

STAFF'S RESPONSES TO PEVELY'S FIRST SET OF DRs

1. Please furnish any and all documents in your possession or available to you that relate to the allegations of the Complaint.

RESPONSE:

See attached.

2. Please provide a list of all territorial agreements between public water supply districts and municipal water utilities which the Public Service Commission has approved, denied approval or sought to enjoin pursuant to § 247.172 RSMo. since 1994.

RESPONSE:

See attached.

3. Please state whether the alleged territorial agreement which is the subject of this Complaint is the first such agreement over which the Public Service Commission has taken affirmative action to assert jurisdiction; and, if it is not, please identify those territorial agreements where it has taken affirmative action and identify such affirmative action.

RESPONSE:

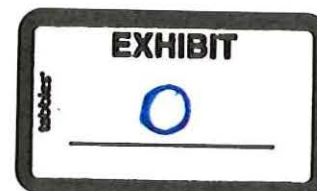
To the best of my knowledge and after review of PSC cases from 1994 to the present, it is the first. However, I did not review PSC cases between 1913 and 1994.

4. Please state when the Public Service Commission first became aware of the agreement which is the subject of this Complaint.

RESPONSE:

When it received the complaint of John F. Holborow.

5. Please state whether any citizen of the City of Pevely or the surrounding area has complained about water service provided pursuant to the agreement which is the subject of your Complaint. If there have been any such complaints, please state the number and nature of those complaints and the dates such complaints were received by the Public Service Commission.



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RESPONSE:

John F. Holborow, Receiver of H&H Development Co. and acting proprietor of Valle Creek Condominiums in Barnhart, Missouri, complained to the Commission in 2013 concerning the inability of CPWSD C-1 and the City of Pevely to resolve their dispute as to which of them would serve Valle Creek Condominiums and CPWSD C-1's threat to terminate service unless H&H constructed a main extension.

6. Please identify the person or persons most knowledgeable about the history of the Public Service Commission's regulation of territorial agreements in general and also with regard to the agreement which is the subject of this Complaint.

RESPONSE:

James Busch, Manager, PSC Water & Sewer Department.

7. Please identify all those persons you claim [have] knowledge of the facts alleged in this Complaint.

RESPONSE:

John F. Holborow
Bianca Eden
Terrance J. Good

8. Please identify any person who is either a retained or non-retained expert which you intend to call as a witness, and please identify the subject matter on which the expert is expected to testify.

RESPONSE:

James Busch, Manager, PSC Water & Sewer Department.

The undersigned states that the responses set out herein are true and correct according to his or her best knowledge, information and belief.

Date: March 28, 2014

/s/ James Busch

JAMES BUSCH

Manager, Water & Sewer Department
Missouri Public Service Commission

**FACTS AROUND THE ISSUE OF WATER SERVICE -- PWSD C-1 /CITY OF PEVELY
VALLE CREEK CONDOMINIUMS, BARNHART, MO.**

1. IN EARLY 2012, THE COMPLEX DEVELOPER, DEFAULTED ON LOANS MADE TO A LOCAL BANK, AND IN AUGUST OF 2012 THE COMPLEX WAS PUT INTO A COURT APPOINTED RECEIVERSHIP.
2. THERE IS AN ONGOING LAWSUIT BETWEEN THE BANK AND THE DEVELOPER SO THE BANK HAS CHOSEN NOT TO FORECLOSE ON THE PROPERTY, AND THE RECEIVER IS MANAGING IT.
3. **IN 2008**, THE FORMER DEVELOPER SIGNED AN AGREEMENT WITH PWSD-C1 TO FURNISH PIPE AND INSTALL A WATER MAIN EXTENSION IN ORDER TO ENABLE THE WATER COMPANY TO COMPLETE A LOOP THEY NEEDED AND TO SERVE THE COMPLEX.
4. BECAUSE THE DEVELOPER DEFAULTED ON THE LOANS FROM THE BANK, THE LOOP NEVER WAS INSTALLED, AND NOW THERE IS NO MONEY TO COMPLETE THE LOOP, AND THE BANK IS NOT WILLING TO PUT FUNDS INTO A PROPERTY THAT IS ALREADY IN DEEP TROUBLE.
5. FROM 2009 UNTIL 2012, THE CITY OF PEVELY SERVED THE COMPLEX WITH THEIR WATER SUPPLY, PWSD C-1 HAD THEIR METERS ON THE MAINS, AND THEY BILLED PEVELY FOR THE WATER USAGE, AND IN TURN PEVELY TURNED AROUND AND BILLED THE COMPLEX.
6. **IN SEPTEMBER 2012** A TERRITORIAL DISPUTE AROSE BETWEEN THE CITY OF PEVELY, MO. AND PWSD-C1. PWSD C-1 CLAIMED THE RIGHT TO SERVE THIS CONDOMINIUM COMPLEX. THE COMPLEX IS SUPPOSEDLY IN **PWSD-C1** BOUNDARIES, BUT BECAUSE C-1 DID NOT HAVE THE APPROPRIATE WATER MAINS TO THE AREA- NEEDING TO BE SERVED THEY MADE AN AGREEMENT TO ALLOW C-1 TO METER THE USAGE, BILL THE CITY WHO IN TURN BILLED US. C-1 THEN COLLECTED THE MONEY FROM THE CITY. IN SEPTEMBER 2012, THE 2 ENTITIES ENTERED INTO A LAWSUIT AGAINST EACH OTHER. WHEN THAT HAPPENED, THE CITY WENT IN TO THE COMPLEX, CUT C-1 METERS OUT AND REPLACED THEM WITH THEIR OWN METERS. SERVICE CONTINUED AS USUAL.
7. IN APRIL OF 2013, PWSD C-1 THEN DECIDED TO REMOVE THE CITY OF PEVELY'S METERS AND START METERING AND BILLING THE COMPLEX

DIRECTLY. PWSD C-1 DID IN FACT GO BACK IN CUT PEVELY'S METERS AND INSTALL THEIR OWN.

8. AS A RESULT OF ALL THE BACK AND FORTH, IN **APRIL OF 2013**, THE RECEIVER, WAS SENT A LETTER FROM THE PWSD C-1 ATTORNEY, NOTIFYING ME THAT PWSD C-1 WANTED THE WATER MAIN EXTENSION, PREVIOUSLY MENTIONED ABOVE, TO BE COMPLETED WITHIN A 180 DAY CALENDAR PERIOD, IN ACCORDANCE WITH THE AGREEMENT SIGNED IN 2008. **IF IN FACT IT WAS NOT COMPLETED WITHIN 180 DAYS, THEY INTENDED TO CUT SERVICE TO THE COMPLEX.**
9. WE HAVE A LETTER FROM THE CITY OF PEVELY THAT INDICATES THEY WILL CONTINUE TO SERVE THE DEVELOPMENT FOR ITS FUTURE WATER NEEDS,

MY QUESTION IS SIMPLE: DOES PWSD C-1 HAVE THE RIGHT TO CUT SERVICE AS LONG AS ALL THE BILLS ARE BEING PAID. IS THER PRECEDENT OR A LAW IN PLACE TO BLOCK THIS?

AS THE RECIEVER I AM CHARGED WITH PROTECTING, PRESERVING AND MANAGING THE ASSET. WHAT DO I NEED TO DO TO PREVENT PWSD C-1 FROM DISCONNECTING THE WATER SERVICE? IS THERE A DISPUTE OR CLAIM WE CAN FILE TO PREVENT THIS FORM OCCURING?

OBVIOUSLY, THERE IS NO DEVELOPER AND NO PROMISE OF A FUTURE DEVELOPER AT THIS POINT, AND THERE IS NO MONEY TO INSTALL THE PIPE AS THEY WANT US TO DO.

YOUR ADVISE WOULD BE WELCOME.

Thank you kindly

John Holborow
Holborow Builders Group, LLC.
Court Appointed Receiver for
H & H Development Group, Inc and
Lots 1 & 3 Holley Acres

3/24/86

AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of April, 1986, between PUBLIC WATER SUPPLY DISTRICT NO. 1 OF JEFFERSON COUNTY, MISSOURI, a Political Corporation of the State of Missouri ("District") and ST. LOUIS COUNTY WATER COMPANY, a Missouri Corporation ("Company"), WITNESSETH:

WHEREAS, District is a public water supply district organized and existing under the provisions of Chapter 247, R.S.Mo.; and

WHEREAS, Company is a business corporation engaged in the business of purifying and selling water and is subject to regulation by the Public Service Commission of Missouri ("Commission"); and

WHEREAS, District and Company as of August 23, 1972, entered into a contract of twenty years duration ("1972 contract") pursuant to which District purchases its water supply from Company; and

WHEREAS, District wishes to increase its purchases of water from Company and wishes to provide for a new transmission main in order to make an increased supply of water available to it; and

WHEREAS, the parties desire to revoke the 1972 contract and supersede it with this Agreement pursuant to which District will hereafter purchase water from Company and Company will sell water to District upon

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OFFICE OF THE SECRETARY
PUBLIC SERVICE COMMISSION

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the following terms and conditions:

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

1. This Agreement shall completely supersede and replace the 1972 contract between the parties which 1972 contract is hereby revoked.

2. Subject to the terms and conditions hereinafter set out, Company will continue to provide water service to District at two connections shown as (a) and (b) on a drawing attached hereto as Exhibit A and incorporated herein by reference. Such connections are described as "(a) a connection on an easement west of Highway I-55 at the Meramec River" and "(b) a connection on an easement east of Highway I-55 at the Meramec River." A previous connection supplying water through an 8" main suspended from the Lemay Ferry bridge over the Meramec River has been abandoned by the District and is removed from any future use and not covered by this contract.

3. District will construct a 16" water transmission main ("new transmission main"), including all necessary pipes, valves, fittings and appurtenances, extending from a connection to Company's existing 30" main on Lemay Ferry Road, to a new connection shown as (c) on Exhibit A and described generally as "(c) a connection to Company 30" transmission main on the east side of Lemay Ferry Road approximately 1200 feet north of the Meramec River at Lemay Ferry." The cost of such new transmission main including connection to Company's 30" transmission main and cost of necessary easements, is to be borne by the District. District will own the

patent tap connection and its 16" transmission line. Company will maintain at no cost to District the patent tap connection and approximately 150 feet of the 16" transmission main and appurtenances from the Company's 30" main to the meter box. "Maintenance" does not include replacement or relocation by Company of any main or facility between the connection and the meter box. Easements for the section of transmission line to be so maintained by Company shall be in joint names (District and Company).

4. District at its sole cost and expense will provide, install, operate and maintain a water distribution system to distribute water from the three connection points (a), (b) and (c) shown on Exhibit A and hereinabove described. The system shall include necessary piping, fittings, and valves including the check valves to prevent backflow which are currently installed in conjunction with pumping stations on connections (a) and (b) and the check valve to be installed on the new connection (c) south of the Meramec River. Meter vaults to be installed by the District for the housing and protection of water meters shall be located at the connection points for (a) and (b) and near connection point (c), in accordance with Company standards. The installation of a vault at the new connection point (c) and of the contents thereof shall be accomplished in accordance with plans which have been approved by Company. Company, at its sole cost and expense, shall furnish, install and maintain water meters in all of the aforesaid vaults. All fire hydrants and other valving devices

installed by District in its water distribution system shall, where necessary, be of the slow closing type to insure against District's causing pressure disturbances in Company's water distribution system or damage to Company's water meters.

5. The Company will cooperate with the District in the acquisition of all necessary easements, rights-of-way, and/or permits and approvals from appropriate governmental agencies necessary for the construction of the District's transmission main from the north bank of the Meramec River to the new connection (c).

6. If construction of the new transmission main described in Section 3 preceding is not commenced before June 1, 1987, all portions of this Agreement in regard to construction of or relating to water service through such new transmission main shall be void and of no force and effect and neither party hereto shall thereafter have any recourse whatsoever against the other party under any of the provisions of this Agreement relating to said new transmission main, but this Agreement will otherwise remain in full force and effect.

7. Company will bill District and District will pay for water used and water available for use in accordance with the following definitions, terms and conditions:

DEFINITIONS - EXCEPTIONS

A. "Billing Month" is defined as an approximately 30-day period between regularly scheduled meter reading dates selected by Company.

B. "Basic Rate" is defined as \$0.4812 per 100 cubic feet of

water provided effective 1/1/86 or as may hereafter be provided for by a new rate filed and approved by the Commission.

C. "Peak Hour Charge" is an alternate rate 10% above the basic rate to compensate Company for usage conditions of peak flows not contemplated in cost of service calculation of Basic Rate.

D. "Rate of Usage" is defined as the average flow, in millions of gallons per day (MGD), during any 24-hour period selected by the Company, from time to time, during which the District is taking water through the aggregate of all connections combined.

E. "Usage Limitation" for any billing month is defined as 1.7 multiplied by the average daily MGD use of water throughout the preceding 12 billing months. This 1.7 multiplier will be subject to review every five years upon written request to the Company from the District, and should the Company determine that District's usage data warrants, this factor will be adjusted.

F. "District 1 Charge" is a demand charge for support of plant used in excess of the Usage Limitation and is defined as the extent to which District's aggregate Rate of Usage in a 24-hour period exceeds District's Usage Limitation, both expressed in millions of gallons per day, or proportionate part thereof, multiplied by \$5,000 per MGD. Once imposed, this charge adjusted monthly for the current usage limitation will remain in effect for the next 12 months or until the District's Usage Limitation meets or exceeds the usage which caused the occurrence of the

District 1 charge, whichever occurs first.

G. The District, under emergency conditions, may request the Company to temporarily waive any penalty charges of the Agreement upon proper notification to an officer of the Company. The Company, if practicable, may agree to do so. Written confirmation of the request by the District is required within 48 hours.

PAYMENT TERMS AND CONDITIONS

A. Monthly bills shall be due and payable and District shall pay same within ten (10) days from and after the date of such bill. District will pay for all water delivered at the Basic Rate. If at any time, or from time to time, a schedule of rates other than those described herein for the sale and delivery of water to District should be filed with and approved by Commission, Company shall charge and District shall pay for water in accordance with such applicable effective schedule of rates. The sale of water herein provided for is also subject to all applicable rules and regulations of Company on file with and approved by Commission.

B. District shall be limited to a maximum amount of water available at each connection point as follows:

- (1) At connection point (a) shown on Exhibit A (Nolau Easement west of I-55) five hundred (500) gallons per minute.
- (2) At connection point (b) as shown on Exhibit A (Easement east of I-55) two thousand (2,000) gallons per minute.
- (3) At connection point (c) as shown on Exhibit A (new

connection on Lemay Ferry Road) two thousand (2,000) gallons per minute.

If District withdraws water from any connection at a rate in excess of the said maximum rate for such connection without written consent of Company, Company may install, at District's expense, water flow limiting devices at all connection points.

(4) At any time during the life of this agreement, the District may elect to abandon the connection point designated (a) shown on Exhibit "A" hereto by written notification to the Company of its decision. At that time, the maximum amount of water available at connection points (b) and (c) shall each be increased from 2,000 gallons per minute to 2,250 gallons per minute to maintain a total supply of 4,500 gallons per minute.

C. District shall operate its system in such a manner that the quantity of water delivered at any single connection point and also at the aggregate of all connection points shall be further limited as follows:

On any day when air temperature at 2:00 p.m. reaches or exceeds 80° F. as measured by the St. Louis Weather Service, the rate of water delivered during any one-hour interval to the District by the Company, between the following 4:00 p.m. to 10:00 p.m. period shall not exceed the average hourly rate of water delivered during the preceding 24-hour period from 8:00 a.m. to 8:00 a.m.

In any Billing Month in which the quantity of water delivered to District by Company exceeds the limitation set out in this subparagraph C, District shall pay for all water delivered to it by Company during such

Billing Month at the Basic Rate per 100 cubic feet of water plus a Peak Hour Charge of 10% of the Basic Rate (110%), both as provided for in this Agreement, or as hereafter provided for by new rates filed with and approved by Commission.

D. If District's Rate of Usage at any time exceeds District's Usage Limitation, District agrees to pay Company an additional monthly District 1 Charge. The District 1 Charge will be recalculated monthly and will be billed, as recalculated, for a period of 12 billing months, unless District's Usage Limitation equals or exceeds District's highest Rate of Usage ever measured within said 12 billing months, whichever occurs first.

E. In the event that the gross receipts received by Company from the sale of water herein provided for shall ever be subjected to a license, gross receipts, or other similar tax, however designated, which is levied by any city, town, village, or other political subdivision authorized to levy such a tax, the amount of such tax shall be passed on to District and set forth as a separate item on District's monthly bill.

B. District will purchase its entire supply of water from Company. District will not, without written consent of Company sell water to anyone for resale. If District purchases or otherwise obtains water from any other source or sells water for resale in violation of this Agreement, Company may disconnect its water system from District's distribution system and this Agreement shall terminate. Establishment of intermittent emergency use of mutual stand-by connections between adjacent

water districts is not considered to be a violation of this provision provided notice of each emergency use is given as provided in Section 7G, of this Agreement.

9. If during the term of this Agreement District shall for any reason whatsoever, either voluntarily or involuntarily, whether by operation of law or otherwise, cease to purchase water from Company in accordance with this Agreement, or if District sells water in violation of this Agreement, or ceases to pay for water purchased from Company as provided herein, it is agreed by and between the parties hereto that Company's liquidated damages for any such breach of Agreement, predicated on Company's unamortized investment in constructing facilities to supply District under preceding contracts, shall be \$56,735 less an amount equal to \$567.35 for each year in which District purchased and paid for water in accordance with the terms of this Agreement. Furthermore, in the event District does not renew this Agreement prior to its expiration, District agrees to reimburse Company the remaining unamortized portion of Company's investment in facilities allocated to provide service to District.

10. Any sum of money which under the terms of this Agreement is or shall hereafter become due to Company whether for costs or expenses of construction, for water service, for liquidated damages or for damages on account of breach of any of the provisions hereof may be recovered by Company by a lawsuit against District and self-help remedies provided for herein such as termination of service shall not preclude Company's right

to recover damages in a court of law, and Company by failing to exercise self-help remedies or by failing to sue on any occasion of breach of this Agreement by District shall not be deemed to have waived its right to such remedies in the event of subsequent breaches or defaults by District.

11. Company's obligation to sell and deliver water pursuant to this Agreement shall be subject to its ability to do so and its obligation to all its customers. Should conditions exist which in the sole judgment of Company require it to place restrictions upon the use of water by its customers, District agrees that upon receipt of notice thereof from Company, District will forthwith place the same restrictions upon the use of water by District's customers. Company shall make every reasonable effort to correct promptly any malfunction of its water works system which adversely affects the supply of water from Company to District.

12. Company agrees that upon the request of District, Company will negotiate with District to provide water in excess of that contemplated in this Agreement but District agrees that this covenant will not affect the validity, provisions or terms of this Agreement unless Company and District agree on and enter into a written agreement which expressly amends or expressly supersedes this Agreement.

13. This Agreement shall be filed with Commission and shall be subject to such action as Commission may take at any time or from time to time in connection therewith.

14. All notices provided for herein shall be in writing and

shall be given by ordinary mail, and any notice to District shall be addressed to the Manager of District at P.O. Box 277, Arnold, Missouri 63010 and any notice to Company shall be sent to its place of business which is now located at 535 North New Ballas Road, Creve Coeur, Missouri 63141.

15. All of the covenants, agreements, conditions, terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the extent and effect as the same are binding upon and inure to the benefit of said parties. In the event of any occurrence rendering the District incapable of performing under this Agreement, any successor of the District, whether the result of legal proceedings, assignment or otherwise, shall succeed to the rights and obligations of the District hereunder.

16. This Agreement shall be in effect from the date hereof until the 1st day of April, 2006, unless sooner terminated in accordance with its terms and shall be renewable for an additional 20-year period at the option of the District upon reasonable notice to Company from District prior to the expiration of the initial term, subject to all rates, rules, conditions or requirements of the Public Service Commission and all then effective laws or regulations whether County, State or Federal.

IN WITNESS WHEREOF, This Agreement has been executed in duplicate for and in the name of District by its President and its seal hereunto

affixed and attested by its Clerk as of the date first above
written, said officers having been duly authorized by the Board of
Directors of District to execute this Agreement, and for and in the name
of Company by its President or a Vice President and its corporate seal
hereunto affixed and attested by its Secretary or an Assistant Secretary
as of said date, said officers having been duly authorized by the
Executive Committee of the Board of Directors of Company to execute this
Agreement.

PUBLIC WATER SUPPLY DISTRICT NO. 1
OF JEFFERSON COUNTY, MISSOURI

By Benjamin F. Phillips
President

ATTEST:

Russell Burkholder
Chairman of the Board
Clerk

ST. LOUIS COUNTY WATER COMPANY

By [Signature]
President

ATTEST:

[Signature]
Secretary

Dist 1

AMENDMENT TO AGREEMENT

This Amendment to Agreement, made and entered into this 28th day of AUGUST, 1997, by and between PUBLIC WATER SUPPLY DISTRICT NO. 1 OF JEFFERSON COUNTY, MISSOURI, a Political Corporation of the State of Missouri ("District") and ST. LOUIS COUNTY WATER COMPANY, a Missouri Corporation ("Company").

WHEREAS, District and Company are parties to a contract for water supply for resale from Company to District dated April 1, 1986, ("Agreement") which remain in full force and effect; and

WHEREAS, District and Company wish to amend the Agreement to permit District to resell water to Public Water Supply District No. C-1 of Jefferson County ("District C-1") for a limited period of time.

NOW THEREFORE, for and in consideration of the payment of one dollar from each to the other paid, the receipt of which is herewith acknowledged, District and Company agree as follows:

1. Effective on a date selected by District with not less than five days written notice to Company, District's "Usage Limitation" which is referred to in paragraph 7 E of the Agreement section designated DEFINITIONS – EXCEPTIONS, and therein defined as "1.7 multiplied by the average daily MGD use of water throughout the preceding 12 billing months," shall be subject to a one-time adjustment of historical data by the addition of .4896 MGD (340 GPM) to each of the District's preceding 12 billing months. In each month subsequent to the one time adjustment, District's Usage Limitation shall be based on District's actual usage calculated with the appropriate, declining number of months of the adjusted historical data.
2. Effective on the date selected by District as described above, the provisions of paragraph 7 B (2) in the section designated PAYMENT TERMS AND

CONDITIONS which specified a 2,000 GPM limitation for connection point (b), shall be amended to state the following: "At connection point (b) as shown on Exhibit A (Easement east of I-55) twenty-seven hundred (2,700) gallons per minute."

3. Effective on the date selected by District as described above, the provisions of paragraph 7 B (4) in the section designated PAYMENT TERMS AND CONDITIONS, shall be deleted.
4. Effective on the date selected by District as described above, the provisions of paragraph 7 C in the section designated PAYMENT TERMS AND CONDITIONS shall be waived for the next following 48-hour period.
5. This Amendment will constitute the "written consent of Company" referred to in paragraph 8 for District to resell water to District C-1.
6. As with the Agreement, this Amendment to Agreement shall be filed with the Missouri Public Service Commission and shall be subject to such action as the Commission may take at any time or from time to time in connection therewith.

IN WITNESS WHEREOF, the parties have cause this instrument to be executed on the day and date first above written.


PUBLIC WATER SUPPLY DISTRICT
NO. 1 OF JEFFERSON COUNTY, MO

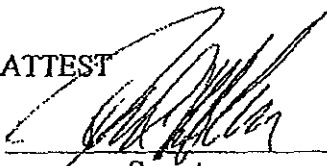
By Darrell Richardson
Vice-President

ATTEST:

Burrill C. Workmaster
Clerk

ST. LOUIS COUNTY WATER
COMPANY

By 
President

ATTEST 
Secretary

WHOLESALE WATER AGREEMENT

THIS WHOLESALE WATER AGREEMENT ("Agreement") is made and entered effective as of the 7th day of March, 2007 (the "Effective Date") by and between **Missouri-American Water Company**, St. Louis County District, a corporation organized and existing under the laws of the State of Missouri ("Water Company"), and the **Public Water Supply District #1 of Jefferson County** ("District").

Recitals:

WHEREAS, District owns, operates and maintains a public, potable water supply system within its political boundaries for the benefit of its residents and the public in general and, in order to accomplish this purpose, District desires to purchase supplies of potable water at locations and in amounts in accordance with the terms and conditions set forth herein; and

WHEREAS, Water Company owns and operates a water supply treatment and distribution system and is desirous of selling a supply of potable water to District as provided herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

Sale and Purchase of Water

1.1 Sale and Purchase of Water. District hereby agrees to purchase from Water Company and Water Company hereby agrees to sell and deliver to District a supply of potable water (the "Required Water") in accordance with the terms of this Agreement.

1.2 Points of Deliver. Water Company shall deliver and District shall receive the Required Water at the four points, subject to Section 1.3 and Section 1.4:

- Point "A" (Nolau easement west of I-55)
- Point "B" (east of I-55 at Meramec River)
- Point "C" (Lemay Ferry Rd., 1,200 ft north of Meramec River)
- Point "D" (This connection will be made at a location to be mutually agreed upon by the District and the Water Company, and will be to either a 30" main or a 24" main)

1.3 Allowable Rate of Delivery. As of the Effective Date, the current allowable rate of delivery through each metering point is:

- Point "A" 500 gallons per minute
- Point "B" 2,700 gallons per minute
- Point "C" 2,000 gallons per minute

Upon the establishment of connection Point "D" pursuant to Section 1.4, connection Point "A" shall be eliminated as a point of sale (but shall remain physically connected for emergency purposes only), and the allowable rate of delivery through each metering point will be:

- Point "A" Eliminated
- Point "B" 3,000 gallons per minute
- Point "C" 2,200 gallons per minute
- Point "D" 500 gallons per minute

From each of metering points "B", "C", and "D" the District may increase the rate of delivery to 1.5 times the allowable rate stated for each of said metering points at any given time as long as total daily delivery from each of said metering points does not exceed an average rate equal to the allowable rate stated for each of said metering points. In addition to these individual metering point rate of delivery and daily delivery limitations, the District shall not exceed a combined rate of delivery from all metering points of seven thousand five hundred (7,500) gallons per minute at any given time and combined total daily delivery from all metering points equal to an average rate of five thousand (5,000) gallons per minute. During periods of peak usage, emergencies or at other times that Water Company's remaining customers experience inadequate pressures, Water Company shall have the right to reduce the allowable rate of delivery to District for a period of time as deemed necessary by Water Company. To effectuate the foregoing, District hereby acknowledges and agrees that Water Company shall not be required by this Agreement to provide or maintain water pressures within District and it is expressly understood to be the obligation of District to provide and maintain such pressures by boosting devices, standpipes, elevated tanks or by such other means as may be required or necessary to provide and maintain satisfactory pressure in the water mains and pipes of District. The obligation of Water Company to supply the Required Water hereunder is further limited by the understanding that Water Company shall undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in the supply, but that it cannot and does not guarantee that such interruptions and fluctuations will not occur because of emergencies due to breaks, leaks, defects or necessary repairs in its facilities, or those emergencies caused by fires, strikes, acts of God or other causes beyond Water Company's control.

1.4 Terms of Connection Point "D". The District may accept delivery of water at the connection identified as Point "D" in Section 1.2 under the following terms:

(a) District hereby acknowledges and agrees that (i) Water Company's delivery of water to connection Point "D" is subject to the availability of capacity as determined in the sole discretion of Water Company, (ii) District is not paying for a reservation of capacity and Water Company hereby disclaims any obligation to reserve capacity from connection Point "D", and (iii) connection Point "D" constitutes an "at risk" capacity source for the District.

(b) In the event a third party desires to purchase a commitment of all or a portion of the remaining capacity from the C-1 Water Main, from which connection Point "D" supplies District, and said remaining capacity is less than or equal to the allowable rate of delivery through metering point "D", as stated in Section 1.3 or as may be revised from time to time, Water Company hereby agrees to first offer District the right to purchase said commitment

("Right of First Refusal") on the same terms and conditions as those offered to the third party. Water Company shall give District thirty (30) calendar days notice of the details of such an offer to the third party. If Water Company does not receive written notice from District within said 30-calendar day period of District's decision to exercise its Right of First Refusal, then Water Company may sell any portion or all of the remaining capacity of the C-1 Water Main. If District exercises its Right of First Refusal, it shall purchase said capacity within forty-five (45) calendar days of the date of notice from District to Water Company stating its intention to exercise the Right of First Refusal. If Company sells the remaining capacity of the C-1 Water Main to the third party Point "D" shall be eliminated as a point of sale (but shall remain physically connected for emergency purposes only).

(c) In consideration of the Right of First Refusal granted in subsection (b) above and other consideration contained herein, District hereby agrees to pay a fixed monthly access charge ("Access Charge") for connection Point "D". The Access Charge will be either: (i) Five Hundred Ninety Four and 44/100 Dollars (\$594.44), if Point "D" is connected to a 30" main, or (ii) Eight Hundred Seventy Eight and 39/100 Dollars (\$878.39), if Point "D" is connected to a 24" main, in either case the selection of the size of the connection point shall be in the District's sole discretion. Any revision from that stated in Section 1.3 in the allowable rate of delivery at metering point "D" will adjust the Access Charge as follows:

If Point "D" is connected to the 24" main:

Access Charge = $X \text{ gpm} / 500 \text{ gpm} \times \878.39 or,

If Point "D" is connected to the 30" main:

Access Charge = $X \text{ gpm} / 500 \text{ gpm} \times \594.44 ,

Where:

X = the allowable rate of delivery at metering point "D" in gpm.

The Access Charge shall begin upon District's establishment of connection Point "D". The amount shall be billed to District by Water Company on a monthly basis pursuant to Section 2.3. Should District opt to convert connection point "D" to an emergency use only connection the Access Charge shall cease.

1.5 Metering Equipment. For the purposes of measuring water delivered to District by Water Company, District has installed the necessary connection piping in a meter vault constructed by and at the expense of District, in accordance with Water Company's specifications. Such meter vault is arranged to accommodate the appropriate number and size of meter(s). Water Company shall own and maintain meters of sufficient size and capacity, and shall be responsible for reading such meter(s).

ARTICLE 2

Term; Rates

2.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of twenty-five (25) years unless earlier terminated in accordance with the terms contained in this Agreement. This Agreement shall be renewable for an additional 25-year period upon a mutual agreement by the District and the Water Company. In the event that renewal terms are not mutually-agreed upon by the parties, then this Agreement shall automatically renew for a single five (5) year period upon the same terms and conditions contained herein, and such renewal shall be subject to all rates, rules, conditions or requirements of the Public Service Commission and all then effective laws or regulations whether county, state or federal; provided however, during the term of any such renewal the Access Charge as herein provided in paragraph 1.4(c) shall be eliminated.

2.2 **Rates.** The rates and charges for the Required Water shall be in accordance with the tariffs for water service in St. Louis County, Missouri and surrounding vicinity in effect from time to time as established by and on file with the Missouri Public Service Commission. At any time in the future that the Required Water sold pursuant to this Agreement is subject to a license, gross receipts or other similar tax, which is levied by any city, town, village or other political subdivision authorized to levy such a tax, the amount of such tax shall be passed on to District and set forth as a separate item on District's monthly bill.

2.3 **Invoices.** The Water Company shall send a monthly invoice to District based on the metered amount of Required Water delivered during the prior month to each point of delivery (as set forth in Section 1.2). Each invoice shall be due and payable upon receipt, but in no event later than thirty (30) days after the date of the invoice. If bills are not paid promptly as herein provided, deferred payment shall bear interest at the rate of fifteen percent (15%) per annum (or the maximum amount allowed by law, whichever is less), which shall be added to the principal amount due and thereafter bear like interest as the principal. Failure to pay said bills promptly may, at the option of Water Company and in compliance with Water Company's Rules and Regulations that are on file with the Missouri Public Service Commission, result in a discontinuation of water service to District and a termination of this Agreement. District agrees to set its rates on a basis reasonably calculated to produce sufficient revenue to meet this obligation and other necessary expenses of District with respect to the provision of water services.

ARTICLE 3

Agreements and Covenants of District

3.1 **Maintenance of District's Infrastructure.** District hereby agrees to maintain all pipe lines and facilities owned and installed by it in District. District acknowledges and agrees that Water Company shall be under no obligation to furnish water service to individual consumers located within the legal boundaries of District. District further agrees that District shall have no right to serve individual consumers within either Water Company's franchised or certificated areas of service or to extend its distribution system within either Water Company's franchised or certificated areas of service without mutual agreement of both District and Water Company.

3.2 Required Water not for Resale.

(a) District hereby acknowledges and agrees that the Required Water delivered to it by Water Company shall be for the use of District and its direct retail customers and not to be re-sold on a sale for resale basis, except as herein allowed for emergency interconnects to other public water suppliers. In the event District breaches the provisions of this Section, District hereby agrees to pay to Water Company, as liquidated damages, twice the rate currently in effect for Water Company's sale for resale customers or twice what District receives (or should have monetarily received as a result of sales made for resale), whichever is greater. However, the penalty provisions stated herein shall not apply under circumstances where District shall deliver water via emergency interconnects to other public water suppliers experiencing a bonafide emergency. District hereby agrees it will notify Water Company of any instances in which it provides and/or sells water to other public water suppliers for any reason whatsoever.

(b) If District is desirous of connecting with another public water supply system for the purpose of providing and selling water to such system, District shall make a written request to Water Company for such connection. The written request shall include the minimum and maximum water amounts required by the public water supply system. Any approval by Water Company shall be authorized by an officer of Water Company and shall be in writing. The written request by District and all approvals shall be attached to this Agreement and made a part hereof. Following the receipt of Water Company's written approval, District may permit connection by said third party water system for the purpose of providing and selling water to said public water supply system. In no event shall District bill said third party water system less than the rates and charges in the tariffs for water service in the District of St. Louis County, Missouri and surrounding vicinity in effect from time to time as established by and on file with the Missouri Public Service Commission. The water quantity sold through each individually metered connection by the District to another sale for resale customer shall be billed to the District at the sale for resale rates described above. The volume resold will be billed as if a separate connection exists between District and Water Company. The volume resold will be deducted from the aggregate volume billed at all connections from Water Company to District. The average minimum contractual amount for each of said public water supply systems shall be added to District's average annual minimum contractual amount, if any, for the duration of this Agreement or the duration of District's agreement with the connected entity, whichever expires first. Any terms hereinabove to the contrary notwithstanding, any water delivered via emergency interconnects to other public water suppliers experiencing a bonafide emergency shall not, in any manner, adversely affect District's rights or interest under this agreement.

(c) The District hereby agrees that it will not permit any physical connections in its water supply system to that of any other pipe system or equipment outside District's own system, except for approved emergency connections. Water Company hereby approves all existing emergency interconnects between the District and other public water suppliers. To effectuate the preceding sentence, the District shall provide a list of all such emergency interconnects prior to the execution hereof. District further agrees to allow Water Company to inspect for possible cross-connections. If such cross-connections are found to exist, District shall assume the responsibility and expense of eliminating the existing cross-connections immediately upon the demand by and to the satisfaction of Water Company. If cross-connections are not

eliminated immediately and to the satisfaction of Water Company, Water Company shall discontinue water service to District in accordance with its Missouri Public Service Commission promulgated rules and regulations and the regulations of the Missouri Department of Natural Resources or its successor agency. District further agrees not to permit unnecessary wastage of water and to maintain and repair its distribution system in accordance with good water works practices. Further, District acknowledges and agrees that Water Company is not responsible for any incompatibility between its product and District's own water supply. If any incompatibility problems arise, it will be District's responsibility, at its sole expense, to rectify the problem by whatever means are necessary.

ARTICLE 4 General Provisions

4.1 The failure of either party to exercise any right given it hereunder, or to insist upon strict compliance with the provisions hereof, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time to require exact and strict compliance with all the terms hereof. The rights and remedies under this Agreement are cumulative to any other rights or remedies which may be warranted by law.

4.2 Any notice, demand or communication required herein or permitted hereunder shall be deemed to have been sufficiently given or served for all purposes if (a) delivered personally to the party or to an authorized representative of the party to whom the same is directed, (b) if sent by a nationally recognized overnight delivery service, charges prepaid, or (c) if sent by certified mail (return receipt requested), postage and charges prepaid, in each case addressed as follows:

If to Water Company:

Missouri-American Water Company
Attention: Network Manager
1050 Research Blvd.
St. Louis, Missouri 63132

With a copy to:

American Water
Attn: Regional General Counsel
727 Craig Road
St. Louis, Missouri 63141

If to District:

Attn: Mr. Dan Simpson, Manager
Public Water Supply District #1 of Jefferson County
2970 Schneider Drive
P.O. Box 646
Arnold, Missouri 63010

Attn: Floyd T. Norrick
THURMAN, HOWALD, WEBER, SENKEL & NORRICK, L.L.C.
P.O. Box 800, 301 Main St.
One Thurman Court
Hillsboro, MO 63050

or to such other address with respect to a party as such party shall notify the other in writing as above provided. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given on the day personally delivered, one (1) day after the date on which the same was deposited with a nationally recognized overnight delivery service, or three (3) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, in each case addressed and sent as aforesaid.

4.3 If either party brings or commences any legal action or proceeding to enforce any of the provisions of this Agreement (or for damages by reason of an alleged breach of this Agreement), the party prevailing on the merits in such action shall be entitled to recovery of all its costs and expenses, including, without limitation, reasonable attorneys' fees (including in-house counsel), expert witness fees, consultant fees and litigation costs.

4.4 This Agreement shall be construed and its performance shall be determined in accordance with the general laws of the State of Missouri without regard to conflict of laws principles.

4.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, neither party hereto may assign this Agreement, whole or in part, without the prior written consent of the other party.

4.6 The Agreement, and all exhibits attached hereto, contain the entire agreement among the parties hereto and supersedes all prior agreements and understandings between the parties with respect to the subject matter thereof, including without limitation, that certain Agreement dated April 1, 1986 as same has been amended and extended from time to time.

4.7 Each person signing this Agreement on behalf of a party does warrant that the person has authority to execute this Agreement on that party's behalf and that any and all necessary corporate and/or municipal actions or resolutions, if any, necessary to that party's entry into this Agreement have been adopted.

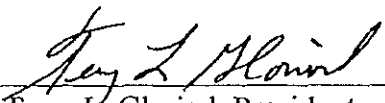
4.9 The captions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof or herein contained.

4.10 The Recitals set forth herein are substantive in nature and are incorporated into the body of this Agreement.

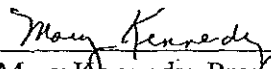
4.11 This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument, and this Agreement shall not be binding on the signatories hereto until all such parties have executed this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the day and year first above written.

Missouri-American Water Company

By: 
Terry L. Gloriod, President

Public Water Supply District #1 of
Jefferson County, Missouri

By: 
Mary Kennedy, President

What is status of This suit.

FILED
NOV 01 2012

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

HOWARD WAGNER
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

THE CONSOLIDATED PUBLIC WATER)
SUPPLY DISTRICT NO. C-1 OF)
JEFFERSON COUNTY, MISSOURI,)

Petitioner,)

vs.)

Case No. 12-JE-CO-1024

CITY OF PEVELY, MISSOURI,)
a City of the Fourth Class,)

Serve: John Knobloch, Mayor)
City Hall)
301 Main Street)
Pevely, MO 63070,)

Respondent.)

PETITION

COMES NOW the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, by and through counsel, and for its Petition against the City of Pevely, Missouri, a City of the Fourth Class, states to the court as follows:

Allegations Common To All Counts (General Allegations)

1. The Public Water Supply District No. C-1 of Jefferson County, Missouri (C-1) is a public entity organized pursuant to the provisions of Chapter 247 of the Revised Statutes of Missouri for purposes of supplying water to the residents within its corporate boundaries which are located within Jefferson County, Missouri.

2. The City of Pevely is a City of the Fourth Class located within Jefferson County, Missouri, and John Knobloch is the duly elected Mayor for purposes of receiving service of process.

3. Portions of Pevely lie within the corporate boundaries of C-1 as shown on Exhibits "A", "B", "C", "D", "E" and "F" attached hereto and incorporated herein by this reference.

4. The property described in Exhibit "A" attached is more generally described as the "Tiara at the Abbey" Subdivision (Tiara) a subdivision as shown by plat on file with the Recorder's Office of Jefferson County, Missouri, at Plat Book 156, Page 10; Plat Book 162, Page 12; Plat Book 175, Page 7; Plat Book 185, Page 21; Plat Book 188, Page 13; and Plat Book 197, Page 25; and "The Vinyards at Bushberg", a subdivision as shown by Plat on file with the Recorder's Office of Jefferson County, Missouri, at Plat Book 226, Page 2-4.

5. The property shown on Exhibit "B" attached hereto lies within a subdivision known as "Hunters Glen" as shown by plat on file with the Recorder's Office of Jefferson County, Missouri, at Plat Book 197, Pages 11-18.

6. The property shown on Exhibit "C" attached hereto lies within a subdivision known as "Valle Creek Condo's" (sic) (hereinafter referred to as Valle Creek Condominiums) as shown by plat on file with the Recorder's Office of Jefferson County, Missouri, at Plat Book 255, Page 27.

7. The property shown on Exhibit "D" attached hereto is a mobile home community known as Mason Woods.

8. The property shown on Exhibit "E" attached hereto are mobile home communities known as Glenoma Trailer Park and Kenmon Valley Mobile Home Park.

9. The property shown on Exhibit "F" attached hereto lies within a subdivision known as "I-55 Business Park" as shown by plat on file with the Recorder's Office of Jefferson County, Missouri at Plat Book 115, Pages 2 and 3; Plat Book 116, Pages 7 and 8; and Plat Book 133, Page 21B.

10. Petitioner and Respondent entered into a territorial agreement in settlement of

23CV306-1286 on or about 12th day of November, 2007 (hereinafter referred to as "Territorial Agreement"). A copy of said Territorial Agreement is attached hereto as Exhibit "G".

11. Pursuant to paragraph 2 of the Territorial Agreement Respondent has been providing water services to the residents within the real property described on Exhibits "A" and "B".

12. On information and belief, Respondent has been providing water services to the residents with the real property described on Exhibits "D", "E" and "F".

13. Pursuant to paragraph 3 of the Territorial Agreement, Valle Creek Condominiums shall be served by Petitioner unless Petitioner assigns in writing the rights to serve Valle Creek Condominiums to Respondent.

14. On or about the 1st day of October, 2012, Respondent removed the meters of Petitioner from Valle Creek Condominiums and installed Respondent's meters at the property and are directly billing the owner of the property for water service.

15. C-1 presently has no general obligation bonds outstanding.

16. C-1 presently has an issue of revenue bonds outstanding, the payment of which are dependent upon the receipt of monies from the sale of water and charges incurred for accessing C-1's water system.

17. None of the parcels of real property described on Exhibits "A" or "B" or "C" or "D" or "E" or "F" has been detached from C-1 in conformance with the provisions of Chapter 247 of the Revised Statutes of Missouri.

18. Upon information and belief, the City of Pevely intends to continue to extend its water distribution system within the geographic boundaries of the District without complying with the provisions of Section 247.170 for the detachment of such areas and the protection of bondholders of the District.

COUNT I – BREACH OF TERRITORIAL AGREEMENT

1. Petitioner incorporates each and every allegation contained in its General Allegations as if same were more fully set out hereat.

2. On or about the 30th day of June, 2008, Petitioner, in conformance with its rules and regulations, entered into an agreement with H and H Development Company, whereby H and H Development as the owner and developer of Valle Creek Condominiums would install water pipe and appurtenances to allow connection of Valle Creek Condominiums to the water delivery system of Petitioner.

3. That on or about June 30, 2008, Petitioner and Respondent reached a verbal agreement for temporary service to Valle Creek Condominiums wherein Petitioner would purchase water from Respondent for Valle Creek Condominiums. Under said agreement the Respondent would provide water which was metered by Petitioner. Petitioner would bill the owner of Valle Creek Condominiums monthly and biannually reimburse Respondent for the cost of the water.

4. That from June 30, 2008 to October 1, 2012, the parties acted under said verbal agreement.

5. That on or about the 3rd day of March, 2012, Respondent's Mayor John Knobloch contacted Petitioner to request that Petitioner's meters be removed and Respondent's installed at Valle Creek Condominiums.

6. That on or about the 2nd day of August, 2012, the parties met to discuss an extension of the temporary agreement.

7. That on or about the 28th day of August, 2012, Respondent via its attorney sent a letter to Petitioner demanding removal of Petitioner's meters by September 30, 2012, and

Penny

indicating that after September 30, 2012, Respondent would continue providing water service to Valle Creek Condominiums and bill the owner for same. A copy of the letter is attached hereto as Exhibit "H".

8. That on or about the 11th day of September, 2012, Petitioner via its attorney sent a letter to Respondent's attorney indicating that a written assignment of rights to serve Valle Creek Condominiums had not been made to Respondent. A copy of the letter is attached hereto as Exhibit "T".

9. That on or about the 1st day of October, 2012, Respondent's employees delivered Petitioner's meters which had been metering the water at Valle Creek Condominiums to Petitioner's home office and installed Respondent's meters at Valle Creek Condominiums.

10. That the actions of *Penny* Respondent are in breach of the Territorial Agreement.

11. That Petitioner has lost revenues and profits as a result of the actions of Respondent.

WHEREFORE Petitioner prays for judgment against Respondent for its lost revenues and profits from the date of the breach until such time as Respondent cures its breach of the Territorial Agreement and for such other and further relief as is just under the circumstances.

COUNT II – INJUNCTION FOR SPECIFIC PERFORMANCE

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count I as if same were more fully set out hereat.

2. That the parties herein in prior litigation negotiated a settlement declaring the territory of the parties which overlap, excluding the territory described in Exhibits "A" and "B", to be the exclusive territory of Petitioner.

3. That the acts of Respondent are continuing in nature.

4. That under the terms of paragraph 6 of the Territorial Agreement, Respondent is precluded for the term of the Territorial Agreement from seeking detachment of any territory within the boundaries of Petitioner without the written consent of Petitioner.

5. Petitioner has no adequate remedy at law, in that, absent this court entering an order restraining the City of Pevely from extending its water distribution services within the corporate boundaries of the District as set forth in the Territorial Agreement, Petitioner will be unable to protect the interests of the holders of the revenue bonds which have been issued and which are presently outstanding.

WHEREFORE, on Count III of plaintiff's Petition, plaintiff prays this court enter its Judgment and Order against the City of Pevely as follows:

- Yalle Creek is not only piece in Question!*
- (a) Restraining the City of Pevely from extending its water distribution system within the corporate boundaries of the District absent compliance with the Territorial Agreement.
 - (b) For attorney's fees;
 - (c) For costs and such other relief as the court deems just and proper in the circumstances.

COUNT III - CONVERSION

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count I as if same were more fully set out hereat.
2. That pursuant to the rules and regulations of Petitioner, the meter boxes and yokes with check valve and shut off valve become the property of Petitioner upon acceptance of the lines installed by the developer and prior to water service being provided to the property owner.

3. That on or about the 1st day of October, 2012, Petitioner was lawfully possessed of the meter boxes and yokes with check valve and shut off valve located at Valle Creek Condominiums.

4. That Respondent installed its meter in the meter box of Petitioner and unlawfully converted two meter boxes and yokes with check valve and shut off valve located at Valle Creek Condominiums to Respondent's own use to Petitioner's damage in the amount of \$300.00.

WHEREFORE Petitioner prays the court enter judgment for the value of the property converted and for such other and further orders as are just under the circumstances.

COUNT IV – DECLARATORY JUDGMENT

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count I as if same were more fully set out hereat.

2. Pursuant to paragraph 7 of the Territorial Agreement the term of the agreement between the parties was for a period of ten years unless the agreement is terminated by virtue of Petitioner "having the ability to serve the areas referred to" in the Territorial Agreement.

3. That on or about the 7th day of November, 2011, the parties established an emergency connection between Petitioner and Respondent at or near the west end of Reisling Lane in The Vinyards at Bushberg approximately 700 feet east of on Highway 61-67.

4. By virtue of the emergency connection, Petitioner now has the ability to serve those areas described on Exhibit A, more commonly known as Tiarra at the Abbey and the Vineyards at Bushberg.

5. By virtue of the emergency connection, Petitioner also has the ability to serve those areas described on Exhibits "D", "E" and "F", which properties are not addressed in the Territorial Agreement.

6. That a controversy exists between Petitioner and Respondent in that Respondent has not turned over service of the properties described in Exhibits "A", "D", "E", and "F" even though Petitioner has the ability to serve same.

7. That by reason of the above and foregoing it is necessary for Petitioner to secure a Declaratory Judgment declaring the Territorial Agreement terminated as to the properties described in Exhibit "A".

WHEREFORE, Petitioner prays the court enter a Declaratory Judgment declaring the Territorial Agreement terminated as to the property described in Exhibit "A" and for such other and further orders as are just under the circumstances.

**COUNT V - INJUNCTION AS TO PROPERTIES
DESCRIBED IN EXHIBITS "A", "D", "E", AND "F"**

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count IV as if same were more fully set out hereat.

2. Petitioner has no adequate remedy at law, in that, absent this court entering an order mandating Respondent City of Pevely to turn over the water distribution services within the corporate boundaries of the District to the Petitioner until such time as Respondent has complied with the statutory provisions for detachment contained in Chapter 247.170, District will be unable to protect its boundaries and the interests of the holders of the revenue bonds which have been issued and which are presently outstanding.

WHEREFORE, on Count V of Petitioner's Petition, Petitioner prays this court enter its Judgment and Order against the City of Pevely as follows:

- (a) Mandate the City of Pevely turn over the water distribution system within the corporate boundaries of the District to the District until such time as Respondent City

No Mention of Exhibit⁸ "C"

of Pevely complies with the provisions of Section 247.170 of the Revised Statutes of Missouri.

- (b) For attorney's fees;
- (c) For costs and such other relief as the court deems just and proper in the circumstances.

**COUNT VI, IN THE ALTERNATIVE, PETITION FOR RECISSION OF
TERRITORIAL AGREEMENT**

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count I as if same were more fully set out hereat.
2. That Respondent's action in removing the meters of Petitioner and beginning to provide direct water service to Valle Creek Condominiums is a material breach of the Territorial Agreement.
3. The purpose of the Territorial Agreement was to insure that Respondent would not, during the time period of the Agreement, extend water service to those properties not served by Respondent at the time of the execution of the Territorial Agreement without the permission of Petitioner.
4. Respondent received the benefit of not being forced to comply with the provisions of section 247.170 RSMo for detachment of the properties described in Exhibits "A" and "B".
5. Petitioner cannot be adequately compensated for the breach by Respondent.

WHEREFORE, Petitioner prays the Court declare the Territorial Agreement null and void and for such other and further orders as are just under the circumstances.

COUNT VII, IN THE ALTERNATIVE, INJUNCTION

1. Petitioner incorporates each and every allegation contained in its General Allegations

and Count VI as if same were more fully set out hercat.

2. Petitioner has no adequate remedy at law, in that, absent an order from this court restraining the City of Pevely from providing water service to the properties described in Exhibits "A" through "F" until such time as the City of Pevely complies with the detachment provision of section 247.170 RSMo, Petitioner will be unable to protect the interests of the holders of its revenue bonds which are presently issued and outstanding.

WHEREFORE, petitioner prays this court enter its Judgment and Order against the City of Pevely as follows:

- (a) Restraining the City of Pevely from providing water service to the properties described in Exhibits "A" through "F" absent compliance with the provisions for detachment contained in Section 247.170 of the Revised Statutes of Missouri.
- (b) For attorney's fees;
- (c) For costs and such other relief as the court deems just and proper in the circumstances.

COUNT VIII, IN THE ALTERNATIVE, MONETARY DAMAGES

1. Petitioner incorporates each and every allegation contained in its General Allegations and Count VI as if same were more fully set out hercat.

2. As a direct and proximate result of the City's deliberate failure to comply with the provisions of Section 247.170 of the Revised Statutes of Missouri in extending its water distribution system and providing water services to the real property described on Exhibits "A" through "F" attached hereto, District has been damaged in an amount as yet to be determined including, but not limited to:

- (a) lost connection fees calculated on the basis of the date each connection to City's distribution system was made;
- (b) lost profits on the sale of water in the amount of Five Dollars and Seventy-Five Cents (\$5.75) per thousand gallons of water sold from the date each such connection was made; and
- (c) an amount calculated in conformance with the provisions of Section 247.170.1(5) of the Revised Statutes of Missouri necessary to protect the interests of District's bondholders.

WHEREFORE, petitioner prays this court enter its Judgment and Order against the City of Pevely for damages in an amount as yet to be determined, for costs, and such other relief as the court deems just and proper in the circumstances.

WEGMANN, STEWART, TESREAU, SHERMAN
EDEN, MIKALE & BISHOP, P.C.
Attorneys for Petitioner C-1 Water District
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455 Maple Street
Hillsboro, MO 63050
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By: 

Bianca L. Eden #50301

By: 

Randall D. Sherman #34715



TERRITORIAL AGREEMENT
BETWEEN
THE CONSOLIDATED PUBLIC WATER
SUPPLY DISTRICT NO. C-1 OF
JEFFERSON COUNTY, MISSOURI,
AND THE CITY OF PEVELY, MISSOURI

WHEREAS, this Agreement is made and entered into this 12th day of November, 2007, by and between the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, P.O. Box 430, Barnhart, Missouri 63012, hereinafter referred to as "District" and the City of Pevely, Missouri, City Hall, 301 Main Street, Pevely, Missouri 63070, hereinafter referred to as "Pevely".

WHEREAS, District is a public water supply district organized pursuant to the provisions of Chapter 247 of the Revised Statutes of Missouri, distributing potable water within its corporate boundaries in Jefferson County, Missouri; and

WHEREAS, Pevely is a municipal corporation of the Fourth Class which also furnishes potable water as part of its municipal services within areas defined by its corporate boundaries; and

WHEREAS, City is presently providing potable water to areas within the District generally located within all or parts of subdivisions known as "Hunters Glen", "Tiara at the Abbey", and "Vinyards at Bushberg"; and

WHEREAS, the parties desire to stipulate and agree with respect to the geographic areas which each will serve, in order to facilitate development of areas within the City of Pevely and the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri.

NOW, THEREFORE, the parties agree as follows:

1. The parties hereto acknowledge the geographical corporate boundaries of each entity and agree that such boundaries shall be in full force and effect as they presently exist and as may be subsequently modified by annexation and/or detachment in conformance with applicable provisions of Missouri Law pertaining to cities of the Fourth Class and Public Water Supply Districts.

2. Pevely shall continue to provide water service to those portions of the Hunters Glen subdivision, Tiara at the Abbey subdivision, and Vinyards at Bushberg subdivision as shown by plats by the subdivisions which are recorded with the Recorder of Deeds Office in Jefferson County, Missouri.

3. Pevely also agrees to cease all plans to extend water service within the current geographic boundaries of the District. Any future development which is within corporate boundaries of both the City of Pevely and the District, including the development presently known as Valle Creek Condominiums, shall be served by the District unless the

rights to serve such development are assigned in writing to the City by the District.

4. Should the City of Pevely be requested by any person or entity to provide water service within the corporate boundaries of the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, Pevely shall forthwith inform C-1 of such request in writing, and shall further direct any developing person or entity to the offices C-1 for purposes of determining whether C-1 has the desire or ability to extend water service to the area proposed for development. Thereafter, C-1 shall have sixty (60) days to make a determination whether to extend water service to the area proposed for development. If C-1 chooses not to extend water service to the area of proposed development, C-1, within said sixty (60) day period, shall notify the City of Pevely in writing of its decision. The parties agree that neither shall attempt to subvert the other's Regulations, Rules of Fee Structure for the sole purpose of causing a person or entity seeking water service to choose one entity over the other or to obtain unfair advantage over the signatory to this Agreement, it being the intention of the parties hereto that they shall not be in competition with each other for purposes of providing water service, but rather, that the parties shall cooperate for purposes of facilitating development within areas located within both entities.

5. It is the intention of the parties that this Agreement shall be a permanent determination as to which party shall provide water service to the areas specifically described in this Agreement, and neither party shall in the future attempt to alter the terms of this Territorial Agreement.

6. The parties further agree that all other territory within the District boundaries shall remain the exclusive territory of the District, and Pevely covenants and agrees that during the terms of this Agreement as specified hereafter it shall not, without the written consent of the District (a) seek detachment of any additional territory now within the boundaries of the District; (b) provide water service to any additional territory now within the boundaries of the District that is hereafter detached from the District; (c) seek to develop an agreement to provide water service to any additional territory now within the boundaries of the District that may be hereafter annexed by the City; and (d) directly or indirectly seek to dissolve the District or hold itself out as an alternative water supplier in any dissolution proceeding.

7. The terms of this Agreement shall be for a period of ten (10) years unless same is terminated earlier by virtue of the District having the ability to serve the areas referred to herein.

8. Pevely shall enact a Resolution and/or Ordinance approving the execution of this Agreement by the duly elected officials, and the District shall adopt a Resolution or Ordinance by its Board of Directors approving this Territorial Agreement and execution by its duly elected officials.

9. The terms of this Agreement shall be in full force and effect from the time the last of the signatories hereto approve same by an Ordinance duly enacted by its governing body.

10. Upon the execution and approval of the terms of this Agreement by each of the signatories hereto, the parties shall execute Stipulations of Dismissal With Prejudice, at each party's cost, of certain litigation currently pending within the Circuit Court of Jefferson County, Missouri, styled The Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, vs. City of Pevely, Missouri, Case No: CV306-1286-CC-J2, and the execution of this Agreement shall constitute and full and complete release of any and all claims, whether statutory, contractual, or tort either party may have against the other predicated upon the provision of water services within those geographic areas located within the corporate boundaries of both the City of Pevely and the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri, whether such claims may be presently apparent or may be discovered in the future.

11. Any written notices referred to in this Agreement shall be mailed to the parties at the following addresses:

Consolidated Public Water
Supply Dist. No. C-1
Attn: District Engineer
6645 Moss Hollow Road
P.O. Box 430
Barnhart, MO 63012

City of Pevely
Attn: Mayor and
Director of Public Works
City Hall
301 Main Street
Pevely, MO 63070


IN WITNESS WHEREOF, the City of Pevely has caused this Territorial Agreement to be executed by its Mayor and attested by its Clerk pursuant to Resolution adopted by the Board of Alderman of the City; and the District has caused the same to be executed by the Board of Directors of said District and attested by the Clerk of said District pursuant to a Resolution or Ordinance adopted by the District's Board of Directors.

CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT
NO. C-1 OF JEFFERSON COUNTY, MISSOURI

By:


Richard Hammond - President

ATTESTED TO:


Christine Hamilton - Clerk

CITY OF PEVELY, MISSOURI

BY: John Knobloch
John Knobloch - Mayor

ATTESTED TO:

Betty Hickley, Clerk
City Clerk

RECEIVED FROM BANK COUNSEL
April 25, 2013 VIA EMAIL



SHEPHERD TAYLOR KORUM & CURTIS, L.L.P.

CHARLES M. M. SHEPHERD
ADMITTED TO THE SUPREME COURT
OF THE UNITED STATES
CHARLES E. TAYLOR
DAVID M. KORUM
FRANK B. CURTIS

KEVIN M. WHITELEY

ATTORNEYS AT LAW
A PARTNERSHIP OF PROFESSIONALS AND PROFESSIONAL CORPORATIONS
222 SOUTH CENTRAL AVENUE, SUITE 804
ST. LOUIS (CLAYTON), MISSOURI 63105-3592

WRITER'S DIRECT: davidkorum@stklaw.com

MICHAEL E. SMALLWOOD
FORREST S. FITZROY
OF COUNSEL

Tel: (314) 727-8677
Fax: (314) 727-6676

August 28, 2012

The Consolidated Public Water Supply District No. C-1
Of Jefferson County
6645 Moss Hollow Road
P.O. Box 430
Barnhart, MO 63012

RE: Valle Creek Condominium Development

Ladies and Gentlemen:

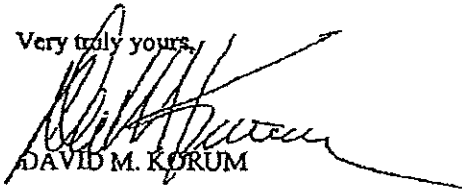
Please be advised that the undersigned is the City Attorney for Pevely, Missouri. As you may be aware, a Territorial Agreement between the Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri ("C-1") and the City of Pevely ("Pevely") was entered into November 12, 2007. H & H Development came to Pevely and processed the necessary paperwork and filings in order to begin and complete construction of Valle Creek Condominium ("Valle Creek"), and in response to H & H's request, Pevely, pursuant to Paragraph 4 of the Agreement, notified C-1 requesting whether C-1 had "... the desire or ability to extend water service to the area purposed for development ...". It is my understanding that the end of the closest extension of water service by C-1 does not service Valle Creek, and is approximately one mile from Valle Creek. Since 2007, Pevely has been furnishing water to Valle Creek, through meters installed and owned by C-1, and C-1 has been collecting the revenues therefor.

On Thursday, August 23, 2012, Pevely was notified by service of a Court Order issued by the St. Louis County Circuit Court notifying Pevely that a receiver had been appointed to replace the management and operations at H & H. In response, Pevely reviewed its historical files concerning Valle Creek and has determined that C-1 has not in fact extended service in order to provide water service to Valle Creek, nor has C-1 formally notified Pevely within the 60 day requirements of the Agreement of either its lack of desire or lack of ability to provide such service. As a result of the above, I am directed by Pevely to notify C-1 to remove its two meters at the Valle Creek project in a peaceful and orderly fashion, to coordinate same with contact of Stephanie Isaas at Pevely (636) 475-4452, in order that Pevely may instantly place its meter(s) at all Valle Creek locations. Pevely will provide C-1 with an accounting and billing, as finally adjusted between Pevely and C-1 not later than September 30, 2012.

The Consolidated Public Water Supply District No. C-1
Of Jefferson County
August 28, 2012
Page 2 of 2

Going forward, Pevely will continue the billing and providing water service to Valle Creek Condominium. Your attention to these matters will be greatly appreciated and assist both C-1 and Pevely in going forward in a seamless and orderly fashion to continue to provide service to the public. Lastly, please be advised that Pevely will continue to honor the territorial agreement as we go forward.

Very truly yours,



DAVID M. KORUM

DMK/mbc

cc: Jason Eisenbeis, City Administrator



**WEGMANN, STEWART, TESREAU, SHERMAN,
EDEN, MIKALE & BISHOP, P.C.
LAWYERS**

-SINCE 1947-

Roland A. (Ray) Wegmann
Jack G. Stewart
Dennis H. Tesreau
Randall D. Sherman
Diane L. Eden
Jessica A. Mikale
Mark T. Bishop

**P.O. Box 740
Court House Square
Hillsboro, MO
63050-0740**

**(636) 797-2665
(636) 296-5769
Fax (636) 797-3505**

Retired: Nicholas G. Gassner
A.W. Duffenbach, Jr.

Will R. Dearing (1903-1975)
Samuel Fickens (1904-1976)
J. Richard Roberts (1928-1976)
John A. Schneider (1942-1992)

EMAIL ADDRESS:
leden@wegmannlaw.com

September 11, 2012

Mr. David M. Korum
Attorney at Law
222 South Central Avenue, Suite 804
St. Louis, MO 63105-3592

Re: Valle Creek Condominium Development

Dear Mr. Korum:

My client, Consolidated Public Water Supply District No. C-1 of Jefferson County, received your letter of August 28, 2012, written on the behalf of the City of Pevely. Thank you for the opportunity to clarify the situation regarding water service to Valle Creek Condominiums. You may know that an agreement was made between this Water District and H&H Development regarding Valle Creek Condominiums on June 30, 2008 a copy of which is attached. Pursuant to that contract H&H Development was to complete the water main extension to Valle Creek Condominiums. Note that its terms were violated on February 1, 2009 as the extension was not complete. This District has not yet entered into negotiations with the developer because Pevely has been willing to continue their temporary service, and H&H Development has stated that no assets yet exist to fulfill the Agreement.

Pevely has had the right to withdraw its service on March 1, 2009. They have not yet done so.

If the developer made other provisions to legally serve Valle Creek Condominium's customers, he would have to dig a well, since the agreement between this Water District and Pevely (Territorial Agreement dated November 12, 2007 attached) requires that (Paragraph 6).

Note further that this District has not assigned rights to serve the development to the City pursuant to Paragraph 3 of the Territorial Agreement which specifically references Valle Creek Condominiums.

WEGMANN, STEWART, TESREAU, SHERMAN, EDEN, MIKALE & BISHOP, P.C.

September 11, 2012

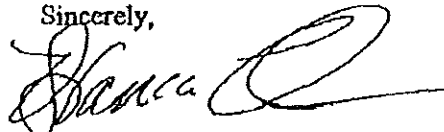
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Pursuant to the Territorial Agreement, if Pevely had been requested by H&H Development to provide service (which would violate Paragraph 6), they would have informed this District (Paragraph 4) and would have directed the Developer to discuss the request with this District.

In fact, this District has already shown a desire to extend water service to Valle Creek Condominiums (the area proposed for development) in the normal and routine manner (installed by a contractor that is approved by this District, under the inspection of this District, financed by the Developer, and accepted for continued maintenance by this District upon completion). See the Agreement dated June 30, 2008. Such requirements are in this District's rules and regulations and pursuant to paragraph 4 of the Territorial Agreement, your client agreed to not attempt to subvert same.

Since Pevely is not in competition with this District for the purposes of providing water service, we expect Pevely to cooperate for purposes of facilitating development of Valle Creek Condominiums within our area. For that reason, we hope to agree on a continued service by Pevely to Valle Creek Condominiums for a temporary period (to be negotiated), during which time H&H Development will find a way to extend the pipe from this District's nearby piping network, as agreed upon, or dig a well. My client would like to set up a meeting with your client to further discuss same and to negotiate the terms of service for a temporary period in conformance with paragraph 3 of the Territorial Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Bianca L. Eden", with a stylized flourish at the end.

Bianca L. Eden

BLE/ka
cc: Donovan Larson
Enc.

List of Territorial Agreements

WO-2013-0443, In the Matter of the Application of Missouri-American Water Company, for the Approval of an Agreement with the Chariton County Public Water Supply District #2 to Sell and Deliver Water for Resale and Related Tariff Sheets.

WO-2013-0193, In the Matter of the City of Chillicothe, Missouri, and Public Water Supply District No. 2 of Livingston County, Missouri's Application for Approval of Joint Service Agreement (not granted).

WO-2012-0088, In the Matter of the Application of Missouri-American Water Company and the Public Water Supply District No. 2 of St. Charles County, Missouri, for Approval of a Territorial Agreement Concerning Territory in St. Charles County, Missouri.

WO-2009-0351, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for Approval of a Third Amendment to a Written Territorial Agreement Concerning Territory Within Boone County, Missouri.

WO-2007-0188, In the Matter of the Application of the Consolidated Public Water Supply District No. 1 of Clark County, Missouri and the City of LaGrange, Missouri for Approval of a Territorial Agreement Concerning Territory Encompassing Part of Lewis County, Missouri.

WO-2007-0091, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for Approval of a Second Amendment to a Written Territorial Agreement Concerning Territory within Boone County, Missouri.

WO-2006-0488, In the Matter of the Joint Application of Public Water Supply District No. 3 of Franklin County, Missouri and the City of St. Clair, Missouri for Approval of a Water Service Area Territorial Agreement in Franklin County, Missouri.

WO-2006-0230, In the Matter of the Joint Application of the Public Water Supply District No. 2 of St. Charles County, Missouri, and the City of Wentzville, Missouri, for Approval of an Amendment to Their Water Service Area Territorial Agreement.

WO-2006-0135, In the Matter of the Application of Consolidated Public Water Supply District No. 1 of Clark County, Missouri and the City of Canton, Missouri for Approval of a Territorial Agreement Concerning Territory Encompassing Part of Lewis County, Missouri.

WO-2005-0286, In the Matter of the Application of Missouri-American Water Company, for the approval of an Agreement with the City of Kirkwood, Missouri to Construct Transmission Mains and Points of Delivery and to Sell and Deliver Water for Resale and Related Tariff Sheets.

LIST OF TERRITORIAL AGREEMENTS

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WO-2005-0242, In the matter of the application of Consolidated Public Water Supply District NO. 1 of Boone County, Missouri for approval of a territorial agreement concerning territory encompassing part of Boone County, Missouri.

WO-2005-0127, In the matter of the joint application of the City of Hannibal, Missouri and Public Water Supply District No. 1 of Ralls County, Missouri for approval of a water service area territorial agreement.

WO-2005-0084, In the Matter of the Joint Application of the City of Centralia, Missouri and Public Water Supply District No. 10 of Boone County, Missouri for approval of a first amendment to a written territorial agreement concerning territory within Boone County, Missouri and Audrain County, Missouri.

WO-2004-0163, In the Matter of the Joint Application of the City of Hannibal, Missouri and Public Water Supply District No. 1 of Ralls County, Missouri for Approval of Three Territorial Agreements Concerning Water Service Areas in Marion County, Missouri.

WO-2003-0186, In the matter of the joint application of the City of Union, Missouri and Public Water Supply District No.1 of Franklin County, Missouri for approval of a Territorial Agreement concerning territory in Franklin County, Missouri.

WO-2002-208, Centralia, City of (Water territorial agreement with Public Water Supply District No. 10 of Boone County which designates boundaries in Boone County, approved).

WO-2002-226, Pacific, City of (Water territorial agreement with Public Water Supply District No. 3 of Franklin County which encompasses part of Franklin County, approved).

WO-2001-326, Public Water Supply District No. 3 of Franklin County (Water territorial agreement with the City of Washington, encompassing part of Franklin County, approved).

WO-2000-472, City of Columbia (Territorial agreement with Public Water Supply District No. 4 of Boone County which encompasses part of Boone County, approved).

WO-2000-849, Public Water Supply District No. 2 of St. Charles County (Water territorial agreement with City of Wentzville, granted).

WO-99-129, Columbia, City of and Consolidated Public Water Supply District No. 1 of Boone County (Water territorial agreement, Boone County, approved).

WO-99-561, Public Water Supply District #1 of Nodaway County & City of Maryville (Territorial agreement, approved).

LIST OF TERRITORIAL AGREEMENTS

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WO-95-282, City of Ste. Genevieve, Public Water Supply District No. 1 of Ste. Genevieve, (Water territorial agreement, approved).