

**6.4.4 Site Development.** The natural condition of any Lot shall not be intentionally disturbed by any person without first obtaining the written approval of Declarant or the ARC.

**6.4.5 ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for MOUNTAINGATE. The ARC may consider siting, shape, size, color, design, height, solar and view access, or other effect on the enjoyment of other Lots or the Common Area, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work. The ARC is not responsible for reviewing, considering, or evaluating the structural design and engineering capacities for any proposed building or structure nor will the ARC be responsible for reviewing the adequacy of any geotechnical recommendations and requirements that are involved in the process described in Sections 5.4, herein.

**6.4.6 Nonwaiver.** Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**6.4.7 Appeal.** After Declarant has assigned the right to appoint ARC members to the Board pursuant to Section 6.2, any Owner adversely impacted by ARC action may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within 10 days after the ARC's action. The Board shall issue a final, conclusive decision within 45 days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within 20 days. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

**6.5 Design Standards.** Declarant or its assigned agent, and thereafter, the ARC, may adopt architectural and site development requirements that more specifically describe the standards and specifications for what will qualify as a complete set of building and site plans. These requirements may be modified as circumstances change.

**6.6 Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire nine months after issuance unless construction of the project has been commenced or the Owner has applied for and received an extension of time from the ARC or unless the ARC's consent specifically provides otherwise.

**6.7 Determination of Compliance.** The ARC may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval

granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

**6.8 Noncompliance.** If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the third day after issuance of such notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The ARC also shall require the Owner to remedy such noncompliance within 10 days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or any extension thereof granted by the ARC, at its sole discretion, the ARC may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

**6.9 Liability.** Neither the ARC nor any member thereof shall be liable to any Owner, occupant, or builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

**6.10 Fees.** The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house siting and height. Such fees shall be collectible as assessments pursuant to Article 10. The initial application fee shall be paid by the Lot Owner upon submittal of plans for approval. Any additional fees incurred by the ARC as described herein shall be charged to the Lot Owner and paid at or before the ARC final approval is granted.

**6.11 Declarant and Successor Exempt from ARC.** The Declarant or a Successor Declarant to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC. However, the Declarant or a Successor Declarant shall not be exempt from the provisions of Article 4 of the Declaration except as set forth herein.

## ARTICLE 7

### ASSOCIATION

**7.1 Organization.** Declarant will organize an association of all of the Owners within MOUNTAINGATE. Such Association, its successors and assigns, will be organized under the name "MOUNTAINGATE Homeowners Association, Inc.", or such similar name as Declarant will designate, and will have such property, powers, and obligations as are set forth in this Declaration for the benefit of MOUNTAINGATE and all Owners of property located therein. Declarant will, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon and adopt and record Bylaws at the same time. The Articles of Incorporation of the Association will provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it will automatically be succeeded by an unincorporated association of the same name. All of the property, powers, and obligations of the incorporated Association existing immediately prior to its dissolution will thereupon automatically vest in the successor unincorporated association. Such vesting will thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association will be governed by the original Articles of Incorporation and Bylaws of the Association (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

**7.2 Membership.** Every Owner of one or more Lots within MOUNTAINGATE will, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within MOUNTAINGATE, be a member of the Association. Such membership will commence, exist, and continue simply by virtue of such ownership, will expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** Voting rights within the Association will be allocated as follows:

**7.3.1 By Lot.** Each Lot will be entitled to one vote.

**7.3.2 Classes of Voting Membership.** The Association will have three classes of voting membership:

**Class A.** Class A members will be all Owners with the exception of the Declarant and Class C members (except that beginning on the date on which either the Class B or Class C membership is converted to Class A membership, thereafter, Class A members will be all Owners including the Declarant). Class A members will be entitled to voting rights for each Lot

owned computed in accordance with paragraph 7.3.1 above. When more than one person holds an interest in any Lot, all such persons will be members. The vote for such Lot will be exercised as they among themselves determine, but in no event will more votes be cast with respect to any Lot than is determined as set forth in paragraph 7.3.1 above.

**Class B.** The Class B member will be Declarant or a Successor Declarant as to all the unsold Lots, and will be entitled to three times the voting rights computed under paragraph 7.3.1 for each Lot owned by Declarant. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When eighty percent (80%) of the Lots in the final phase of development of MOUNTAINGATE, including any other property that is annexed to MOUNTAINGATE in accordance with Section 2.2 herein, have been sold and conveyed to Owners other than Declarant;

or

(b) At such earlier time as Declarant may elect in writing to terminate its Class B membership including termination of its membership for specific phases while retaining Class B membership in other phases as prescribed in the supplementary declaration for such additional phases.

**Class C.** The Class C members will be builders, contractors and others who have been designated by Declarant in separate agreements and who have accepted Class C membership as a condition of their purchase of a Lot or Lots in MOUNTAINGATE. Class C members will not have any votes but do have membership in the Association. Class C membership will be converted to Class A membership when the Class C member conveys a Lot with a Home to a third party not affiliated with or related to the Class C member or no later than April 1, 2015, whichever occurs first.

**7.4 Declarant's Role.** Declarant shall act as and for the Association until the occurrence of either of the following events, whichever occurs earlier.

**7.4.1** Declarant elects to create a board of directors pursuant to this Declaration; or

**7.4.2** When eighty percent (80%) of the Lots in the final phase of development of MOUNTAINGATE, including any other property that is annexed to MOUNTAINGATE in accordance with Section 2.2 herein, have been sold and conveyed to Owners other than Declarant or a Successor Declarant.

**7.5 Powers and Obligations.** The Association will have, exercise, and perform all of the following powers, duties, and obligations:

**7.5.1 Declaration.** The powers, duties, and obligations granted to the Association by this Declaration.

**7.5.2 Statutory Powers.** The powers, duties, and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time.

**7.5.3 General.** Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within MOUNTAINGATE.

**7.5.4 Amendment.** The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

**7.6 Liability.** Neither the Association nor any officer or member of its Board of Directors will be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by the member.

**7.7 Transitional Advisory Committee.** The Declarant or Owners will form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by the Declarant of MOUNTAINGATE to administrative responsibility by the Association. Not later than the sixtieth (60th) day after the Declarant has conveyed to Owners, other than Declarant and Class C members, Lots representing fifty percent (50%) of the votes of all phases in MOUNTAINGATE computed in accordance with Section 7.3.1 above, the Declarant will call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee will consist of three or more members. The Owners, other than the Declarant, will select two or more members. The Declarant may select no more than one member. The Transitional Advisory Committee will have reasonable access to all information and documents which the Declarant is required to provide under the Oregon Planned Community Act. Notwithstanding the foregoing, if the Owners do not select members for the Transitional Advisory Committee as described above, Declarant will have no further obligation to form the Transitional Advisory Committee. The requirement for formation of a

Transitional Advisory Committee will not apply once the turnover meeting specified in Article 8 herein has been held.

**7.8 Subassociations.** Nothing in this Declaration will be construed as prohibiting the formation of Subassociations within MOUNTAINGATE, including, without limitation, condominium associations or neighborhood associations. Such subassociations shall be established and operated in accordance with the terms and provisions of any supplemental declaration that is recorded by the Declarant in accordance with Section 2.2. herein.

**7.9 Association Rules and Regulations.** The Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the property within MOUNTAINGATE. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, will be delivered by the Association Board of Directors promptly to each Owner and will be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules will be as provided in the Bylaws of the Association.

## ARTICLE 8

### DECLARANT CONTROL

**8.1 Declarant Control.** Declarant hereby reserves administrative control of the Association, in accordance with Article 7.4 herein. Declarant further reserves the right to annex property to MOUNTAINGATE that is subject to the Master Plan Approval granted by the City of Springfield until no later than April 1, 2015. This shall be known as the period of declarant control.

**8.2 Turnover Meeting.** Declarant shall call a meeting for the purpose of turning over administrative control of the Association from Declarant to the Class A members within 90 days following:

**8.2.1 Earliest Date.** The date of expiration of the period of declarant control as specified in Section 8.1.

**8.2.2 Optional Turnover.** The date on which Declarant has elected in writing to terminate Class B membership.

**8.2.3 Notice.** Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section, any Owner may do so.

**8.3 Declarant Control After Turnover.** After the turnover meeting described in Section 8.2 above, Declarant will continue to have the voting rights described in Section 7.3 above. In addition, a majority of the Board of Directors of the Association will be elected by Declarant, as a Class B Member, with the balance of the Board of Directions elected by the Class A members. After termination of Class B membership, all directors will be elected by the Class A members.

## ARTICLE 9

### DECLARANT'S SPECIAL RIGHTS

**9.1 General.** Declarant is undertaking the work of developing Lots and other improvements within MOUNTAINGATE. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. Until the period of Declarant control has expired or at such earlier date if elected by Declarant, Declarant shall have the special declarant rights set forth in this Article 9 and as provided elsewhere in this Declaration. This would include the right to annex property to MOUNTAINGATE in accordance with Section 2.2 herein.

**9.2 Marketing Rights.** Declarant and any Successor Declarant shall have the right to maintain or allow others to maintain a sales office and model on one or more of the Lots that Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

**9.3 Declarant Easements.** Declarant reserves easements over the Property as more fully described in Article 3 herein..

**9.4 Additional Improvements.** Declarant has no obligation to build any improvements not described in this Declaration.

**9.5 Phases.** It is the intent of the Declarant to annex additional phases to MOUNTAINGATE from property that is subject to the Master Plan Approval granted by the City of Springfield. Through the adoption and recordation of a supplemental declaration for each particular phase, the Declarant or any Successor Declarant will control the development and sale of Lots within that phase prior to its annexation to MOUNTAINGATE and during the period of Declarant control.

## ARTICLE 10

### FUNDS AND ASSESSMENTS

**10.1 Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners and Occupants of the Property, for the improvement, operation, and maintenance of the Common Area and any improvements therein, for the administration and operation of the Association including the exercise and discharge of all the powers, duties, and responsibilities set forth in Section 7.5 herein and the Planned Community Act, and for securing and maintaining property and liability insurance.

**10.2 Covenant to Pay.** Declarant and each Owner by acceptance of a deed whether it is so expressed in such deed, covenant and agree to pay to the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement, and reserves shall be allocated among the Lots and their Owners as set forth in Section 10.4.2.

**10.2.1 Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in Section 10.1. On the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

**10.2.2 Offsets.** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**10.2.3 Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

**10.3 Basis of Assessment; Commencement of Assessments.** Declarant shall pay all common expenses of the Association until the Lots are assessed for common expenses. The amount and date of commencement of the initial annual assessment to Owners other than Declarant shall be determined by Declarant. In the sole and unfettered discretion of Declarant, Declarant may defer payment of reserves for a Lot that is sold to a Class C member until the Lot is conveyed to a third party. However, Declarant may not defer payment of accrued reserves beyond the date of the Turnover Meeting.

**10.4 Initial Assessment.** Upon purchase of a Lot from either the Declarant or a Class C Member, an owner will be charged an initial assessment of \$100 which shall be in addition to any other assessment or fee described herein and which shall be payable at the time of or prior to the purchase.

**10.5 Annual Assessments.** Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial annual assessment may be determined by Declarant. Annual assessments shall be payable on a periodic bases, not more frequently than semi-annually, as determined by the Board. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members.

**10.5.1 Budgeting.** Each year the Board shall prepare, approve, and make available to each Member a pro forma operating statement (budget) containing (a) estimated revenue and expenses on an accrual basis; (b) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and Commonly Maintained Property and for contingencies; (c) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement, or additions to major components of such improvements; and (d) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement, or additions to major components of the Common Area and the Commonly Maintained Property. Notwithstanding that budgeting shall be done on an accrual basis, the Association's books shall be kept on a cash basis and the Association shall be a cash basis taxpayer, unless applicable governmental regulations require otherwise. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within 30 days after adoption of such budget.

**10.5.2 Allocation of Assessments.** The total amount in the budget shall be charged against all Lots in equal shares as annual assessments, unless otherwise provided in this Declaration.

**10.5.3 Nonwaiver of Assessments.** If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

**10.6 Special Assessments.** The Board and/or the Owners shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

**10.6.1 Correct Deficit.** To correct a deficit in the operating budget, by vote of a majority of the Board;

**10.6.2 Special Obligations of an Owner.** To collect amounts due to the Association from an Owner for breach of the Owner's obligations under this

Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

**10.6.3 Repairs.** To collect additional amounts necessary to make repairs or renovations to the Common Area or commonly maintained property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

**10.6.4 Capital Improvements.** To make capital acquisitions, additions or improvements ("Capital Improvements") for the benefit and enjoyment of its members, by vote of at least 80% of all votes allocated to the Lots.

**10.6.5 Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, architectural standards, or any rules and regulations adopted pursuant thereto has (a) necessitated an expenditure of monies by the Association to effect compliance or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days' written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision within not more than 30 days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

## **10.7 Accounts.**

**10.7.1 Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a bank, which accounts shall be clearly designated as (a) the Current Operating Account and (b) the Reserve Account, if found to be necessary. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either two Directors or one Director and an officer of the Association who is not a Director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area and