MEMORANDUM OF UNDERSTANDING
between
NR Properties, LLC
and
Carolina Mountain Land Conservancy, Inc.

PARTIES

This Memorandum of Understanding (hereinafter "MOU") is made and entered into as of this 20th day of December, 2004 by and between NR Properties, LLC, a North Carolina limited liability company (hereinafter "NRP"), and the Carolina Mountain Land Conservancy, a North Carolina nonprofit corporation (hereinafter "CMLC").

BACKGROUND

NRP owns certain land in Henderson County, described by a plat of survey prepared by Steven P. Long and recorded in Slide 4534, Henderson County, North Carolina Registry, and attached hereto as Exhibit A. As indicated by this survey, NRP has created a residential housing development known as "The Meadows at Lewis Creek" (hereinafter "The Meadows") by subdividing the land into twenty (20) house lots and two parcels of common open space,.

I. One of the two parcels of common open space is further described in a survey entitled "Lewis Creek Conservation Area," prepared by Steven P. Long and recorded as Slide 5266, Henderson County, North Carolina Registry (hereinafter "Survey"), and attached hereto as Exhibit B. The Survey shows that Lewis Creek Conservation Area (hereinafter "Conservation Area") contains 8.34 acres.

II. NRP and CMLC share a mutual interest in the conservation, management and protection of:

A. all of the natural, native plant and animal communities populating the Conservation Area, and

B. the riparian buffer created by the length and breadth of the Conservation Area. The Conservation Area plays a vital role in the stream and floodplain function of Lewis Creek, of which periodic flooding is an important component. The Conservation Area dissipates the erosive energy of floods by allowing waters to spread out over the floodplain, assists in filtering sediments and pollutants out of surface run-off flowing from adjacent upland sites, hosts wetland flora and fauna communities, helps maintain a stable stream flow by gradually releasing stored water, and generally improves water quality and aquatic habitat in Lewis Creek.

III. NRP and CMLC share a mutual interest in the creation, management, and maintenance of a trail or trails (hereinafter "the Greenway") that will traverse the Conservation Area for the use and benefit of the property owners in The Meadows, and for the public if, at some later date, CMLC, at its sole discretion, finds it feasible to enable access by the public to the Conservation Area and Greenway.

IV. NRP and CMLC share a mutual interest in the restoration of the wetland complex and riparian buffer encompassed by the Conservation Area.

V. The Parties contemplate that NRP will transfer title in fee simple to the Conservation Area to CMLC.

PURPOSE

Summary:
The Parties contemplate that, **as described in detail below**, CMLC will pay $25,000 to NRP in exchange for title in fee simple to the Conservation Area. CMLC will be responsible for the restoration of the wetland complex and riparian buffer located within the Conservation Area. Without interfering with the restoration of these areas, CMLC also will undertake to design and reconstruct the Greenway through the Conservation Area. The creation of the Greenway will occur in two phases. Phase I will create private access to the Greenway exclusively for the property owners of The Meadows and their guests. CMLC will be responsible for management and maintenance of the Greenway. Phase II, if it occurs, will create public access to the Greenway. Phase II will not occur unless the owners of the parcels fronting Lewis Creek downstream of the Conservation Area agree to the extension of the Greenway over their properties. The Parties contemplate that following the creation of public access, either Henderson County or an as yet uncreated Municipal Government (hereinafter "Municipal Government" refers to both entities interchangeably) will accept responsibility for maintaining and managing the Greenway, and may eventually take title to the Conservation Area.

PURCHASE of the Conservation Area

The Parties will execute an agreement for the purchase by CMLC of the Conservation Area from NRP. The Parties contemplate that NRP will convey title in fee simple to CMLC in exchange for consideration totaling twenty-five thousand dollars ($25,000). NRP has expressed an intention to execute a non-binding pledge agreement to donate $25,000 to CMLC.

CREATION of the Greenway--PHASE I

The Parties contemplate that:

I. The goal of PHASE I is the creation of the Greenway for the exclusive use by property owners of The Meadows and their guests;

II. CMLC, after accepting title in fee simple to the Conservation Area, will undertake to secure adequate funding for the planning and execution of the restoration of the wetland complex and riparian buffer encompassed by the Conservation Area. Based on promising communications with representatives of the North Carolina Ecosystem Enhancement Program (hereinafter EEP), CMLC expects that EEP will agree to restore the aforementioned areas. A threshold requirement for EEP to accept a restoration project is the participation of the owners of both stream banks. CMLC and NRP expect that the owner of the opposite stream bank, Don Ingle, will participate in the project. In any event, unless and until CMLC has obtained the agreement of EEP or otherwise secured adequate funding for this purpose, CMLC will not be responsible for causing the planning and execution of the restoration work.

III. CMLC will attempt to secure adequate funding for the design and construction of the Greenway. Based on promising communications with representatives of EEP, CMLC expects that EEP will agree to design and construct the Greenway. In any event, unless and until CMLC has obtained the agreement of EEP or otherwise secured adequate funding for this purpose, CMLC will not be responsible for causing the design and construction of the Greenway.

IV. CMLC will set aside a modest area adjacent to North Ridge Road SR 1861 for potential use as a parking area. The parking area will be for use by the general public if and when PHASE II of the Greenway, described below, is completed and permission for construction of the parking area is obtained from the North Carolina Clean Water Management Trust Fund or its successor as grantee of a conservation easement on the Conservation Area to be donated by CMLC. The parking surface should be constructed using pervious materials.

V. Certain principles, enumerated below, will serve to guide CMLC when reviewing and approving the design and construction of the Greenway during PHASE I and PHASE II (described below):

(i) The design and construction of the Greenway will be executed by an entit(ies) with demonstrated experience in planning and building trail systems in environmentally sensitive areas. The construction of the Greenway should leave intact as much as possible the natural, native plant and animal communities populating the Conservation Area, and should not interfere with the restoration work described in paragraph II of this section.

(ii) The Greenway will be designed for use by pedestrians. Unless and until CMLC is able to accommodate their use in designing the Greenway and in funding the trail maintenance regime, non-motorized vehicles and horses will be prohibited. Motorized vehicles will be prohibited except for electric mobility scooters and wheelchairs.

(iii) The surface of the Greenway should be covered with permeable, natural materials such as wood chips, crushed rock, gravel, etc. except where footbridges or boardwalks over wet areas may be required, and where impermeable surfaces, e.g., concrete, asphalt, etc., are necessary but will not degrade the natural features of the site.

(iv) The design of the Greenway should minimize alteration of the natural and /or restored topography of the Conservation Area by incorporating passive measures, e.g., culverts, boardwalks, footbridges, etc., to enable use of the Greenway during ordinary periods of standing water (but not to imply use of the trail during floods, i.e., when Lewis Creek has crested over its banks).

CREATION of the Greenway--PHASE II

The Parties contemplate that:

I. CMLC will make sincere efforts to seek the binding agreement of the owners of the parcels bordering Lewis Creek and lying between the Conservation Area and Highway 64 to enable the expansion of the Greenway over these parcels. The goal of such efforts is to create a trail system open to the public. Unless and until CMLC has secured the agreement of all of the landowners whose properties border Lewis Creek and lie between the Conservation Area and Highway 64, the Greenway will remain closed to the public and access will be restricted to owners of property in The Meadows.

II. At some unspecified date CMLC, having secured adequate funding for the purpose, will cause connecting spur(s) trail(s) (hereinafter "Spur Trail") to be designed and constructed to enable access by the general public to the Greenway. Unless and until CMLC secures adequate funding for this purpose, CMLC will not be responsible for causing the design and construction of any Spur Trail.

III. CMLC, before approving a design for a Spur Trail, will consult with the property owners of The Meadows to benefit from their opinions and suggestions regarding the Spur Trail and public access to the Greenway, but reserves the right of approval over the final design of any Spur Trail.

IV. CMLC will adhere to the guiding principles enumerated in paragraph V (i – iv) above when approving and supervising the design and construction of any Spur Trail.

V. Possibilities for enabling access by the general public to the Greenway include, without limitation:

(i) construction of a Spur Trail to connect with a future trail or point of access that would be located on parcels to the west of the Conservation Area, to wit, lands now or formerly owned by Gale Pressley and Habitat for Humanity; and

(ii) construction of a Spur Trail to connect with an area set aside for parking by

the general public as described above under Phase I, paragraph IV.

MANAGEMENT of the Greenway – PHASE I

The Parties contemplate that:

I. CMLC will create a comprehensive management plan (hereinafter "Management Plan") for the Greenway and Conservation Area to conserve the natural, native plant and animal communities and associated habitats as described in a Baseline Document attached hereto as Exhibit B, and to furnish the property owners of The Meadows with recreational opportunities. Unless and until CMLC has secured adequate funding for the purpose of creating a Management Plan for the Greenway and Conservation Area, CMLC will not be responsible for creating such a plan.

II. The Management Plan will address specific policies concerning the Conservation Area and Greenway, including policies regarding, without limitation, the class of users permitted to access the Conservation Area and use the Greenway, permissible activities within the Conservation Area, pets, erection of interpretive signage, the schedule for conducting maintenance activities, and the process by which a property owner of The Meadows may request or suggest changes to the Management Plan.

III. On its own initiative, CMLC may modify the Management Plan from time-to-time, and will consult and seek to cooperate with the property owners of The Meadows to create mutually acceptable policies.

IV. CMLC will modify the Management Plan at its sole discretion.

V. The Management Plan will contain reasonable rules and policies to limit the liability of CMLC to all classes of users of the Conservation Area and Greenway, in addition to the limitations on liability afforded by NCGA General Statutes §§ 38-A1 – 38-A4.

MAINTENANCE of the Greenway--PHASE I

The Parties contemplate that:

I. CMLC, having secured adequate funding for the purpose, will maintain the Greenway including the trimming of vegetation, repair and replacement of trail surfaces, placement and repair of signage, planting and sowing for conservation purposes, maintenance of any other amenities placed by CMLC within the Conservation Area, and any other activities included in the Management Plan. Unless and until CMLC has secured adequate funding for maintenance, CMLC will not be responsible for the maintenance of the Greenway.

II. CMLC will consult and seek to cooperate with the property owners of The Meadows to maintain the Greenway in a mutually satisfactory condition.

III. CMLC will seek the involvement of property owners as trail and conservation stewards and management volunteers.

IV. The impassibility of the Greenway due to periodic flooding or standing water is a natural occurrence and necessary to the health of the wetland complex and riparian environment, and CMLC shall not be responsible for making the Greenway passable during these occurrences.

MAINTENANCE AND MANAGEMENT of the Greenway-- PHASE II

The Parties contemplate that:

I. CMLC, as part of a plan to enable access by the public to the Greenway or for other reasons, may choose to convey title to the Conservation Area and the Greenway to the Municipal Government, and also transfer to the Municipal Government the responsibilities for maintenance and management of the Greenway and Conservation Area.

II. CMLC will consult with the property owners in The Meadows prior to conveying title to the Conservation Area and the Greenway.

III. Notwithstanding paragraph II above, CMLC reserves complete discretion to convey title to the Conservation Area and Greenway to the Municipal Government.

CONDITIONS

I. This MOU may be modified by mutual written agreement of both parties or may be terminated by either party with the provision of 60 days written notice to the other.

II. CMLC and NRP intend to conduct the aforementioned activities in this agreement in accordance with existing laws, regulations, or ordinances. If any provisions of this MOU are determined to be inconsistent with existing laws, regulations or ordinances governing the signatories, then only those provisions of this MOU not affected by a finding of inconsistency shall remain in full force and effect.

III. Each party to this MOU, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that its execution, delivery, and performance of this MOU has been fully authorized and approved, and that no further corporate or government approvals or consents are required to bind such party.

IV. This MOU shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

V. This MOU constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations.

VI. This MOU shall not merge into the Purchase and Sale Agreement or into the deeds with respect to the Conservation Area, but rather shall continue in full force and effect.

VII. Each party acknowledges that it and its legal counsel have reviewed this MOU. The Parties agree that the terms and conditions of this MOU shall not be construed against any party on the basis of such party's drafting, in whole or in part, of such terms and conditions.

VIII. In addition to the actions specifically mentioned in this MOU, the Parties will each do whatever may reasonably be necessary to accomplish the the transaction(s) contemplated in this MOU including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this MOU.

IX. Should any legal action or proceeding be commenced by any party in order to enforce this MOU or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.

X. The headings in this MOU are for convenience only and are not intended to, and will not be construed to, limit, enlarge, or affect the scope or intent of this MOU nor the meaning of any provisions hereof.

EFFECTIVE DATE

I. This MOU becomes effective with both signatures on the last date written below and remains in effect until modified or terminated.

M. A. Searles

Date 12-20-04

Mark Searles, Member Manager
for
NR Properties, LLC

Kieran Roe

Date 12/20/04

Kieran Roe, Executive Director
of
Carolina Mountain Land Conservancy