

Map



Doc ID: 000211150008 Type: CRP  
Recorded: 12/19/2005 at 09:53:16 AM  
Fee Amt: \$35.00 Page 1 of 8  
Instr# 200500008893  
Rutherford County, NC  
Faye H. Huskey Register of Deeds

BK 891 PG 297-304

Return after recording to: Tornow & Kangur, LLP

NORTH CAROLINA )  
RUTHERFORD COUNTY )

**DECLARATION OF  
RESTRICTIVE COVENANTS  
FOR SOUTH MOUNTAIN PEAKS**

**KNOW ALL MEN BY THESE PRESENTS** that whereas FALL CREEK LAND COMPANY, INC. (hereinafter the "Declarant") is the owner of all of the lots in the development known as **SOUTH MOUNTAIN PEAKS** (hereinafter the "Development"), located in Rutherford County, North Carolina, a description of which property is attached hereto as Exhibit A and attached hereto by reference; and, whereas the Declarant desires to impose certain restrictions and conditions upon the present and future owners of said lots;

**NOW, THEREFORE**, FALL CREEK LAND COMPANY, INC., the Declarant, does hereby covenant and agree, for itself and it's heirs and assigns, with all persons, firms, corporations, or other parties hereafter acquiring title to lots in the aforesaid Development, that all of the said lots are hereby subjected to the following restrictions to be appurtenant to and to run with all of the lots in said Development, by whomsoever owned.

1. **USE OF LOTS:** No lot shall be used except for residential purposes. Any commercial use is strictly prohibited. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family residence and its customary accessory buildings and uses. One secondary guest cottage shall be permitted on each lot, however, any such guest cottage shall not be used as a permanent residence or for commercial purposes.

2. **SUBDIVISION OF LOTS:** No lot subject to this Declaration shall be subdivided, except that two (2) lot owners may subdivide a lot between them, but only one residence shall be built on the combined lot and subdivided portion of any lot.

3. **DWELLING RESTRICTIONS:** Any dwelling house built in this Development shall be new, stick-built construction, constructed on the premises and shall comply with all State, County and local building standards and codes, including specifically those standards for plumbing, septic, and electrical work. Single-wide mobile homes, double-wide mobile homes,

6

and manufactured homes are specifically prohibited. All buildings, including dwelling houses and outbuildings, shall be constructed of natural wood, stone or brick materials, including but not limited to brick, stone, log, clapboard, shingle, or high-quality composite materials with the same appearance as natural wood materials. In no event shall aluminum, vinyl siding, or cinder block be used on any dwelling house or outbuilding, nor shall exposed cinder block foundations be permitted.

a) The living area of any dwelling house, exclusive of any porches, garages, carports and patios, shall be not less than 1200 square feet.

4. **NUISANCE:** The pursuit of loud and/or inherently dangerous activities including, but not limited to, the use of firearms and the use of any all-terrain vehicles, including 2-wheel, 3-wheel, and 4-wheel motorcycles, which might tend to cause noise, dangerous conditions, and/or disorderly conditions shall not be undertaken on any part of any lot, any common area, or private road without the consent of the Board of Directors of the Association.

5. **ANIMALS:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, horses, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes and provided they are not permitted to become a nuisance to the neighborhood.

6. **GARBAGE AND REFUSE DISPOSAL:** No lot shall be used or maintained as a dumping ground for refuse or rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

7. **PARKING:** The parking of wrecked, junked, disabled or otherwise unregistered or unlicensed vehicles for more than twenty-four (24) hours shall not be permitted upon any lot or upon the roadway in front of any lot. No discarded tires, automobile parts or other discarded material, waste or rubbish shall be permitted to remain on any lot.

8. **TEMPORARY STRUCTURES:** No structure of a temporary character, trailer, camper, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. Campers and recreational vehicles may be used for temporary camping purposes but in no event shall any camper or recreational vehicle be connected to any permanent or semi-permanent electrical connection, septic connection, or other utility service connection of any kind. No camper or recreational vehicle of any kind shall be permitted to remain upon any lot for more than six months.

9. **OWNERS ASSOCIATION:** Each lot owner(s), by acceptance of a deed, shall be a member of the South Mountain Peaks Owners Association, a nonprofit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns (hereinafter the "Association"). Membership in the Association shall be subject to the following rights, terms, and conditions:

a) **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, and rules and regulations, if any. Ownership of record shall be the sole qualification for membership.

(1) During any period in which a Member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such Member(s) may be suspended by the Board of Directors of the Association until such assessment is paid.

(2) No membership fee shall be charged, nor shall Members be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments and special assessments levied upon each Member's lot as specified in the Declaration or as the members of the Association may from time to time hereafter adopt.

(3) In the event that a Member owns two or more *contiguous* lots with only one residence, such owner shall be subject to only one membership fee, and not for additional membership fees for the *contiguous* lots. In the event that a member owns two or more contiguous lots with a residence on each lot, then such owner shall be responsible for a membership fee for each lot.

b) **Voting and Voting Rights.** The voting and voting rights of the membership shall be appurtenant to the ownership of lots. The ownership of each lot by a person other than Declarant shall entitle its owner to one (1) vote. The Declarant shall be entitled to one (1) vote for each lot owned by the Declarant, provided that the Declarant may, at its sole option, withdraw from membership in the Association upon the sale by Declarant of seventy five percent (75%) of all lots subject to the Declaration.

c) **Board of Directors.** The Board of Directors of the Association shall be elected and determined pursuant to the provisions of the Bylaws of the Association.

10. **RIGHTS TO PRIVATE ROADS:** Every owner (by virtue of membership in the Association) shall have a nonexclusive right and easement of access and enjoyment in and to the private roads and common areas, if any, which shall be appurtenant to and shall pass with the title for every lot subject to the provisions of this Declaration. Every owner shall be subject to the rights set forth in any recorded easements and/or rights-of-way that may be granted for the use of any such private road.

11. **TITLE TO PRIVATE ROADS:** The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the private roads and common areas, if any, shown in the aforementioned recorded plat as well as those roads and common areas, if any, which are part of this development as those portions are annexed in the future.

12. **MAINTENANCE ASSESSMENTS:** For each lot subject to the Declaration, every owner covenants, and each subsequent owner of any such lot, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association for certain expenses of maintenance in accordance with this Declaration. Annual assessments or charges shall be established in amounts as determined by the Board of Directors of the Association. Special Assessments as approved by the Association may be established and collected as hereinafter provided.

a) **Payment.** The annual assessments provided for herein for the Association shall be payable in advance on an annual basis by every owner of each lot, unless the Association decides by a majority vote to have the assessment payable monthly. The annual assessment shall be due on January 1 of each year except for the first year of ownership by an owner. At the closing of a purchase of a lot by an owner, the assessment shall begin to accrue and the owner shall pay to the Association the owner's pro-rata share of the annual assessment for the remainder of the year.

b) **Purpose.** The assessments levied by the Association shall be used to provide funds for such purposes and common expenses as are for the benefit of the owners of the property within the area overseen and administered by the Association. The purposes presently contemplated include maintenance, repair, landscaping and beautification of the roadways providing access to the lots subject to this Declaration. Other purposes may be benefited by the assessments as may be adopted by a majority of the members of the Association.

c) **Creation of lien and personal obligation.** In accordance with the terms and provisions hereof, and in order to secure payment at and after the due date, as each assessment becomes due there shall arise a continuing lien and charge against each lot, the amount of which shall include costs and reasonable attorneys fees to the extent permitted by law. Each such assessment, together with such interest, costs, and reasonable attorneys fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

d) **Annual assessments and maximums.** The annual assessment imposed by the Association shall be set each year by the Association as set forth herein or as provided for in the Bylaws of the Association. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(1) Lots owned by the Declarant shall not be subject to assessments until any such lot is conveyed to an owner other than the Declarant.

(2) In addition to the annual assessment imposed by the Association set forth above, the Association may levy, in any assessment year, a special assessment applicable to that year only.

(3) The annual assessments provided for herein for the Association shall be payable on January 1 of each year. The assessment shall begin to accrue as to all lots at the time of closing and conveyance of a lot to an owner other than the Declarant. At least thirty (30) days before January 1 of each year, the Board of Directors of the Association shall establish the amount of the annual assessment imposed by the Association against each lot and in the event the Board of Directors of the Association elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed assessment rate shall be sent to every owner of the Association.

(4) Any owner of two or more *contiguous* lots shall be subject to one lot assessment (annual and/or special) as if such owner were the owner of a single lot. Any owner of two or more non-contiguous lots shall be subject to assessment (annual and/or special) for each lot owned. For example, the owner of three lots, none of which are contiguous to another, shall be subject to three assessments, one for each lot.

e) **Effect of nonpayment.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate and to the extent allowed by law. The Association or its agents or representatives, may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the lot to which the assessment relates, and interest, costs, and reasonable attorneys fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any common area or abandonment of his lot.

f) **Subordination of the lien to mortgages.** The liens provided for herein shall be subordinate to the lien of any first lien deed of trust on any lot if, but only if, all such assessments with respect to such lot having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only a lien and charge as it relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage.

13. **DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION:** In the event that the Association becomes insolvent or for any reason whatsoever loses the ownership of any of the private roads or common areas, if any, the owners of lots having an interest in the private roads and/or common areas may, at their election as determined by majority vote of those affected, form a nonprofit corporation as provided for in the Articles and Bylaws of the Association and assign to it the duty and authority to assess on a per lot basis all lots having an interest in such private roads and/or common areas, if any, whereupon such corporation shall maintain such private roads and/or common areas in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

14. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant either to restrain violation or to recover damages. The Declarant and/or any subsequent purchaser of a lot in the Development shall have standing to enforce the terms of the Restrictions pursuant to any remedies that may be available at law or in equity.

15. **RIGHT OF MODIFICATION:** The Declarant has developed this subdivision pursuant to a general plan or scheme of development, and does not intent to abandon this general plan. However, the Declarant reserves the right to cancel, modify or change any of the above restrictions by the written consent of the Declarant which written consent shall be duly executed, acknowledged, and recorded in the Office of the Register of Deeds, of Rutherford County, North Carolina, and which consent may be given or withheld within the controlled and sole discretion of the Declarant as the Declarant may deem best for the general plan or scheme of development.

16. **APPLICABLE PERIOD:** The foregoing covenants, restrictions, and conditions shall remain in full force and effect, unless sooner changed in accordance with Paragraph 14 herein, for thirty (30) years from the above date, at which time said covenants, restrictions, and conditions shall be automatically extended for successive periods of five (5) years unless by a vote of a majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

17. **DELEGATION AND ASSIGNABILITY:** Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to the private roads and common areas, if any, provided, however, that any transferee, grantee or assignee shall be deemed to have assumed the same. In the event of any such sale, transfer or conveyance, Declarant shall not, however, be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

18. **INTERPRETATION:** No captions or titles in this Declaration shall be considered in the interpretation of any of the provisions hereof.

19. **CONFLICT:** In case of conflict between any of the foregoing provisions and any Zoning Ordinances (or exceptions thereto which may lawfully be made by the Zoning Board of Adjustment) or laws which may be in effect, or which may hereafter be enacted, such zoning ordinances or laws shall control.

20. **SEVERABILITY:** Invalidation of any one of these covenants, restrictions, or conditions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the President of Fall Creek Land Company, Inc. has hereunto set his hand and corporate seal, by authority duly given, this the 12th day of December, 2005.



FALL CREEK LAND COMPANY, INC.

By: Todd J. Black  
Todd J. Black, President

\*\*\*\*\*

NORTH CAROLINA

RUTHERFORD COUNTY

I, T. Thomas Kangur, Jr., a notary public of Forsyth, County, North Carolina, certify that Todd J. Black personally came before me this day and acknowledged that he is the President of **Fall Creek Land Company, Inc.**, a North Carolina corporation, and that by authority duly given and as the act of the entity, he executed the foregoing instrument in its name and on its behalf as its act and deed.

This the 12 day of December, 2005.

T. Thomas Kangur Jr.  
Notary Public

OFFICIAL SEAL  
Notary Public, North Carolina  
COUNTY OF FORSYTH  
T. THOMAS KANGUR, JR.

My Commission Expires: 10-08-06

\*\*\*\*\*

The foregoing Certificate of T. Thomas Kangur, Jr. is 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.

Faye H. Huskey, Register of Deeds for Rutherford County, North Carolina,

By: \_\_\_\_\_, Deputy/Assistant Register of Deeds

## Exhibit A

### TRACT ONE

**Being known and designated** as a 397.88 acre tract, as shown on the map entitled "Robert W. Ramsey and wife, Pilar J. Ramsey, Fall Creek Land Company, Inc." as recorded in Plat Book 26, Page 317, in the office of the Register of Deeds of Rutherford County, North Carolina, reference to which is hereby made for a more particular description. Being the same and identical property as conveyed to the Declarant by Deed recorded in Deed Book 888, Page 135, Rutherford County Registry.

### TRACT TWO

**Being known and designated** as a 28.11 acre tract, as shown on the map entitled "Lands of D.G. Melton to Fall Creek Land Company, Inc." as recorded in Plat Book 26, Page 342, in the office of the Register of Deeds of Rutherford County, North Carolina, reference to which is hereby made for a more particular description. Being the same and identical property as conveyed to the Declarant by Deed recorded in Deed Book 889, Page 824, Rutherford County Registry.

### TRACT THREE

All that certain tract or parcel of land situated in Golden Valley Township of Rutherford County, North Carolina, containing 85 acres, more or less, being identical land conveyed to Northumberland Corporation, as Tract No. 6735, by deed from Frank B. McFadden et ux dated September 25, 1956, recorded in Deed Book 225, Page 614, in the records of Rutherford County, North Carolina, to which reference is made for a more particular description of said lands. Being the same and identical property as conveyed to the Declarant by Deed recorded in Deed Book 888, Page 256, Rutherford County Registry.



NORTH CAROLINA )  
 )  
McDOWELL COUNTY )

**SEPTIC AGREEMENT**

Property: Lot \_\_\_\_\_  
Buyer(s): \_\_\_\_\_

Concerning the Buyers purchase of the above-referenced property from Fall Creek Land Company, Inc., the undersigned acknowledge that a septic permit for the property will not be available at the time of closing. Further, the parties acknowledge and agree that, due to County regulations and the requirement that the County be provided with building plans, it shall be the Buyer's responsibility to obtain the necessary septic permits from the appropriate County Agency.

Fall Creek Land Company, Inc. hereby certifies that the above-referenced property shall be suitable for a non-engineered septic system acceptable to North Carolina State standards. Fall Creek Land Company, Inc. hereby agrees to re-purchase the subject property, at the same price as paid by the Buyers including customary Seller's closing costs, in the event it is determined that the subject property is not suitable for a non-engineered septic system.

This the \_\_\_\_\_ day of \_\_\_\_\_.

**Fall Creek Land Company, Inc.**

By: \_\_\_\_\_  
Todd J. Black, President