

**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
MOUNTAIN PRESERVE  
SUBDIVISION**

**Prepared by:**

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**SPECIAL NOTE TO CLOSING ATTORNEYS**

PLEASE NOTE THE FOLLOWING PROVISIONS RELATING TO HOMEOWNER ASSOCIATION DUES AND COLLECTION OF TRANSFER FEES: (1) PURSUANT TO ARTICLE IV, SECTION 8, ON PAGE 7 OF THE DECLARATION, PRORATED GENERAL ASSESSMENTS ARE TO BE COLLECTED AT CLOSING, UNLESS THE EXCEPTION FOR A TRANSFER TO A BUILDER APPLIES; AND (2) TRANSFER FEES ARE DUE TO THE ASSOCIATION UPON EACH CONVEYANCE OF PROPERTY AFTER THE INITIAL CONVEYANCE FROM A BUILDER TO A THIRD PARTY (OTHER THAN A MORTGAGE, FORECLOSURE DEED OR DEED IN LIEU OF FORECLOSURE) PURSUANT TO ARTICLE IV, SECTION 12, PAGE 8.

**DECLARATION**  
**OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**MOUNTAIN PRESERVE SUBDIVISION**

**THIS DECLARATION** is made on the date hereinafter set forth by Enfinger Development, LLC, an Alabama limited liability company, (hereinafter sometimes called "Declarant").

**BACKGROUND  
STATEMENT**

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

The Declarant has heretofore caused the Association, as defined below, to be formed as an Alabama nonprofit corporation for the purpose of making the Assessments, as defined below, and otherwise taking all action which the Association is authorized to take.

**ARTICLE I**  
**Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

**ARTICLE II**  
**Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

**Section 2. Other Property.** Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article X.

**Section 3. Mutuality of Benefit and Obligation.** The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot and Common Area within the Community and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Community, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**ARTICLE III**  
**Association Membership and Voting Rights**

**Section 1. Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership. Those Owners of property, if any, which are exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

**Section 2. Voting.** The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 1; provided, however, there shall be only one vote per Lot. Notwithstanding the above, the Owner of two contiguous Lots, as shown on the final subdivision plat recorded in the Public Records, on which one residential dwelling is constructed which crosses the boundary line separating Lots, shall have only one vote for such Lots. All Class "A" votes shall be cast as provided below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all or a Majority of the members of the Board of Directors, as determined in the By-Laws, during the Class "B" Control Period which shall continue until the first to occur of the following:

- (i) when Declarant no longer owns any land (including Common Area) in, or adjacent to, the Community and the unilateral right of the Class "B" Member has expired;
- (ii) twenty-five years from the date of execution of this Declaration; or
- (iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

(c) Post Control Period Rights. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to veto actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (i) once all Lots have obtained certificates of occupancy and no more land remains available for annexation;
- (ii) ten years after expiration of the Class "B" Control Period; or
- (iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Any Owner of a Residence not occupied by the Owner may, in the lease or other written instrument, assign the Owner's voting right appurtenant to that Residence to the Occupant, provided that a copy of such instrument is furnished to the Secretary within the time period prescribed by the Secretary. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

#### **ARTICLE IV Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Type of Assessments.** Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (c) Specific assessments against any particular Residence and/or Lot which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Lots in the Community.

**Section 3. Creation of Lien and Personal Obligation for Assessments.** All assessments, together with late charges, interest at a rate equal to the lesser of fifteen (15%) percent or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Lot at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of

each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each Lot Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Lot which is more than one hundred twenty (120%) percent of the General Assessment for the immediately preceding fiscal year (except as set forth in Section 8). In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

**Section 5. Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 6. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

DUES ARE PAYABLE REGARDLESS OF WHETHER OR NOT AN OWNER RECEIVES AN INVOICE FROM THE ASSOCIATION. INVOICES ARE A COURTESY REMINDER AND NOT A CONDITION PRECEDENT TO PAYMENT.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, (“due date”), shall be delinquent. Any assessment delinquent shall incur a one-time late charge of one hundred and no/100 (\$100.00) dollars, or such other amount as the Board may from time to time determine. If the Owner’s payment of dues (along with the initial late fee and any attorneys’ fees) is not received by the Association within 60 days from the due date, in addition to the initial late fee, the Owner shall be charged monthly for the collection fee which is then being charged by the Association until all amounts are paid in full, including the late fee and collection fees. The amount of such collection fee may be changed from time to time by the Association without notice to any Owner. The initial amount of the collection fee shall be fifty and no/100 (\$50.00) dollars. Such collection fee shall be due and payable immediately and shall be for the purpose of helping to pay the extra cost to the Association for handing and collecting delinquent payments. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all collection fees (which may also be referred to from time to time as “late charges”) from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to

