

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW  
227 SECOND AVENUE NORTH  
FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631  
TELEPHONE (615) 254-8801 ~ FACSIMILE (615) 250-3937

CECIL D. BRANSTETTER, SR.  
C. DEWEY BRANSTETTER, JR.  
RANDALL C. FERGUSON  
R. JAN JENNINGS\*  
JOE P. LENISKI, JR.  
DONALD L. SCHOLES  
MIKE STEWART  
JAMES C. STRANCH, III  
J. GERARD STRANCH, IV  
MICHAEL J. WALL

ASSOCIATES:  
KARLA M. CAMPBELL  
BEN GASTEL\*  
STACEY K. SKILLMAN \*\*

OF COUNSEL:  
ROBERT E. RICHARDSON, JR. \*\*\*

January 14, 2013

\* ALSO ADMITTED IN GA  
\*\* ALSO ADMITTED IN KY  
\*\*\* ONLY ADMITTED IN OH

Ms. Sharla Dillon  
Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*Via Hand Delivery*

Re: Petition of Laurel Hills Condominiums Property Owners Association for a  
Certificate of Public Convenience and Necessity  
Docket No. 12-00030

Dear Sharla:

I have enclosed an original and five copies of the Rebuttal Testimony of Michael McClung in the above styled case along with this cover letter.

This Testimony and this cover letter are being filed electronically by electronic mail this same date. Please return the additional copy of the Testimony stamp filed to me.

Thank you for your assistance.

Sincerely yours,



BENJAMIN A. GASTEL

Enclosure

c: Shiva Bozarth  
John J. Baroni  
Melanie Davis  
Robert Schwerer  
Michael McClung

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In re: PETITION OF LAUREL HILLS CONDOMINIUMS PROPERTY OWNERS  
ASSOCIATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY**

**DOCKET NO. 12-00030**

**REBUTTAL TESTIMONY OF  
MICHAEL McCLUNG, PRESIDENT OF LAUREL HILLS**

Dated: January 14, 2013

1 Q. Please state your name for the record.

2 A. My name is Michael McClung.

3 Q. What is your position with Laurel Hills Condominiums Property Owners Association, Inc.

4 ("Laurel Hills" or the "Company")?

5 A. President.

6 Q. How long have you been President of Laurel Hills?

7 A. Since May 1, 2011.

8 Q. What kind of organization is Laurel Hills?

9 A. Laurel Hills is a Tennessee nonprofit corporation which provides management and

10 maintenance services for the Laurel Hills Timeshare units located on Renegade Mountain in

11 Crossville, Tennessee. On May 1, 2011, Laurel Hills acquired what is known as the Renegade

12 Mountain water system and has operated this small water system since that date.

13 Q. Have you reviewed any of the testimony filed so far in this action?

14 A. Yes.

15 Q. Whose testimony have you reviewed?

16 A. I have reviewed the testimony filed by William Novak, Christopher Klein, Robert Adkins,

17 Ronnie Hill, and John Moore.

18 Q. Do you have comments or concerns concerning the testimony of Mr. Novak?

19 A. Yes.

20 Q. While acknowledging that he cannot offer a legal opinion, Mr. Novak claims that a

21 significant issue exists about Laurel Hills' ownership of the Renegade Mountain water system. Mr.

22 Novak relies upon this alleged ownership issue to support his opinion that Laurel Hills should not be

1 issued a Certificate of Public Convenience and Necessity (CCN). More importantly, Mr. Novak uses  
2 this alleged ownership issue as the primary ground for completely excluding for ratemaking purposes  
3 certain known and anticipated expenses which Laurel Hills has incurred and will continue to incur to  
4 operate the water system and which the Authority should and must include in Laurel Hills' cost of  
5 service. No questions exists that Laurel Hills owns the water system. Laurel Hills has provided the  
6 Authority with the deed and bill of sale by which Laurel Hills acquired the real property, water  
7 facilities and personal property of the water system. In his direct testimony John Moore asserts that  
8 at some point in the past the water system was turned over or transferred to the Renegade Mountain  
9 Community Club, but Mr. Moore provided no evidence to the Authority to support this claim. The  
10 Tennessee Department of Environment (TDEC) recognizes Laurel Hills as the owner of the water  
11 system, and TDEC issued PWSID 000857 to Laurel Hills. TDEC has worked with Laurel Hills as  
12 the owner of the water system to assist it in bringing the neglected water system public water system  
13 into compliance with TDEC rules and regulations since Laurel Hills became the owner of the water  
14 system in May of 2011. In the Sanitary Survey done by TDEC in October of 2011, Laurel Hills  
15 received a very favorable score of 98 out of 100 possible points in TDEC's evaluation Laurel Hills'  
16 public water system. Therefore, the Authority should disregard any opinions of Mr. Novak which are  
17 based in whole or in part upon an alleged issue with the ownership of the water system.

18 Q. What is your chief concern regarding the testimony of Mr. Novak?

19 A. Other than the issue just discussed, my chief concern is that the rates proposed by Mr. Novak  
20 do not cover the actual expenses of the system. If the TRA were to give Laurel Hills the rate  
21 proposed by Mr. Novak, the system could simply not operate. Several vendors of the system to  
22 which Laurel Hills currently owes money could not be paid, including its water supplier Crab

Orchard Utility District (COUD). In the event unpaid vendors sue Laurel Hills for nonpayment, Laurel Hills would have no defense against any such claims, and judgments could be obtained against Laurel Hills related to the water system. Any revenues received by Laurel Hills from its ratepayers would be subject to garnishment by such judgment creditors; therefore, Laurel Hills would have no funds to operate its water system. In addition, COUD has the ability to terminate water sales to Laurel Hills for nonpayment of its account. Laurel Hills currently owes COUD \$23,659.18, and Laurel Hills has already received notice that COUD intends terminate water service to Laurel Hills for nonpayment of the balance on this account. If the Authority approves a rate anywhere near as low as recommended by Mr. Novak, COUD will have no incentive to work with Laurel Hills to give it additional time to pay off its outstanding account.

Q. Please explain the line by line discrepancies between the operating and maintenance expenses you proposed and those proposed by Mr. Novak, and for your convenience, I add in the chart contained in Mr. Novak's testimony below.

ITEM	EXPENSE TYPE	COMPANY MONTHLY PRO FORMA	CAPD MONTHLY PRO FORMA
	<b>O &amp; M Expenses</b>		
1	Engineering & Labor	\$2,500	\$333
2	Construction Contracts	1,400	0
3	Water Testing	600	600
4	Depreciation	500	88
5	Real Estate Tax	200	0
6	Telephone	125	61
7	Permits & Penalties	1,200	25
8	Interest Expense	1,900	0
9	Legal Expense	2,500	0
10	Accounting & Management Services	1,550	300
11	Office Expenses	200	20
12	Insurance Expense	700	433
13	Postage Expense	50	8
14	Equipment Rental Expense	150	8

15	Maintenance & Repair Expense	2,000	0
16	Wholesale Water Expense	1,750	1,671
17	Electricity Expense	800	467
18	<b>Total Monthly O &amp; M Amount</b>	<u><b>\$18,125</b></u>	<u><b>\$4,014</b></u>
19	<b>Total Annual O &amp; M Amount</b>	<u><b>\$217,500</b></u>	<u><b>\$48,168</b></u>

1 **A. Line 1 (Engineering & Labor):** Mr. Novak has only proposed \$333 per month because he  
 2 excluded from Laurel Hills' proposed amount the ongoing \$500 per week amount owed Darryll  
 3 McQueen. Laurel Hills outlined the significant services provided by Mr. McQueen represented by  
 4 this charge in previous responses to Request 19 of the Customer Intervenor's Second Revised  
 5 Discovery Request (responses produced on November 19, 2012). Mr. McQueen was uniquely  
 6 qualified to provide these engineering and maintenance services because of his historical knowledge  
 7 of the system, and because he had performed some of these services for the water system even before  
 8 Laurel Hills acquired it. The \$500 per week covers all services provided by Mr. McQueen, including  
 9 his engineering services, and Mr. McQueen these engineering services at a rate which was  
 10 significantly less than Laurel Hills could have hired a consulting engineer to perform the same work.  
 11 Mr. McQueen's willingness to perform work for the water system, even when Laurel Hills lacked  
 12 funds to pay him, was one of the primary reasons the water system was able to obtain its favorable  
 13 score of 98 on its Sanitary Survey, and that Laurel Hills was able to negotiate the dismissal of the  
 14 TDEC enforcement proceedings against the water system, which had been ongoing for several years  
 15 before Laurel Hills acquired the water system. Additionally Laurel Hills proposes that the back-due  
 16 amount due to Mr. McQueen be collected through a surcharge.

1   **Line 2 (Construction Contracts):** Mr. Novak has excluded the amount the Company has requested  
2   of \$1,400 a month for construction contracts based solely on his unsupported opinion that a question  
3   exists about the Company's ownership of the water system. Since I filed my direct testimony, the  
4   Company has received invoices for the construction related to the valve boxes to which this line item  
5   relates. These invoices are being filed as a supplement to the Company's response to discovery  
6   requests served upon it. These documents fully support the requested \$1,400 per month for this  
7   expense. As I said in my direct testimony, the installation of these valve boxes are necessary to  
8   permit the Company to terminate service to individual customer connections for nonpayment. In  
9   addition, these valve boxes must be installed for the Company's customers to install backflow  
10   preventers which TDEC has recommended for all of the Company's service connections. Mr. Novak  
11   further claims that this type of expense is usually capitalized and depreciated. While Mr. Novak may  
12   be correct, his recommendation assumes that a utility has the funds necessary for the construction or  
13   has the ability to borrow money to pay for the construction of the value boxes. The Company has  
14   neither. Therefore, these construction costs must be paid for out of the operating revenues, and  
15   monthly rates must be set to cover this expense. Otherwise, the valve boxes for all customer  
16   connections cannot be installed. .

17   **Line 3 (Water Testing).** Mr. Novak agrees that \$600 a month is an appropriate amount for water  
18   testing. Although Mr. Novak does not disagree with the amount the Company included for water  
19   testing, in Attachment 2, Item 4 of his testimony on this expense, Mr. Novak states, "This amount  
20   appears to be reasonable, however, the CAPD is curious as to why Laurel Hills's water needs to be  
21   tested since it is already purchasing wholesale water that is already tested." While the Company  
22   purchases water treated by COUD, TDEC regulations require all water system which purchase their

1 water supply to perform a number of ongoing tests to measure the level of bacteria, chemical and  
2 disinfection byproducts regularly each month. The Company is responsible for submitting monthly  
3 reports of tests performed and the results to TDEC. Mr. Novak's lack of knowledge of the water  
4 quality regulations of TDEC and the work required by the Company to meet these regulations causes  
5 the Company grave concern about his opinions the Company's expenses and the costs of service of a  
6 small water company, and the Authority should carefully review any opinions or recommendations  
7 of Mr. Novak in any area in which he does not have the requisite expertise or background to render  
8 an opinion on cost.

9 **Line 4 (Depreciation).** Mr. Novak's proposed depreciation expense incorrectly excludes amounts  
10 for payment of the \$400,000 promissory note to Moy Toy which is relevant to the financing of Laurel  
11 Hills' purchase of the water system and therefore should be included in the rate.

12 **Line 5 (Real Estate Taxes).** Mr. Novak has excluded any expense for the Company for real estate  
13 taxes. The Company does not believe that this expense amount should be \$0. The real property  
14 owned by the Company upon which its tank is located is used solely for its water operations. None  
15 of the prior owners of the Renegade Mountain water system have obtained a CCN to operate the  
16 water system. To my knowledge the water tank, pump house, water lines and other property of the  
17 water system have never been assessed by the Tennessee Comptroller's office as public utility  
18 property. Once a CCN is issued to the Company, all of its property is subject to assessment shall be  
19 assessed at the rate of 55% of its value rather than the current local assessment rate of 25% of its  
20 value. Although most of the water system's plant in service is fully depreciated, I believe that the  
21 value of the system for property tax purposes will take into account other methods of evaluation  
22 other than the net book value of the Company's utility plant in service. As a Tennessee non-profit



1 corporation, Laurel Hills is not exempt from paying those taxes. For the purposes of this proceeding,  
2 the Company suggests that an annual ad valorem tax obligation of \$600 is reasonable and  
3 appropriate.

4 **Line 6 (Telephone Expenses).** Laurel Hills will not contest Mr. Novak's expense allocation related  
5 to this line item.

6 **Line 7 (Permits & Penalties).** Mr. Novak incorrectly excludes the amounts paid to the State of  
7 Tennessee in order to settle a TDEC enforcement proceeding. The Company agreed to pay the civil  
8 penalty amount it negotiated with the Assistant Attorney General representing TDEC in the  
9 enforcement proceeding. While the violations which were the subject of the enforcement  
10 proceedings occurred long before the Company purchased the water system, TDEC took the position  
11 that the water system itself was responsible for any civil penalties awarded to TDEC by the court.  
12 Taking into account the costs of defending against the enforcement proceeding and the Laurel Hill's  
13 inability to defend against the actions of the prior owners of the water system, the payment of the  
14 negotiated civil penalty amount was in the best interest of water system's customers. Therefore, the  
15 Company should be able to recover the civil penalty amount paid through its rate structure or through  
16 a surcharge. The Company understands that this expense will not be a recurring expense and may be  
17 more appropriately recovered by a surcharge to the monthly rate for water service approved until the  
18 entire amount is recovered. The prudent operation of the water system mandated the civil penalty be  
19 paid. Laurel Hills had no funds available to pay the civil penalty and borrowed funds to pay the civil  
20 penalty from Renegade Mountain Timeshares, LLC. The loan from Renegade Mountain Timeshares,  
21 Inc. is a valid debt of the water system. If Laurel Hills is not able to pay the balance of the note off  
22 through its water operations, Renegade Mountain Timeshares, LLC may foreclose on the note

1 costing Laurel Hills significant legal and other expenses which will only increase Laurel Hills's cost  
2 of service.

3 **Line 8 (Interest Expense).** Mr. Novak incorrectly excludes the interest due on Laurel Hill's  
4 promissory note on the purchase of the water system and the interest expense owed to Renegade  
5 Mountain Timeshares, LLC on the \$50,000 note previously mentioned. After additional searches, I  
6 was able to locate the note to Renegade Mountain Timeshares, LLC and have attached that as  
7 Exhibit 2. These are valid debts of the water system if Laurel Hills is not able to pay the balance of  
8 the note off through water operations, Renegade Mountain Timeshares, LLC and/or Moy Toy may  
9 foreclose on the note costing Laurel Hills significant legal and other expenses.

10 **Line 9 (Legal Costs).** Mr. Novak provides \$0 for legal expenses incurred by the Company related to  
11 its water operations. All of the legal expenses incurred by the Company in this proceeding are  
12 properly recoverable since practically all of the legal expenses relate to the setting of the rate Laurel  
13 Hills will charge its customers for water service. I understand that rate case expenses should be  
14 recovered through water rates paid by customers. While Laurel Hills acknowledges the amount of  
15 legal expenses which have been incurred and will be incurred in this proceeding are high in  
16 comparison to the number of persons served by the Laurel Hills water system, the sizable costs of  
17 this proceeding have been driven primarily by the CAPD and intervenors in multiple discovery  
18 request and depositions.

19 Laurel Hills asserts that all legal expenses related to the first case Laurel Hills was required to  
20 defend in the Cumberland Chancery Court are properly included as an expense in this case. The  
21 actions taken by the Company which prompted the filing of the lawsuit by some of the intervenors  
22 was prompted by the concerted effort of a majority of the Company's customers not to pay the

1 monthly bills for water service in the late fall of 2011. The actions of the Company's customers  
2 resulted in the Company having no revenue on which to operate and left the Company with no option  
3 except to terminate water service to four customers which the Company could terminate service  
4 without terminating service to all of its customers. The second lawsuit filed in Chancery Court by  
5 the Authority should also be recovered since the issues in this case are essential the same as the  
6 issues in the first case file by some of the intervenors in this case. The legal expenses related to the  
7 two Cumberland County Chancery Court cases are valid debts incurred by the water system. If  
8 Laurel Hills is unable to pay its legal costs related to the operation of its water system, then it simply  
9 cannot obtain counsel and fully comply with requirements of the Authority and TDEC as Laurel  
10 Hills is prohibited by law from representing itself in proceedings before either agency or in courts;  
11 therefore, Laurel Hills must obtain counsel in order to obtain a certificate and represent its interest  
12 before TDEC. If the Company is unable to pay its legal costs related to the operation of its water  
13 system, then it will not be able to adequately defend itself in future court proceedings which may  
14 very well occur based upon the number of entities and persons who whom the Company owes  
15 money.

16 **Line 10 (Accounting & Management Services).** This amount includes the amounts paid to  
17 Lansford and Stevens for monthly billing, collection and accounting services. Mr. Novak properly  
18 allocates an amount of \$300 per month paid to Lansford and Stevens as a valid expense. I do not  
19 believe the \$300 amount per month is sufficient for the Company's needs as a regulated utility. Mr.  
20 Novak is requesting that Laurel Hills convert its financial statements to the uniform system of  
21 accounts ("USOA"); however, Mr. Novak provides no money in his proposed expenses for the  
22 conversion and the continuing education by Lansford and Stephens to use the USOA. In addition, the

1 Company will need to use the services of Lansford and Stephens to meet other requirements the  
2 Company will have as a regulated utility. The Company will need to use Lansford and Stephens to  
3 prepare and submit the quarterly and annual financial reports to the Authority as required by its rules  
4 and regulations. The Company will need to use Lansford and Stephens to prepare and submit its  
5 annual ad valorem report to the Tennessee Comptroller's office. The Company anticipates it will  
6 need to consult with Lansford and Stephens periodically on other TRA regulatory matter to respond  
7 to inquiries by the Authority. Lansford and Stephens are not familiar with the USOA and therefore a  
8 new accountant would have to be found and Laurel Hills suspects that having that accountant  
9 maintain the financial statements in accordance with the USOA would be far more expensive than  
10 the services offered by Langford and Stephens.

11 Mr. Novak limited this expense only to the invoices provided by Lansford and Stevens, but  
12 this item also includes the amounts allocated from Renegade Resources, LLC for work performed by  
13 it on the Company's water system. As explained in Laurel Hills' response to discovery requests  
14 from the Consumer Advocate Division, Renegade Resources provides significant labor resources to  
15 Laurel Hills in the management of the system. Someone must conduct routine maintenance on the  
16 water system, respond to emergency calls, fix leaks in the system, assist the certified operator as  
17 needed, handle customer inquires and perform other customer service functions other than the billing  
18 and collection done by Lansford and Stephens. Both TDEC and the Company's customers expect  
19 these jobs task to be performed for the system. If the Company is not permitted to use Renegade  
20 Resources to perform these functions, then it must hire outside contractors and vendors to perform  
21 these functions which will be increase the costs the Company has been paying Renegade Resources

1 to perform these job tasks. Accordingly, the amount which the Company seeks to recover for  
2 accounting and management services is reasonable and necessary.

3 **Line 11 (Office Expenses).** Mr. Novak incorrectly assumes that office supplies for the office is only  
4 \$20 per month. As can be seen from a review of the Exhibit 1 to my Direct Testimony, TDEC itself  
5 requires Laurel Hills to maintain significant records and to do that requires significant office  
6 expenses. Accordingly, Mr. Novak's position is untenable as it would leave Laurel Hills without  
7 resources to maintain records in accordance with TDEC regulations.

8 **Line 12 (Insurance Expense).** Laurel Hills does not challenge Mr. Novak's allocation. Originally,  
9 Laurel Hills allocated greater than 50% of this expense in calculating this original line item but later  
10 conceded that a 50% allocation is acceptable. Accordingly, Mr. Novak's reduction is appropriate.

11 **Line 13 (Postage Expense).** Laurel Hills will not dispute this allocation.

12 **Line 14 (Equipment Rental Expense).** Mr. Novak improperly reduced this amount. Laurel Hills  
13 does not own equipment like backhoes in order to perform maintenance on the system. The system,  
14 although relatively small, requires a relatively larger amount of maintenance because of the fact that  
15 the system is located on the side of a mountain and part of its main service line is above ground  
16 (because it is prohibitively expensive to bury the line going up the side of the mountain). As a result,  
17 Laurel Hills needs to regularly rent equipment to help individuals from Renegade Resources, LLC  
18 perform maintenance when leaks or other issues arise. Obviously, it is very important when  
19 equipment needs to be leased for funds to be immediately accessible for that expense.

20 **Line 15 (Maintenance & Repair Expense).** The majority of this line item relates to rehabilitation  
21 of the system's water tank, which is needed in order to ensure the system is able to meet TDEC  
22 requirements. The estimated rehabilitation cost is \$183,000, but Mr. Novak provides no monies for

1 this expense because he incorrectly claims that this expense should be capitalized. Although that  
2 might be a proper method of paying for the tank and expensing the rehabilitation cost, Laurel Hills  
3 cannot borrow money to pay for this expenditure and does not have sufficient available funds to pay  
4 for this expenditure, and therefore, has no choice but to pay for this out of the operating budget.

5 **Line 16 (Water Expense).** Mr. Novak improperly excludes from his expense calculation all water  
6 related expenditures because he excludes penalty amounts from his calculation. However, those  
7 penalty amounts are assessed by Laurel Hills' water provider and are valid expenses of the system.  
8 Without cost recovery of those expenses, Laurel Hills will not be able to pay its water bills in full  
9 and will face termination of water service from its water provider.

10 **Line 17 (Electricity Expense).** Laurel Hills does not dispute Mr. Novak's allocation.

11 **Line 20 (Plant in Service).** Laurel Hills does not dispute Mr. Novak's allocation.

12 **Line 21 (Accumulated Depreciation).** Laurel Hills does not dispute Mr. Novak's allocation.

13 **Line 22 (Working Capital).** Laurel Hills does not dispute Mr. Novak's use of 1/8 of its operating  
14 budget as proper allocation for working capital, but Laurel Hills, as explained above, disputes the  
15 amount of its operating budget used by Mr. Novak in his calculation. Accordingly, Laurel Hills  
16 proposes \$25,510.50 based on the above discussion for working capital.

17 **Line 24 (Rate of Return).** Laurel Hills will not dispute the 6.668% rate of return.

18 Q. Based on the above, what is Laurel Hills' revised monthly budgeted expenses?

19 A. Laurel Hills' revised monthly budgeted expenses is contained in the below chart (modeled  
20 after Mr. Novak's):

ITEM	EXPENSE TYPE	COMPANY ORIGANOL MONTHLY PRO FORMA	CAPD MONTHLY PRO FORMA	COMPANY REVISED MONTHLY PRO FORMA
<b>O &amp; M Expenses</b>				
1	Engineering & Labor	\$2,500	\$333	\$2,500
2	Construction Contracts	1,400	0	1,400
3	Water Testing	600	600	600
4	Depreciation	500	88	500
5	Real Estate Tax	200	0	200
6	Telephone	125	61	61
7	Permits & Penalties	1,200	25	1,200
8	Interest Expense	1,900	0	1,900
9	Legal Expense	2,500	0	2,500
10	Accounting & Management Services	1,550	300	1,550
11	Office Expenses	200	20	200
12	Insurance Expense	700	433	433
13	Postage Expense	50	8	8
14	Equipment Rental Expense	150	8	150
15	Maintenance & Repair Expense	2,000	0	2,000
16	Wholesale Water Expense	1,750	1,671	1,750
17	Electricity Expense	800	467	467
18	<b>Total Monthly O &amp; M Amount</b>	<b>\$18,125</b>	<b>\$4,014</b>	<b>\$17,419</b>
19	<b>Total Annual O &amp; M Amount</b>	<b>\$217,500</b>	<b>\$48,168</b>	<b>\$209,028</b>
<b>Rate Base:</b>				
20	Plant Service		\$15,757	\$15,757
21	Accumulated Depreciation		-525	-525
22	Working Capital (1/8 of O & M Expenses)		6,021	\$26,128.50
23	<b>Total Rate Base</b>		<b>\$21,253</b>	<b>\$41,885.50</b>
24	Hypothetical Rate of Return		6.668%	6.668%
25	<b>Return on Invested Capital</b>		<b>\$1,417</b>	<b>\$2,793</b>
26	<b>Total Cost of Service</b>		<b>\$49,585</b>	<b>\$211,821</b>

1  
2 Q. Given the foregoing chart, what is Laurel Hills' proposed rate design from this total cost of  
3 service?

4 A. Although the Company previously identified 135 residential billing units, 15 customers have  
5 disconnected from the system since I filed my direct testimony. Using the 120 residential billing  
6 units and spreading the total cost of service of \$211,821 across those 120 current residential billing  
7 units, Laurel Hills believes a rate of \$147.10 per residential unit is necessary for it recover its cost of  
8 service. This rate assumes certain items will be recovered through a surcharge.

9 Q. Is there anything else, apart from the surcharge, you just identified that needs to be added to  
10 this rate.

11 A. Yes. Under the Authority's Rules, each regulated public utility must pay an annual  
12 inspection fee to the Authority, which is set as \$4.25 per \$1,000 revenue less the first \$5,000 of  
13 revenue. Taking Laurel Hills total cost of service as its estimated revenue for the coming year,  
14 Laurel Hills calculates this annual inspection fee to be \$878.98. Spread across the 120 current billing  
15 units, Laurel Hills this annual fee will add \$.61 per customer per month to the above identified rate,  
16 bringing the total rate requested to **\$147.71**.

17 Q. So just to summarize, what is the monthly service rate, without the proposed surcharge, you  
18 propose?

19 A. \$147.71.

20 Q. Would this rate be higher if a surcharge were not put into effect?

21 A. Yes, then the rate would have to be designed to ensure that Laurel Hills could cover certain  
22 costs prudently incurred in the operation of the system.



1 Q. Mr. Novak also raised issues about the ownership of the system, what is your response to  
2 those issues?

3 A. There is no dispute about the ownership of the system. We have attached the promissory  
4 note and the bill of sale related to Laurel Hills' purchase of the water system from Moy Toy, LLC.  
5 Prior to the sale, Laurel Hills had a title search conducted which came back clean. No person has  
6 ever filed any suit challenging the transfer of ownership from Moy Toy, LLC to Laurel Hills. The  
7 basis for Mr. Novak's incorrect contention that there is such a proceeding appears to stem from the  
8 testimony offered by John Moore in this proceeding. In that testimony Mr. Moore incorrectly and  
9 without any support alleged that Moy Toy, LLC could not have transferred the system to Laurel  
10 Hills, but Mr. Moore is not a lawyer and provided no support for that contention and did not include  
11 any records or documents or court opinions which would support his claims that the transfer of  
12 ownership of the water system was improper. Mr. Novak may have been also been confused because  
13 Laurel Hills is a party to two lawsuits in Cumberland County, Tennessee related to the water system,  
14 but neither of those suits are in any way related to or allege that Laurel Hills is not the legal owner of  
15 the water system. Moreover, the substantial improvements to the pump station, which is the most  
16 critical asset to the operation of the water system, evidence clear ownership by Laurel Hills. Laurel  
17 Hills paid for the construction of these improvements, and the operation of these improvements are  
18 essential to the system's operation. In short, there is no factual support for Mr. Moore's position or  
19 Mr. Novak's testimony that any dispute concerning the ownership of the system exists.

20 Q. Mr. Novak also is requesting that Laurel Hills convert its financial statements to the uniform  
21 system of accounts ("USOA"), do you have a response to that recommendation?

1 A. Yes, although Laurel Hills is not opposed to converting its accounting to the USOA, Laurel  
2 Hills does not at this time have money in the budget, and Mr. Novak does not provide money in his  
3 proposed rate structure for that conversion. Laurel Hills' current accountants, Langford and  
4 Stephens, are not familiar with the USOA and therefore a new accountant would have to be found  
5 and Laurel Hills suspects that having that accountant maintain the financial statements in accordance  
6 with the USOA would be far more expensive than the services offered by Langford and Stephens.

7 Q. Mr. Novak also claims there is animosity between Laurel Hills and its customers, do you  
8 have a response to that contention?

9 A. Yes. Although the Company has had differences with customers in the past, the Company is  
10 committed to providing safe and reliable water service to its customers and is mandated by TDEC to  
11 provide water quality which meets its rules, regulations and standards. The Company only needs a  
12 rate to cover its expenses to ensure it can accomplish this goal.

13 Q. Have you reviewed the testimony offered by Dr. Klein?

14 A. Yes.

15 Q. And do you have comments on that testimony?

16 A. Yes. Dr. Klein is correct that Laurel Hills needs to ensure that it has a rate of return that can  
17 cover its interest on prudently incurred debt in support of its water utility operations. Laurel Hills has  
18 prudently incurred two debts in need of interest payments: (1) the \$400,000 note to purchase the  
19 system; and the \$50,000 promissory note used to pay for the installation of the pump station, the  
20 payment of the TDEC civil penalty and certain operating expenses. Without paying the civil penalty  
21 imposed by TDEC, the Company's customers would have been unable to get potable drinking water as  
22 required by TDEC. When TDEC saw that Laurel Hills was committed to bringing its water system

1 into compliance with TDEC regulations (manifested in part by Laurel Hills' favorable score on its  
2 most Sanitary Survey which I included in my original testimony), TDEC allowed Laurel Hills to  
3 continue to operate the water system and appeared satisfied at the initial steps Laurel Hills took to  
4 bring the system into compliance with TDEC regulations. Therefore, this debt incurred in ensuring  
5 water quality of the system was prudently incurred debt and should be part of any analysis on Laurel  
6 Hills' rate of return and cost of service. The Company purchased the water system from Moy Toy to  
7 ensure a source of water to the Laurel Hills condominium development. In order to ensure proper  
8 operation of the system, Laurel Hills purchased the system from Moy Toy, and it did so via the  
9 \$400,000 note carrying an interest rate of 6.5%. Based on my discussions with people familiar with  
10 water systems, this was a reasonable price to pay for the system. Although we obviously disagree  
11 with Dr. Klein's characterization of the above-identified prudently incurred debts, we do believe his  
12 calculation of a 6.668% rate of return is reasonable and Laurel Hills does not dispute this amount.

13 Q. Have you reviewed the testimony offered by Mr. Adkins?

14 A. Yes.

15 Q. And do you have any comments on that testimony?

16 A. Laurel Hills has had to significantly cut back on the amount of resources it devotes to water  
17 operations because its revenue is insufficient to cover ongoing expenses. As a result we have had to  
18 significantly scale back our presence in the office occupied by Laurel Hills. Nevertheless, it is Laurel  
19 Hills' goal to have a part time person occupying its office located at the Laurel Hills condominium  
20 complex to help with customer inquiries, filing, and other front office functions. That cost is part of  
21 the management fees of the system and Laurel Hills should have rates to cover that expense,

1 otherwise it will lack the resources to respond to customer inquiries and ensure that its records are  
2 maintained.

3 Q. Have you reviewed the testimony filed by Mr. John Moore?

4 A. Yes.

5 Q. Mr. Moore claims there has been water quality issues since Laurel Hills took over the system,  
6 do you have a comment on that?

7 A. Yes. When Laurel Hills took over the system, the water system was the subject of an  
8 enforcement action by TDEC because of water quality issues. At that time, the antiquated pumps  
9 operating on the system were not working properly, and Laurel Hills began discussions with  
10 TDEC about what was necessary to bring the system into compliance. Mr. Darryll McQueen  
11 helped tremendously in these discussions, and he engineered and designed the current pump  
12 station operation which utilizes alternating pumps to help ensure consistent operation of the  
13 water system. TDEC approved this design, and Mr. McQueen and Laurel Hills' construction  
14 contractors began to implement these changes. Once the new water pumps were installed, the  
15 system's ability to provide continuous service to its customers and to improve water quality was  
16 significantly improved. The next major critical step to ensuring reliable service is rehabilitating  
17 the water tank, which is necessary to ensure continued service and water pressure on top of the  
18 mountain in the event of a power failure, other problem with the pumps or changes in the  
19 COUD's water system which limit or curtail water delivered to the Company.

20 Q. Mr. Moore also testified about problems with contacting Laurel Hills on occasions, do  
21 you have a comment on those allegations.

1 A. Yes, as a result of the significant expenses Laurel Hills knew it was going to incur to  
2 bring the system into TDEC compliance, along with other operational and maintenance issues,  
3 Laurel Hills needed to increase rates because the then existing rate structure did not provide  
4 revenues sufficient to maintain the system. The rates in place when the Company acquired the  
5 system had caused the system to fall into non-compliance with TDEC regulations and had  
6 resulted in significant past-due bills with Crab Orchard Utility District. Because of this poor  
7 financial condition of the water system, Laurel Hills has not been able to devote the resources it  
8 would like to devote to customers service issues. Although I am President of Laurel Hills, I do  
9 not take a salary and receive no compensation from the Company's water operations, and I have  
10 little ability to provide additional time or resources to the operation of the water system. Laurel  
11 Hills needs to procure personnel and resources to handle customer complaints and other  
12 customer service issues, but under its current rate structure, it is unable to do so.

13 Q. Are you familiar with the dispute concerning the Renegade Mountain Community Club  
14 mentioned in Mr. Moore's testimony?

15 A. Yes, I am a named party in that lawsuit as a result of my position on the Board of the  
16 Renegade Mountain Community Club.

17 Q. Does that lawsuit involve the water system?

18 A. No. That lawsuit involves control of the Renegade Mountain Community Club and in no  
19 way impacts the water system.

20 Q. Mr. Moore discusses a "master plan" in his testimony that purportedly relates to the water  
21 system are you familiar with that document?

1 A. No, and importantly, Mr. Moore did not provide that document with his testimony and  
2 therefore I have no way to confirm whether the so called document supports Mr. Moore's  
3 contentions.

4 Q. When Laurel Hills purchased the water system and the real estate related to the water  
5 system, did Laurel Hills have a title search done?

6 A. Yes.

7 Q. And what was the result of that title search?

8 A. As I discussed earlier, the title search came back clean, and Laurel Hills proceeded to  
9 purchase the water system free and clear from Moy Toy without any encumbrances other than the  
10 note used by Laurel Hills to finance the purchase of the system.

11 Q. Are you familiar with the Chancery Court case 2011-CH-508 discussed in Mr. Moore's  
12 testimony.

13 A. Yes, I am a named party in that lawsuit and provided testimony on behalf of Laurel Hills in  
14 that proceeding.

15 Q. What precipitated that lawsuit?

16 A. In or around June of 2011, in order to ensure the water system remained financially viable,  
17 Laurel Hills sent its first invoice for water service with a rate of service of \$86.40. At the request of  
18 Mr. McQueen, the Company agreed to allow the Cumberland Point Condominiums Association, and  
19 only the Cumberland Point Condominiums Association, to pay one-half of this amount until the  
20 Company knew how much it was going to cost the run the system with a few months of operations.  
21 When the Company concluded that the \$86.40 was going to be necessary to operate the system in the  
22 fall of 2011 and advised its customers that this rate would need to be paid, the majority of

1 Company's water customers acted in concert to stop paying for water service at all. The failure to  
2 pay created a major crisis because Laurel Hills was not receiving revenue sufficient to pay its bills  
3 and maintain water operations.

4 Q. And what actions did Laurel Hills take as a result?

5 A. Laurel Hills reluctantly informed customers that it would have to stop providing water  
6 service as a result of customers' failure to pay for ongoing operations because the water system was  
7 not financially viable.

8 Q. And what happened next?

9 A. When the Company terminated water service to four of its customers from nonpayment, some  
10 of the Company's customers filed the above-identified lawsuit in the Cumberland County Chancery  
11 Court. The Chancellor in that case entered a temporary injunction requiring all customers to pay the  
12 monthly rate of \$42.20 and to bring their unpaid balance for water service using this rate and  
13 ordered Laurel Hills to contact the TRA concerning the water system.

14 Q. And why had Laurel Hills not previously approached the TRA.

15 A. In June 2011 Laurel Hills did not believe it was subject to TRA regulation because of the  
16 uncertain regulatory environment. No previous owner of the water system had ever obtained a CCN  
17 to operate the water system. Additionally, Laurel Hills had numerous conversations with TDEC,  
18 TDEC never advised or required that Laurel Hills obtain a CCN from another public agency to  
19 continue to operate the system. At that time the Company's primary concern was improving the  
20 system to try to bring the system into compliance with TDEC water quality standards, and the  
21 Company believes that it operated in good faith in an attempt to comply with Tennessee law.

22 Q. Are there other proposals Laurel Hills would like to make?

1 A. Yes, Laurel Hills recognizes that some of the major expenses it has incurred since it began  
2 operating the system will not be typical monthly operating expenses of the system. Therefore, the  
3 Company proposes that the TRA approve a surcharge fee for a period of time to recoup these large  
4 expenses from its customers.

5 Q. What costs does Laurel Hills believe are appropriate to be included in a potential surcharge?

6 A. I understand that the costs incurred by a regulated utility to set rates and to comply with  
7 regulatory mandates are properly recovered from its customers. The Company has incurred  
8 substantial legal costs in this proceeding and in trying to maintain the viability of the water system.  
9 The Company seeks to recover the costs associated with paying the civil penalty assessed by TDEC,  
10 Mr. McQueen bill for engineering services and the past-due balance owed to COUD with the  
11 surcharge.

12 Q. And what would be the proposed structure of a surcharge?

13 A. Laurel Hills proposes spreading these costs over a two year period because Laurel Hills  
14 anticipates the need for an additional rate case will occur sometime in the next two years.

15 Q. And what would the proposed surcharge be?

16 A. Laurel Hills proposes a surcharge of \$47.49.

17 Q. How did you arrive at this amount?

18 A. The below chart identifies how I arrived at this amount:



ITEM	EXPENSE TYPE	Amount
1	Back Due Amount To Crab Orchard	\$ 23,659.18
2	McQueen Payment	\$ 36,500.00
3	Legal Fees	\$ 65,317.60
4	TDEC Civil Penalty	\$ 11,282.50
		<hr/>
	Total	\$ 136,759.28
	Monthly Total Over 2 Years	\$ 5,698.30
		<hr/>
	<b>Monthly Total Per Customer</b>	<b>\$ 47.49</b>
	<b>COUD ONLY</b>	\$ 8.21

1

2 Q. What surcharge rate would Laurel Hills propose just to cover the back due amount owed to  
3 COUD?

4 A. If the surcharge were only to cover the back due amount to COUD, then it would be \$8.21.

5 Q. If the Authority does not approve the rates requested by the Company, how will it be able to  
6 pay for the operation of the Renegade Mountain water system?

7 A. It will not be able to do so. The Company is a nonprofit member corporation. Its members  
8 are the entities and persons who own weekly time share units in the Laurel Hills Condominiums.  
9 The assessments currently being paid by the Company's members do not even cover the cost of the  
10 Company's maintenance of the Laurel Hills Condominiums. Therefore, no funds from assessments  
11 to its members are available to help Company finance its water operations nor should they be.

12 Q. Why do you say they should not be?

13 A. To require the weekly time share unit owners to pay for water operations through annual  
14 assessments would be a deprivation of the property interests of the unit owners.

15 Q. Can the members of the Laurel Hills obtain a financial benefit from the operation of the water  
16 system?

1 A. No, under its charter and bylaws and under Tennessee law, the unit owners may not received  
2 a distribution from any earnings of Laurel Hills and therefore cannot financially benefit from its  
3 water system operations.

4 Q. Other than the changes to your direct testimony you made above, are there any other issues  
5 you wish to correct in the record?

6 A. Yes, in my direct testimony, I misidentified myself as the managing member of Moy Toy, and  
7 I am not. I own a non-controlling, minority interest in Moy Toy and am not its managing member.

8 Q. Are you aware that the hearing officer in this case ruled that Laurel Hills should turn over  
9 Moy Toy's tax returns and general ledger?

10 A. Yes.

11 Q. And have you turned over those records?

12 A. No.

13 Q. Why not?

14 A. Laurel Hills requested that Moy Toy produce those records to it, and Moy Toy denied Laurel  
15 Hills' requests for those records.

16 Q. Does this complete your rebuttal testimony?

17 A. Yes it does.

# Gold Mine Golf, Inc.

435 Robinson Ridge Road, Dahlonega, GA 30533 706-864-9445 706-867-8388(fax)

EXHIBIT

1

November 12, 2012

Mr. Mike McClung  
Laural Hills Condominium  
Property Owners Association  
Crab Orchard Tenn. 37723

## INVOICE 1 Job No. 1042-1

This invoice is for the work completed to date for the location and installation of water valves.

### Scope of Work:

- Locating and marking approximately (20) Water Gate Valves per plan.
- Locating and marking approximately (19) Service Valves to the homes located on plans.
- Installation and replacement of approximately (8) new service valves to homes per plan.
- Labor, materials and lodging included.

**Total Amount of Contract: \$17,425.52**

Please make payment to Gold Mine Golf, Inc.

Thank You,

David Guettler

SECURED PROMISSORY NOTE  
(Future Advance Clause)

\$50,000.00

April 8, 2011

FOR VALUE RECEIVED, LAUREL HILLS CONDOMINIUMS PROPERTY OWNERS ASSOCIATION, a Tennessee nonprofit corporation (hereafter referred to as "Maker"), promises to pay, upon demand, to the order of RENEGADE MOUNTAIN TIMESHARES, LLC, a Tennessee limited liability company (hereinafter referred to as "Lender") up to the principal sum of Fifty Thousand Dollars (\$50,000.00), as the same may be advanced to Maker by Lender in lump sum, or on a periodic basis in the future, together with interest on the unpaid principal balance outstanding from time to time from the date of this Note, until paid in full, at the rate of six and one-half (6.5%) percent per annum.

Principal and interest shall be due upon demand. If not sooner paid, the Note shall mature on April 7, 2013, (the "Maturity Date"), at which time the entire unpaid principal balance together with all accrued interest not previously paid shall be due and payable in full.

The principal balance of this Note along with accrued interest hereunder can be prepaid at any time and from time to time, in whole or in part, at the option of Borrower, without premium or penalty. All payments under this Note (including prepayments) shall be made to Lender at Box 288, Crab Orchard, TN 37723, or at such other place as the Lender may designate in writing. All payments hereunder (including prepayments) shall be applied first to fees, advancements, costs, expenses and other charges due under this Note, next to accrued but unpaid interest and then to the reduction of principal hereunder.

Maker does hereby severally waive, demand, presentment, demand for payment, protest, notice of protest, non-payment and dishonor except as specifically provided for herein, and consents that the time of payment of this Note may be extended, renewed, or modified, from time to time upon the mutual consent of Lender and Maker, and further agrees that the security for this Note or any portion thereof may from time to time be modified, adjusted or released in whole or in part without affecting the liability of any parties liable or becoming liable for the payment of this Note.

This Note, and all sums advanced to the Maker by Lender hereunder, shall be and the same secured by all of Maker's unsold or reacquired time-share weeks, in addition to all equipment, electrical motors, and framework for the pump stations that are purchased and utilized by Maker in connection with its existing water system at Renegade Mountain, and all additions, replacements, and spare parts related thereto that are subsequently acquired (the "Collateral"). The Maker hereof represents to Lender that the Collateral as heretofore described shall be free and clear of all other liens and encumbrances, and that Lender shall have a first lien and security interest therein, fully enforceable to the extent provided by applicable law.

The occurrence of any one or more of the following shall be an event of default under this Note causing Maker to be in default under this Note, to-wit: (i) the failure of Maker to make any

payment of interest, principal or principal and interest under this Note on demand; or (ii) a breach or failure of Maker to perform any of the other terms, provisions or conditions of this Note and to cure such breach or failure to perform or observe within ten (10) days after Maker is notified of such breach or failure to perform or observe in writing by Lender. Upon default under this Note, Lender may: (i) declare all of the remaining principal and accrued interest due on this Note, to be due, payable and collectible without regard to the Maturity Date of this Note upon delivery of written notice to Maker, and (ii) cause to be transferred to Lender all of the Collateral heretofore described, including, but not limited to the unsold and reacquired time-share weeks of Maker; (iii) repossess and take control of the Collateral and otherwise exercise Lender's rights as a secured creditor with respect to the Collateral; and/or (iv) exercise any and all rights Lender may have under law or equity. Should it become necessary in the opinion of Lender to employ counsel to collect or enforce, or to protect the security for this Note, Maker agrees to pay all costs, charges, disbursements and reasonable attorney's fees incurred by Lender in collecting payment of this Note or enforcing its rights.

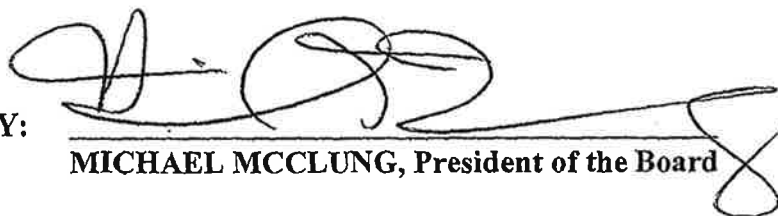
No delay, failure or forbearance on the part of Lender in exercising any right, power, privilege or remedy under the Note shall affect such right, power or remedy to be deemed to be a waiver of the same or any part thereof. Additionally, any single or partial exercise of any right, power, privilege or remedy under this Note or any failure to exercise the same in any incidence shall not preclude Lender from any further or future exercise thereof or the exercise of any other right, power, privilege or remedy under this Note.

The terms of this Note are severable. If any portion, or the application of any provision, shall be declared invalid or unenforceable, then all other provisions and all other applications of such provisions shall remain in full force and effect, and in no way be impaired.

At the option of Lender, and upon demand therefore, Lender may at any time request Maker to provide further collateral or security for this Note, which collateral shall be and the same pledged as additional security for this Note.

**LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION,  
a Tennessee nonprofit corporation,**

BY:



**MICHAEL MCCLUNG, President of the Board**