be extended to such of his successors in interest who submit an application, along with an appropriate fee, to transfer the license to such successor and who agree to be bound by all subparagraphs contained in this paragraph (E) as well as all terms of paragraphs (I), (J), (L), (M), (N), (O), and (P) of this Release, provided further that Northern Kentucky Water Service District accepts such successor as a customer in accordance with paragraphs (A), (B), (C) and (I) of this Release. Other than as just described, the license granted to Plaintiff or any above-described successors in interest shall not be transferrable, assignable or otherwise subject to encumbrance or mortgage, and does not run with any particular parcel of land, and shall terminate upon Plaintiff's or any such successor's dispossession, voluntarily or involuntarily of any parcel of land that is serviced by water from a tap onto the City's water line. Plaintiff and any such successors agree not to suffer or permit any lien of mechanics or materialman or otherwise to be placed against the City's water line.
- (6) Any tap established and maintained under this Agreement by Plaintiff shall be accomplished in accordance with the specifications and

requirements of, and be installed and maintained to the satisfaction of, City of Bromley officials and the Northern Kentucky Water Service District.

- (7) Plaintiff agrees to grant a Deed of Easement to the City of Bromley and the Northern Kentucky Water Service District, to be executed simultaneously herewith, granting the City of Bromley and the Northern Kentucky Water Service District the right to traverse Plaintiff's property within said easement in order to construct, maintain, and/or repair any and all utilities, including but not limited to the water line which currently exists, and any utilities which may be constructed in the future.
- (8) Northern Kentucky Water Service District agrees to maintain, at its expense and in accordance with its rates, rules and regulations, the entire length of that portion of the City's 8-inch water line that lies upon or adjacent to those parcels of Plaintiff's land as are actually connected to, and serviced by tap(s) onto the City's line pursuant to this Agreement. The Northern Kentucky Water Service District's obligation to maintain the line shall not include replacements or upgrades or any repairs to damage caused by the City of Bromley or the City's agents or employees.
- (9) The parties understand that no estoppel may arise against the City's right to disconnect any tap in accordance with subparagraph (1) above by virtue of the Plaintiff or Northern Kentucky Water Service District's failure to comply with all terms and conditions contained in paragraph (E) herein.

(F) Plaintiff hereby forever releases, for himself and his heirs, legal representatives, agents, successors, and assigns, Defendants and Third Party Defendant, and their respective agents, successors, assigns, officers, commissioners, directors, shareholders, employees, attorneys, guarantors, sureties, and insurers, and any person acting on their behalf, from any and all injuries, losses, damages, liabilities, defenses, claims, actions, causes of action, suits, debts, promises, demands, or agreements, of whatever nature or kind, known and unknown, whether based in law or in equity, that Plaintiff ever had or has now, or that anyone claiming through or under Plaintiff may have or claim to have, which were raised or asserted or could have been raised or asserted by Plaintiff against Defendants and Third Party Defendant at any time prior to the execution of this Release, including but not limited to any and all claims arising out of, by reason of, or in any way related to the subject matter of the action. Plaintiff further releases any potential claims or causes of action he may now have or in the future possess, of whatever nature or kind, known or unknown, arising out of, or in any way related to, any acts or conduct of Defendants and Third Party Defendant, occurring prior or subsequent to the events complained of in the action, which may have been taken in response

to, or otherwise have anything to do with, Plaintiff's attempt to receive water from the City's 8-inch water line through an unauthorized, self-administered tap onto the City's water line.

(G) Defendant City of Bromley hereby forever releases, for itself, successors, and assigns, Third Party Defendant, and its respective agents, successors, assigns, officers, commissioners, employees, attorneys, guarantors, sureties, and insurers, and any person acting on its behalf, from any and all injuries, losses, damages, liabilities, defenses, claims, actions, causes of action, suits, debts, promises, demands, or agreements, of whatever nature or kind, known and unknown, whether based in law or in equity, that Defendant City of Bromley ever had or has now, or that anyone claiming through or under Defendant City of Bromley may have or claim to have, which were raised or asserted or could have been raised or asserted by Defendant City of Bromley against Third Party Defendant at any time prior to the execution of this Release, including but not limited to any and all claims arising out of, by reason of, or in any way related to the subject matter of the action.

(H) The parties hereto are parties to a lawsuit styled Douglas Bryant v. The City of Bromley v. Northern Kentucky Water Service District, Civil Action No. 96-CI-01349, currently pending in the First Division of Kenton Circuit Court. In consideration of the terms and conditions contained herein and agreed upon by the parties to this Release, the parties release each other from all actual or potential claims and counterclaims in the action or arising from the events on which the action is based. The parties further agree to dismiss the action with prejudice to each party with all costs thereof (as defined by CR 54.04(2)) to be paid by each of them, and to join in and file an appropriate agreed order of dismissal to that effect. Each party shall bear all other costs and expenses incurred by him/them including attorney fees.

(I) All duties and obligations of the parties under this Release shall terminate and expire after the passage of twenty (20) years from the date of execution of this Release or the cessation of Plaintiff's status as a customer of Northern Kentucky Water Service District or the annexation of any parcels of property owned by Plaintiff which may be serviced by a tap onto the City's 8-inch water line, whichever of the aforementioned events occurs first. The provisions of paragraphs (E)(7), (F), (G), (H), and (I), as well as all lettered paragraphs hereafter, however, shall survive the termination of this Release.

(J) The parties each further acknowledge that they have received sufficient consideration for the provisions set forth in this Release and represent and warrant that no promise or inducement has been made or offered to them except as set forth in this Release, that they are executing this Release without reliance on any statement or representation by any person or party released, or the representative of any person or party released, except as set forth in this Release, that they are legally competent to make the agreements set forth and evidenced by this document and to execute this Release, that they fully understand their right to discuss with their respective legal counsel any and all aspects of the agreements set forth in this Release, that they have availed themselves of this right, that they have carefully read and fully understand all of the provisions of this Release, that they are voluntarily entering into this Release and the agreements evidenced hereby, and that they agree that this Release shall be considered to have been prepared jointly by the parties and their respective

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counsel such that any dispute as to its meaning shall not be construed against any party as if such party was the drafter.

(K) The parties each further acknowledge that this Release is given in compromise and settlement of various disputed claims among the parties, that the execution of this Release shall not constitute nor be deemed to constitute either an admission of liability on the part of any of them or an admission by any party that his or her or its position taken in any dispute was or is incorrect, and that the consideration in this Release is accepted by each of the parties hereto in full accord and satisfaction of disputed claims which were or might have been the subject of the action and in full accord and satisfaction of any claims, including claims for punitive or exemplary damages, which have arisen or might in the future arise out of or in connection with the action.

(L) This Release is to be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

(M) This Release sets forth the entire release of claims between the parties with respect to its subject matter, and supersedes and replaces any and all prior or contemporaneous warranties, representations, or agreements, whether oral or written, other than those contained in the agreement.

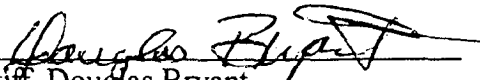
(N) This Release may not be amended or modified except by agreement set forth in a written memorandum executed by all parties to this Release.

(O) Should any provision or section of this Release be declared legally invalid or unenforceable, it is expressly agreed that the other provisions shall continue to be binding upon the parties, and the parties agree to be governed by the remaining provisions of the Release, except that the parties agree that Northern Kentucky Water Service District will not be bound by any paragraphs of this Release except paragraphs (H), (J), (K), (L), (M), (N), (O) and (P), should the Public Service Commission of the Commonwealth of Kentucky disapprove of this Release.

(P) The parties understand that Northern Kentucky Water Service District may be required to submit this Release for approval to the Public Service Commission of the Commonwealth of Kentucky, but any such submission or approval is not intended, and should not be interpreted to subject the City of Bromley to any regulation by, or to the jurisdiction of, the Public Service Commission.

IN WITNESS of the agreements set forth herein, and being duly sworn and cautioned, the parties have signed this Release on the following lines and on the following dates:

7/22/99
Date


Plaintiff, Douglas Bryant

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6-15-99
Date

By: *Jim Miller*
Defendant, The City of Bromley

Title: Mayor

6-15-99
Date

Jim Miller
Defendant, Mayor Jim Miller

6/15/99
Date

Patty Grimes
Defendant, Patty Grimes

6/15/99
Date

Joe Tewes
Defendant, Joe Tewes

6/16/99
Date

Dave Radford
Defendant, Dave Radford

6/15/99
Date

Charlie Foulks
Defendant, Charlie Foulks

6/19/99
Date

Sharon Hamilton
Defendant, Sharon Hamilton

6/15/99
Date

Dan Gardiner
Defendant, Dan Gardiner

6/15/99
Date

R. Kim Vocke
Defendant, R. Kim Vocke
City Attorney

7/8/99
Date

By: *Kim G.M.* Title: Interim GM
Third Party Defendant, Northern Kentucky Water Service District

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