

operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Area and necessary reserves relating to all other matters.

**10.7.2 Reserve Account.** Declarant may establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association, and shall comply with ORS 94.595, or its successor. A reserve account shall be established for those items of the Common Area, all or part of which will normally require replacement in more than three and less than 30 years, for exterior painting, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. If established, the Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of Common Area or improvements located therein that normally requires replacement, in whole or in part, within three to 30 years and not for regular or periodic maintenance and expenses. The present Common Area (Lots "A" and "B") requires periodic maintenance but not replacement.

**10.8 Default in Payment of Assessments; Enforcement of Lien.** If an assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge will become delinquent and will bear interest from the due date until paid at the rate set forth below and, in addition, the Association may exercise any or all of the following remedies:

**10.8.1 Suspension of Rights, Acceleration.** The Association may suspend such Owner's voting rights until such amounts, and other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable.

**10.8.2 Lien.** The Association will have a lien against each Lot for any assessment or charge levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine, or charge is due. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.382 or any amendments there to, will apply to the Association's lien. The lien will be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due.

**10.8.3 Suit or Action.** The Association may bring an action to recover a money judgment for unpaid assessments, fines, and charges under this Declaration

without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.

**10.8.4 Other Remedies.** The Association will have any other remedy available to it by law or in equity.

**10.9 Notification of First Mortgagee.** The Board of Directors will notify any first mortgagee or trust deed beneficiary of any Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

**10.10 Subordination of Lien to Mortgages.** The lien of the assessments or charges provided for in this Declaration will be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot will not affect the assessment lien; however, if a first mortgagee acquires a Lot in MOUNTAINGATE by foreclosure or deed in lieu of foreclosure, such mortgagee and a subsequent purchaser will not be liable for any of the common expenses chargeable to the Lot which became due before the mortgagee or purchaser acquired title to the Lot by foreclosure or deed in lieu of foreclosure. Such sale or transfer, however, will not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

**10.11 Interest, Expenses, and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date until paid at a rate three percentage points per annum above the prevailing Springfield, Oregon prime rate at the time, compounded monthly, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon, nor to be less than twelve (12) percent per annum, compounded monthly. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association will file a notice of lien, the lien amount will also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association will bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner defendant will pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action will recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

**10.12 Non-Exclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies

provided in this Declaration are not exclusive but will be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

**10.13 Reallocation Upon Annexation or Withdrawal of Property.** When additional property or phases are annexed to MOUNTAINGATE, the Association will, within 60 days of the annexation, recompute the budget in accordance with Section 10.5.1. Such recomputation shall be based upon the additional Lots and Common Areas and recompute assessments for each Lot based upon the formula set forth in Section 10.5.2 and the provisions of the supplementary declaration by which such property has been annexed including provisions for when the newly annexed Lots will be subject to assessment from the time of annexation of such Lots to MOUNTAINGATE. The Association will send notice of the assessment to the Owners of newly annexed Lots not later than 60 days after the annexation or with the next occurring annual assessment whichever is sooner. Assessments will be due and payable on or before a date set forth in the notice which will be not less than 30 days from the date the notice is mailed or at such other time or times set in accordance with this Declaration or the Bylaws as the Association may specify in the notice. Prior to annexation and pursuant to the terms of the supplementary declaration for the property to be annexed, Declarant may collect initial and annual assessments from Lot Owners therein. Declarant reserves the right to use the collected assessments for maintenance of Common Areas not yet annexed or to transfer them to the Association upon or prior to annexation. To the extent that any adjustment results in a credit for the Owner, such credit will be applied toward the next occurring payment or payments on the annual assessment.

## ARTICLE 11

### GENERAL PROVISIONS

**11.1 Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid on the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the State of Oregon and be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

**11.2 Indemnification of Directors, Officers, Employees, and Agents.** The Association shall indemnify any Director, officer, employee, or agent including the

Declarant, who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that such person is or was a Director, officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action, or proceeding if such person acted in good faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe that such person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe that such person's conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit, or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee, or agent shall have a right of contribution over and against all other Directors, officers, employees, or agents and members of the Association who participated with or benefitted from the acts that created said liability.

**11.3 Enforcement; Attorney Fees.** The Association and the Owners and any mortgagee holding an interest on a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration including without limitations, for the collection of assessments, the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

**11.4 Duration.** The covenants, conditions, and restrictions of this Declaration shall

run with and bind the land for a term of 35 years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of 10 years, unless rescinded by a vote of at least 90% of the Owners and 90% of the first mortgagees.

**11.5 Amendment.** Prior to the Turnover Meeting, this Declaration may be amended at any time by the Declarant, to the extent permitted by law, by a properly recorded instrument executed by Declarant. Otherwise, this Declaration may be amended at any time by an instrument approved by not less than 75% of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded, and certified as provided by law; provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Nonprofit Corporation Act and that no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns, including without limitation, amendment of this Section 11.5

**11.6 Unilateral Amendment by Declarant.** In addition to all other special rights of Declarant provided in this Declaration, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of Lots. Before the Turnover Meeting, no such amendment shall require notice to or approval by any Class A member.

**11.7 Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration will be a joint and several responsibility and the act or consent of any one or more of such persons will constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them will be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved will then be disregarded completely in determining the proportion of votes or consent given with respect to such matter.

**11.8 Lessees and Other Invitees.** Lessees, invitees, contractors, family members, and other persons entering MOUNTAINGATE under rights derived from an Owner will comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot and other areas within MOUNTAINGATE. The Owner will be responsible for obtaining such compliance and will

be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**11.9 Number.** As used herein, the singular will include the plural and the plural the singular, and the masculine and neuter will each include the masculine, feminine and neuter, as the context requires.

**11.10 Captions and Recitals.** All captions used herein are intended solely for convenience of reference and will in no way limit any of the provisions of this Declaration. The recitals set forth at the beginning of their Declaration shall be a substantive part of and considered relevant in the application and interpretation of this Declaration.

**11.11 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing MOUNTAINGATE, such conflict shall be resolved by giving priority to the following documents in the order shown below:

1. Declaration;
2. Supplementary Declaration;
3. Articles;
4. Bylaws;
5. Rules and Regulations.

IN WITNESS WHEREOF, Declarant has executed this instrument this 13 day of April, 2005.

MOUNTAINGATE DEVELOPMENT LLC

Michael P. Evans  
By: Michael P. Evans, Managing Member

STATE OF OREGON        )  
  ) ss.  
County of Leas        )

This instrument was acknowledged before me on April 13, 2005 by MICHAEL P. EVANS, a Managing Member of MountainGate Development, LLC.



Brenda Lee Carlin  
Notary Public for Oregon  
My commission expires: 6/7/2007

Mike Evans  
Land Planning Consultants  
1071 Harlow Road  
Springfield, Oregon 97477

February 10, 2005

Re: Geotechnical Requirements for Individual Building Lots  
Mountaingate Subdivision – Phase 1 and 2  
Springfield, Oregon

Project 201.037

Dear Mr. Evans:

As requested, Boire Associates Inc. has provided some additional geotechnical information for the Mountaingate Subdivision project – Phases 1 and 2 located in Springfield, Oregon. This information should be considered an addendum to our previous geotechnical reports and is intended to address select requirements of the City of Springfield for individual lot development.

#### PURPOSE

Our previous reports mainly addressed issues related to general site development and earthwork. General expectations were given for foundation conditions within individual lots; however, specific details were not provided since individual lot grades, layouts, and building plans were not known. The purpose of this document is to outline geotechnical engineering investigations that should be completed for individual lots prior to residential construction. Actual investigations and the level of detail for individual sites may vary.

#### LEVELS OF GEOTECHNICAL INVESTIATION

Surface and subsurface conditions vary extensively throughout the Phase 1 and 2 development areas and it is difficult to prescribe uniform standards for individual house foundations on a broad scale. In order to establish guidelines for house foundations, we have identified two different levels of geotechnical investigations (Level I and II) that we recommend be completed for individual lots or groups of lots. Details are as follows:

##### Level I Geotechnical Investigation

We recommend a Level I investigation be completed for lots where subsurface conditions are generally known to consist of competent soil or rock, and where the topography is not especially steep such that significant cuts or fills would not be needed. A site-specific geotechnical investigation is not expected for foundation design prior to construction. However, we do recommend detailed building plans be developed that include aspects of site layout and foundation design, which can be verified by a geotechnical engineer during construction. We recommend Lots 3 – 20, 43 – 49, and 55 – 71 be included in the Level I category.

### *Building Plans – Level I*

In general, we recommend home sites within the Level I category be designed to accommodate the existing grades without extensive earthwork or other site manipulations. If extensive grading work is planned a geotechnical engineer should be consulted to evaluate site conditions and determine if a Level II investigation is required. Accordingly, we suggest house plans include specific site development details such as:

1. A site plan with existing topography and proposed grade changes.
2. At least one slope cross-section with a house elevation showing the supporting foundations in relation to the final grades and bordering lot/street upslope and downslope.
3. Details that show how footings would be placed on competent native soil or rock. The assumed bearing capacity should be stated in the design, to be verified by a geotechnical engineer in the field.
4. Details for slab-on-grade construction, as appropriate.
5. Foundation/crawl space drainage details.
6. A comment prohibiting the use of soil-fill beneath foundations, as this would necessitate a Level II investigation. Granular site fill needed for foundation leveling/stabilization should be restricted to a thickness less than 2 ft.
7. Plans and details showing all retaining walls on the site. Only retaining walls less than 4 ft high (total height without terraces) are included in the Level I category.
8. A statement limiting cuts to less than 4 ft (taller cuts would require a Level II investigation).
9. A statement limiting total fill placed to less than 50 cubic yards total (additional fill would require a Level II investigation).

### *Field Verification – Level I*

During construction, we recommend at least one site visit be completed by a geotechnical engineer to verify adequate foundation conditions. As a minimum, we suggest the geotechnical engineer complete the following tasks:

1. Examine foundation conditions to confirm footings are placed on suitable/stable native soil and/or rock. The assumed soil bearing capacity should be verified. Any special items such as indications of global instability, unauthorized earthwork, soil stabilization, plastic clay soils, drainage, and erosion control should be identified and addressed, if needed.
2. Verify the site work has not affected or otherwise impacted adjacent lots. Any special items such as boundary drainage or earthwork controls should be identified and addressed, as necessary.
3. Note any other special conditions that may require a Level II investigation.

Upon successful completion of the foundation construction and approved site work, the geotechnical should provide a written letter (or statement) that documents the site conditions and work completed. The geotechnical engineer should ensure lot preparations are appropriate, and that an adequately designed and properly constructed house foundation has been installed. If needed, any special provisions, conditions, or other recommendations should be explicitly stated.

### Level II Geotechnical Investigation

We suggest a Level II investigation be completed for lots where subsurface conditions are unstable, steep, or complex such that structural fills and/or retaining walls would be needed. We recommend Lots 1 – 2, 21 – 42, and 50 – 54 be included within the Level II category (see note below regarding lot grouping).

### *Geotechnical Report – Level II*

For lots within the Level II category, we recommend a site-specific geotechnical investigation be completed prior to home site development. Within these areas, particular attention should be given to: unstable ground; soft/wet soil conditions; plastic clay soils, natural drainage interferences; cuts and fills; and retaining walls. The following items are suggested as minimum requirements for the geotechnical investigations and reports.

1. Subsurface explorations (test pits and/or borings) to establish foundation conditions.
2. Testing and analysis, as necessary, to qualify site "buildability," including identification of any hazards or other problematic geotechnical conditions that might exist or be created by development.
3. A report prepared by a qualified geotechnical engineer that summarizes site conditions and addresses key aspects of site development, ground stabilization (if needed), and foundation design. As practical, reports should refer to specific layouts and proposed structures. Requirements for ground stabilization, special foundations, cuts/fills, drainage, retaining walls, access, and other limitation/criteria should be discussed.

### *Building Plans – Level II*

Aspects of the geotechnical report should be incorporated into each site development package. As such, we recommend building plans include the following:

1. A site plan showing the existing topography and proposed grade changes. Details should include potential impacts on neighboring properties.
2. The locations of all engineered cuts, fills, and retentions structures, along with appropriate earthwork and design specifications. Other aspects of site development, such as driveway access and ancillary structures should also be included.
3. At least one slope cross-section that depicts a house elevation and foundation level in relation to the final grades and bordering lot and street upslope and downslope.

4. Specific foundation design details (spread footings, footings on fill, structural mats, piles/piers, subsurface drainage, etc.), as recommended by the geotechnical engineer.
5. Other geotechnical design criteria for earthwork, drainage, and erosion control that are necessary to maintain or enhance lot stability.

*Field Verification – Level II*

During construction, we recommend at least one site visit by a geotechnical engineer be made to verify adequate foundation conditions prior to foundation construction. Specifically, the geotechnical engineer should examine foundation conditions to confirm conformance with the geotechnical recommendations and approved design. Completed items such as special foundation installation, unstable soil mitigation, earthwork/drainage controls and/or other special provisions required to maintain/improve lot stability should be documented in an as-built report.

*Lot Grouping for Level II Geotechnical Work*

We expect the Level II category geotechnical work could be expensive for individual lots. However, we also point out that there are similarities in ground conditions between lots within the Level II category that should allow a single geotechnical report to be completed for a group of lots. This could be especially useful for a single builder constructing a series of adjacent homes. The following table provides information that can be used to evaluate similarities between lots.

**Table 1.  
Lot Grouping – Level II Geotechnical Investigation**

Groups	Comments
Lots 1 and 2	Expect steep ground conditions and possible unstable soil. Retaining walls and/or engineered fills may be required. The presence of hard rock may de-rate either of these lots to Level I category.
Lots 21 thru 27	Expect high plasticity clay, soft soil, and unstable ground near rear portion of lots. Hard rock might be present along front half of lots. Depending on actual condition and layout, these lots could be de-rated to a Level I category.
Lots 28 thru 39	Expect soft ground conditions and/or potentially unstable ground. Drainage features could impact development.
Lots 40 thru 42	Expect high plasticity soils and/or potentially unstable ground. Steep ground condition to the north may limit development. Existing drainage features could impact site development.
Lots 50 thru 54	Expect steep ground conditions. However, hard rock, if present, may de-rate these lots to a Level I category.

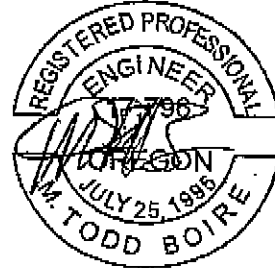
It has been a pleasure assisting you with this phase of the project. Please contact us at your convenience with any questions.

Sincerely,

Boire Associates Inc.



M. Todd Boire, P.E, G.E.



EXPIRES 12/31/05