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MCDOWELL CO, NC FEE \$53.00
PRESENTED & RECORDED:
05-15-2006 10:50:46 AM
Patricia A. Reel
REGISTER OF DEEDS
BY: CAROLYN I REEL
DEPUTY REGISTER OF DEEDS
BK: CRP 868
PG: 768-781

1340 Wintgate Centre
Winston Salem NC 27103
Return after recording to: Tornow & Kangur, LLP
S R SE

NORTH CAROLINA)
)
McDOWELL COUNTY)

DECLARATION OF
RESTRICTIVE COVENANTS
FOR GRANDVIEW 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 GRANDVIEW PEAKS (hereinafter the "Development"), located in McDowell County, North Carolina, a description of which property is attached hereto as Exhibit A and incorporated herein 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,

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.
- b) The construction of the exterior of all buildings, including dwelling houses and outbuildings, shall be completed within twelve (12) months from date of issuance of the building permit. For purposes of this provision, a building shall be deemed "completed" when all exterior components and finishes are installed including, but not limited to, siding, roofing, trim, gutters, porches and paint/stain.
- c) All disturbed areas of each building site shall be seeded and/or landscaped within three (3) months from the date of completion of the exterior components of any building but, in any event, not later than fifteen (15) months from the date of issuance of the building permit. During construction, appropriate erosion control measures shall be made to avoid the transfer of any sediment or construction debris to any neighboring lots or common area.

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.

- a) The open burning of any vegetation, trash, or other debris is strictly prohibited and shall not be permitted at any time, nor for any reason including, but not limited to, the burning of construction materials and discarded trees and other vegetation which are the result of clearing activities upon any lot.

5. **BUILDING SETBACKS:** No building shall be placed or erected nearer the front property line (measured from the center of the road) than forty-five (45) feet, not nearer the rear property line than twenty (20) feet, and not nearer any side yard than fifteen (15) feet. In the event of a discrepancy in the set-back requirements as set forth in a recorded plat of any phase of the Gandview Peaks Development and these Restrictions, the setbacks set forth herein shall control.

- a) At any time during which the Declarant owns at least one lot in the Development, the Declarant may grant variances, in its sole discretion, as to the setback requirements set forth herein in cases justified by reasonable hardship.

6. **ANIMALS:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, 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.

7. **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.

8. **SIGNS:** No permanent sign of any kind shall be displayed to the public view on any lot except for one (1) sign with dimensions of not more than one (1) foot by two (2) feet for the purpose of a personalized sign to identify a house number, address or house name.

a) Temporary signs, with dimensions of not more than two (2) feet by three (3) feet shall be allowed only for use by the Developer and by construction contractors that may be performing work upon any lot. Any construction contractor signs shall be removed immediately upon the completion of any building but, in any event, not later than twelve (12) months from the date of issuance of the building permit. No "for sale" signs shall be allowed on any lot at any time, whether such signs be for sale by owner, or by a real estate agent or broker, except for any signs used by the Developer for the initial sale of the development.

9. **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.

10. **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 which is not completely screened from public view. All screening must be made of natural construction materials including, but not limited to, natural wood, stone or brick materials that compliment the main dwelling house, or may be made of bushes, hedges or other landscape material.

11. **EASEMENTS/OBLIGATIONS FOR LAKE:** There may be constructed a lake upon a certain portion of the land within the development, which lake shall be a part of the common area for the recreational use of all the lot owners within the development. In order to provide for the harmonious use and enjoyment of the lake and to provide for the use, maintenance, repair and upkeep of the lake and the dams/spillways and other associated parts, owners of the lots within the Development shall be subject to the following rights, obligations, and easements:

a) **Lake Easements.** All lots adjoining the lake are conveyed subject to easements and the same are reserved, for the benefit of the Declarant and the lot owners through the Property Owners Association, for the impounding of water, which includes, not to the exclusion of other items necessary for the impounding of water, the presents of a dam or parts thereof and other items associated with the impounding of water, such as stand pipes, drainage pipes and spillways, together with the right of access over each lot to reach the various elements of the lake to maintain, repair and replace the same. Any damage done in exercising such access shall be repaired and replaced in a reasonable manner and shall be a part of the common costs to lot owners. Easements for the impounding of water to the water's edge over each lot adjoining the lake is reserved based on the assumption that the water's edge is at its highest level in relation to the lake's constructed design for impoundment of water. The impounded water (lake) may be used by all property owners in the Development. Access to the lake for those authorized to use the lake shall be from the user lot owner's land (if adjoining the lake) and from easements as shall be designated, upon the recorded plats of the Development and otherwise, for access for the use of lot owners whose property does not adjoin the lake.

b) **Maintenance of Lake, Dam(s).** Maintenance of the lake and dam(s) shall be the common financial responsibility of all lot owners within Development. The Declarant, in its sole discretion, reserves the right, without the consent or approval of any lot owners, to negotiate and execute agreements and easements for the operation, use, maintenance, repair and replacement of the lake and the associated items of the lake and the financial responsibility therefore and each owner by the acceptance of a deed for a lot or lots, whether it be stated in such deeds or not, hereby appoints the Declarant as their attorney-in-fact coupled with an interest to negotiate agreements, easements, rules and regulations and financial responsibility for the operation, maintenance and repair, replacement and use of the lake. Such agreements, if obtained, will be binding on Property Owners Association and, therefore, the lot owners and their heirs, successors and assigns.

c) **Maintenance and Repair of Lake and Dam(s)/Spillway.** The owners of all lots within the Development, through membership in the Property Owners Association of the Development, shall be responsible for the maintenance of the lake, the dam, any spillway, standpipe or other associated items, causing and maintaining the impoundment of the water, and shall maintain the lake, dam and associated items in a safe condition, causing the same to comply with all Federal, State and Local laws and regulations governing lakes and dams. Maintenance shall include the removal from the lake, on a reasonably consistent basis, all debris, filth, refuse, silt and excess algae and water foliage, the cost of said removal being a common expense to the Property Owners Association, provided any paper, trash or other debris disposed of into the lake or on the dam/spillway by an owner (or his invitees and/or guests) shall be removed at the cost of such owner who disposes or allowed the disposal of such trash or debris. Such costs may include insurance and administrative costs and fees, if any.

d) **Specific Maintenance Requirements.** Each lot owner adjoining the lake, at his sole cost, shall maintain the area of his lake lot which borders on the edge of the impounded water in a clean, tidy and trim manner at all times after a dwelling is constructed on the lot which borders a part of the impounded water. The expense of any action, work, repair or

replacement required by the Property Owners Association or any Local, State or Federal governmental authority having jurisdiction over lakes and dams which affects the general existence of the elements of the lake, such as, but not to the exclusion of other items, repairs, installation or replacement of standpipes, trash guards, spillways, grading, seeding, clearing, or other repair, maintenance and replacement to a dam or other elements of the impounding of water (hereinafter collective referred to as "Work"), shall be a common expense of the Property Owners Association.

e) **Limitations/Restrictions on Use.** The lake shall be used for open space and recreational purposes by all the lot owners within the Development. Owners whose lots do not adjoin the lake shall access the lake only from the designated easements and common areas as shall be designated for such use, and shall not have the right to enter upon any portion of the lots adjoining the lake which are not designated as common area. No person shall:

- (i) use any boat or other mode of conveyance which contains or utilizes a combustible engine in excess of ten (10) horse power;
- (ii) use any personal water craft of any kind at any time including, but not limited to, jet-skis and wave runners;
- (iii) use or affect the lake in any way which would cause the water level therein to rise above or fall below existing standpipe or spilling levels, whichever exit for excess runoff is or are in use, except as may be required to comply with law;
- (iv) construct any permanent dock and/or boathouse that is attached to piers or other support structure which are set in the lake bed under the surface of the water. Floating docks that do not include a building, shed or other structure upon them shall be permitted.
- (v) perform or allow noxious or offensive activities, including excessive noise which could be considered a disturbance of the peace, or which might disturb the comfort and serenity of the owners; and,
- (vi) violate such other restrictions as may imposed by the Declarant or the Property Owners Association as may be imposed from time to time.

f) **Representations of Declarant.** Declarant makes no representations, express or implied, as to any continued water level in the lake, nor does Declarant undertake any liability or responsibility for maintaining the lake level. The future maintenance, repair, and operation and any other matter concerned with the lake shall be the responsibility of the owners of all the lots in the Development, through the Property Owners Association, as set out herein or as may be set out in the Property Owners Association's documents concerning the lake.

g) In the event the lake is not constructed within the Development, the terms and conditions of Paragraph 11 herein shall be void and of no effect.

12. **OWNERS ASSOCIATION:** Each lot owner(s), by acceptance of a deed, shall be a member of the Grandview Peaks Owners Association, a nonprofit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns (hereinafter or previously referred to herein as the "Association" or "Property Owners 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.

(i) 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.

(ii) 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.

(iii) 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.

d) **Purpose.** The purpose of the Association shall be to manage the common areas and facilities which service and benefit the Development including, but not limited to, the private roads which service the Development and the lake which may be constructed within the

13. **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.

14. **EASEMENTS:** The Development, and all lots therein, shall be subject to all easements and rights-of-way of record and as may be shown upon the recorded plats of any phase of the Development, including a non-exclusive, permanent easement to the property of Jerry Holshouser Adams (see deed book 588, Page 626) over the private roads which service the Development.

15. **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.

16. **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 and for the maintenance, operation and repair of the lake that may be constructed within the Development. 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.

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

(ii) 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.

(iii) 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.

(iv) 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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

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

23. **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.

24. **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 10th day of May, 2006.

FALL CREEK LAND COMPANY, INC.



By:

Todd J. Black
Todd J. Black, President

NORTH CAROLINA

McDOWELL COUNTY

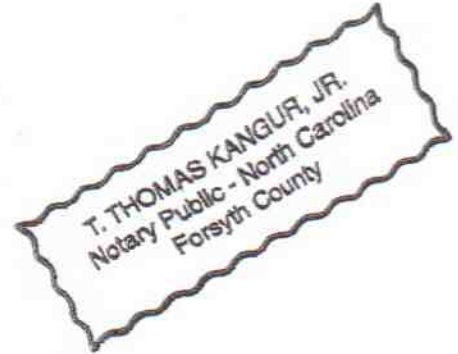
CRP 868 778

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 11 day of May, 2006.

T. Thomas Kangur, Jr.
Notary Public

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.

Patricia A. Reel, Register of Deeds for McDowell County, North Carolina,

By: _____, Deputy/Assistant Register of Deeds

Exhibit A

CRP 868 779

TRACT I (155.06 acres – “Lowery & Webster Tract”):

BEING KNOWN AND DESIGNATED as a tract consisting of 155.06 acres as shown upon the map entitled “Lowery & Webster Properties, LLC to Fall Creek Land Company, Inc.”, prepared by Nathan Odom, Professional Surveying Services, dated February 23, 2006, as recorded in Plat Book 12, Page 40, in the Office of the Register of Deeds of McDowell County, North Carolina, reference to which is hereby made for a more particular description.

TRACT II (949.05 acres – “Gilkey Tract”):

Lying and being in Bracketts and Dysartsville Townships, McDowell County, North Carolina, being a portion of that property conveyed to Gilkey Lumber Company, Inc. (hereinafter referred to as GILKEY) by deed of record in Book 626, Page 137, McDowell County Registry, and being described as follows:

Being that tract of land, containing 949.05 acres, more or less (part of Tract 6, Plat Book 4, Page 131), as set forth and described as Tract A on the plat by Professional Surveying Services dated December 13, 2005, entitled “William M. Parton et als to Fall Creek Land Company,” and recorded in Plat Book 11, Page 96, McDowell County Registry, which plat is hereby incorporated by reference and to which plat reference is hereby made for a more complete and accurate description.

TRACT III (2.60 acres – “Adams Tract”):

Being known and designated as 2.60 acres as shown on the map entitled “Conveyance to Fall Creek Land Company”, prepared by Nathan Odom, Professional Surveying Services dated January 31, 2006, as recorded in Plat Book 12, Page 26, in the Office of the Register of Deeds of McDowell County, North Carolina, reference to which is hereby made for a more particular description.

BEGINNING on an existing iron pipe, with witness, the beginning corner of Deed Book 142, Page 426, AND FROM SAID BEGINNING running S 87 deg. 00 min. 00 sec. E 962.28 feet to an iron pipe set; thence S 86 deg. 10 min. 20 sec. E 685.38 feet to an existing iron pipe, with witness; thence S 25 deg. 15 min. 00 sec. W 410.52 feet to an iron pipe set, East of a branch; thence S 31 deg. 19 min. 44 sec. E 159.40 feet to a point in a pond; thence along and with the centerline of a branch S 74 deg. 56 min. 21 sec. E 146.52 feet to an iron pipe set in a dry wash; thence continuing with branch S 34 deg. 26 min. 21 sec. E 145.20 feet to an existing stone with witness; thence N 67 deg. 01 min. 08 sec. E 375.60 feet to an existing iron pipe West of SR 1775; thence S 67 deg. 01 min. 08 sec. E 375.60 feet to an existing iron pipe West of SR 1775; thence S 23 deg. 00 min. 00 sec. E 140.91 feet to a point in the centerline of Joe Branch Road (SR 1775); thence along and with the centerline of said road, the following four (4) courses: S 23 deg. 35 min. 22 sec. E 531.92 feet, S 28 deg. 05 min. 21 sec. E 467.47 feet, S 54 deg. 36 min. 31 sec. E 355.36 feet and S 23 deg. 36 min. 24 sec. E 509.51 feet to a point in said centerline; thence leaving Joe Branch Road and passing an iron pipe set at 25.31 feet N 86 deg. 00 min. 00 sec. W a total distance of 446.27 feet to an existing iron pipe with witness; thence N 48 deg. 3 min. 25 sec. W 539.82 feet to an existing iron pipe with witness; thence S 14 deg. 11 min. 43 sec. W 160.29 feet to a point in the centerline of an old road bed; thence along and with the centerline of said road bed S 35 deg. 18 min. 01 sec. W 247.50 feet to a point and S 63 deg. 45 min. 58 sec. W 362.34 feet to a point; thence leaving said road bed S 30 deg. 13 min. 37 sec. W 82.50 feet to an existing iron pipe with witness West of said road bed; thence N 89 deg. 55 min. 24 sec. W 282.69 feet to an existing iron pipe with witness; thence N 03 deg. 59 min. 32 sec. E 961.69 feet to an existing iron pipe with witness; thence N 86 deg. 16 min. 27 sec. W 108.00 feet to an existing iron pipe with witness; thence S 32 deg. 26 min. 00 sec. W 2215.71 feet to an existing stone pile with witness; thence S 00 deg. 59 min. 18 sec. W 1482.64 feet to an existing iron pipe with witness; thence N 86 deg. 59 min. 17 sec. W 2831.57 feet to an 18-inch Hickory Tree, a corner of Adams and Gilkey Lumber Co.; thence S 89 deg. 25 min. 10 sec. W 114.12 feet to a stone pile in the head of a gully; thence N 03 deg. 17 min. 49 sec. E 2894.34 feet to an existing iron pipe with witness, a corner of Gilkey Lumber Co.; thence N 04 deg. 39 min. 15 sec. E 526.97 feet to an existing iron pipe with witness; thence S 87 deg. 01 min. 38 sec. E 78.63 feet to an existing stone with witness, a corner of Guffey and Hensley; thence S 86 deg. 23 min. 00 sec. E 1645.24 feet to an existing iron pipe with witness; thence N 03 deg. 01 min. 03 sec. E 655.27 feet to an existing iron pipe with witness; thence N 45 deg. 30 min. 00 sec. E 1133.69 feet to the place of BEGINNING, containing 362.98 acres as recorded in McDowell County Plat Book 8 at Page 62 identified as Tract NC01 Mc-05.

AND BEING THE SAME IDENTICAL PROPERTY conveyed and described in that certain Deed dated 26 November 2001 from Former Champlands, LLC, to International Paper Realty Corporation, a Delaware corporation, recorded in McDowell Deed Book 701, Page 478, to which said Deed is hereby incorporated by reference as if fully set out.

TRACT V (500 acres – “Gilkey Tract”):

CRP 868 781

Lying and being in Bracketts and Dysartsville Townships, McDowell County, North Carolina, being a portion of that property conveyed to Gilkey Lumber Company, Inc. (hereinafter referred to as GILKEY) by deed of record in Book 626, Page 137, McDowell County Registry, and being described as follows:

Being those three (3) tracts of land, containing 71.793 acres, more or less (Tract 7, Plat Book 4, Page 131), 89.142 acres, more or less (part of Tract 6, Page Book 4, Page 131), and 339.065 acres, more or less (part of Tract 6, Plat Book 4, Page 131), as set forth and described on plat by Professional Surveying Services dated June 15, 2004, entitled “Fall Creek Land Company,” and recorded in Plat Book 10, Page 13, McDowell County Registry, which plat is hereby incorporated by reference and to which plat reference is hereby made for a more complete and accurate description (such plat may be hereinafter referred to as the FALL CREEK LAND COMPANY PLAT).

**FALL CREEK LAND COMPANY, INC.
ADDITIONAL PROVISIONS TO CONTRACT OF SALE**

Property: Lot _____, Grand View Peaks

Subdivision: Grand View Peaks, McDowell County, NC

Lake Disclosure:

In developing the Grand View Peaks Subdivision, Seller/Developer (Fall Creek Land Company, Inc.) contemplates that a recreational lake may be constructed upon a portion of the subdivision. It is understood at the time of the execution of this contract, the Seller/Developer has not completed the process of obtaining necessary governmental approvals for the lake. Because the Seller/Developer cannot determine with absolute certainty that such governmental approvals can be obtained, for cost or other reasons, it is possible that a lake may not be constructed within the Grand View Peaks Subdivision.

In the event that a lake is constructed within the Grand View Peaks Subdivision, such lake will be part of the common area available to all lot owners within the Grand View Peaks Subdivision. The lake will be managed by a legal entity known commonly as the Grand View Peaks Property Owners Association, which association shall consist of all the lot owners within the Grand View Peaks Subdivision. The Grand View Peaks Property Owners Association shall be solely responsible for all maintenance, repairs, liabilities and any other costs associated with the lake, if constructed, as well as any other common area located within the Grand View Peaks Subdivision. If the lake is constructed, all lot owners shall be subject to the covenants concerning the lake set forth in the Declaration of Restrictive Covenants of the Subdivision. In the event the lake is not constructed, the provisions concerning the lake as set forth in the Declaration of Restrictive Covenants of the Subdivision shall be void and of no effect.

The undersigned Buyer(s) specifically acknowledge that Fall Creek Land Company, Inc., and its agents have not made any representations or guarantees, nor are they able to do so, that a lake will be constructed within the Grand View Peaks Subdivision.

Received this the _____ day of _____, 20_____.

Buyer

Buyer

Buyer

Buyer