

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-T-26TBM

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT,

Relief Defendants.

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**DECLARATION OF CARL R. NELSON IN SUPPORT OF  
RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE AS TO WHY  
CONSERVATION EASEMENT SHOULD NOT BE EXTINGUISHED**

Carl R. Nelson declares as follows:

1. I am an attorney with Fowler White Boggs P.A. in Tampa, Florida, and co-counsel in this matter for the Court-appointed Receiver, Burton W. Wiand (the "Receiver"). I make this declaration in support of the Receiver's Motion for Order to Show Cause as to why Conservation Easement Should Not Be Extinguished (the "Motion"), which is being filed along with this declaration.

2. Attached as **Exhibit A** is a true and correct copy of the Deed of Conservation Easement, which shows that Laurel Mountain granted the 169-acre easement (the “Easement”) that is the subject of the Motion to the Carolina Mountain Land Conservancy (the “Conservancy) on or about December 1, 2005.

3. Attached as **Exhibit B** is a true and correct copy of an appraisal of the 169 acres that are subject to the Easement.

4. Attached as **Exhibit C** are pertinent pages from Arthur Nadel and his wife’s income tax return for the year 2005. Among other things, the tax return shows that Nadel took a deduction of \$1,800,000 as “not capital gain property donated to 30% limit organizations.” (Ex. C at 4.)

5. Attached as **Exhibit D** is a true and correct copy of the Order Reappointing Receiver and Complaint filed on June 10, 2009, in the Western District of North Carolina. These court documents establish that this Court has jurisdiction over the property that is the subject of the Receiver’s Motion. *See* 28 U.S.C. § 754; *see also* 28 U.S.C. § 1692.

I declare under the penalty of perjury that the foregoing is true and correct and is executed this 23rd day of November, 2009.

s/ Carl R. Nelson  
\_\_\_\_\_  
Carl R. Nelson, FBN 0280186  
[cnelson@fowlerwhite.com](mailto:cnelson@fowlerwhite.com)  
FOWLER WHITE BOGGS P.A.  
P.O. Box 1438  
Tampa, FL 33601  
T: (813) 228-7411  
F: (813) 229-8313

**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Arthur G. Nadel  
Register No. 50690-018  
Metropolitan Correctional Center, New York  
150 Park Row  
New York, NY 10007

I further certify that I mailed the foregoing document, its exhibits, and the notice of electronic filing by certified mail and email to counsel for the Carolina Mountain Land Conservancy and the Assistant Attorney General for the State of North Carolina at the following addresses:

Sharon B. Alexander  
Prince, Youngblood & Massagee, PLLC  
240 Third Avenue West  
Hendersonville, NC 28739  
sbalexander@pym-law.com  
Co-Counsel for the Carolina Mountain  
Land Conservancy

William W. Weeks  
The Conservation Law Center  
116 S. Indiana Avenue  
Bloomington, Indiana 47408  
wwweeks@indiana.edu  
Co-Counsel for the Carolina Mountain  
Land Conservancy

Sueanna P. Sumpter  
North Carolina Department of Justice  
Attorney General's Western Office  
42 North French Broad Avenue  
Asheville, North Carolina 28801  
wossumpt@ncdoj.gov  
Assistant Attorney General, State of  
North Carolina

s/ Carl R. Nelson  
\_\_\_\_\_  
Carl R. Nelson, FBN 0280186

Doc ID: 016855350021 Type: CRP  
Recorded: 12/13/2005 at 04:05:47 PM  
Fee Amt: \$74.00 Page 1 of 21  
Workflow# 1987353  
Buncombe County, NC  
Otto W. DeBruhl Register of Deeds

BK 4151 PG 1686-1706

2006000989

MCDOWELL CO, NC FEE \$75.00  
PRESENTED & RECORDED:

02-13-2006 01:56:20 PM

Patricia A. Reel  
REGISTER OF DEEDS  
BY: CAROLYN I REEL  
DEPUTY REGISTER OF DEEDS

BK:CRP 857

PG:485-506

2005008737

MCDOWELL CO, NC FEE \$74.00  
PRESENTED & RECORDED:

12-06-2005 02:09:09 PM

Patricia A. Reel  
REGISTER OF DEEDS  
BY: JANE B MCGEE  
ASSISTANT REGISTER OF DEEDS

BK:CRP 849

PG:808-828

**THIS DOCUMENT CONTAINS A NOTICE PROVISION UPON TRANSFER OF ALL OR ANY PART OF THE REAL PROPERTY LEGALLY DESCRIBED HEREIN. SEE ARTICLE VII, SECTION 1.**

After recording mail to:

Carolina Mountain Land Conservancy  
P.O. Box 2822  
Hendersonville, NC 28793

*Mail to: Powell & Deutsch  
75 North Market St. # 71  
Mail SASE Asheville NC 28801*

NORTH CAROLINA

A portion of Parcel ID Number: 0637.00-81-0433

BUNCOMBE AND MCDOWELL COUNTIES

**DEED OF CONSERVATION EASEMENT  
LAUREL MOUNTAIN PRESERVE PROPERTY**

This Grant of Conservation Easement (hereinafter "Conservation Easement") is made this 1st day of December, 2005, by Laurel Mountain Preserve LLC, whose primary address is 131 Garren Creek Road, Fairview NC, 28730 (hereinafter "Grantor") and CAROLINA MOUNTAIN LAND CONSERVANCY, a North Carolina nonprofit corporation, with an address of Post Office Box 2822, Hendersonville, NC 28793 (hereinafter "Grantee").

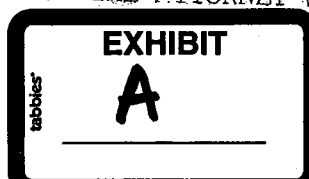
**RECITALS & CONSERVATION PURPOSES**

Whereas, Grantor is the sole owner in fee simple of the property consisting of 168.794 acres more or less, located in the Broad River Township, Buncombe and McDowell Counties, North Carolina, which is a portion of the property described in instruments recorded in Book 3487, Page 9, Buncombe County Registry and Book 762, Page 157, McDowell County Registry (the 168.794 acres hereinafter referred to as the "Property") and further described in Exhibit A attached hereto and by this reference incorporated herein; and

Whereas, the Property is depicted on a survey dated September 10, 2005 entitled "Composite Map for Laurel Mountain Preserve" (hereinafter the "Survey"), prepared by David E. Summey, P.L.L.C. and recorded in Plat Book 100, Page 81, Buncombe County Registry and recorded in Plat Book 11, Page 85, McDowell County Registry; and

THIS DEED IS BEING RE-RECORDED TO CORRECT THE PLAT BOOK AND PAGE NUMBER OF THE PLAT RECORDED IN MCDOWELL COUNTY REGISTRY. I AM THE ATTORNEY WHO DRAFTED THE ORIGINAL.

*[Signature]*  
ROBERT J. DEUTSCH, attorney



Whereas, **Grantee** is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, and not a private foundation under Code §509, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested and/or open space condition; and

Whereas, **Grantor** and **Grantee** recognize that the **Property** in its present state is a "natural scenic, rural or open area" that has not been subject to significant development and is a significant natural area which provides a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code. More specifically the **Easement** Area has:

- (i) Perennial streams which are a critical resource supplying fresh water to the Catawba River watershed as well as supporting aquatic wildlife;
- (ii) Approximately 37 acres of what appears to be historically unlogged, old growth forest including portions of most forest types found onsite. Old growth forests are the rarest forested conditions found in the eastern United States today offering an atypical glimpse of forest conditions prior to European colonization and deforestation;
- (iii) Rich and acidic cove forest communities which are High Priority Conservation Areas because they contain the highest numbers of rare species and total species diversity and density of forests onsite. They also provide important wildlife habitat;
- (iv) Rare plant species which have been designated and tracked by the North Carolina Natural Heritage Program as critical biological elements to the state of North Carolina. Such species found on the property include "significantly rare" *Coreopsis latifolia*, and "watch list" plant species such as *Helianthus glaucophyllus*, *Smilax biltmoreana*, *Tsuga caroliniana*, *Trillium cuneatum* and other species mentioned in the baseline documentation. In addition the property may host populations of other rare plant species such as Mountain Heartleaf which has been found upslope to the southeast near Round Mountain.
- (v) Critical Wildlife species such as Yellow-bellied Sapsucker and 39 other probable bird species, 17 of which are listed by Partners in Flight as priority conservation species within the Southern Blue Ridge Region.

Whereas, **Grantor** and **Grantee** further recognize the **Property** provides "open space for the scenic enjoyment of the general public" as that phrase is used in Section 170(h)(4)(iii) of the Internal Revenue Code. More specifically, the **Property** is visible from State Roads 1100 and 1106 to the north, and has:

- (i) Viewsheds from south facing slopes in the road vicinity and south-facing slopes, ridges and peaks from Edmundson Mountain and Wildcat Knob;
- (ii) Close proximity to the Pisgah National Forest and Gamelands, although it does not directly abut. Hickorynut Gamelands and other private forested land surround the property, although this land is not necessarily protected from development. The connectivity of all forested land in the general vicinity of the property is

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profoundly important for plant and animal migration and diversity.

Whereas, **Grantor** believes that with the careful use of the conservation easement, the resources, habitat, beauty and unique ecological character (hereinafter "**Conservation Values**") of the **Property** can be protected in a manner that permits continuing private ownership of land and its subsequent use and enjoyment, and **Grantor** is willing to forego forever the right to fully exploit the financial potential of the **Property** by encumbering the **Property** with this **Conservation Easement**;

Whereas the protection of the natural and open space characteristics of the **Property** will yield significant public benefits, as evidenced by:

1. The policies and purposes of the Clean Water Management Trust Fund, N.C.G.S. Section 113-145.1 et seq., which recognizes the importance of protecting riparian buffers in protecting and conserving clean surface water;
2. The policies and purposes of the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. Section 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural farming or forest use;" and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement."
3. The policies and purposes of the special North Carolina Conservation Tax Credit Program which encourages contributions of land for conservation purposes as set forth in N.C.G.S. Section 105-130.34 and Section 105-151.12 et seq.
4. The "Million Acres Initiative," enacted in June 2000, N.C.G.S. 113A-240, which provides that the state shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space and conservation lands are permanently protected by December 31, 2009; and
5. North Carolina General Statute 139-2 et seq. provides that "it is hereby declared that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people. It is hereby declared to the policy of the legislature to provide for the conservation of the soil and resources of this State."; and

Whereas **Grantor** and **Grantee** have the common purposes of conserving the **Conservation Values** described in the preceding paragraphs, and **Grantor** further intends that the **Conservation Values** of the **Property** be conserved and maintained by permitting only those land uses on the **Property** that do not significantly impair or interfere with them, including, but not limited to, those land uses relating to recreational uses of the land and more specifically:

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- (i) The development and maintenance of hiking, biking, and walking trails including trail signs;
- (ii) A reasonable number of picnic tables and benches;
- (iii) Providing that all trails and picnic areas etc. are developed and located in a way so as not to impair the aforementioned significant Conservation Values of the land.

Whereas, the **Conservation Values** are of great importance to the **Grantor**, to the **Grantee** and to the people of North Carolina and this nation; and

Whereas, the characteristics of the **Property**, its current use and state of improvement, are described in a report entitled Laurel Mountain Preserve Baseline Documentation, dated July 2005, (hereinafter "**Report**") prepared by Equinox Environmental Consultation and Design, Inc. for the **Grantor**, which consists of maps, reports, and onsite photographs, a summary of which is attached as Exhibit B to this **Conservation Easement**. The **Grantor** worked with the **Grantee** and Equinox Environmental Consultation and Design, Inc. to ensure that the report is a complete and accurate description of the **Property** as of the date of this **Conservation Easement**. The report will be used by the **Grantor** and **Grantee** to assure that any future changes in the use of the **Property** will be consistent with the terms of this **Conservation Easement**. However, the **Report** is not intended to preclude the use of other evidence to establish the present condition of the **Property** if there is a controversy over its use; and

Whereas **Grantor** owns the entire fee simple interest in the **Property** including the entire mineral estate subject to any liens, encumbrances, restrictions or covenants of record and all holders of liens or other encumbrances upon the **Property** have agreed to subordinate their interest in the **Property** to this **Conservation Easement**; and

Whereas the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., provides for the enforceability of restrictions, easements, covenants, or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use; and

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the **Grantor** hereby unconditionally and irrevocably give, grant and convey forever and in perpetuity to the **Grantee**, its successors and assigns, and the **Grantee** hereby accepts, a Deed of **Conservation Easement** of the nature and character and to the extent hereinafter set forth in, over, through and across the **Property**, together with the right to preserve and protect the **Conservation Values** thereof as described in the Recitals herein.

### ARTICLE I. PURPOSE OF EASEMENT

The purposes of this **Conservation Easement** are to protect and conserve the value of the **Property's** natural habitat, water quality, and scenic qualities and it shall be so held, maintained,

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and used therefore. It is the further purpose of this **Conservation Easement** to prevent any use of the **Property** that will significantly impair or interfere with the preservation of said **Conservation Values**. **Grantor** intends that this **Conservation Easement** will restrict use of the **Property** to such activities as are consistent with the purposes of conservation.

**ARTICLE II. DURATION OF EASEMENT**

This **Conservation Easement** shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by **Grantee** against **Grantor**, its representatives, successors, assigns, lessees, agents and licensees.

**ARTICLE III. RIGHTS RESERVED TO GRANTOR**

**Grantor** reserves certain rights accruing from ownership of the **Property**, including the right to engage in or permit others to engage in uses of the **Property** that are not inconsistent with the purpose(s) of this **Easement**. All rights reserved by **Grantor** are reserved for **Grantor**, its representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this **Conservation Easement**. The following rights are expressly reserved:

1. Construction. The right to construct structures except those existing on the date of this **Conservation Easement** is permitted only in accordance with the paragraphs below.

1.1 Roads and Trails: **Grantor** reserves the right to keep open and passable all existing trails on the **Property** at the time of this **Conservation Easement**, the general locations of which are shown in the **Report**. A reasonable number of hiking trails may be created anywhere on the **Property** so long as the network of trails does not degrade the **Conservation Values** of the **Property**.

1.2 Recreational Structures: **Grantor** reserves the right to construct a reasonable number of benches, boardwalks picnic tables, fire rings and where necessary railings, stairs, and footbridges.

1.3 Utilities: **Grantor** reserves the right to construct a well or wells to serve allowed improvements and **Property** uses, along with aboveground appurtenances not to exceed 100 square feet.

2. Existing Improvements. **Grantor** shall have the right to maintain, remodel, replace and repair existing structures, water tanks, water wells, fences, utilities, and other improvements, and to improve, keep open and keep passable existing roads, and in the event of their destruction, to reconstruct any such existing improvements with another of similar size, function, capacity, location and material.



3. Timber Harvest. The right to cut timber or remove or destroy trees shall be permitted upon the **Property** only under the following conditions or for the following purposes:

- 3.1 Clearing and restoring vegetative cover that has been damaged or disturbed by forces of nature or otherwise or for the removal of dead wood or trees as necessary to control or prevent imminent hazard, disease or fire.
- 3.2 Selective thinning or harvesting trees is permitted, but done only in accordance with contemporary, conservation-based, forest management practices and according to a plan that is consistent with the provisions of this **Conservation Easement**, and prepared by the North Carolina Division of Forest Resources, a registered forester or other qualified biologist. Such plans must be approved by **Grantor** and **Grantee**, and may be amended from time to time by the parties. Such plans shall include a copy of this **Conservation Easement** as an appendix and shall also include a biological inventory of the **Property** if one is available. The purpose of this requirement is to ensure that goal of the forest management plan is consistent with the purpose of this **Conservation Easement**.
- 3.3 **Grantor** shall indemnify **Grantee** for all claims of personal injury or property damage, including reasonable attorney fees and costs, occurring on the **Property** to the extent they are caused by the negligence or intentional act of **Grantor**, its employees, or agents. **Grantee** shall indemnify **Grantor** for all claims of personal injury or property damage, including reasonable attorney fees and costs, occurring on the **Property** to the extent that they are caused by the negligence or intentional act of **Grantee**, its employees, or agents.

4. Recreational Use. **Grantor** shall have the right to engage in and to permit others to engage in recreational uses of the **Property** including, but not limited to, hiking, camping, picnicking, non-motorized bicycling, lawful hunting and fishing, and other recreational uses that require no buildings, facilities, surface alteration or other development of the land.

5. Destruction of Plants and Pruning. **Grantor** shall have the right to cut and remove diseased trees, shrubs, or other plants, and to cut firebreaks, subject to prior approval by the **Grantee**, except that such approval shall not be required in case of emergency firebreaks. **Grantor** shall also have the right to cut and remove trees, shrubs, or other plants to accommodate the activities expressly allowed under this easement and to maintain open spaces existing at the time of this **Conservation Easement**. There shall be no additional removal, harvesting, destruction or cutting of native trees, shrubs or other plants. Furthermore, except to accommodate the activities expressly permitted in this easement, there shall be no use of fertilizers, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

- 5.1 The spraying of herbicides to control weeds and undesirable plants shall be allowed, provided that any herbicide shall be applied in accordance with the recommendations and/or requirements on the label of the herbicide and

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its use shall be consistent with any applicable federal, state, and local laws and regulations.

6. Excavation. **Grantor** shall have the right to excavate only as necessary to allow the construction of the improvements allowed above, the maintenance of existing hiking trails and the prevention of erosion and/or flooding. There shall be no other excavation or alteration to the topography allowed on the **Property**.

7. Water Quality and Drainage Patterns. **Grantor** reserves the right to alter the land in furtherance of wetland or riparian restoration activities so long as such activities to restore natural hydrology, or to enhance wetlands or other hydric habitat, are performed in accordance with a habitat improvement plan prepared by a biologist, consultant, or other qualified professional and approved by the **Grantee** and as permitted by state and any other appropriate regulatory authorities. **Grantor** also reserves the right to construct a well or wells to serve allowed improvements.

8. Signage. No signs or billboards or other advertising displays are allowed on the **Property**, except that signs whose placement, number and design do not significantly diminish the scenic character of the **Property** may be displayed to identify roads or trails and the **Conservation Values** of the **Property**, to identify the name and address of the **Property** and the names of persons living on the **Property**, to give directions, to advertise or regulate permitted uses on the **Property** and proscribe rules, use, and regulations for recreational use of the protected **Property**, to advertise the **Property** for sale or rent, and to post the **Property** to control trespassing.

9. Predator Control. **Grantor** shall have the right to control, destroy, or trap predatory and problem animals that pose a material threat to humans by means and methods approved by the **Grantee**. The method employed shall be selective and specific to individuals, rather than broadcast, non-selective techniques and shall be in accordance with all pertinent federal, state and local laws and regulations.

10. Vehicular Use. **Grantor** reserves the right to use motorized vehicles on any road on the **Property** and to use motorized vehicles on the **Property** in furtherance of rights reserved to **Grantor** so long as such use is not for recreational purposes.

#### ARTICLE IV. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the **Property** inconsistent with the purposes of this **Conservation Easement** is prohibited. Notwithstanding the foregoing, **Grantor** and **Grantee** have no right to agree to any activity that would result in the termination of this **Conservation Easement** or would cause it to fail to qualify as a "qualified conservation contribution" as described in Section 170(h) of the Internal Revenue Code or any regulations promulgated thereunder, or as a "qualified conservation easement" as described in Section 2031(c)(8)(B) of the Internal Revenue Code or any regulations promulgated thereunder. The **Property** shall be maintained in its natural, scenic, wooded or open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this **Conservation**

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Easement set forth above.

Except for those rights specifically reserved to Grantor in Article III and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted:

1. Industrial and Commercial Use. Industrial and commercial activities and any right of passage for such purposes are prohibited on the **Property**.
2. Subdivision. The **Property** may not be divided, subdivided or partitioned, nor conveyed except in its current configuration as an entity.
3. Development Rights. No development rights that have been encumbered or extinguished by this **Conservation Easement** shall be transferred to other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
4. Commercial Agricultural, Timber Harvesting, Grazing and Horticultural Use. Commercial agricultural, timber harvesting, grazing, horticultural or animal husbandry operations are prohibited on the **Property**.
5. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features on the **Property**.
6. Construction of Buildings and Recreational Use. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier landing, dock or any other temporary or permanent structure or facility on or above the **Property**.
7. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or incidental to any conservation management activities.
8. No Biocides. There shall be no use of pesticides or biocides, including, but not limited to, insecticides, fungicides, rodenticides, and herbicides, except as approved by **Grantee** to control invasive species detrimental to the **Conservation Values** of the **Property**, and except as needed around improvements on the **Property** and in existing agricultural fields.
9. No Dumping. There shall be no storage or dumping of trash, garbage, abandoned vehicles, appliances, or machinery, or other unsightly or offensive material, hazardous substance, or toxic waste on the **Property**. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the **Property** that could cause erosion or

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siltation on the **Property**.

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10. Water Quality and Drainage Patterns. There shall be no pollution or alteration of water bodies and no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the **Property** or into any surface waters; or cause soil degradation or erosion; nor diking, dredging, alteration, draining, filling or removal of wetlands.

11. Adverse or Inconsistent Uses. There shall be no other use or activity that is inconsistent with the **Conservation Purposes**.

**ARTICLE V. RIGHTS RESERVED TO GRANTEE, ENFORCEMENT AND REMEDIES**

1. Enforcement. To accomplish the purposes of this **Conservation Easement**, **Grantee** is allowed to prevent any activity on or use of the **Property** that is inconsistent with the purposes of this **Conservation Easement** and to require the Grantor, all subsequent owners, heirs and assigns to restore such areas or features of the **Property** that may have been damaged by such activity or use. Upon any breach of the terms of this **Conservation Easement** by **Grantor** that comes to the attention of the **Grantee**, the **Grantee** shall, except as provided below, notify the **Grantor** in writing (hereinafter "**First Notice**") of such breach. The **Grantor** shall have thirty (30) days after receipt of the **First Notice** to either correct the conditions constituting such breach or to pursue mediation as described in Article VII Section 9 of this **Conservation Easement**. In the event that mediation or voluntary compliance is not agreed upon within thirty (30) days of receipt of **First Notice**, the **Grantee** shall give written notice to **Grantor** of such violation (hereinafter "**Second Notice**") and demand corrective action sufficient to cure the violation and, where the violation involves injury to the **Property** resulting from any use or activity inconsistent with the purpose of this **Conservation Easement**, to restore the portion of the **Property** so injured. If the **Grantor** fails to agree to mediation or to cure the breach within thirty days after receipt of the **Second Notice** the **Grantee** may enforce this **Conservation Easement** by appropriate legal proceedings including damages, injunctive and other relief. The **Grantee** shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the **Property** by acts which may be unlawful or in violation of this **Conservation Easement**; (b) to otherwise preserve or protect its interest in the **Property**; and (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the **Grantee** reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this **Conservation Easement** is or would irreversibly or otherwise materially impair the benefits to be derived from this **Conservation Easement**. The **Grantor** and **Grantee** acknowledge that under such circumstances damage to the **Grantee** would be irreparable and remedies at law will be inadequate. The rights and remedies of the **Grantee** provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to **Grantee** in connection with this **Conservation Easement**.

2. Right of Entry and Inspection. **Grantee**, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the **Property** once a year for the purpose of inspecting the **Property** to determine if the **Grantor**, **Grantor's** representatives, or assigns are complying with the terms, conditions and restrictions of this **Conservation Easement**. **Grantee** may enter the **Property** without giving reasonable notice to the **Grantor** whenever **Grantee** has reasonable evidence of a violation; in this event **Grantee** will notify **Grantor** of the reasonable evidence prompting **Grantee's** entry of the **Property** in accordance with Article VII, Paragraph 6 below.

3. Acts Beyond Grantor's Control. Nothing contained in this **Conservation Easement** shall be construed to entitle **Grantee** to bring any action against **Grantor** for any injury or change in the **Property** caused by third parties, resulting from causes beyond the **Grantor's** control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the **Grantor** under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the **Property** resulting from such causes.

4. Costs of Enforcement. Any costs incurred by **Grantee** in enforcing the terms of this **Conservation Easement** against **Grantor**, including, without limitation, any costs of restoration necessitated by **Grantor's** acts or omissions in violation of the terms of this **Conservation Easement**, shall be borne by **Grantor**.

5. No Waiver. Enforcement of this **Conservation Easement** shall be at the discretion of the **Grantee** and any forbearance by **Grantee** to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by **Grantee** of such term or of any subsequent breach of the same or of any other term of this easement or of **Grantee's** rights. No delay or omission by **Grantee** in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6. Research and Restoration Activities. **Grantee** has the right, but not the obligation, to undertake research, restoration and any special management necessary (e.g., removal of exotic species, wildlife restoration activities) for species designated by agencies of the State of North Carolina or federal agencies as warranting concern due to small or declining local, regional, or national populations.

#### ARTICLE VI. DOCUMENTATION AND TITLE

1. Property Condition. The parties acknowledge that the **Property** has a system of hiking trails and old logging roads, and no other improvements other than as described in Exhibit B and easements and rights of way of record.

2. Title. The **Grantor** covenants and represents that the **Grantor** is the sole owner and is seized of the **Property** in fee simple and has good right to grant and convey the aforesaid **Conservation Easement** on the **Property**, that there is legal access to the

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**Property**, that the **Property** is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this **Conservation Easement**; **Grantor** shall defend its title against the claims of all persons whomsoever, and **Grantor** covenants that the **Grantee** shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid **Conservation Easement**.

3. Easement Documentation Report. The parties acknowledge that the Report, a copy of which is on file at the offices of **Grantee**, accurately establishes the uses, structures, **Conservation Values** and condition of the **Property** as of the date hereof.

### ARTICLE VII. MISCELLANEOUS

1. Subsequent Transfers. **Grantor** agrees for itself, its successors and assigns, to notify **Grantee** in writing of the names and addresses of any party to whom the **Property**, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. **Grantor**, for itself, its successors and assigns, further agrees to make specific reference to this **Conservation Easement** in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the **Property** is conveyed.

2. Conservation Purpose.

2.1 **Grantee**, for itself, its successors and assigns, agrees that this **Conservation Easement** shall be held exclusively for conservation purposes.

2.2 The parties hereto recognize and agree that the benefits of this **Conservation Easement** are in gross and assignable, provided, however that the **Grantee** hereby covenants and agrees, that in the event it transfers or assigns this **Conservation Easement**, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and **Grantee** further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

2.3 This **Conservation Easement** gives rise to a real property right and interest immediately vested in **Grantee**. For purposes of this **Conservation Easement**, the fair market value of **Grantee's** right and interest shall be equal to the difference between (a) the fair market value of the **Easement Area** as if not burdened by this **Conservation Easement** and (b) the fair market value of the **Easement Area** burdened by this **Conservation Easement**.

2.4 If at any time **Grantee** or any successor or assignee is unable to enforce this **Conservation Easement** or if **Grantee** or any successor or assignee of **Grantee's** rights under this **Conservation Easement** ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, **Grantee** or any successor or assignee fails to assign all of its rights and responsibilities under this **Conservation Easement** to a "qualified organization" and "holder", then the rights and responsibilities under this **Conservation Easement** shall become vested in and fall upon another qualified organization in accordance with a proceeding before, and the order of, any court of competent jurisdiction. **Grantor shall have the right to comment in writing on the selection of an organization or entity to transfer this Conservation Easement to and Grantee shall consider such comments in their decision.**

3. Existing Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this **Conservation Easement** is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation to the **Grantor** as owner of the **Property**. Among other things, this shall apply to:

3.1 Taxes. The **Grantor** shall continue to be solely responsible for payment of all taxes and assessments levied against the **Property**. If the **Grantee** is ever required to pay any taxes or assessments on its interest in the **Property**, the **Grantor** will reimburse the **Grantee** for the same.

3.2 Upkeep and Maintenance. The **Grantor** shall continue to be solely responsible for the upkeep and maintenance of the **Property**, to the extent it may be required by law. The **Grantee** shall have no obligation for the upkeep or maintenance of the **Property**.

3.3 Liability and Indemnification. If the **Grantee** is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the **Property**, the **Grantor** shall indemnify and reimburse the **Grantee** for these payments, as well as reasonable attorneys' fees and other expenses of defending itself, unless the **Grantee** has committed a deliberate act that is determined to be the sole cause of the injury or damage. In addition, **Grantor** warrants that **Grantee** shall be maintained as an additional insured on **Grantor's** liability insurance policies covering the **Property**.

4. Construction of Terms. This **Conservation Easement** shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34 et seq. which authorizes the creation of Conservation Easements for purposes including those set forth in the Recitals herein, and the conservation purposes of this **Conservation Easement**, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

5. Recording. **Grantee** shall record this instrument and any amendment hereto in timely fashion in the official records of Buncombe and McDowell County, North

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Carolina, and may re-record it at any time as may be required to preserve its rights.

6. Notices. All notices, requests or other communications permitted or required by this Agreement shall be sent by certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. All such items shall be deemed given or made three (3) days after being placed in the United States mail as herein provided. In any case where the terms of this **Conservation Easement** require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed approved unless, within thirty (30) days after receipt of notice, a written response is returned via registered mail. If additional information is required or requested to render a decision, consent will be deemed approved thirty (30) days after receipt of said additional information if a response is not received.

To **Grantor**:  
Laurel Mountain Preserve LLC  
131 Garren Creek Road  
Fairview NC 28730

To the **Grantee**:  
Carolina Mountain Land Conservancy  
P.O. Box 2822  
Hendersonville. NC 28793

7. Amendments. In furtherance of the **Conservation Purposes** of this **Conservation Easement**, neither **Grantor** nor **Grantee** contemplate the amendment of this **Conservation Easement** except in the event of an error in drafting jointly acknowledged by both **Grantor** and **Grantee**, or other rare, unlikely circumstances. If circumstances arise such that an amendment to, or modification of, this **Conservation Easement** would be appropriate, **Grantor** and **Grantee** are free to jointly amend this **Conservation Easement**, provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement as a qualified conservation contribution or the status of **Grantee** under any applicable laws, including Section 170(h). **Grantor** and **Grantee** are free to jointly amend this **Conservation Easement** to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this **Conservation Easement** or affects the perpetual duration of this **Conservation Easement**. Such amendment(s) require the written consent of both **Grantor** and **Grantee** and shall be effective upon recording in the public records of Buncombe and McDowell County, North Carolina. **Grantee** and the legal owner or owners of the **Easement Area** or, if the **Easement Area** has been legally subdivided, the owner of that portion of the **Easement Area** affected by such amendment at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this **Conservation Easement** which are not inconsistent with the **Conservation Purposes**.

8. Environmental Condition of Property. The **Grantor** warrants, represents and covenants to the **Grantee** that to the best of its knowledge after appropriate inquiry and investigation that: (a) the **Property** described herein is, and at all times hereafter will continue to be, in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances,



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wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the **Property** or used in connection therewith, and that there is no environmental condition existing on the **Property** that may prohibit or impede use of the **Property** for the purposes set forth in the Recitals and the **Grantor** will not allow such uses or conditions.

9. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose or terms of this **Conservation Easement** that they cannot resolve through unassisted consultation between themselves, and **Grantor** agrees not to proceed with, or shall discontinue, the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties, within fifteen (15) days of receipt of the initial request will jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

- 9.1 Purpose: The purposes of the mediation are to (a) promote discussion between the parties; (b) assist the parties in developing and exchanging pertinent information concerning issues in dispute; and (c) assist the parties in developing proposals that enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this **Conservation Easement**.
- 9.2 Participation: The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of both parties having settlement authority will attend sessions as requested by the mediator.
- 9.3 Confidentiality: All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.
- 9.4 Time Period: Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- 9.5 Costs: The cost of the mediator shall be borne equally by **Grantor** and **Grantee**. The parties shall bear their own expenses, including attorney's fees, individually.
- 9.6 Decisions: No verbal discussions arising from mediation are binding unless they are written and signed.

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10. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the **Conservation Easement** and supersedes all prior discussions, negotiations, understandings or agreements relating to the **Conservation Easement**. If any provision is found to be invalid, the remainder of the provisions of this **Conservation Easement**, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby. The party(ies) hereto intend this document to be an instrument executed under seal. If any party is an individual, partnership or limited liability company, such party hereby adopts the word "SEAL" following his/her signature and the name of the partnership or limited liability company as his/her/its legal seal. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

11. Indemnity. The **Grantor** agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the **Grantee** from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation, by any party other than the **Grantee**, of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the **Property**. Grantee shall also indemnify Grantor from any such violation caused by Grantee, its employees, or agents

12. Interpretation. This **Conservation Easement** shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.

13. Parties. Every provision of this **Conservation Easement** that applies to the **Grantors** or to the **Grantee** shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all other successors in interest herein.

14. No Extinguishment Through Merger. **Grantor** and **Grantee** herein agree that should Carolina Mountain Land Conservancy come to own all or a portion of the fee interest in the **Property**, (a) Carolina Mountain Land Conservancy as successor in title to **Grantor** shall observe and be bound by the obligations of **Grantor** and the restrictions imposed upon the **Property** by this **Conservation Easement**, as provided in Article IV.; (b) this **Conservation Easement** shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (c) Carolina Mountain Land Conservancy as promptly as practicable shall assign the **Grantee** interests in this **Conservation Easement** of record to another holder in conformity with the requirements of this paragraph, Article VII, Paragraph 14. Any instrument of assignment of this **Conservation Easement** or the rights conveyed herein shall refer to the provisions of this paragraph, Article VII, Paragraph 14, and shall contain language necessary to continue it in force.

15. Subsequent Liens. No provisions of this **Conservation Easement** shall be construed as impairing the ability of **Grantors** to use the **Property** for collateral or

CRP 857 500

CRP 849 823

borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinated to this **Conservation Easement**.

16. Termination of Easement. If it is determined that conditions on or surrounding the **Property** have changed so much that it is impossible to fulfill any of the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the **Grantor** and **Grantee**, terminate this **Conservation Easement**. If condemnation of a part of the **Property** or of the entire **Property** by public authority renders it impossible to fulfill any of these conservation purposes, the **Conservation Easement** may be terminated through condemnation proceedings. If the **Conservation Easement** is terminated and the **Property** is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the **Grantee** shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the **Property**, as these values are determined on the date of this **Conservation Easement**. The **Grantee** shall use the proceeds consistently with the conservation purposes of this **Conservation Easement**.

17. No Public Access. Unless otherwise specifically set forth in this **Conservation Easement**, nothing herein shall convey to or establish for the public a right of access over the **Property** or the **Property**.

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CRP 849 824

TO HAVE AND TO HOLD unto THE CAROLINA MOUNTAIN LAND CONSERVANCY, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed by its officers and its seal affixed, to be effective the day and year first above written.

GRANTOR:

Laurel Mountain Preserve LLC

By: Arthur W. Havel (Seal)

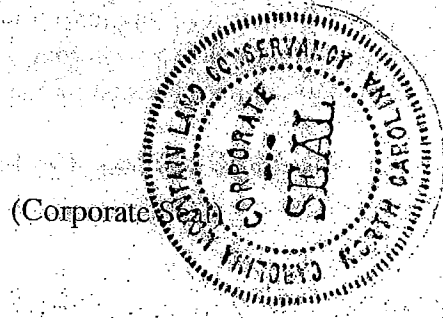
Its: Manager

GRANTEE:

Carolina Mountain Land Conservancy, a North Carolina Non-profit Corporation

James L. Neal  
Board President

William H. [Signature]  
Board Secretary



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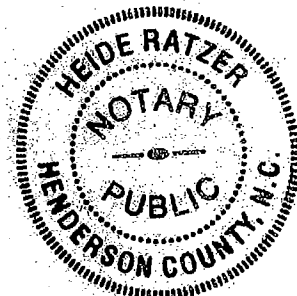
STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

*Re: see* CRP 849 825

I, Heide Ratzer, a Notary Public, of said State and County, do hereby certify that Arthur Nadel, as manager of Laurel Mountain Preserve LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Limited Liability Company.

WITNESS my hand and Notarial Seal, this the 21<sup>st</sup> day of November, 2005.

Heide Ratzer  
Notary Public



My commission expires: 9/21/2010

STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

I, J. Reginald Hall III, a Notary Public of said State and County do hereby certify that Hilliard Staton personally appeared before me this day and acknowledged that  he is the Board Secretary of the Carolina Mountain Land Conservancy, a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its Board President, sealed with its corporate seal and attested by himself as its Board Secretary.

WITNESS my hand and Notarial Seal this the 7<sup>th</sup> day of December, 2005.

J. Reginald Hall III  
Notary Public



My commission expires: May 23, 2009

CRP 857 503

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

*Re-nc* CRP 849 826

The Foregoing Certificate(s) of \_\_\_\_\_, Notary(ies) Public, are certified to be correct. This instrument was presented for registration and recorded in this office in Book \_\_\_\_\_, page \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_\_  
Register of Deeds

By: \_\_\_\_\_  
Deputy Register of Deeds

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

The Foregoing Certificate(s) of \_\_\_\_\_, Notary(ies) Public, are certified to be correct. This instrument was presented for registration and recorded in this office in Book \_\_\_\_\_, page \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_\_  
Register of Deeds

By: \_\_\_\_\_  
Deputy Register of Deeds

(ATTACHMENT)

EXHIBIT A

CRP 849 827

*Re-rec*

"The Property"

CRP 857 504

All of the 168.794 acre parcel designated as "Approximate Area" as surveyed by David E. Summey, PLLC, and as shown on a plat thereof dated September 10, 2005 and recorded in Plat Book 100, Page 81, Buncombe County North Carolina Registry and also recorded in Plat File 11, Slide 85, McDowell County North Carolina Registry and further being a portion of Laurel Mountain Preserve, LLC as recorded in Deed Book 3487, Page 9 in the Buncombe County Registry and subject to the restrictions imposed therein.

EXHIBIT B

CRP 849 828

Conservation Easement Baseline Documentation Report Summary  
(To satisfy Section 1.170A-14(g)(5) of the federal tax regulations)

This is a summary of the uses, structures, conservation values and condition of the protected Easement Area as of December 2005, which has been prepared by Equinox Environmental Consultation & Design, Inc. A copy of the complete Laurel Mountain Preserve Baseline Report is on file at the offices of the Carolina Mountain Land Conservancy.

*Re-see*

**Donor Name:** Laurel Mountain Preserve LLC  
**Address:** 131 Garren Creek Road, Fairview, NC 28730  
**Property Location:** Off of Old Fort Road  
**Acres:** 168.794 acres  
**Road:** Bird Creek Estate Rd.  
**Township:** Broad River  
**County:** Buncombe & McDowell Counties  
**Tax Parcel ID:**  
**Deed Book/Page:**

CRP 857 505

LAND DESCRIPTION

**Topography:** Several peaks surround the property with elevations ranging from 2,600 to 3,450 feet including Cross Mountain (3,420 ft.) to the northwest, Dutchman Ridge (2,682 ft.) to the east, and Round Mountain (3,446 ft.) to the southeast. Elevations within the property range from 1,920 to 2,600 ft.

**Watersheds:** Catawba River

**Streams:** Numerous unnamed tributaries which flow into Bird Creek (Tr) which flows northeast into Crooked Creek and then onto the Catawba River several miles downstream.

**Natural Community Types:** Rich Cove Forest, Acidic Cove Forest, Montane Oak Hickory Forest, Chestnut Oak Forest, Submesic Oak Forest, and Mesic Oak Forest.

PROPERTY CONDITION AND HISTORY

**Buildings, Structures and Improvements on the Property:** None

**Roads/Trails:** A network of hiking trails, gravel & earth roads and abandoned logging roads exists on the property.

**Past Land Use/Disturbance:** The Property, like most of the Southern Appalachians, was probably extensively cut for timber 50-70 years ago, however, approximately 37 acres of old growth forest was identified in the Report. These old growth areas probably exist due to the steep slopes and lack of good access to these areas of the Property. At the time of the Conservation Easement, the Property is intended to be part of a "conservation based" development, and the Property shall serve as the nature preserve for the community and provide it with passive recreational opportunities.

In compliance with Section 1.170A-14(9)(5) of the federal tax regulations, this natural resources inventory is an adequate representation of the property at the time of the conservation easement donation.

*Grantor* \_\_\_\_\_ *11/21/05* \_\_\_\_\_ *James R. Neal* \_\_\_\_\_ *12-1-05*  
Grantor Date Grantee Date



**168.794 ACRE CONSERVATION EASEMENT LAND TRACT  
LAUREL MOUNTAIN PRESERVE  
BIRD CREEK ESTATES ROAD  
BUNCOMBE AND MCDOWELL COUNTIES, NC**

**Prepared For:  
Mr. Art Nadel  
Laurel Mountain Preserve  
1618 Main Street  
Sarasota, FL 34236**

**Prepared By:  
David R. Roberts, SRA  
Pattie J. Tennille, MAI, SRA  
Tennille & Associates, Inc.  
820B State Farm Road  
Boone, North Carolina 28607  
Federal Tax ID #56-1779936**

**Effective Date of the Appraisal: November 1, 2005**



**Tennille & Associates, Inc.**

**Real Estate Appraisers**

October 19, 2005

Mr. Art Nadel  
Laurel Mountain Preserve  
1618 Main Street  
Sarasota, FL 34236

Re: Laurel Mountain Preserve, 168.794 Acre Land Tract, Bird Creek Estates Road, Buncombe and McDowell Counties, NC

Dear Mr. Nadel:

In accordance with your request for an appraisal of the above referenced property, located in Buncombe and McDowell Counties, North Carolina, David R. Roberts, SRA, first inspected the subject property on July 21, 2005, and the final inspection was September 29, 2005 for the purpose of analysis for a charitable contribution due to the granting of a conservation easement. Pattie J. Tennille, MAI, SRA did not physically inspect the subject property. The effective date of the appraisal report for the purpose of estimating the charitable contribution is November 1, 2005.

Property rights appraised consist of the fee simple estate, all liens disregarded, assuming marketable title. The value reported in this appraisal is the Market Value of the conservation easement, determined by an analysis of the value of the property before and after the conservation easement is granted on all of the 168.794 acres of land. The market value before the granting of a conservation easement will be determined by the Sales Comparison Approach for the acreage parcel as-is and also will indicate the prospective market value of a proposed 12 site subdivision within the boundaries of the 168.794 acres of land. This value will be determined by the Subdivision Analysis method of value estimation. A reconciliation of value will determine the estimate of market value for the subject property prior to the granting of the conservation easement. The market value after a conservation easement is granted will indicate the value of all 168.794 acres placed in a conservation easement that has restricted usage with no development potential on a per acre basis. The specifics of the conservation easement and restrictions will be detailed more fully in the site description section of the report in the after value.

October 19, 2005

Mr. Art Nadel

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Simply stated, Market Value is that reasonable and probable price a property will bring when exposed for sale for a reasonable length of time. Implicit in the definition are various conditions, which will be explained in the body of the appraisal.

The report reflects prospective market value for the property prior to the granting of the easement and market value for the subject property after the granting of the easement. The values will be indicated and the difference will be noted as the value of the charitable contribution as of the specified date. Also considered will be enhancement value to adjoining owner properties.

We certify that we have no present or contemplated interest in the property appraised. The fee charged for our service is in no way related to the value reported. This appraisal assignment was not made, nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or on an amount, which would result in approval of a loan. The purpose of this appraisal is to estimate for federal income tax purposes the market value of a conservation easement as of the specified date, November 1, 2005. The report was prepared for use and submission to the Internal Revenue Service as evidence of the value of the charitable donation of a conservation easement. It is not to be distributed or to be relied upon by others without our written permission.

We concluded that the proposed concept plan of 12 single-family homesites is consistent with the highest and best use of the property. The conservation easement effectively eliminates future development of this nature in perpetuity, and meets the requirements outlined in the conservation easement act as permitted under section 1.170A-14 of the Internal Revenue Code of 1986.

Mr. Art Nadel  
October 19, 2005  
Page 3

The prospective market value of the subject land parcel, prior to the granting of the conservation easement, with the highest and best use as a 12-site subdivision, as of November 1, 2005, is:

**TWO MILLION THREE HUNDRED NINETY EIGHT THOUSAND  
DOLLARS  
(\$2,398,000.00)**

Market Value - After Conservation Easement Granted - 168.794 Acres  
conservation easement land:

**FOUR HUNDRED TWENTY TWO THOUSAND DOLLARS  
(\$422,000.00)**

Value of Conservation Easement (Difference):

**ONE MILLION NINE HUNDRED SEVENTY SIX THOUSAND DOLLARS  
(\$1,976,000.00)**

Pursuant to IRC §1.170 A-14(h)(3)(i), "...if the granting of a conservation easement has had an effect of increasing other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property..."

Based upon market conditions as of November 1, 2005,  
the enhancement is deemed to be:  
(to adjoining owner homesites)

**\$ 175,000.00**

Total contribution market value:

**\$1,801,000.00**

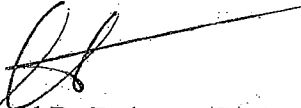
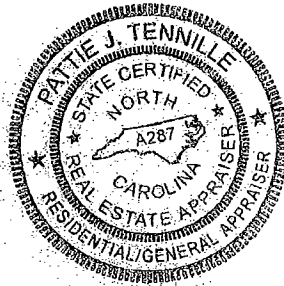
Mr. Art Nadel  
October 19, 2005  
Page 4

The appraiser understands that this appraisal is made in support of a gift of the conservation easement described herein and a taxpayer(s) deduction of the conservation contribution will probably be claimed and this appraisal is therefore prepared for income tax purposes; the date of contribution will be prior to December 31, 2005.

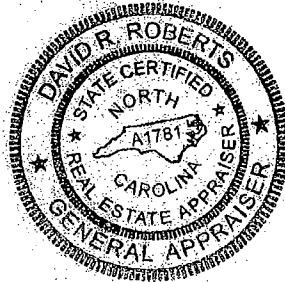
Sincerely,



Pattie J. Tennille, MAI, SRA  
NC General Appraiser #A287



David R. Roberts, SRA  
NC General Appraiser # A1781



PJT:DRR/nkr

**EXECUTIVE SUMMARY**  
**Laurel Mountain Preserve**  
**168.794 Acres**  
**Buncombe and McDowell Counties, NC**

**Location:** Laurel Mountain Preserve  
Bird Creek Estates Road  
Off Old Fort Road  
Borders of Buncombe and McDowell  
Counties, NC

**Site Size:** 168.794 Acres

Before granting of conservation easement  
Proposed residential subdivision  
12 homesites - 168.794 acres

After granting of conservation easement  
168.794 acres – conservation easement land

**Zoning:** None in Buncombe or McDowell Counties, NC

**Date of Inspection:** July 21, 2005 and September 29, 2005

**Effective Date of Value Estimate:** November 1, 2005

**Date of Report:** October 19, 2005

**Highest and Best Use:** Single Family homesites  
Before granting conservation easement  
Recreation land  
After granting conservation easement

**Value Indications:**

Before Value: \$2,398,000.00  
Residential subdivision  
(12 homesites)

|   |                                     |
|---|-------------------------------------|
| <b>After Value:</b><br><b>Conservation Easement Granted</b><br><b>168.794 Acres</b> | <b>\$422,000.00</b>                 |
| <b>Value of Conservation Easement</b><br><b>(Difference)</b>                        | <b>\$1,976,000.00</b>               |
| <b>Enhancement Value:</b><br><b>(Adjoining owner homesites)</b>                     | <b>\$ 175,000.00</b>                |
| <b>Total Contribution</b>   | <b>\$1,801,000.00</b>               |
| <b>Inspecting Appraiser:</b>  | <b>David R. Roberts, SRA</b>        |
| <b>Appraiser:</b>   | <b>Pattie J. Tennille, MAI, SRA</b> |
| <b>Report Type:</b>   | <b>Complete Self-Contained</b>      |

## ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following underlying assumptions and qualifying and limiting conditions:

1. This appraisal covers the property as described in this report, and the areas and dimensions as shown herein are assumed to be correct.
2. The appraisers have made no survey of the property and assume no responsibility in connection with such matters. Any sketch or identified survey of the property included in this report is only for the purpose of assisting the reader in visualizing the property.
3. Responsible ownership and competent management are assumed.
4. No responsibility is assumed for matters involving legal or title consideration.
5. The information identified in this report as being furnished by others is believed to be reliable, but no responsibility for its accuracy is assumed.
6. Possession of this report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by any but the client for whom it was made without the consent of the appraisers or the client.
7. The appraisers are not required to give testimony or attendance in court by reason of this appraisal unless arrangements have been made previously thereof.
8. The allocation of total value to land or to buildings, as shown in this report, is invalidated if used separately in conjunction with any other appraisal.
9. Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless test indicates such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.



10. The Americans with Disabilities Act (ADA) became effective January 26, 1992. I have not made a specific compliance survey or analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. Inspection could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since I have no direct evidence relating to this issue, I did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

11. This appraisal assignment was not made, nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or on an amount that would result in approval of a loan.

12. The property was inspected on July 21, 2005 and September 29, 2005 by David R. Roberts, SRA. Pattie J. Tennille, MAI, SRA did not physically inspect the subject property. The effective date of the appraisal is November 1, 2005.

#### **RESTRICTIONS UPON DISCLOSURE AND USE**

Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he or she is connected, or any reference to the Appraisal Institute, or to the MAI or SRA designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent or approval of the appraiser.

## DESCRIPTION OF THE SUBJECT PROPERTY

### PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of a charitable contribution, due to the granting of a conservation easement on a 168.794-acre land tract, located in Buncombe and McDowell Counties, North Carolina. The appraisal report will estimate the before and after market value of the parcel. The market value of the property prior to the granting of the conservation easement will be determined by two analyses. The first analysis is the Sales Comparison Approach to determine the value for the acreage tract as-is. The second analysis is the Subdivision Analysis for a proposed 12-site subdivision that could be placed within the boundaries of the land parcel. The two values will be reconciled, and the value for the property prior to the granting of the conservation easement will be noted as the before value. The market value of the subject property after the conservation easement is granted is the value of the conservation easement land. The difference will be noted as the value of the conservation easement as of November 1, 2005. The inspection date was July 21, 2005 and September 29, 2005. Enhancement value to adjoining owner property because of a positive value contribution by the subject conservation easement land will be determined, and enhancement value will be deducted from the total charitable contribution.

Market Value is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale; these conditions assume that the buyer and the seller will each act prudently and knowledgeably, and that the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a) Buyer and seller are typically motivated;
- b) Both parties are well informed or well advised, and each acting in what he or she considers his or her best interest;
- c) A reasonable time is allowed for exposure in the open market;
- d) Payment is made in terms of cash and US dollars or in terms of financial arrangements comparable thereto;
- e) The price represents the normal consideration for the property sold unaffected

by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f].)

The Internal Revenue Service definition of market value, which is also considered is: "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."

(Source: IRS Section 1.170A-14 (H)(3))

It is our conclusion that the highest and best use of the property, prior to the granting of the conservation easement, is the 12-site subdivision. This will be noted as the before value. The subject property will be analyzed by both the Sales Comparison Approach for the acreage parcel as a vacant tract of land and the Subdivision Analysis Method for the 12-site residential subdivision. The reconciliation will indicate that the highest and best use of the property is the proposed residential subdivision. The value of the subject property after a conservation easement is granted will be determined by the Sales Comparison Approach for the acreage placed in the easement. The difference will be noted as the value of the charitable contribution, less any enhancement to the adjoining owner land because of the conservation easement land.

## **FUNCTION OF THE APPRAISAL**

The appraisal is made for the information of Mr. Art Nadel of Laurel Mountain Preserve, the owner of the property. It is prepared for the owner's use and submission to the Internal Revenue Service as evidence of a value of a charitable contribution for the property due to the placing of a conservation easement. The appraisal will provide a market value of the property prior to the granting of the easement, and the market value of the property after the conservation easement is granted on the property. The difference in the two values, less enhancement, is the value of the charitable contribution. The conservation easement will be granted from the owners prior to December 31, 2005. No copy of the preliminary conservation easement documents were provided to the appraiser.

## **SCOPE OF THE APPRAISAL**

The subject property is a 168.794-acre tract of land that is to have a portion of the land placed in a conservation easement restriction that limits development. The purpose of this report is to provide a market value of the conservation easement. The first part of this process is to provide a market value of the subject property prior to the granting of the easement for the highest and best use of this land. The

site will be described more fully in the site description in the valuation of the property before the easement. The second section of the report, valuing the property after the easement is granted, utilizes vacant land tract sales, and also considers enhancement due to the conservation easement area adjoining other owner land. The difference in these two values, the before and after the easement value, is the value of the charitable contribution.

A value estimate for a property is typically based on the three generally accepted approaches to value. These approaches are the Cost, Sales Comparison and Income Approaches. In the case of the subject, which is vacant sites and land in the before value, the Cost or Income Approaches to Value are not applicable. The Subdivision Analysis Method and the Sales Comparison Approach to value will be applied to the subject property to provide an estimate of value. In estimating a market value for the subject property after the easement is granted, the same analysis for the conservation easement land will be utilized.

In researching this appraisal assignment, the appraiser used both primary and secondary sources of information. The courthouse, including the Registrar of Deeds Office and the Tax Supervisor's Office, was used to find and verify various pieces of information. Local brokers, local individual investors, and previous appraisals were also consulted for information. Local economic development studies were also consulted.

## AREA ANALYSIS

**Buncombe County.** The subject property is located in Buncombe and McDowell Counties, but for tax purposes and for market analysis is considered Buncombe County property. Only a small portion of the land is in McDowell County, and the property is economically affected most by Buncombe County, and is a growing residential market. Asheville is a county seat and Buncombe County is located 60 miles north of Greenville/Spartanburg, 115 miles east of Knoxville, TN, and 120 miles west of Charlotte, NC. Asheville is approximately 200 miles northeast of Atlanta, GA.

Major highways in the county include Interstate Highways 26 and 40 and US Highway 19 and 74. Rail service is provided to the county by Norfolk and Southern Railway. There are 40 motor freight carriers and the Asheville Regional Airport has service by US Air, US Air Express, Atlantic Southeast and Com-Air. There are 22 daily flights. The average temperature is 55 degrees Fahrenheit; rainfall is 47.6 inches and the average elevation in the county 2,165 feet. Asheville is located in southwestern North Carolina in the Smokey Mountain/Blue Ridge Mountain chain and has sloping to steep terrain throughout the mountain country. Approximately 50% of the land in the county is steep to the point of

being unusable. Major towns in the county include Asheville, the Biltmore Community, Black Mountain, Fairview, Swannanoa, and Weaverville. Asheville is the tenth largest city in North Carolina and the largest in western North Carolina.

The population in Buncombe County increased 12% from 1990 to 2000. The county population in 2000 was 206,330 persons. The largest center of population is in the 25 to 40 years of age bracket for both males and females. Residential growth and development has increased greatly in Buncombe County between 1996 and 2002. In 2004, total residential building permits issued totaled \$30,000,000, which included 225 new residential permits.

Buncombe County has not suffered as large an economic downturn because of the heavy dependence on tourism as many North Carolina counties. The most recent unemployment figures available for year 2004 annual was 4.5% well below the statewide average of 6%. The employment is blended between 30% of service sector and 21% in retail and trade. Manufacturing is only 15% of overall employment, which indicates the reason for the lack of an economic downturn. The major manufacturing employers in Buncombe County include Sonia-Press, LLC, Square-D Electric Company, Charles D. Owens Manufacturing and Copper Bussmann. Other major employers in the county are Mission Saint Joseph Health System, the Buncombe County Board of Education, Buncombe County Government, Ingle's Markets, the City of Asheville, VA Hospital, the Grove Park Inn Resort, and Biltmore Estate and Wine Company.

Education in the county is broad based. There are 21 elementary schools, six middle schools and six high schools in Buncombe County. The total student enrollment as of fall 2005 is approximately 31,000. There are 1,800 teachers in the Asheville City Schools and the 1,900 teachers in Buncombe County. There are also 12 private schools in the county with over 2,000 students, 237 teachers, and a student to teacher ratio of 9 to 1. Colleges and universities in the county include the University of North Carolina at Asheville, Western Carolina University in nearby Cullowhee, Appalachian State University in Boone approximately 2 hours away, and also nearby Mars Hill College, Warren Wilson College, Montreat College, and Asheville/Buncombe Technical College with over 4,000 students.

The cost of living in Asheville, based on 100 as an average, ranks at 102.4 for all items, 102.2 for food and 114.9 for housing. The average home sales price for a three bedroom home is \$175,000 and for a four bedroom home \$325,000. Average weakly earnings in Buncombe County were \$650 ranked 19<sup>th</sup> in the state of 100 counties. Per capita personal income for year ending 2004 was \$29,500, 10<sup>th</sup> in the

state. Median family income was \$53,500, 30<sup>th</sup> in the state, and gross retail sales for the 2004 was \$950,000,000.

Recreational and cultural activities are vast. Asheville is the cultural center of western North Carolina with camping, fishing, golf, hiking, white water rafting, and mountain climbing in the mountain region. Area attractions for recreation activities include the Biltmore Estate Winery, Thomas Wolfe Memorial, the North Carolina Arboretum, Mount Mitchell State Park, Chimney Rock Park and Lake Lure, the Asheville Community Theater, the Asheville Tourist Semi-Pro Baseball Team, Blue Ridge Parkway, Pisgah National Forest, the Western North Carolina Nature Center, the Asheville Civic Center, and numerous art galleries. Community facilities are also broad and include over 280 churches representing all Protestant faiths, and five Catholic Parishes, two Synagogues and two Greek Orthodox churches. Billy Graham Center and Montreat Presbyterian Conference Center are also located in the county. There are 90 hotels and motels with approximately 8,000 rooms in the county, 30 bed and breakfasts with 200 rooms, two regional malls, and seven libraries with 8 branches. There are five hospitals with over 1,800 beds in the county and 18 nursing homes with over 1500 beds. There are 700 doctors and 160 dentist in the county. Communications include nine daily and weekly newspapers, 12 radio stations, 4 televisions stations in the viewing area, cablevision for the county, Bell South is the major telephone service provider, 20 post offices and all major companies represented in partial services. Buncombe County has council and manager forms of government with elected officials and appointed managers. The Buncombe County Sheriff's Department employs 300 persons. There are 200 firefighters in the city of Asheville and 1500 volunteers in the county. Buncombe County has 20 banks with 60 branches, and 10 credit unions with 10 branches. Utilities are provided by Carolina Light and Power Company, natural gas by Public Service Company of North Carolina, and water and sewer available in the towns of Black Mountain, Asheville, and other municipalities and countywide.

In summary, Buncombe County has not been as adversely affected by the economic downturn because of its lack of dependency on manufacturing. The unemployment rate is much below the statewide average. Retail and residential growth and development continue to occur. The continued increase in tourism and visitors to the area because of good access, air service and the beauty of the area are the major positive economic factors at the present time for Buncombe County.

## DESCRIPTION OF THE NEIGHBORHOOD

Within a community, there is a marked tendency toward the grouping of land uses. The areas devoted to these various uses are termed "physical neighborhoods." Neighborhood use in this context is further defined by the Appraisal Institute as follows:

"A portion of a larger community, or an entire community, in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have a more than casual community of interests and similarity of economic level or cultural background. Neighborhood boundaries may consist of well defined, natural or man-made barriers or they may be, more or less, well defined by distinct change in land use or in the character of the inhabitants."

The subject property is a portion of the Laurel Mountain Preserve, a new residential neighborhood located in rural Buncombe County at its intersection with McDowell County, North Carolina. A small portion of the subject site, the exact amount of which is unknown, approximately 10 acres, is located in McDowell County. The subject property has the majority of the land located in Buncombe County, and is located at the end of Bird Creek Estates Road, a private graveled road off Old Fort Road in eastern Buncombe County in the Broad River Township. The property has a physical address of Laurel Mountain Preserve, Bird Creek Estates Road, Black Mountain, Buncombe County, North Carolina. The property is located approximately 8 miles south of Black Mountain, 5 miles east of the Fairview Community, and is approximately 15 miles east of downtown Asheville, North Carolina. The subject site is located approximately 8 miles south Interstate Highway 40 at its intersection with NC Highway 9 in the Black Mountain Community of eastern Buncombe County, North Carolina. Laurel Mountain Preserve is in a rural neighborhood with sloping to steep terrain, typical of the mountain region, with no county water or sewer offered. Laurel Mountain Preserve is a planned residential community with 10 acre plus homesites that surrounds the subject conservation easement area that will have a total of 32 homesites. The subject property is a 168.794-acre portion of a total 448.3-acre land tract. The site, typical of the mountain region and the neighborhood, is sloping to steep with approximately 50% of the neighborhood land steep to the point of being unusable. The location midway between Black Mountain, Fairview, Lake Lure, and Asheville, although rural and remote, is very convenient to all of these locations, and is also very convenient to Interstate Highway 40. Several new residential communities have developed in the immediate market area, and will be noted in both the absorption analysis and the homesite sales utilized in the Subdivision Analysis. The Blue Ridge Mountains of North Carolina have experienced heavy growth and development on large acreage tracts

similar to the subject site for residential development over the past five-year period. Although remote in feel, the site is very convenient and is a prime development tract. The neighborhood is a good location for residential resort development as will be indicated by the similar market comparables utilized in the Subdivision Analysis. The site is taxed by Buncombe and McDowell Counties, has a small fire tax, and is in no municipal area. It is not provided water and sewer by any municipality. Homeowners will be required to install private wells and septic systems. Graveled road access to any neighborhood would be permissible with sites over 10 acres in size, which will be the case of the subject property. No zoning is in effect for either Buncombe or McDowell County, with subdivision restrictions not applying to any residential homesites larger than 10 acres in any subdivision of a land tract. This is the case of the proposed subject neighborhood. Considering access, location and privacy, the subject site is in a prime location for residential growth and development.



**ZONING**

There is no countywide zoning in effect in either Buncombe or McDowell County that would affect the subject property. Subdivision regulations indicate any sites larger than 10 acres do not need county approval, and also would allow for graveled streets. The proposed 12 site subdivision within the boundaries of the 168.794 acres is an allowable use of the subject property.

**TAXES**

The subject property is located in both Buncombe and McDowell County. However, the small portion of land in McDowell County is not taxed by McDowell County, but is noted as a portion of the property in Buncombe County. The one homesite in the proposed subdivision is located above the county line in the subdivision plan but is included in the assessment of the Buncombe property. Therefore, Buncombe County taxes will only be noted for the subject site. The parcel is currently identified as tax parcel 0637-00-81-0433 in the Buncombe County Tax Assessors Office as Laurel Mountain Preserve. It is noted as an acreage tract containing a total of 372.43 acres for the entire parcel of which the subject property is a portion. The land currently has an assessed value of \$670,400. To determine a value for the 12 homesites that are all 10 acres or above, the following tax comparables will indicate probable values for the subject property. The current tax rate for Buncombe County is \$.59 per \$100 for 2005, with a \$.07 per \$100 fire tax additional for total tax assessment of \$.66 per \$100 value. The following are similar tax comparables in the market area to indicate probable tax values for the homesites.

| <u>Site</u>                  | <u>Tax Value</u> |
|------------------------------|------------------|
| Lot 24 High Cliffs           | \$250,000        |
| Lot 19 High Cliffs           | \$400,000        |
| Lot 13 Drovers Road Preserve | \$150,000        |
| Lot 11 Drovers Road Preserve | \$125,000        |
| Lot 16 Drovers Road Preserve | \$250,000        |

All the tax comparables are in the immediate subject market area, and are larger homesites. This indicates probable annual tax values for the subject sites all 10 acres plus in size of \$200,000 each. The probable annual taxes are as follows:

\$200,000 probable annual tax value x \$.66 per \$100 value tax rate = \$1,320 annual taxes

A tax map for the subject land parcel is included on the following page.



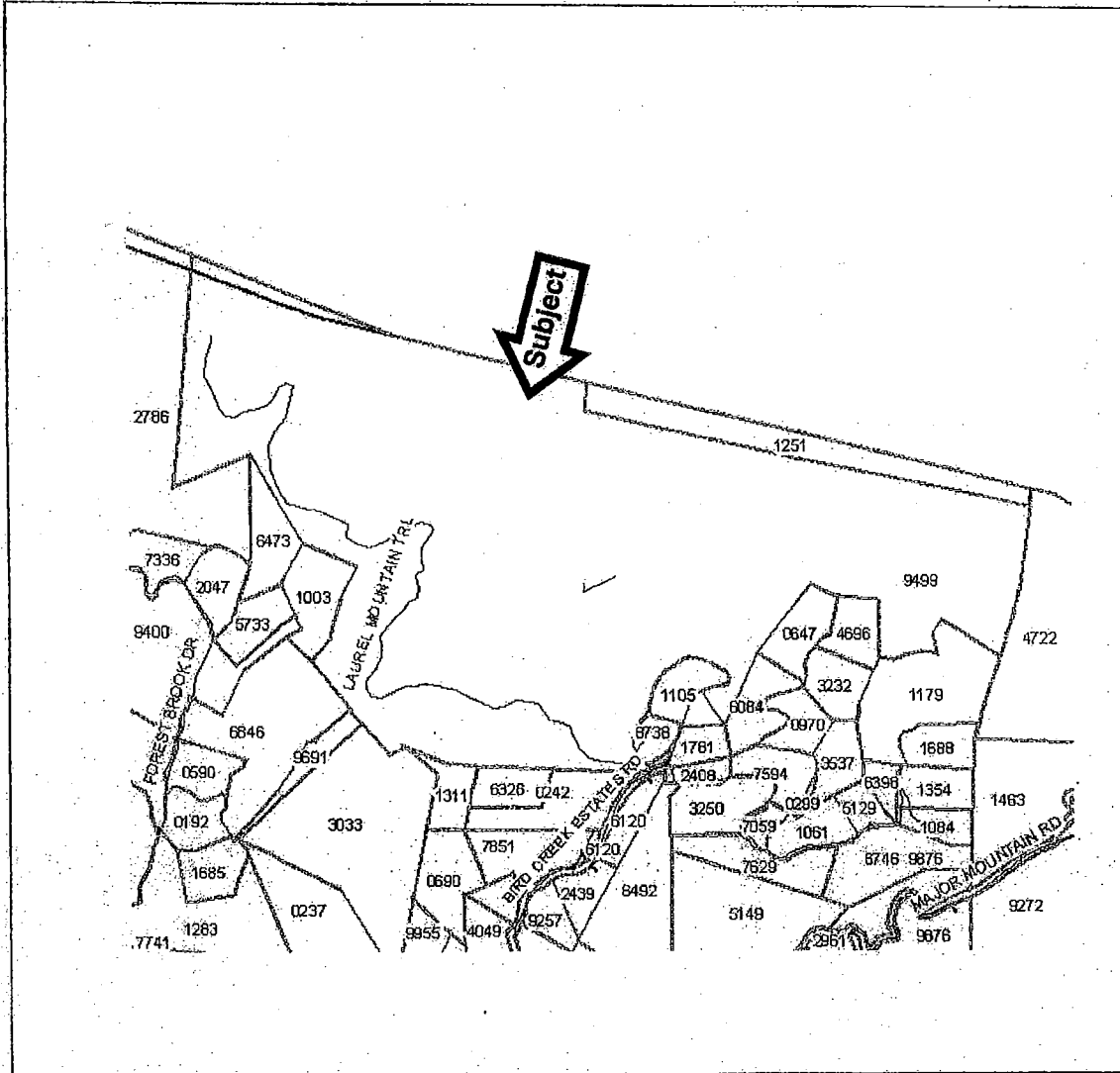
This map has been developed for use by the tax assessment process, and is not of survey quality.

**This property map is not a survey and should NOT be used as a survey.**

Grid is based on the North Carolina State Plane Coordinate System  
 1927 North American datum



7/21/2005 1:26 pm



One Parcel Selected

Township: 28  
 Pin Number: 0637-00-71-9499  
 Owner: LAUREL MOUNTAIN PRESERVE LLC  
 Account: 008184578  
 Situs Address: 19999 OLD FORT RD  
 Acreage: 358.75

Deed Date: 12 / 08 / 2003  
 Deed Book/Page: 3487 / 0009  
 Plat Book/Page: 0090 / 0062  
 Tax Value: \$0  
 Total Market Value: \$0  
 Total Appraised Value: \$0

## **HISTORY OF THE SUBJECT PROPERTY**

The subject property is a 168.794-acre portion of a total 448.3-acre tract of land that was acquired by the current owners, Laurel Mountain Preserve, LLC on December 4, 2003. The property is located in both Buncombe and McDowell Counties, North Carolina, with only a small portion of the property, approximately 44 acres, in McDowell County. The property was acquired in both counties from Ecohab Development Company, LLC, with the Buncombe County recording in Deed Book 3487, Page 9 and the McDowell County recording in Deed Book 762, Page 157 in the Register of Deeds Office for both counties. Deed stamps recorded in Buncombe County indicate a purchase price for the property confirmed by the buyer of \$2,035,000 for the entire 448.3-acre tract of land located in both counties. The property was acquired by Ecohab Development Company, LLC from John R. and Tristen Green on April 10, 2001. This transaction is recorded in Deed Book 2457, Page 726 in Buncombe County, North Carolina, and in Deed Book 641, Page 258 in McDowell County, North Carolina. Deed stamps indicate a total purchase price of \$950,000 for the property on this date. Also acquired by Ecohab Development Company, LLC from Betty C. and David West was Lot 101 of adjoining Bird Creek Estates on May 23, 2001. This transaction is recorded in Deed Book 2500, Page 532 in the Buncombe County Register of Deeds Office. Deed stamps indicate a purchase price for this section of the property of \$31,500. A copy of the most recent legal descriptions for the subject property is located on the following pages.

Workflow 9999-00252902

BOOK 3487  
PAGES 9 - 10

Buncombe County, NC  
Recorded 12/08/2003 01:11:05pm  
No 8809-00252902 1 of 2 pages  
Excise Tax: \$4,061.00  
Otto W. DeBruhl, Register of Deeds

Excise Tax \$4,061.00 Do NOT write above this line. Recording: Time, Book and Page

**NORTH CAROLINA GENERAL WARRANTY DEED**

This instrument prepared by: Wilder Wadford, Attorney at Law Return to: See below  
Brief description for the Index:

This Deed made this 4 Day of DECEMBER, 2003, by and between Grantor and Grantee:  
Enter in appropriate block for each party: Name, address, county, state and if appropriate entity (i.e.,  
corporation, partnership). The designation Grantor and Grantee as used herein shall include all parties,  
their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as  
required by context:

Grantor: ECOHAB DEVELOPMENT COMPANY, LLC

Grantee: LAUREL MOUNTAIN PRESERVE, LLC

1668 Main Street, Sarasota, FL 34236

Transfer of Ownership: Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby  
acknowledged, conveys to Grantee in fee simple, the Property described below:

Property: City of \_\_\_\_\_  
Township of NO. 28 County of BUNCOMBE, North Carolina and Township of CROOKED CREEK  
County of MCDOWELL, North Carolina.

This property was acquired by Grantor by an instrument recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ County.  
A map showing the property is recorded in Plat Book \_\_\_\_\_ Page \_\_\_\_\_ County.

The legal description of the Property is:

BEING 448.30 acres, more or less (426.653 acres after exception below), as shown in a plat  
recorded in Plat Book 90 at Page 62, Buncombe County Registry, and in Plat Book 9 at Page 41,  
McDowell County Registry, reference to which are made for a more particular description.

LESS AND EXCEPTING Lots 105, 107, 108 and 110 as shown in a plat recorded in Plat Book  
46 at Page 163, Buncombe county Registry, reference to which is made for a more particular  
description.

REFERENCE is made to Deed Book 2457 at Page 726 and Deed Book 2500 at Page 532,  
Buncombe County Registry and Deed Book 641 at Page 258, McDowell County Registry.

TOGETHER WITH AND SUBJECT TO easements, restrictions and rights of way of record.

Continued on Page 2

After recording mail to: (Box 81) (JRR)  
John R. Rose 03-5243  
Attorney at Law  
P. O. Box 7436  
Asheville, NC 28802

Tax/Lot No: \_\_\_\_\_  
Parcel Identifier No. \_\_\_\_\_  
Verified By \_\_\_\_\_ County  
On the \_\_\_\_\_ Day of \_\_\_\_\_, 2003.  
By \_\_\_\_\_  
Page 1 of 2

2

Continued from Page 1

TO HAVE AND TO HOLD the said Property and all privileges and appurtenances (rights) belonging to Grantee, in fee simple.

Promises by Grantor: Grantor promises (covenants) with Grantee, that Grantor has title to the Property in fee simple; has the right to convey the title in fee simple; that the title is marketable and free and clear of all liens and encumbrances (i.e. mortgages and judgements), and Grantor will warrant and defend the title against the lawful claims of all persons, except for the following exceptions:

TOGETHER WITH AND SUBJECT TO easements, restrictions, rights of way of record and ad valorem taxes for 2003..

Signatures: Grantor has duly executed the foregoing instrument, as of the day and year first written above.

| Entity                                       | Individual |
|--|------------|
| Name: <u>EcoHab Development Company, LLC</u> | (SEAL)     |
| By: <u><i>Allen W. Tucker</i></u>            | (SEAL)     |
| Title: <u>Manager</u>                        | (SEAL)     |
| Name: _____                                  | (SEAL)     |
| By: _____                                    | (SEAL)     |
| Title: _____                                 | (SEAL)     |

**INDIVIDUAL**

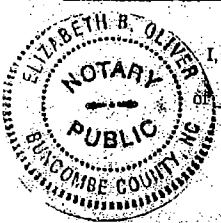
STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
 I, a Notary Public of the County and State aforesaid, certify that

Grantor personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
 My Commission Expires: \_\_\_\_\_ Notary Public

**INDIVIDUAL**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
 I, a Notary Public of the County and State aforesaid, certify that

Grantor personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
 My Commission Expires: \_\_\_\_\_ Notary Public



ENTITY: Corporation, Limited Liability Company, General Partnership, or Limited Partnership  
 STATE OF North Carolina COUNTY OF Buncombe  
 I, a Notary Public of the County and State aforesaid, certify that ALLEN W. TUCKER personally came before me this day and acknowledged that he is The Manager of EcoHab Development Company, LLC, a North Carolina limited liability company and that by authority duly given and as an act of the Entity, has signed the foregoing instrument in its name and on its behalf as its act and deed. Witness my hand and official stamp or seal, this 5 day of December, 2003.  
 My Commission Expires: 12/5/04 Elizabeth B. Oliver Notary Public

The foregoing Certificate(s) of Elizabeth B. Oliver is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page Shown on the first page hereof.

BY Oliver B. Rogers REGISTER OF DEEDS FOR Buncombe COUNTY  
 Deputy/Assistant Register of Deeds

2003020614  
 MCDOWELL CO, NC FEE \$17.00  
 NO TAXABLE CONSIDERATION  
 RECORDED & RECORDED:  
 12-09-2003 10:42:54 AM  
 Patricia A. Reel  
 REGISTER OF DEEDS  
 BY: PATRICIA A REEL  
 BK: CRP 762  
 PG: 157-158

Excise Tax \$0 Do NOT write above this line. Recording: Time, Book and Page

**NORTH CAROLINA GENERAL WARRANTY DEED**

This instrument prepared by: Wilder Wadford, Attorney at Law (Return to: See below)  
 Brief description for the Index:  
 This Deed made this 4 Day of DECEMBER, 2003, by and between Grantor and Grantee:  
 Enter in appropriate block for each party: Name, address, county, state and if appropriate entity (i.e. corporation, partnership). The designation Grantor and Grantee as used herein shall include all parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

Grantor: **ECOHAB DEVELOPMENT COMPANY, LLC**

Grantee: **LAUREL MOUNTAIN PRESERVE, LLC**

1668 Main Street, Sarasota, FL 34236

**Transfer of Ownership:** Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, conveys to Grantee in fee simple, the Property described below:

**Property:** City of \_\_\_\_\_  
 Township of NO. 28 County of BUNCOMBE, North Carolina and Township of CROOKED CREEK  
 County of MCDOWELL, North Carolina.

This property was acquired by Grantor by an instrument recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ County.  
 A map showing the property is recorded in Plat Book \_\_\_\_\_ Page \_\_\_\_\_ County.  
 The legal description of the Property is:

BEING 448.30 acres, more or less (426.653 acres after exception below), as shown in a plat recorded in Plat Book 90 at Page 62, Buncombe County Registry, and in Plat Book 9 at Page 41, McDowell County Registry, reference to which are made for a more particular description.

LESS AND EXCEPTING Lots 105, 107, 108 and 110 as shown in a plat recorded in Plat Book 46 at Page 163, Buncombe county Registry, reference to which is made for a more particular description.

REFERENCE is made to Deed Book 2457 at Page 726 and Deed Book 2500 at Page 532, Buncombe County Registry and Deed Book 641 at Page 258, McDowell County Registry.

TOGETHER WITH AND SUBJECT TO easements, restrictions and rights of way of record.

APPROVED BY  
 CRA  
 APPROVED TO RECORD  
 TAX DEPARTMENT  
 Jan 12/9/03

Continued on Page 250

After recording mail to: (JRR) 03-5243  
 John R. Rose  
 Attorney at Law  
 P. O. Box 7436  
 Asheville, NC 28802

Tax Lot No. \_\_\_\_\_  
 Parcel Identifier No. \_\_\_\_\_  
 Verified By \_\_\_\_\_ County \_\_\_\_\_  
 On the \_\_\_\_\_ Day of \_\_\_\_\_, 2003.  
 By \_\_\_\_\_  
 Page 1 of 2

Continued from Page 1

CRP 762 158

TO HAVE AND TO HOLD the said Property and all privileges and appurtenances (rights) belonging to Grantee, in fee simple.

Promises by Grantor: Grantor promises (covenants) with Grantee, that Grantor has title to the Property in fee simple; has the right to convey the title in fee simple; that the title is marketable and free and clear of all liens and encumbrances (i.e. mortgages and judgements), and Grantor will warrant and defend the title against the lawful claims of all persons, except for the following exceptions:

TOGETHER WITH AND SUBJECT TO easements, restrictions, rights of way of record and ad valorem taxes for 2003..

Signatures: Grantor has duly executed the foregoing instrument, as of the day and year first written above.

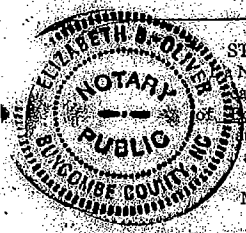
| Entity                                       | Individual   |
|--|--------------|
| Name: <u>EcoHab Development Company, LLC</u> | _____ (SEAL) |
| By: <u><i>Allen W. Tucker</i></u>            | _____ (SEAL) |
| Title: <u>Manager</u>                        | _____ (SEAL) |
| Name: _____                                  | _____ (SEAL) |
| By: _____                                    | _____ (SEAL) |
| Title: _____                                 | _____ (SEAL) |

**INDIVIDUAL**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
 My Commission Expires: \_\_\_\_\_ Notary Public

**INDIVIDUAL**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
 My Commission Expires: \_\_\_\_\_ Notary Public



ENTITY: Corporation, Limited Liability Company, General Partnership, or Limited Partnership  
 STATE OF North Carolina COUNTY OF Buncombe  
 Notary Public of the County and State aforesaid, certify that ALLEN W. TUCKER personally came before me this day and acknowledged that he is The Manager of EcoHab Development Company, LLC, a North Carolina limited liability company and that by authority duly given and as an act of the Entity, has signed the foregoing instrument in its name and on its behalf as its act and deed. Witness my hand and official stamp or seal, this 5th day of December, 2003.  
 My Commission Expires: 12/15/09 Elizabeth B. Oliver Notary Public

The foregoing Certificate(s) of \_\_\_\_\_  
 is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page Shown on the first page hereof.  
 REGISTER OF DEEDS FOR \_\_\_\_\_ COUNTY  
 BY: \_\_\_\_\_ Deputy/Assistant-Register of Deeds

Book 762 Page 158.002

Patricia A. Reel  
Register of Deeds

# McDowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752  
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail register@mcowell.main.nc.us



\*\*\*\*\*  
Filed For Registration: 12/09/2003

Book: CRP 762 Page: 157-158

Document No.: 2003020614

DEED 2 PGS 0.00

Recorder: JANE B MOGEE  
\*\*\*\*\*

State of North Carolina, County of McDowell

The foregoing certificates of ELIZABETH B OLIVER Notary (ies) Public is (are) certified to be correct this 09TH of  
ECEMBER 2003:

PATRICIA A. REEL, REGISTER OF DEEDS

\_\_\_\_\_  
DEPUTY REGISTER OF DEEDS  
\*\*\*\*\*

**DO NOT REMOVE!**

This certification sheet is a vital part of your recorded document. Please retain with original document and submit  
when re-recording.



## DESCRIPTION AND VALUATION OF THE PROPERTY BEFORE CONSERVATION EASEMENT

### SITE DESCRIPTION

The subject property is a 168.794-acre portion of the Laurel Mountain Preserve land that has the following physical characteristics:

**Location:** The subject site is located on the eastern boundary of Laurel Mountain Preserve property at the end of Bird Creek Estates Drive, the private graveled road access to the subject property. The property is located in Buncombe and McDowell Counties at the county boundary, with only a small portion of the land in McDowell County. The property has a physical address of Bird Creek Estates Road, Black Mountain, North Carolina. The property is within the boundaries of Laurel Mountain Preserve, a total 448.3-acre land tract, the remaining area of which is being developed into residential homesites.

**Size, Shape  
And Dimensions:**

A survey of the subject tract follows this site description, and a site plan for the 168.794 acres of land. The tract is irregular in shape with access from Bird Creek Estates Road and existing graveled roads from adjoining Laurel Mountain Preserve. The tract of land is located on the eastern boundary of Laurel Mountain Preserve land, and runs on a south to north flow toward the McDowell county line.

Proposed within the boundaries of the 168.794 acres of land are twelve 10 acres plus residential homesites that would be accessed from graveled streets similar to those in adjoining Laurel Mountain Preserve. A site plan of these 12 homesites, and also a site plan indicating the location of the proposed sites adjoining the boundaries of Laurel Mountain Preserve, is located following this site description. The sites are all 10 acres plus in size and have sloping to steep topography. Six of the sites are average interior lots with some views, and six of the sites are long-range view lots. A copy of the subdivision plan follows this site description.

**Soil:** The soil type common to the North Carolina mountains is loam. There appears to be no soil or subsoil conditions, which would adversely affect the value. See Limiting Condition Number 9 in the beginning of this appraisal report.

**Access:** Access to the subject property is from Bird Creek Estates Road, a private graveled road with deeded right-of-way to the subject site off Old Fort Road, which is a public paved street. To provide access to the proposed 12 homesites within the boundaries of the property, gravel road construction would be necessary. Trantham and Son Grading Company, providing construction in adjoining Laurel Mountain Preserve, has provided an estimate of road costs at \$80 per linear foot for 5,000 linear feet of graveled streets. Utilities would be run along these roadways at an additional cost of \$10 per linear feet, which would be a total cost of \$90 per linear feet of utilities and roads at 5,000 linear feet. This a total cost of \$450,000.

**Utilities:** Utilities available to the site include public electricity, telephone and cablevision. Each site would require a private well and septic system with no countywide water or sewer available in Buncombe County, North Carolina. The cost of installation of the utilities was also provided and will be discussed in the subdivision analysis.

**Topography:** Typical of the mountain region, the subject tract is sloping to steep with the steepest terrain on the northwestern site boundary, however access could be provided from the interior of the site along the graveled roads. The eastern site boundary, which is also sloping to steep is not utilized for residential use but is left as open space. The topography of the tract with 10 acre plus homesites is well utilized by the proposed subdivision plan.

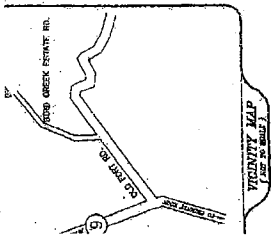
**Flood Zone:** The subject property is not in a hazardous flood zone and can be found on FIRM Flood Map 37021C0360C

for Buncombe County, North Carolina dated May 6, 1996. A copy of this map follows the site description.

Site Improvements: Site improvements will consist of 5,000 linear feet of graveled streets, and underground utilities along the roadways. A small amount of signage and landscaping will also be necessary.

The following page contains a survey sketch of the property, a subdivision plan and a flood map.

THE AREA SHOWN IS APPROXIMATE.  
 THIS DOES NOT REPRESENT A  
 CURRENT BOUNDARY SURVEY.



DAVID E. SMITH  
 PROFESSIONAL LAND SURVEYOR, L-3693

**NOTES**

THIS MAP IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHTS AND INTERESTS OF RECORD AND TO ANY AND ALL RIGHTS OF RECORD AND TO ANY AND ALL RIGHTS OF RECORD AND TO ANY AND ALL RIGHTS OF RECORD.

PRESENTED FOR REGISTRATION AND RECORDATION TO THE OFFICE OF THE REGISTER OF DEEDS, REGISTER OF DEEDS, DEPT. OF REVENUE, 100 COLLEGE AVENUE, RALEIGH, NC 27603.

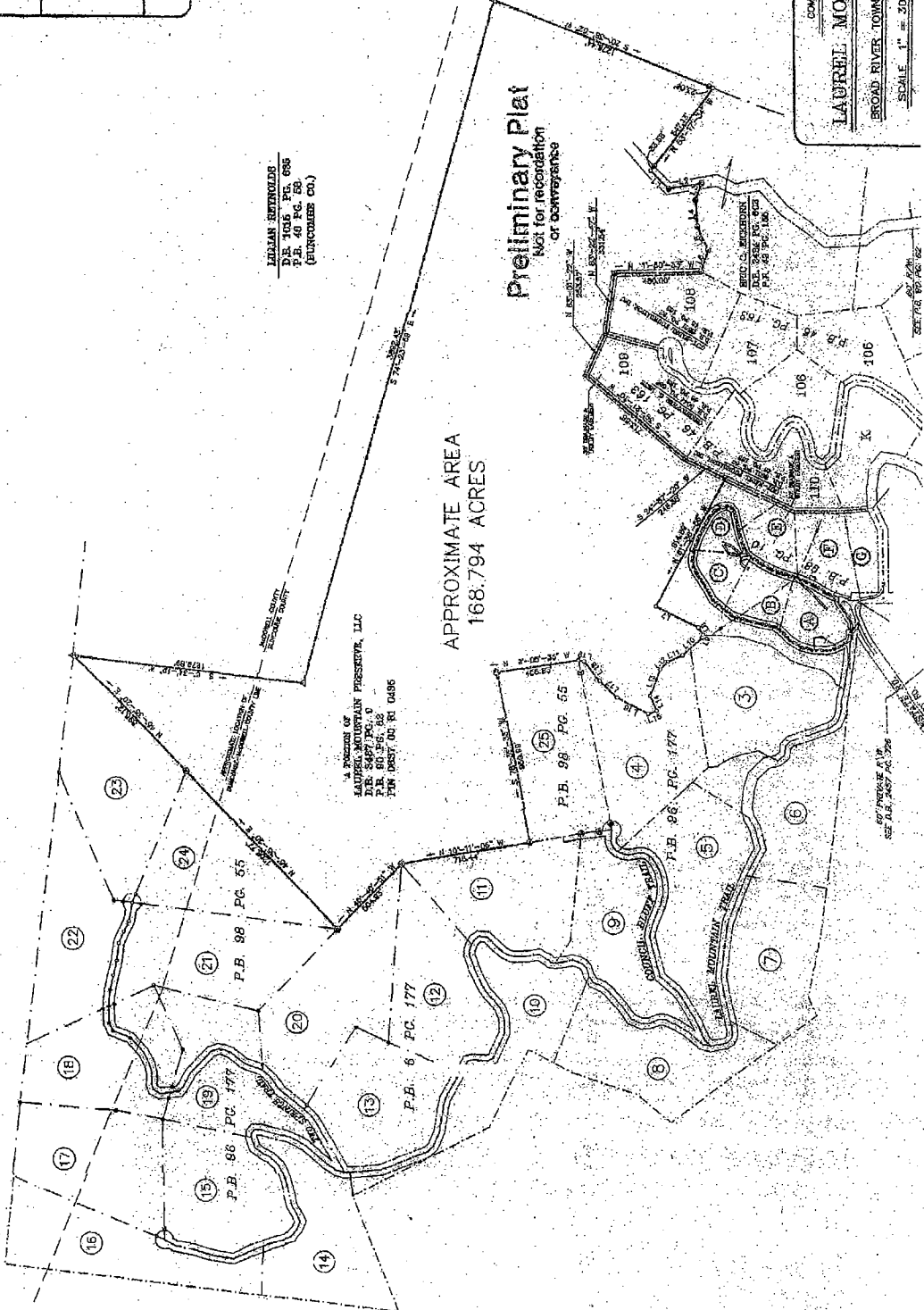
THIS MAP IS OF AN EXISTING PARCEL OF LAND.

DEEDMAN REFERENCES  
 D.E. 1036 P.G. 686  
 D.E. 1037 P.G. 686  
 (SALISBURY CO.)

A PORTION OF  
 LAUREL MOUNTAIN PRESERVE, LLC  
 P.B. 98, P.G. 55  
 P.B. 98, P.G. 55  
 TOWN OF BROAD RIVER, NC 27803

APPROXIMATE AREA  
 168.794 ACRES

Preliminary Plat  
 Not for recordation  
 of correspondence



JOHNNY F. HERBERT  
 D.E. 1036 P.G. 686  
 P.B. 98 P.G. 55

| Line | Distance |
|------|----------|
| 1    | 100.00   |
| 2    | 100.00   |
| 3    | 100.00   |
| 4    | 100.00   |
| 5    | 100.00   |
| 6    | 100.00   |
| 7    | 100.00   |
| 8    | 100.00   |
| 9    | 100.00   |
| 10   | 100.00   |
| 11   | 100.00   |
| 12   | 100.00   |
| 13   | 100.00   |
| 14   | 100.00   |
| 15   | 100.00   |
| 16   | 100.00   |
| 17   | 100.00   |
| 18   | 100.00   |
| 19   | 100.00   |
| 20   | 100.00   |
| 21   | 100.00   |
| 22   | 100.00   |
| 23   | 100.00   |
| 24   | 100.00   |
| 25   | 100.00   |

COMPOSITE MAP FOR  
**LAUREL MOUNTAIN PRESERVE**  
 BROAD RIVER TOWNSHIP  
 RANOCOMBE COUNTY, N.C.  
 SCALE: 1" = 200'  
 DATE: 9-10-2005

Form **1040** Department of the Treasury-Internal Revenue Service **U.S. Individual Income Tax Return 2005** (99) IRS Use Only-Do not write or staple in this space.

**Label** (See instructions) For the year Jan. 1-Dec. 31, 2005, or other tax year beginning 2005, ending 20 OMB No. 1545-0074

**Name** Spouse's Name (if Joint Return) Home Address City, State, and ZIP Code **Your social security number**

ARTHUR NADEL MARGUERITE J NADEL

**Use the IRS label.** Otherwise, please print or type. 3966 COUNTRY VIEW DRIVE SARASOTA FL 34233-4128

**Spouse's social security no.**

▲ You must enter your SSN(s) above. ▲

Checking a box below will not change your tax or refund.

**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see instructions)  You  Spouse

**Filing Status** Check only one box.

1  Single **4**  Head of household (with qualifying person). (See instructions.)

2  Married filing jointly (even if only one had income) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

3  Married filing separately. Enter spouse's SSN above

5  Qualifying widow(er) with dependent child (see instructions)

**Exemptions** 6a  Yourself. If someone can claim you as a dependent, do not check box 6a

b  Spouse

c **Dependents:**

| (1) First name | Last name | (2) Dependent's social security no. | (3) Dependent's relationship to you | (4) <input checked="" type="checkbox"/> If qualifying child for child tax credit (see instr.) |
|----------------|-----------|-------------------------------------|-------------------------------------|---|
|                |           |                                     |                                     |   |
|                |           |                                     |                                     |   |
|                |           |                                     |                                     |   |
|                |           |                                     |                                     |   |

**Boxes checked on 6a and 6b** 2

**No. of children on 6c who:**

- lived with you 0
- did not live with you due to divorce or separation (see instr.) 0
- Dependents on 6C not entered above 0

**Add numbers on lines above** ▶ 2

d Total number of exemptions claimed

**Income**

7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 225,000.

8a Taxable interest. Attach Schedule B if required 8a 11,395.

b Tax-exempt interest. Do not include on line 8a 8b

9a Ordinary dividends. Attach Schedule B if required 9a 310,094.

b Qualified dividends (see instructions) 9b 307,791.

10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) 10

11 Alimony received 11

12 Business income or (loss). Attach Schedule C or C-EZ 12

13 Capital gain or (loss). Attach Schedule D if required. If not required, check here  13 9,668,050.

14 Other gains or (losses). Attach Form 4797 14

15a IRA distributions 15a b Taxable amount (see instr.) 15b

16a Pensions and annuities 16a b Taxable amount (see instr.) 16b

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17 7,448,279.

18 Farm income or (loss). Attach Schedule F 18

19 Unemployment compensation 19

20a Social security benefits 20a 8,331. b Taxable amount (see instr.) 20b 7,081.

21 Other income. List type and amount (see instr.) 21

22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶ 22 17,669,899.

**Adjusted Gross Income**

23 Educator expenses (see instructions) 23

24 Certain business expenses of reservists, performing artists, and fee-basis gov. officials. Attach Form 2106 or 2106-EZ 24

25 Health savings account deduction. Attach Form 8889 25

26 Moving expenses. Attach Form 3903 26

27 One-half of self-employment tax. Attach Schedule SE 27

28 Self-employed SEP, SIMPLE, and qualified plans 28

29 Self-employed health insurance deduction (see instr.) 29

30 Penalty on early withdrawal of savings 30

31a Alimony paid b Recipient's SSN ▶ 31a

32 IRA deduction (see instructions) 32

33 Student loan interest deduction (see instructions) 33

34 Tuition and fees deduction (see instructions) 34

35 Domestic production activities deduction. Attach Form 8903 35

36 Add lines 23 through 31a and 32 through 35 36

37 Subtract line 36 from line 22. This is your adjusted gross income ▶ 37 17,669,899.

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Nadel Receivership Zucker002744

Form 1040 (2005)

ARTHUR & MARGUERITE J NADEL

Page 2

|  |  |  |                        |
|--|--|--|------------------------|
| 38 Amount from line 37 (adjusted gross income) .....   |  | 38   | 17,669,899.            |
| <b>Tax and Credits</b>   | 39a Check <input checked="" type="checkbox"/> You were born before Jan. 2, 1941, <input type="checkbox"/> Blind. Total boxes checked <b>2</b>  |  |                        |
|  | if: <input checked="" type="checkbox"/> Spouse was born before Jan. 2, 1941, <input type="checkbox"/> Blind. checked <b>39a</b>  |  |                        |
|  | b If your spouse itemizes on a separate return or you were a dual-status alien, see instructions and check here ..... <b>39b</b>   |  |                        |
|  | 40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) .....  | 40   | 3,347,575.             |
|  | 41 Subtract line 40 from line 38 .....   | 41   | 14,322,324.            |
|  | 42 If line 38 is over \$109,475, or you provided housing to a person displaced by Hurricane Katrina, see instructions. Otherwise, multiply \$3,200 by the total no. of exemptions claimed on line 6d ..... | 42   |                        |
|  | 43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- .....   | 43   | 14,322,324.            |
|  | 44 Tax (see instr.). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 .....  | 44   | 4,925,318.             |
|  | 45 Alternative minimum tax (see instructions). Attach Form 6251 .....  | 45   |                        |
|  | 46 Add lines 44 and 45 .....   | 46   | 4,925,318              |
|  | 47 Foreign tax credit. Attach Form 1116 if required .....  | 47   |                        |
|  | 48 Credit for child and dependent care exp. Attach Form 2441 ..  | 48   |                        |
|  | 49 Credit for the elderly or the disabled. Attach Schedule R .....   | 49   |                        |
|  | 50 Education credits. Attach Form 8863 .....   | 50   |                        |
|  | 51 Retirement savings contributions credit. Attach Form 8880 ..  | 51   |                        |
| 52 Child tax credit (see instr.). Attach Form 8901 if required .....   | 52   |  |                        |
| 53 Adoption credit. Attach Form 8839 .....   | 53   |  |                        |
| 54 Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8859 .....   | 54   |  |                        |
| 55 Other credits. Check applicable box(es): a <input type="checkbox"/> Form 3800 .....   | 55   |  |                        |
| b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Form .....   | 55   |  |                        |
| 56 Add lines 47 through 55. These are your total credits .....   | 56   |  |                        |
| 57 Subtract line 56 from line 46. If line 56 is more than line 46, enter -0- .....   | 57   | 4,925,318.   |                        |
| <b>Other Taxes</b>   |  |  |                        |
| 58 Self-employment tax. Attach Schedule SE .....   | 58   |  |                        |
| 59 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 ..  | 59   |  |                        |
| 60 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required .....   | 60   |  |                        |
| 61 Advance earned income credit payments from Form(s) W-2 .....  | 61   |  |                        |
| 62 Household employment taxes. Attach Schedule H .....   | 62   |  |                        |
| 63 Add lines 57 through 62. This is your total tax .....   | 63   | 4,925,318.   |                        |
| <b>Payments</b>  |  |  |                        |
| 64 Federal income tax withheld from Forms W-2 and 1099 .....   | 64   | 70,000.  |                        |
| 65 2005 estimated tax pymts and amt applied from 2004 return .....   | 65   | 4,900,000.   |                        |
| 66 a Earned income credit (EIC) .....  | 66a  |  |                        |
| b Nontaxable combat pay election ..... <b>66b</b>  |  |  |                        |
| 67 Excess social security and tier 1 RRTA tax withheld (see Inst) .....  | 67   |  |                        |
| 68 Additional child tax credit. Attach Form 8812 .....   | 68   |  |                        |
| 69 Amount paid with request for extension to file (see Inst) .....   | 69   |  |                        |
| 70 Payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885 .....   | 70   |  |                        |
| 71 Add lines 64, 65, 66a, and 67 through 70. These are your total payments .....   | 71   | 4,970,000.   |                        |
| <b>Refund</b>  |  |  |                        |
| 72 If line 71 is more than line 63, subtract line 63 from line 71. This is the amount you overpaid .....   | 72   | 44,682.  |                        |
| 73a Amount of line 72 you want refunded to you .....   | 73a  |  |                        |
| b Routing number XXXXXXXXXXXXXXXXXXXXXXX c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings .....  |  |  |                        |
| d Account number XXXXXXXXXXXXXXXXXXXXXXX .....   |  |  |                        |
| 74 Amount of line 72 you want applied to your 2006 est. tax .....  | 74   | 44,682.  |                        |
| <b>Amount You Owe</b>  |  |  |                        |
| 75 Amount you owe. Subtract line 71 from line 63. For details on how to pay, see instructions .....  | 75   |  |                        |
| 76 Estimated tax penalty (see instructions) .....  | 76   |  |                        |
| <b>Third Party Designee</b>  |  |  |                        |
| Do you want to allow another person to discuss this return with the IRS (see instructions)? <input checked="" type="checkbox"/> Yes. Complete the following. <input type="checkbox"/> No   |  |  |                        |
| Designee's name  | MICHAEL D ZUCKER   | Phone no.  | 941-379-0003           |
|  |  | Personal identification number (PIN)                       | 00103                  |
| <b>Sign Here</b>   |  |  |                        |
| Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. |  |  |                        |
| Your signature   | Date   | Your occupation  | Daytime phone number   |
| <i>Marguerite Nadel</i>  | 10/16/2006   | INVESTMENT CONSULTANT                                      | 941-366-0975           |
| Spouse's signature, if a joint return, both must sign  | Date   | Spouse's occupation  |                        |
| <i>Arthur Nadel</i>  | 10/13/06   | OFFICE MANAGER   |                        |
| <b>Preparer's Use Only</b>   |  |  |                        |
| Preparer's signature   | Date   | Check if self-employed <input checked="" type="checkbox"/> | Preparer's SSN or PTIN |
| <i>Michael D Zucker</i>  | 10/13/2006   |  |                        |
| Firm's name (or yours if self-employed), address, and ZIP code   | MICHAEL D ZUCKER ACGTG & TAX SVCS<br>5037 WILLOW LEAF WAY<br>SARASOTA FL 34241-6234  |  | EIN                    |
|  |  |  | Phone no. 941-379-0003 |

Nadel Receivership  
Zucker002745

**SCHEDULES A&B  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Schedule A - Itemized Deductions**

(Schedule B is on page 2)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A & B (Form 1040).

OMB No. 1545-0074

**2005**

Attachment  
Sequence No. 07

Name(s) shown on Form 1040

ARTHUR & MARGUERITE J NADEL

Your social security no

|   |   |  |  |            |
|---|---|--|--|------------|
| <b>Medical and Dental Expenses</b>  | <b>Caution.</b> Do not include expenses reimbursed or paid by others. |  |  |            |
|   | 1   | Medical and dental expenses (see Instructions) .....   | 1  |            |
|   | 2   | Enter amt. from Form 1040, line 38 <input type="text" value="2"/>  | 2  |            |
|   | 3   | Multiply line 2 by 7.5% (.075) .....   | 3  |            |
|   | 4   | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-  | 4  |            |
| <b>Taxes You Paid</b><br>(See instructions.)                                    | 5 State and local (check only one box):                               |  | 5  | 5,280.     |
|   | a   | <input type="checkbox"/> Income taxes, or  |  |            |
|   | b   | <input checked="" type="checkbox"/> General sales taxes (see instructions)   | 6  | 4,155.     |
|   | 6   | Real estate taxes (see instructions) .....   | 7  |            |
|   | 7   | Personal property taxes .....  | 8  |            |
|   | 8   | Other taxes. List type and amount ▶  |  |            |
|   | 9   | Add lines 5 through 8 .....  | 9  | 9,435.     |
|   | <b>Interest You Paid</b><br>(See instructions.)                       | 10   | Home mortg. interest & points reported to you on Form 1098 ..... | 10         |
| 11  |   | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see inst. and show that person's name, identifying no., and address ▶  | 11   |            |
| 12  |   | Points not reported to you on Form 1098. See instructions for special rules .....  | 12   |            |
| 13  |   | Investment interest. Attach Form 4952 if required. (See instructions.) .....   | 13   | 638.       |
| 14  |   | Add lines 10 through 13 .....  | 14   | 31,059.    |
| <b>Gifts to Charity</b>   | 15a   | Total gifts by cash or check. If you made any gift of \$250 or more, see instructions .....  | 15a  | 2,032,174. |
|   | 15b   | Gifts by cash or check after August 27, 2005, that you elect to treat as qualified contributions (see instructions) .....  | 15b  |            |
|   | 16  | Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500 .....   | 16   | 1,800,625. |
|   | 17  | Carryover from prior year .....  | 17   |            |
|   | 18  | Add lines 15a, 16, and 17 .....  | 18   | 3,832,799. |
| <b>Casualty and Theft Losses</b>  | 19  | Casualty or theft loss(es). Attach Form 4684. (See instructions.) .....  | 19   |            |
|   | 20  | Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. ▶  | 20   |            |
|   | 21  | Tax preparation fees .....   | 21   |            |
|   | 22  | Other expenses - investment, safe deposit box, etc. ▶  | 22   |            |
|   | 23  | Add lines 20 through 22 .....  | 23   |            |
|   | 24  | Enter amt. from Form 1040, line 38 <input type="text" value="24"/>   | 24   |            |
| <b>Job Expenses and Certain Miscellaneous Deductions</b><br>(See instructions.) | 25  | Multiply line 24 by 2% (.02) .....   | 25   |            |
|   | 26  | Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-  | 26   |            |
|   | 27  | Other - from list in the inst. List type and amount .....  | 27   |            |
|   | 28  | Is Form 1040, line 30, over \$148,950 (over \$72,975 if married filing separately)?<br><input type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 40.<br><input checked="" type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter. | 28   | 3,347,575. |
| <b>Other Miscellaneous Deductions</b>   | 29  | If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ <input type="checkbox"/>   |  |            |

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule A (Form 1040) 2005

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USSCHA\$1 Rev. 1

Nadel Receivership  
Zucker002746

**US Schedule A** **Charitable Deduction Detail Worksheet** **2005**

Name: **ARTHUR & MARGUERITE J NADEL** SSN: \_\_\_\_\_

Medical Expenses Medical miles: X .15 = Medical miles: X .22 =

|                                       |  |                                   |  |
|---------------------------------------|--|-----------------------------------|--|
| Insurance premiums paid (not pre-tax) |  | Medicare from 1040 worksheet      |  |
| Taxpayer                              |  | Remainder from worksheets         |  |
| Spouse                                |  | Taxpayer                          |  |
| Qualified long term care contracts    |  | Spouse                            |  |
| Taxpayer                              |  | Self-employed health insurance    |  |
| Spouse                                |  | Taxpayer                          |  |
| Other medical expenses                |  | Spouse                            |  |
|                                       |  |                                   |  |
|                                       |  | Amount from additional worksheets |  |
|                                       |  | <b>Total</b>                      |  |

Cash Contributions Hurricane Katrina miles X .29 = Other Charitable miles: X .14 =

|                         |            |                                   |            |
|-------------------------|------------|-----------------------------------|------------|
| 50% Limit Organizations | 2,031,174. |                                   |            |
| SEE SCHEDULE            |            |                                   |            |
|                         |            | From Schedules K-1                | 1,000.     |
|                         |            | Amount from additional worksheets |            |
|                         |            | <b>Total</b>                      | 2,032,174. |

|                         |  |                                   |  |
|-------------------------|--|-----------------------------------|--|
| 30% Limit Organizations |  | Charitable miles: X .14 =         |  |
|                         |  | Schedules K-1                     |  |
|                         |  | Amount from additional worksheets |  |
|                         |  | <b>Total</b>                      |  |

|                               |                         |                                   |      |
|-------------------------------|-------------------------|-----------------------------------|------|
| Other Than Cash Contributions | 50% Limit Organizations |                                   |      |
|                               |                         | From Forms 8283                   | 625. |
|                               |                         | Amount from additional worksheets |      |
|                               |                         | <b>Total</b>                      | 625. |

|   |  |                 |  |
|---|--|-----------------|--|
| 30% Limit Capital gain property donated to 50% limit organizations. |  | From Forms 8283 |  |
|   |  | <b>Total</b>    |  |

|   |           |                 |            |
|---|-----------|-----------------|------------|
| 30% Limit Not capital gain property donated to 30% limit organizations. |           | From Forms 8283 |            |
|   | 1,800,000 | <b>Total</b>    | 1,800,000. |

|  |  |                 |  |
|--|--|-----------------|--|
| 20% Limit Organization Capital gain property donated to 30% limit organizations. |  | From Forms 8283 |  |
|  |  | <b>Total</b>    |  |

|      | From years 2000 through 2004 |     |                       |     | To 2006 tax year        |     |                       |     |
|------|------------------------------|-----|-----------------------|-----|-------------------------|-----|-----------------------|-----|
|      | Cash and other property      |     | Capital gain property |     | Cash and other property |     | Capital gain property |     |
|      | 50%                          | 30% | 30%                   | 20% | 50%                     | 30% | 30%                   | 20% |
| 2000 |                              |     |                       |     |                         |     |                       |     |
| 2001 |                              |     |                       |     |                         |     |                       |     |
| 2002 |                              |     |                       |     |                         |     |                       |     |
| 2003 |                              |     |                       |     |                         |     |                       |     |
| 2004 |                              |     |                       |     |                         |     |                       |     |
| 2005 |                              |     |                       |     |                         |     |                       |     |

|  |            |            |
|--|------------|------------|
| <b>Contributions allowed this year</b>                                     |            |            |
| 50% of adjusted gross income   | 8,834,950. |            |
| This year's 50% organization cash contributions allowed                    |            | 2,032,799. |
| 30% of adjusted gross income   | 5,300,970. |            |
| This year's capital gain contributions to 50% organizations limited to 30% |            |            |
| 50% cash carryover allowed   |            |            |
| 50% capital gain carryover limited to 30%                                  |            |            |
| This year's 30% organization cash and other property contributions allowed |            | 1,800,000. |
| 30% organizations cash and other property carryover                        |            |            |
| 20% of adjusted gross income   | 3,533,980. |            |
| This year's capital gain contributions to 30% organizations limited to 20% |            |            |
| 30% capital gain carryover limited to 20% AGI                              |            |            |
| <b>Total contributions allowed this year</b>                               |            | 3,832,799. |

USWAS551

Nadel Receivership  
Zucker002747





UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO.: 8:09-cv-87-T-26TBM

*1:09 mc 27-LHT*

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT

Relief Defendants.

FILED  
ASHEVILLE, N.C.  
JUN 10 2009  
U.S. DISTRICT COURT  
W. DIST. OF N.C.

ORDER REAPPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund LTD, Victory Fund LTD, Viking IRA Fund LLC, Viking Fund LLC and Viking Management ("Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants;

marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors; and

**WHEREAS**, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants; and

**WHEREAS**, the Commission submitted the credentials of Burton W. Wiand to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that Burton W. Wiand was prepared to assume this responsibility if so ordered by the Court; and

**WHEREAS**, Burton W. Wiand was appointed Receiver over the Defendants and Relief Defendants; and

**WHEREAS**, upon sufficient and proper showing by Burton W. Wiand and, for the protection of the investors and the Receivership Estate, the Court expanded the Receivership to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; and A Victorian Garden Florist, LLC,

**NOW, THEREFORE, IT IS ORDERED AND ADJUDGED** that Burton W. Wiand is hereby reappointed the Receiver over the Defendants and Relief Defendants and Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; and A Victorian Garden Florist,

LLC (collectively "Receivership Entities"), their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Receivership Entities, whatsoever and wheresoever located belonging to or in the possession of the Receivership Entities, including but not limited to all offices maintained by the Receivership Entities, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Receivership Entities wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Receivership Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Entities, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Receivership Entities or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Receivership Entities are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Receivership Entities, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Receivership Entities;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Receivership Entities and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Receivership Entities (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Receivership Entities.

**IT IS FURTHER ORDERED AND ADJUDGED** that, in connection with the reappointment of the Receiver provided for above:

10. The Receivership Entities and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Receivership Entities shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Receivership Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Receivership Entities shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Receivership Entities and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Receivership Entities;

13. The Receivership Entities, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Receivership Entities and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Receivership Entities; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. Without prior permission from this Court, during the period of this receivership all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Receivership Entities;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Receivership Entities;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Receivership Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to the Receivership Entities shall provide a reference of calls from any number presently assigned to any of the Receivership Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Receivership Entities, and to handle future deliveries of the mail of the Receivership Entities as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Receivership Entities or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. In the event that the Receiver discovers that funds of persons who have invested in the Receivership Entities have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and

24. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Tampa, Florida, on June 3, 2009.

s/ Richard A. Lazzara

**RICHARD A. LAZZARA**

**UNITED STATES DISTRICT JUDGE**

COPIES FURNISHED TO:

Counsel of Record

Arthur G. Nadel, Register No. 50690-018

MCC New York

Metropolitan Correctional Center

150 Park Row

New York, NY 10007

I certify the foregoing to be a true  
and correct copy of the original.  
MICHELLE M. BUCHHEIT, Clerk  
United States District Court  
Middle District of Florida

BY: \_\_\_\_\_  
Deputy Clerk



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
CASE NO.:

FILED  
ASHEVILLE, N.C.

JUN 10 2009

U.S. DISTRICT COURT  
W. DIST. OF N.C.

8.09 CV 00087-26

TBM

1:09mc 27-LHT

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC

Relief Defendants.

09 JAN 21 AM 10:47  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

FILED

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges and states as follows:

I. INTRODUCTION

1. The Commission brings this emergency action to halt an ongoing fraud by Arthur G. Nadel and two investment management companies he controls, Scoop Capital, LLC and Scoop Management, Inc. ("Defendants"). The fraud concerns six hedge funds: Scoop Real Estate, L.P, Valhalla Investment Partners, L.P., Victory IRA Fund, Ltd, Victory Fund, Ltd, Viking IRA Fund, LLC, and Viking Fund, LLC; and two other investment management

I certify the foregoing to be a true  
and correct copy of the original.  
SHEZEL L. LOGGON, Clerk  
United States District Court  
Middle District of Florida.

BY: *[Signature]*  
Deputy Clerk

WV

companies, Valhalla Management, Inc. and Viking Management. The latter eight entities are collectively referred to as Relief Defendants.

2. From at least January 2008 through the present, the Defendants, who provide investment advice to Scoop Real Estate, Valhalla Investment Partners, Victory IRA Fund, Victory Fund, Viking IRA Fund, and Viking Fund (collectively the "Hedge Funds") have issued materially false and misleading account statements to the Hedge Funds' investors. The false account statements overstated the value of investments in the Funds by approximately \$300 million.

3. The Defendants have also massively overstated the Hedge Funds' historical investment returns and the value of their assets in account statements provided to investors.

4. Nadel, the Hedge Funds' principal investment advisor, provided fraudulent balances and values to others associated with the Hedge Funds knowing they would be used to create false investor account statements.

5. At the same time he was deceiving investors, Nadel maintained secret bank accounts, which only he controlled, in the names of at least two of the Hedge Funds. He recently transferred \$1.25 million from the Viking IRA Fund and Valhalla Investment Partners to one of the secret accounts.

6. By causing the Hedge Funds to issue materially false statements to investors that tremendously exaggerated the value of their investments, the Defendants violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a); and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C §78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. §240.10b-5.

7. To halt the ongoing fraud, maintain the status quo, and preserve investor assets, the Commission seeks various forms of equitable relief against the Defendants, including a temporary restraining order, preliminary injunctions, permanent injunctions against future violations of the federal securities laws, disgorgement plus pre-judgment interest, and civil penalties.

8. Based on the ongoing nature of their violations and the scienter the Defendants have demonstrated through their willful and wanton disregard for the federal securities laws, the Defendants have shown they will continue to violate the law unless the Court grants the injunctive and other relief the Commission seeks.

## **II. DEFENDANTS AND RELIEF DEFENDANTS**

9. Defendant Nadel, 76, is a resident of Sarasota, Florida and one of the owners of Scoop Capital and Scoop Management. He is the sole officer and director of Scoop Management and the sole managing member of Scoop Capital. At all relevant times, he provided investment advice to the Hedge Funds, was responsible for the Hedge Funds' trading activities, and provided the account values included in investor account statements for the Hedge Funds. Nadel received compensation through the fees charged to the Hedge Funds for management and investment advice.

10. Defendant Scoop Capital is a Florida limited liability company organized on June 28, 2001, with its principal place of business in Sarasota, Florida. Nadel is the sole managing member of Scoop Capital. Nadel and his wife are the principals of Scoop Capital.

11. Defendant Scoop Management is a Florida corporation incorporated on April 17, 2001, with its principal place of business in Sarasota, Florida. Nadel is the President, Secretary and a Director of Scoop Management.

12. Relief Defendant Scoop Real Estate is a Delaware limited partnership formed on October 15, 2003. Scoop Capital is its general partner.

13. Relief Defendant Valhalla Investment Partners is a Delaware limited partnership formed on October 15, 2003. Valhalla Management is its general partner, and its principal place of business is Sarasota, Florida.

14. Relief Defendant Valhalla Management is a Florida corporation organized on February 16, 1999, with its principal place of business is Sarasota, Florida.

15. Relief Defendant Victory IRA Fund is a Florida limited partnership formed on April 3, 2003, with its principal place of business in Sarasota, Florida. Scoop Capital is the general partner of Victory IRA Fund.

16. Relief Defendant Victory Fund is a Florida limited partnership formed on May 1, 2005, with its principal place of business in Sarasota, Florida. Scoop Capital is the general partner of Victory Fund.

17. Relief Defendant Viking IRA Fund is a Florida limited liability company organized on March 27, 2001, with its principal place of business in Sarasota, Florida. Viking Management is its sole managing member.

18. Relief Defendant Viking Management is a Florida limited liability company organized on May 21, 2001, with its principal place of business in Sarasota, Florida.

19. Relief Defendant Viking Fund is a Florida limited liability company organized on March 23, 2001, with its principal place of business in Sarasota, Florida. Viking Management is its sole managing member.

### **III. JURISDICTION AND VENUE**

20. This Court has jurisdiction over this action pursuant to Sections 21(d) 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

21. This Court has personal jurisdiction over the Defendants and Relief Defendants, and venue is proper in the Middle District of Florida, because the Defendants and Relief Defendants' principal places of business are in Sarasota. Additionally, Nadel resides in Sarasota and has conducted the Defendants' and Relief Defendants' business in Sarasota. Thus, the conduct constituting the fraud alleged in this Complaint has occurred in the Middle District.

22. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

### **IV. FACTS**

23. Nadel and the two other Defendants have managed the Hedge Funds since 1999.

24. In 2003, Scoop Capital formed Scoop Real Estate to acquire interests in residential, commercial, office and industrial real estate properties. Scoop Capital has been responsible for managing that Hedge Fund's portfolio and its day-to-day operations, with Nadel responsible for its investment decisions.

25. In 2005, Scoop Capital formed Victory IRA Fund and Victory Fund. The investment objective of these two Funds has been to invest or trade in securities.

26. The Defendants have offered and sold limited partnership interests in Scoop Real Estate, Victory IRA Fund and Victory Fund through multiple offerings.

27. According to private placement memoranda ("PPMs") for Scoop Real Estate, Victory IRA Fund and Victory Fund, Scoop Capital has been responsible for managing those Hedge Funds' portfolios and their day-to-day operations. Nadel has been responsible for all the Hedge Funds' investment decisions.

28. The Victory IRA Fund and Victory Fund PPMs tout Scoop Management's proprietary trading systems and extensive market research.

29. The PPMs state those two Hedge Funds will pay quarterly management fees to Scoop Capital and Scoop Management, based on a percentage of those funds' net assets.

**A. Valhalla Investment Partners, Viking Fund, and Viking IRA Fund**

30. In 1999, Valhalla Management formed Valhalla Investment Partners to invest in and/or trade in securities.

31. In 2001, Viking Management formed Viking IRA Fund and Viking Fund to invest and/or trade in the securities of medium to large cap companies.

32. The Defendants have offered and sold limited partnership and membership interests in Valhalla Investment Partners, Viking IRA Fund and Viking Fund through multiple offerings.

33. According to the PPMs, Viking Management and Valhalla Management were responsible for all of the investment decisions for their respective Hedge Funds. However, the PPMs also state that Viking Management and Valhalla Management rely on the investment advice of Scoop Management, or that the Funds' investments will be made in accordance with trading signals and other principles Scoop Management developed.

34. More specifically, the PPMs state Scoop Management will provide trading signals, market data, computer investment and trading programs, technical and fundamental

research, and entry of trades for the Hedge Funds. Scoop Management also is expected to provide Viking Management and Valhalla Management with office management and technical services in connection with those Funds' operations, including the use of office space, facilities, and bookkeeping.

35. According to the PPMs, the Hedge Funds will pay Valhalla Management and Viking Management a management and performance fee, and Scoop Management a monthly advisory fee of \$5,000. The PPMs also state Valhalla Management and Viking Management will share their management and performance fee with Scoop Management.

**B. Misrepresentations to the Funds' Investors Concerning the Value of the Funds' Assets**

36. For at least the last year, the Defendants have materially misrepresented the value of the Hedge Funds' assets to investors. For example, the Hedge Funds' internal books and records – used to provide false account statements to investors – indicate the value of their assets exceeds \$300 million. In fact, the actual value of the Hedge Funds' assets is only about \$506,000.

37. As of mid-January 2009, the account values for the six Hedge Funds were as follows: (a) **Victory Fund** – securities worth \$1,901.31 and cash of \$78,764.37; (b) **Scoop Real Estate** – securities worth \$2,119.81 and cash of \$122,830.40; (c) **Viking IRA Fund** – securities worth \$2,923.58 and cash of \$77,025.20; (d) **Viking Fund** – securities worth \$917.70 and cash of \$65,708.33; (e) **Valhalla Investment Partners** – securities worth \$4,413.66 and cash of \$16,158.05; and (f) **Victory IRA Fund** – securities worth \$2,938.86 and cash of \$131,139.52.

38. Thus, the total value of the Hedge Funds' securities holdings as of January 14, 2009 was only \$15,214.92, and the cash on hand was only \$491,625.87.

39. The Defendants have grossly misrepresented to investors the value of their investments in the Hedge Funds by providing them false account statements that Nadel directed.

40. In particular, one investor from Virginia who invested in the Victory IRA Fund received a statement for October 2008 indicating his investment was valued at \$599,551.55, and a November 2008 statement indicating his investment was valued at \$602,965.39. This same investor made a second investment in Victory IRA Fund through another account and subsequently received an October 2008 statement indicating this investment was valued at \$172,354.07, and a November 2008 statement indicating this investment was valued at \$173,335.45. These statements were false because the *total* value of the entire Victory IRA Fund's holdings was only \$2,938.86 at the end of October and November 2008.

41. This same investor also invested in Scoop Real Estate. He received account statements for October 2008 indicating his investment in Scoop Real Estate was valued at \$586,862.54, and a November 2008 statement indicating the value of his investment was \$590,321.18. These statements were false because Scoop Real Estate's entire holdings were only worth \$8,088.35 at the end of October and \$198,224.13 at the end of November 2008.

42. This investor's wife also made two separate investments in the Victory IRA Fund and received statements for October and November 2008 which grossly misrepresented the value of her investments.

43. She also invested in Victory Fund and received an account statement for November 2008 which misrepresented the value of her investment in this fund as worth \$419,824.89. The November 2008 account statement was false because Victory Fund's entire holdings were worth only \$91,823.49 at the end of November 2008.



**C. Misrepresentations in the Offer or Sale of the Hedge Funds' Securities**

44. In addition to misrepresenting to the Funds' investors the value of their investments, the Defendants have prepared, approved and disseminated offering materials to prospective investors that materially misstate the Funds' yearly historical returns and the total capital invested in the Funds.

45. In particular, the offering materials for the Viking Fund, the Viking IRA Fund, and the Victory Fund represent those Funds had approximately \$342 million in capital as of November 30, 2008. In fact, the total value of those Funds' assets as of that date was only \$963,123.85.

46. The offering materials also represent that the Funds generated investment returns ranging from 10.97% to 11.82% between January and November of 2008. In fact, these claimed returns were utterly bogus. At least three of the funds lost money on their investments from January through November, and a fourth reported lower returns.

**COUNT I**

**Fraud in Violation of Section 10(b) of the Exchange Act and Rule 10b-5**

47. The Commission repeats and realleges Paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. From at least January 2008 through the present, the Defendants, directly or indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this Complaint, knowingly, willfully or recklessly have: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were

made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

49. By reason of the foregoing, the Defendants have directly or indirectly violated and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5.

## **COUNT II**

### **Fraud in Violation of Section 17(a)(1) of the Securities Act**

50. The Commission repeats and realleges Paragraphs 1 through 46 of this Complaint as if fully set forth herein.

51. From at least January 2008 through the present, the Defendants directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, have knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

52. By reason of the foregoing, the Defendants have directly or indirectly violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. §77q(a)(1).

## **COUNT III**

### **Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act**

53. The Commission repeats and realleges Paragraphs 1 through 46 of this Complaint as if fully set forth herein.

54. From at least January 2008 through the present, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate

commerce and by the use of the mails, in the offer or sale of securities, as described in this Complaint have: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

55. By reason of the foregoing, the Defendants have directly or indirectly violated and, unless enjoined, are reasonably likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§77q(a)(2) and 77q(a)(3).

### **RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests the Court:

#### **I. Declaratory Relief**

Declare, determine and find that the Defendants committed the violations of the federal securities laws alleged in this Complaint.

#### **II. Permanent Injunction**

Issue a Permanent Injunction, enjoining the Defendants, their agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with them, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5.

#### **III. Asset Freeze**

Issue an Order freezing the assets of all Defendants and Relief Defendants until further Order of the Court.

**IV. Appointment of a Receiver**

Issue an Order appointing a Receiver over all assets held in the name of the Defendants (other than Nadel) and Relief Defendants to (1) preserve the status quo, (2) ascertain the financial condition of each of the Defendant and Relief Defendant entities, (3) prevent further dissipation of the property and assets of each of the Defendant and Relief Defendant entities, to prevent loss, damage and injury to investors, (4) preserve the books, records and documents of each of these Defendant entities and Relief Defendant entities, and (5) be available to respond to investor inquiries.

**V. Disgorgement**

Issue an Order directing the Defendants and the Relief Defendants to disgorge all profits or proceeds that they received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

**VI. Penalties**

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

**VII. Further Relief**

Grant such other and further relief as may be necessary and appropriate.

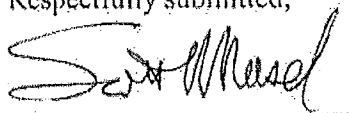
**VIII. Retention of Jurisdiction**

Further, the Commission respectfully requests the Court to retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

January 21, 2009

Respectfully submitted,

By:




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*I hereby declare this to be a true  
and correct copy of the original.*  
STUART L. LOWSON, Clerk  
United States District Court  
Middle District of Florida.

DL   
Deputy Clerk