

City of Magnolia, Texas

Ordinance No. 2007-117

AN ORDINANCE APPROVING A SETTLEMENT AND OFFER OF COMPROMISE TO PENDING LITIGATION BETWEEN MAGNOLIA PLAZA, LTD., EASLEY FAMILY LIMITED PARTNERSHIP AND THE CITY OF MAGNOLIA; PROVIDING FOR REFUNDS AND MODIFICATION OF UTILITY RATES FOR LIMITED CUSTOMER CLASSES AND REPEALING AND AMENDING PORTIONS OF ORDINANCE 2007-110 INCONSISTENT WITH THESE SETTLEMENTS.

WHEREAS, the City of Magnolia, is a general law municipality located in Montgomery County, created in accordance with the Laws of the State of Texas.

WHEREAS, it is intent of the City of Magnolia to protect the health, safety and welfare and well being of its citizens and while meeting their water and sewer utility service needs through the resources of the City;

WHEREAS, under the authority of Local Government Code Chapter 402, a municipality may purchase, construct and operate a water and/or wastewater utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interest of the municipality, its citizens and its utility customers;

WHEREAS, the City owns and operates water works and sewer utility systems and provides retail public utility services to consumers inside and outside the City's corporate limits within certificates of convenience and necessity issued by the Texas Commission on Environmental Quality.

WHEREAS, in Ordinance 2006-088, 2006-102, 2006-104 and 2007-110, the City has adopted water and sewer service rates to recover its capital and operational costs of providing such services to various customer classes inside and outside the City.

WHEREAS, four of the customer rate classes remaining in Ordinance 2007-110 are the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City).

WHEREAS, Magnolia Plaza, Ltd. and Easley Family Limited Partnership, members of these select customer rate classes, filed suit against the City of Magnolia claiming improperly designed rates, billing errors and rate class inequities.

WHEREAS, Magnolia Plaza, Ltd. and Easley Family Limited Partnership and the City of Magnolia have negotiated compromises and settlements to said law suit that would amend the rate structure for these four distinct customer classes and resolve all other billing issues between the parties.

WHEREAS, the Magnolia City Council finds that the rates resulting from these law suit settlements and the ORDINANCE of the raised billing disputes to be reasonable, necessary and equitable among all customer classes without undue financial prejudice to the City.

NOW THEREFORE BE IT RESOLVED:

SECTION 1. APPROVAL OF COMPROMISES AND SETTLEMENT

The City of Magnolia approves the compromises and settlements between the parties as attached hereto and authorizes their execution as provided by law.

SECTION 2. RATE CHANGES

The City of Magnolia hence forth abolishes the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City) effective with the first normal billing cycle following the adoption of this ORDINANCE. Henceforth, former members of these four customer classes shall be designated as commercial (inside City) or commercial (outside City) depending on where their point of service consumption is located in relation to the then current city limit

§2.1 Section I.4.q – definition of “Multiple Unit” of Ordinance No. 2007-110 is repealed.

§2.2 Section III.5, Residential Multiple Unit Rates Inside/Outside City and Commercial Multiple Unit Rates Inside City/Outside are repealed. Henceforth, members of these former customer classes shall be billed on the basis of their water meter size adjusted according to the meter equivalency factors adopted herein.

§2.3 Section III.5 All retail water and sewer utility bills for the former members of the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City) shall be recalculated from the Effective Date forward using rates approved by the Magnolia City Counsel, which new rates shall implement a meter equivalence factor rate design to calculate the monthly minimum base rate. This “meter equivalency factor” rate design shall adopt the 5/8 x 3/4-inch residential water meter with a continuous flow rate of 10 gpm (inside or outside the City) as the base customer demand for rate design purposes. The actual dollar charge to be applied to the meter equivalency factor shall be the inside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located inside the City or the outside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located outside the City. Monthly minimum bills for affected members of these four customer classes having or requiring larger meters shall be calculated by multiplying the appropriate 5/8 x 3/4-inch meter rate by the American Water Works Association (“AWWA”) equivalency factors set forth below

§2.4 Section III.5
are:

The meter equivalency factors adopted by this ordinance

<u>meter size</u>	<u>recommended continuous rate of flow</u>	<u>residential meter equivalents</u>
5/8" X 3/4"	10.0 GPM	1.00
3/4"	15.0 GPM	1.50
1"	25.0 GPM	2.50
1 1/2"	50.0 GPM	5.00
2"	80.0 GPM	8.00
3" DISP.	90.0 GPM	9.00
3" CMPD	160.0 GPM	16.00
3" TURB.	175.0 GPM	17.50
4" CMPD	250.0 GPM	25.00
4" TURB.	300.0 GPM	30.00
6" CMPD	500.0 GPM	50.00
6" TURB.	625.0 GPM	62.50
8" CMPD	800.0 GPM	80.00
10" CMPD	1,150.0 GPM	115.00

Note: Although AWWA does not recommend a continuous flow of greater than 50 percent for displacement and multijet meters, meter equivalents are calculated on a proportional basis and remain the same regardless of allowable rates.

SECTION 3. SURCHARGES AND REFUNDS

Surcharges and/or refunds of the differences between the rates paid and the rates that members of these four customer classes, excepting Easley Family Limited Partnership, shall be calculated and billed in the manner set forth in the compromise and settlement.

SECTION 4. EASLEY FAMILY LIMITED PARTNERSHIP REFUNDS

In full and complete settlement of all claims of overcharges, improper billing or act or omission regarding charges for water and or sewer utility service, the City of Magnolia shall compensate the Easley Family Limited Partnership by either:

- a. paying the Easley Family Limited Partnership, \$22,500 cash, or
- b. giving the Easley Family Limited Partnership a billing credit of \$600 per month for thirty-six (36) consecutive months.

SECTION 5. SEVERANCE

If for any reason any section, paragraph, subdivision, clause, phrase or provision of this ORDINANCE is held invalid, it shall not affect any valid provisions of this or any other Ordinance or ORDINANCE of the City of Magnolia.

SECTION 6. REPEALER

To the extent, any other ordinance or ORDINANCE is inconsistent with the provisions herein, it is hereby repealed.


SECTION 7. RECITALS

The City Council hereby finds and declares all precatory language herein to be true and correct and approves and adopts the same herein as part of this ORDINANCE.

SECTION 8. EFFECTIVE DATE

This ORDINANCE shall take effect from and after the date of its adoption.

PASSED AND APPROVED this 11th day of September, 2007.


John W. Bramlett, Mayor Pro Tem


LuAnn D. Drake, City Secretary

Approved as to Form:

Leonard V. Schneider, City Attorney

MAGNOLIA PLAZA, LTD, a limited partnership and EASLEY FAMILY § LIMITED PARTNERSHIP, a limited partnership	§ § § § § § §	IN THE DISTRICT COURT 221 st JUDICIAL DISTRICT MONTGOMERY COUNTY, TEXAS
Vs. CITY OF MAGNOLIA, TEXAS		

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and Easley Family Limited Partnership ("EFLP") ("Plaintiff") and the City of Magnolia ("City" or "Defendant") to resolved without further litigation various disputes between Plaintiff and Defendant regarding charges made by Defendant to Plaintiff for retail municipal water and/or sewer utility services rendered to Plaintiff inside the City's corporate limits. This settlement is entered into without admission of the merits of any parties' factual allegations or claims of controlling legal authorities. The express purpose of this Agreement is to resolve all issues in dispute concerning billing for retail water and/or services from November 14, 2006 (the adoption of City Ordinance No. 2006-102) to date. The parties acknowledge and agree that City Ordinance 2006-102 modified in part a comprehensive retail water and sewer utility ordinance then in effect — Ordinance 2006-088 dated April 11, 2006. To the extent necessary, this Agreement shall also affect City Ordinance No. 2006-088. The parties acknowledge and agree that City Ordinance 2006-102 was modified in part in Ordinance 2007-110 This Agreement shall also fully resolve retail water or sewer utility disputes between the parties before November 14, 2006. In doing so, it will modify the comprehensive water and sewer rate ordinance now in effect, Ordinance 2007-110.

This Agreement is contingent upon approval by the Magnolia City Council in a noticed public meeting.

This Agreement has been made to ensure that all municipal water and sewer customers with the same or similar service demands and usage patterns are treated in the same or in a fair and equitable manner consistent with the City's treatment of all municipal retail water and sewer utility customers.

The terms of this Agreement, to which all parties bind and commit themselves to through the signatures of their respective authorized representatives (including counsels) are:

1. The effective date of this Agreement shall be the date of adoption of City Ordinance No. 2006-102 ("Effective Date").

2 The City agrees to modify its current retail water and sewer utility rate design for the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City). These unique customer classes shall be abolished as of the Effective Date. Henceforth, former members of these four customer classes shall be designated as commercial (inside City) or commercial (outside City) depending on where their point of service consumption is located in relation to the then current city limit.

3. All retail water and sewer utility bills for the former members of the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City) shall be recalculated from the Effective Date forward using rates approved by the Magnolia City Counsel, which new rates shall implement a meter equivalence factor rate design to calculate the monthly minimum base rate. The revised rates shall be calculated as nearly as reasonably possible to recover the same amount of revenue from the four affected customer classes as should have been collected if their bills under City Ordinance No. 2006-102 had been properly calculated and charged. This "meter equivalency factor" rate design shall adopt the 5/8 x 3/4-inch residential water meter with a continuous flow rate of 10 gpm (inside or outside the City) as the base customer demand for rate design purposes. The actual dollar charge to be applied to the meter equivalency factor shall be the inside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located inside the City or the outside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located outside the City. Monthly minimum bills for affected members of these four customer classes having or requiring larger meters shall be calculated by multiplying the appropriate 5/8 x 3/4-inch meter rate by the American Water Works Association ("AWWA") equivalency factors set forth below.

4. In full and complete settlement of all claims of overcharges, improper billing or act or omission regarding charges for water and or sewer utility service up to and including the date of execution of this Agreement by Plaintiff, the City shall compensate Plaintiff by either:

- a. paying Plaintiff \$22,500 cash within fifteen (15) days of the date of the Defendant's noticed City Council meeting at which this settlement is approved, or
- b. giving Plaintiff a billing credit of \$600 per month for thirty-six (36) consecutive months beginning with the first normal monthly billing cycle beginning within fifteen (15) days of the date of the Defendant's noticed City Council meeting at which this settlement is approved.

Plaintiff shall provide Defendant written notice of its election of remedies within five days of the date of the Defendant's noticed City Council meeting at which this settlement is approved. If Plaintiff elects the future billing credit option, Defendant shall designate in writing at the time of election which of its water or

sewer utility service accounts the credit shall be applied to in order of priority. If the full monthly credit is not offset by the designated water or sewer account in any given month, the balance shall be applied to the remaining accounts in designated order until fully offset.

By executing this Agreement and Plaintiff's receiving a one-time cash payment or the first billing credit created hereunder, Plaintiff and Defendant mutually release and hold harmless each other from any and all claims or causes of action relating to charges for water and or sewer utility service to any property of Plaintiff up to and including the date of execution of this Agreement by Plaintiff.

The executive officers of the Plaintiff and the Defendant shall be invested with the authority to modify or correct this payment Plaintiff from the provision of water and/or sewer utility service Agreement by mutual consent to address issues not currently envisioned so long as such change or modification does not increase or enhance any liability of the City arising hereunder. This power to modify shall include (for illustration purposes only) Plaintiff amending its water and sewer account designation of priority to be followed henceforth. The executive officer of the city shall notify all City Council members of each such change.

This Agreement on refunds is exclusive to Plaintiff and shall not be extended, in fact or by example, to any other former members of the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City).

5. The meter equivalency factors adopted by this agreement are:

<u>meter size</u>	<u>recommended continuous rate of flow</u>	<u>residential meter equivalents</u>
5/8" X 3/4"	10.0 GPM	1.00
3/4"	15.0 GPM	1.50
1"	25.0 GPM	2.50
1 1/2"	50.0 GPM	5.00
2"	80.0 GPM	8.00
3" DISP.	90.0 GPM	9.00
3" CMPD	160.0 GPM	16.00
3" TURB.	175.0 GPM	17.50
4" CMPD	250.0 GPM	25.00
4" TURB.	300.0 GPM	30.00
6" CMPD	500.0 GPM	50.00
6" TURB.	625.0 GPM	62.50
8" CMPD	800.0 GPM	80.00
10" CMPD	1,150.0 GPM	115.00

Note: Although AWWA does not recommend a continuous flow of greater than 50 percent for displacement and multijet meters, meter equivalents

are calculated on a proportional basis and remain the same regardless of allowable rates.

6. Any member of the four affected customer classes whose bills have been recalculated as provided above excluding Plaintiff, shall be entitled to schedule a meeting with a member of the City Staff during which the City will demonstrate the manner the revised bills and refunds/surcharged were calculated and what historic billing determinants were used to make the calculations. If the affected customer is not satisfied and the matter cannot be resolved to their satisfaction, that affected customer may petition the City to be put on a mutually convenient City Council agenda so they may present their complaint to the Council and have it acted on within the legal requirements of the Texas Open Meetings Act, Texas Government Code, Chapter 551.

7. The new water and/or sewer rates adopted by the Magnolia City Council in response to the terms of this Agreement shall remain the metered water and/or sewer rates to these four affected customer classes until the City adopts its next comprehensive revision of water and/or sewer rates. The City agrees that in the next comprehensive rate change ordinance, the former members of these four customer classes will be treated as commercial customers receiving service through a single meter.

8. Any member of the four affected customer classes except Plaintiff having a dispute with the Defendant over water or sewer service bills for services rendered during the four calendar years preceding the Effective Date shall be entitled to schedule a meeting with the City staff and the opportunity to resolve their billing problem(s) in the manner as set forth in Paragraph 6 above.

9. All other customer disputes over retail water or sewer utility service bills by any municipal customer class for any other reason or for any other period of service not expressly covered by this Agreement shall be resolved using the City's customer service rules now in effect.

10. The Defendant agrees that it will not terminate retail water or sewer utility services to any of the four affected customer classes for non-payment of bills purportedly calculated under City Ordinance No. 2006-102 until the Magnolia City Council has:

- a. Approved this Agreement without material change,
- b. Adopted new rates using the "meter equivalency factor" methodology prescribed herein.
- c. Directed the City staff and/or utility service contractor to issue water and/or sewer bills containing the refund/surcharge reconciliations prescribed in Paragraph 5.

11. This Agreement shall not prohibit the Defendant from terminating water or sewer utility to any municipal retail utility service customer in the ordinary

course of business under applicable municipal code or state law for any reason outside the express scope of this Agreement. This Agreement shall not prohibit the Defendant from terminating water or sewer utility to any municipal retail utility service customer who does not timely pay a reconciled bill containing the refund/surcharge reconciliations prescribed in Paragraph 5.

12. This Agreement shall only affect the City and each member of the former Residential Multiple Unit customer classes (inside the City and outside the City limits) and Commercial Multiple Unit customer classes (inside the City and outside the City limits). There are no third party beneficiaries to this Agreement and none are intended.


13. Within ten (10) days of the Magnolia City Counsel adopting the revised rates for the four affected customer classes as prescribed in Paragraph 11, Plaintiff shall file a motion of non-suit with prejudice in Cause No. 06-12-12110-CV with the Clerk of the 221st Judicial District Court, Montgomery County, Texas and pursue in good faith the entry of an order of the Court approving such motion. Should Plaintiff fail to file and prosecute said motion of non-suit with prejudice, by affixing their authorized signatures hereto, Plaintiff consents to Defendant to filing and prosecuting an agreed motion to dismiss Cause No. 06-12-12110-CV. Defendant's motion must contain a copy of this Agreement and evidence that the City has complied with the provisions of Paragraph 11.


ENTERED in Magnolia, Montgomery County, Texas on September 11, 2007.

CITY OF MAGNOLIA

Attest:

By:


John W. Bramlett, Mayor Pro Tem


Lu Ann Drake, City Secretary

EASLEY FAMILY LIMITED PARTNERSHIP

By: BBE, Inc., a Texas corporation

Attest:

By:

Name: Robert A. Easley

Name: _____

Title: President

Title: _____

Date Signed: 9.21.07

MAGNOLIA PLAZA, LTD, a limited partnership and EASLEY FAMILY § LIMITED PARTNERSHIP, a limited partnership	§ § § §	IN THE DISTRICT COURT 221 st JUDICIAL DISTRICT
Vs.	§	
CITY OF MAGNOLIA, TEXAS	§ §	MONTGOMERY COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between Magnolia Plaza, Ltd. ("MP") ("Plaintiff") and the City of Magnolia ("City" or "Defendant") to resolved without further litigation various disputes between Plaintiff and Defendant regarding charges made by Defendant to Plaintiff for retail municipal water and/or sewer utility services rendered to Plaintiff inside the City's corporate limits. This settlement is entered into without admission of the merits of any parties' factual allegations or claims of controlling legal authorities. The express purpose of this Agreement is to resolve all issues in dispute concerning billing for retail water and/or services from November 14, 2006 (the adoption of City Ordinance No. 2006-102) to date. The parties acknowledge and agree that City Ordinance 2006-102 modified in part a comprehensive retail water and sewer utility ordinance then in effect — Ordinance 2006-088 dated April 11, 2006. To the extent necessary, this Agreement shall also affect City Ordinance No. 2006-088. The parties acknowledge and agree that City Ordinance 2006-102 was modified in part in Ordinance 2007-110 This Agreement shall also fully resolve retail water or sewer utility disputes between the parties before November 14, 2006. In doing so, it will modify the comprehensive water and sewer rate ordinance now in effect, Ordinance 2007-110.

This Agreement is contingent upon approval by the Magnolia City Council in a noticed public meeting.

This Agreement has been made to ensure that all municipal water and sewer customers with the same or similar service demands and usage patterns are treated in the same or in a fair and equitable manner consistent with the City's treatment of all municipal retail water and sewer utility customers.

The terms of this Agreement, to which all parties bind and commit themselves to through the signatures of their respective authorized representatives (including counsels) are:

1. The effective date of this Agreement shall be the date of adoption of City Ordinance No. 2006-102 ("Effective Date").

2. The City agrees to modify its current retail water and sewer utility rate design for the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City). These unique customer classes shall be abolished as of the Effective Date. Henceforth, former members of these four customer classes shall be designated as commercial (inside City) or commercial (outside City) depending on where their point of service consumption is located in relation to the then current city limit.

3. All retail water and sewer utility bills for the former members of the Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City) shall be recalculated from the Effective Date forward using rates approved by the Magnolia City Counsel, which new rates shall implement a meter equivalence factor rate design to calculate the monthly minimum base rate. The revised rates shall be calculated as nearly as reasonably possible to recover the same amount of revenue from the four affected customer classes as should have been collected if their bills under City Ordinance No. 2006-102 had been properly calculated and charged. This "meter equivalency factor" rate design shall adopt the 5/8 x 3/4-inch residential water meter with a continuous flow rate of 10 gpm (inside or outside the City) as the base customer demand for rate design purposes. The actual dollar charge to be applied to the meter equivalency factor shall be the inside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located inside the City or the outside city 5/8 x 3/4-inch residential rate if the point of utility service consumption is located outside the City. Monthly minimum bills for affected members of these four customer classes having or requiring larger meters shall be calculated by multiplying the appropriate 5/8 x 3/4-inch meter rate by the American Water Works Association ("AWWA") equivalency factors set forth below.

4. Except for the Easley Family Limited Partnership, after each member of the former Residential Multiple Unit customer classes (inside and outside the City) and Commercial Multiple Unit customer classes (inside and outside the City) has been recalculated from the Effective Date forward, these revised bills shall be deducted from the total moneys paid in by such water and/or sewer customers for utility service, plus late fees and penalties, for the same period. If the amount paid exceeds the amount that should have been made without the assessment of late fees or penalties, the customer shall be entitled to a refund of the difference. If the total amount paid, including late fees or penalties, is less than the amount that should have been made without the assessment of late fees or penalties, the City shall be entitled to levy a surcharge on the customer to recover the difference.

5. Refunds and surcharges shall be calculated and implemented in the same manner for all affected customers except the Easley Family Limited Partnership. The amount of the refund or credit shall be divided by the number of months the City Ordinance No. 2006-1202 rates were charged that customer. The dividend shall be applied to that customer's future water and/or sewer bills as a refund or a surcharge for number of months in the divisor. Whether a former member of these four customer classes will receive a refund or a surcharge will depend upon

the amount paid in for retail utility services during the calculation period. Unless otherwise agreed to by the individual affected customer the same billing units used to calculate the original City Ordinance No. 2006-102 bills shall be used to calculate the revised meter equivalency factor bills arising from the Agreement.

6. The meter equivalency factors adopted by this agreement are:

<u>meter size</u>	<u>recommended continuous rate of flow</u>	<u>residential meter equivalents</u>
5/8" X 3/4"	10.0 GPM	1.00
3/4"	15.0 GPM	1.50
1"	25.0 GPM	2.50
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Note: Although AWWA does not recommend a continuous flow of greater than 50 percent for displacement and multijet meters, meter equivalents are calculated on a proportional basis and remain the same regardless of allowable rates.

7. Any member of the four affected customer classes whose bills have been recalculated as provided above, except the Easley Family Limited Partnership, shall be entitled to schedule a meeting with a member of the City Staff during which the City will demonstrate the manner the revised bills and refunds/surcharged were calculated and what historic billing determinants were used to make the calculations. If the affected customer is not satisfied and the matter cannot be resolved to their satisfaction, that affected customer may petition the City to be put on a mutually convenient City Council agenda so they may present their complaint to the Council and have it acted on within the legal requirements of the Texas Open Meetings Act, Texas Government Code, Chapter 551.

8. The new water and/or sewer rates adopted by the Magnolia City Council in response to the terms of this Agreement shall remain the metered water and/or sewer rates to these four affected customer classes until the City adopts its next comprehensive revision of water and/or sewer rates. The City agrees that in the next comprehensive rate change ordinance, the former members of these four

customer classes will be treated as commercial customers receiving service through a single meter.

9. Any member of the four affected customer classes having a dispute with the Defendant over water or sewer service bills for services rendered during the four calendar years preceding the Effective Date, except the Easley Family Limited Partnership, shall be entitled to schedule a meeting with the City staff and the opportunity to resolve their billing problem(s) in the manner as set forth in Paragraph 7 above.

10. All other customer disputes over retail water or sewer utility service bills by any municipal customer class for any other reason or for any other period of service not expressly covered by this Agreement shall be resolved using the City's customer service rules now in effect.

11. The Defendant agrees that it will not terminate retail water or sewer utility services to any of the four affected customer classes for non-payment of bills purportedly calculated under City Ordinance No. 2006-102 until the Magnolia City Council has:

- d. Approved this Agreement without material change,
- e. Adopted new rates using the "meter equivalency factor" methodology prescribed herein.
- f. Directed the City staff and/or utility service contractor to issue water and/or sewer bills containing the refund/surcharge reconciliations prescribed in Paragraph 5.

12. This Agreement shall not prohibit the Defendant from terminating water or sewer utility to any municipal retail utility service customer in the ordinary course of business under applicable municipal code or state law for any reason outside the express scope of this Agreement. This Agreement shall not prohibit the Defendant from terminating water or sewer utility to any municipal retail utility service customer who does not timely pay a reconciled bill containing the refund/surcharge reconciliations prescribed in Paragraph 5.

13. This Agreement shall only affect the City and each member of the former Residential Multiple Unit customer classes (inside the City and outside the City limits) and Commercial Multiple Unit customer classes (inside the City and outside the City limits). There are no third party beneficiaries to this Agreement and none are intended.

14. Within ten (10) days of the Magnolia City Counsel adopting the revised rates for the four affected customer classes as prescribed in Paragraph 11, Plaintiff shall file a motion of non-suit with prejudice in Cause No. 06-12-12110-CV with the Clerk of the 221st Judicial District Court, Montgomery County, Texas and pursue in good faith the entry of an order of the Court approving such motion. Should Plaintiff fail to file and prosecute said motion of non-suit with prejudice,


by affixing their authorized signatures hereto, Plaintiff consents to Defendant to filing and prosecuting an agreed motion to dismiss Cause No. 06-12-12110-CV. Defendant's motion must contain a copy of this Agreement and evidence that the City has complied with the provisions of Paragraph 11.

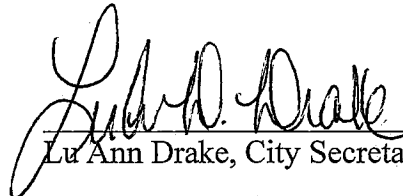
ENTERED in Magnolia, Montgomery County, Texas on September 11, 2007.

CITY OF MAGNOLIA

Attest:

By:


John W. Bramlett, Mayor Pro Tem

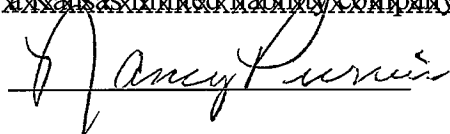

Lu Ann Drake, City Secretary

MAGNOLIA PLAZA, LTD.

~~By xxx Megan Asset Services LLC~~
~~xxx Kansas limited liability company~~

Attest:

By:



Name: Nancy Purvis

Name: _____

Title: General Partner

Title: _____

9/27/07

Baggett, Gordon & Deison

ATTORNEYS AT LAW

CHARLES C. BAGGETT, Dec'd
GEORGE D. GORDON*
R.A. "Mickey" DEISON
*Also Admitted in Ark.

307 N. San Jacinto
Conroe, Texas 77301

Telephone: (936) 756-1813
Telecopier: (936) 760-2305
Metro: (936) 441-3111
E-Mail: radeison@bgdlaw.net

*Received & Filed
in the Office of*

OCT 04 2007

October 2, 2007

*City Secretary
City of Magnolia, Texas*

CMRRR# 7006 2760 0005 1142 4694

Mayor Jimmy W. Thornton, Jr.
City of Magnolia, Texas
16835 FM 1488
Magnolia, Texas 77355

In Re: Cause No. 06-12-12110-CV; Magnolia Plaza, Ltd, a limited partnership and Easley Family Limited Partnership, a limited partnership vs. City of Magnolia, Texas; In the 221st Judicial District Court; Montgomery County, Texas

Dear Mayor Thornton:

Per instructions from Mr. Mark Zeppa, please find enclosed one (1) original document with the City of Magnolia, Texas Ordinance No. 2007-117, Settlement Agreement executed by Magnolia Plaza, Ltd. and Easley Family Limited Partnership, by BBE, Inc., a Texas corporation.

The Settlement Agreement with Easley Family Limited Partnership, provides for an election of one of two options and Mr. Easley has elected to receive the sum of \$22,500.00 cash within fifteen (15) days as provided in the Agreement. A joint motion to dismiss the lawsuit was filed with the Court on October 1, 2007.

Please forward the City's check to Mr. Easley at: P.O. Box 249, Carmine,
Texas 78932.

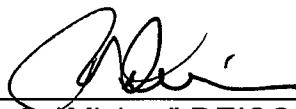
Your assistance in this matter is appreciated.

With best regards, I am,

Very truly yours,

BAGGETT, GORDON & DEISON

By:



R.A. "Mickey" DEISON

RAD:dgp

cc: Mr. Bob Easley
Easley Family Limited Partnership

Via: Regular Mail