

**SUPPLEMENTARY  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
MOUNTAINGATE FIRST ADDITION  
("MOUNTAINGATE 1st ADD")  
AND  
ANNEXATION TO MOUNTAINGATE SUBDIVISION**

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAINGATE FIRST ADDITION ("MOUNTAINGATE 1<sup>ST</sup> ADD") AND ANNEXATION TO MOUNTAINGATE SUBDIVISION ("Supplementary Declaration") is made by MountainGate Development LLC ("Original Declarant") and Alberts Development LLC ("Declarant").

**RECITALS AND OBJECTIVES**

- A.** Declarant is the owner of all the real property and improvements thereon located in Lane County, Oregon, described as: Lots 1-43 inclusive and shown on the final plat map of MOUNTAINGATE FIRST ADDITION as platted and recorded on \_\_\_\_\_, 2006, in the Plat Records of Lane County, Oregon, and assigned Recorder's Number 2006-\_\_\_\_\_ in the Official Records of Lane County, State of Oregon ("MOUNTAINGATE 1st ADD")
- B.** MOUNTAINGATE 1st ADD is part of a larger 338-acre area, known as "MountainGate, A Proposed Residential Development" which received Master Plan Approval from the City of Springfield, dated May 13, 1998 (Spr. Journal No. 95-02-39), the notice of which was recorded April 19, 1999 at Reel 2540, Instrument No. 99035359, in Lane County OFFICIAL Records ("the Master Plan Property").
- C.** The final plat for MOUNTAINGATE SUBDIVISION was recorded on May 10, 2005 in Lane County Deeds and Records at Recorder's Reception No. 2005-033764. The plat contained 71 lots and the owner and declarant of MOUNTAINGATE SUBDIVISION ("MOUNTAINGATE") was MountainGate Development, LLC ("Original Declarant") The Original Declarant recorded a "DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAINGATE SUBDIVISION" on May 10, 2005 in Lane County Deeds and Records at Recorder's Reception No. 2005-033770 ("the CC&Rs").
- D.** The Original Declarant, in the CC&Rs, created a nonprofit corporation, The MountainGate Lot Owners Association ("the Association"), whose members are all the owners of Lots within MOUNTAINGATE.
- E.** By adoption of this Supplementary Declaration it is the intent of Declarant and the Original Declarant to annex MOUNTAINGATE 1st ADD to MOUNTAINGATE and to adopt the

It is the intent of the Declarant and the Original Declarant to include future owners of Lots described and depicted on the plat of MOUNTAINGATE 1<sup>ST</sup> ADD (“1<sup>ST</sup> ADD OWNERS”) as full and equal members of the Association, prior to turnover as hereafter described, for the purpose of assessments and the enforcement of use and other restrictions set forth in the CC&Rs. It is their further intent that the 1<sup>ST</sup> ADD Owners will become full voting members of the Association after turnover, provided however, that for purposes of review and approval of house and other improvement plans, the Declarant and, after turnover occurs, a committee or association of 1<sup>ST</sup> ADD Owners, shall act and function as the Architectural Review Committee as described in Article 6 herein.

NOW THEREFORE, Declarant and the Original Declarant declare that MOUNTAINGATE 1st ADD shall be held, transferred, sold, conveyed, and occupied subject to the Oregon Planned Community Act as may be amended from time to time (ORS 94.550-94.783) and further subject to CC&Rs of MOUNTAINGATE except as modified herein which shall run with the land, which shall be binding on all parties having or acquiring any right, title, or interest in MOUNTAINGATE 1<sup>ST</sup> ADD or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

## **ARTICLE 1**

### **DEFINITIONS**

The terms and provisions of ARTICLE 1 of the CC&Rs are hereby adopted and incorporated herein except for and with the following changes, amendments and additions:

- 1. Lot** shall mean a platted lot within MOUNTAINGATE 1st ADD. Except as may hereafter be stated or distinguished in this Supplementary Declaration, all of the terms defined in Article 1 of the CC&Rs shall mean, refer to and include all the platted lots and Owners thereof located within MOUNTAINGATE 1<sup>ST</sup> ADD.
- 2.** All references herein to the “Architectural Review Committee” or “ARC” shall mean and refer to the Declarant or any committee created by the Declarant until turnover, as described hereafter, should occur.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The terms and provisions of ARTICLE 2 of the CC&Rs are hereby adopted and incorporated herein except for and with the following changes:

- 1. First Addition.** Declarant and the Original Declarant hereby declare that

MOUNTAINGATE 1st ADD shall be held, transferred, sold conveyed, encumbered and occupied subject to this Supplementary Declaration and is more particularly described as follows:

MountainGate First Addition as platted and recorded \_\_\_\_\_, 2006, in the Plat Records of Lane County, State of Oregon and assigned Recorder's Number 2006-\_\_\_\_\_ in the Official Records of Lane County, State of Oregon and located in the City of Springfield, County of Lane, State of Oregon ("MOUNTAINGATE 1<sup>ST</sup> ADD")

### **ARTICLE 3**

#### **OWNERSHIP AND EASEMENTS**

The terms and provisions of ARTICLE 3 of the CC&Rs are hereby adopted and incorporated herein in their entirety.

### **ARTICLE 4**

#### **LOTS AND HOMES**

The terms and provisions of ARTICLE 4 of the CC&Rs are hereby adopted and incorporated herein in their entirety.

### **ARTICLE 5**

#### **DEVELOPMENT PLAN FOR MOUNTAINGATE SUBDIVISION**

The terms and provisions of ARTICLE 5 of the CC&Rs are hereby replaced and superceded in their entirety by the following:

**Introduction.** MountainGate, 1st Addition, which was approved by the City of Springfield as Phase III-A of the Master Plan Property, consists of 43 lots that have been approved as a residential subdivision under the provisions of MountainGate Master Plan Approval (City File 95-02-0039) and Springfield Development Code (SDC) standards contained in SDC Article 35 - Subdivisions, SDC Article 38 - Tree Felling, and SDC Article 26 - Hillside Development. This document satisfies the

requirements of the Hillside Development and Master Plan approvals for a comprehensive “Hillside Development Plan” for the subdivision to guide the construction of dwellings on the individual lots. This plan incorporates the referenced reports required by the Hillside Development article and the City of Springfield, Developer, and future owners will use the approved Hillside Development Plan to assure that tree felling, grading, construction, and future use will conform to subdivision conditions and provisions of the Master Plan requiring the protection of trees, drainages, and slopes. The Hillside Development Plan includes a lot by lot description of conditions that will affect the design and location of structures and driveways, including special foundation requirements on some lots. The plan also includes general guidelines for the entire subdivision contained in required reports and final plans. The structure of the remainder of this document is as follows:

1. Tree Preservation Plan
2. Fire Protection Standards
3. Geotechnical Requirements
4. Grading, Slopes, and Drainage Guidelines

The requirements of the Hillside Development Plan, including individual lot plans, are hereby incorporated into these CC&Rs. A copy of the approved geotechnical report is attached as Exhibit “A” and Hillside Development Plan which are recorded with the subdivision plat.

#### **Tree Preservation Plan**

1. The purpose of this plan is to summarize and implement measures adopted to maintain the aesthetic and erosion control value of trees and native vegetation within the MountainGate, 1<sup>st</sup> Addition Subdivision as established by the approved tree felling permit, the final forester’s report, Hillside Development Plan, and individual Springfield Development Code (SDC) standards.

#### **Tree Removal – General**

SDC requires that a tree felling permit be obtained for the removal of more than five trees greater than five inches in diameter at breast height per year. However, a tree felling permit is not required for the initial removal of trees from the lots during preliminary grading or the construction of the approved dwelling footprint and driveway provided that no tree removal is allowed within building or vegetative setback areas without prior city approval through the LDAP or building permit process. Additional restrictions for tree removal exist within the tree conservation easement and vegetative setback areas as described below.

#### **Tree Conservation Easement**

A private tree conservation easement has been established on the recorded Subdivision Plat for MountainGate, 1<sup>st</sup> Addition. The tree conservation easement is located upon a portion of Lot 42. The purpose of this area is to preserve the existing forest along the northern side of the development as an inventoried natural resource and viewshed from lower elevations pursuant to City Council Resolution 8415. The tree conservation easement contains primarily Oak and Douglas fir trees, a few maple trees, and various species of native understory vegetation.

No activity, except for those expressly listed below, may occur within the tree conservation easement area. Those activities that may occur in the tree conservation easement are: 1) removal of diseased or dangerous trees as determined by a professional forester or arborist and approved by the

city and 2) removal of non-native vegetation including blackberries, scotch broom, and ivy by hand or by light-duty machinery.

#### Vegetative Setback Areas

Private vegetative setback areas have been established on the recorded Subdivision Plat for MountainGate, 1<sup>st</sup> Addition. These areas are located upon portions of Lots 1, 5, 7, 9, 11 and 12, 14, 17, 19, 21, 24 – 27, and 32 and 33. The purpose of these areas is to retain or create an internal buffer of trees and native vegetation along internal property lines and protect the forest viewshed from lower elevations. This may be achieved by pruning and shaping existing, healthy trees; by thinning younger existing trees to encourage growth into healthy properly spaced mature trees or by planting new trees. The vegetative setback areas contain primarily Oak and Douglas fir trees, a few maple trees, and various species of native understory vegetation.

No structures other than fences shall be located within the vegetative setback areas, except those that may be required for soil stability such as retaining walls or others as determined by a geotechnical engineer licensed in the State of Oregon and approved by the city.

No native vegetation may be removed from within vegetative setback areas except as necessary to meet fuel break standards for fire protection and diseased or dangerous trees as determined by a professional forester or arborist and approved by the city.

Trees and understory may otherwise be thinned and pruned to enhance their health and appearance and to meet fire protection standards. Non-native vegetation including blackberries, scotch broom, and ivy may be removed by light-duty machinery.

Fencing is allowed along the internal boundary of the vegetative setback areas provided that it is not a solid fence such as wood or block but consists of wrought iron or other open fencing materials as approved by the Architectural Control Committee for the development. Maintenance and repair of utilities and access for such purposes within the conservation area is allowed provided that care is taken to prevent damage to trees.

#### Acceptable Replacement Trees/Planting Standard

1. Trees replaced within a tree conservation easement or vegetative setback area as established on the recorded Subdivision Plat of MountainGate, 1<sup>st</sup> Addition shall be of a native species specified for hillside development in Section 6 of the City of Springfield Design Standards and Procedures Manual.

Tree replacement is acceptable when, for example, a mature tree has a broken top. The mature tree in this circumstance could be removed and replaced by an acceptable replacement tree. Otherwise, the tree shall be pruned and shaped to improve its health and appearance.

Tree planting shall follow the procedures contained in Section 6 of the City of Springfield Design Standards and Procedures Manual.

#### Street Trees

During the subdivision process no trees or tree groupings have been protected for potential qualification as street trees that will meet City requirements

However there maybe individual trees, tree clusters and tree groupings located close enough to the street curb that they could qualify as street trees if not damaged or removed with house and driveway placement. Generally trees within 20 feet of street right-of-way may qualify as street trees. Groupings of trees even beyond the 20 foot distance may be retained in lieu of City required street

trees along the lot street frontages. Hardwood trees must be located at least 5 feet and conifers must be 10 feet behind curbside sidewalks. Street trees should be 10 to 20 feet from street lights. Specific standards regulating the use of existing native trees as street trees are contained in Section 6 of the City of Springfield Design Standards and Procedures Manual.

#### Tree Protection During Construction

During house and driveway construction trees selected as native street trees as discussed above under “street trees” shall be protected with construction fencing. Construction fencing shall be placed between the construction site and tree conservation easement or vegetative setback area to protect trees and shall be a minimum of 5 feet from trees in the conservation easement or vegetative setback areas.

#### Hazard Trees

Hazard trees are not identified, but are present within the boundaries of MountainGate, 1st Addition. Property owners are responsible for identification and removal of hazard trees with verification by a professional forester or arborist and approved by the city through an LDAP or subsequent tree felling permit process

#### **Fire Protection Standards**

1. Due to the forested setting of this subdivision certain fire protection measures should be observed to help protect dwellings within a forested environment from the dangers of wildfire.

The subdivision has been designed and constructed so that all dwellings will be located in close proximity to fire hydrants that are to be used for fire protection. In addition landscaping within the lots should establish fuel breaks around the dwellings that discourage the spreading of wildfire. There are two levels of fuel breaks based upon proximity to the dwelling:

Primary Safety Zone: The primary safety zone is a firebreak extending a minimum of 30 feet in all directions around the dwelling except however that it shall not extend into the tree conservation easement or vegetative setback areas. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs. Trees should generally be spaced with greater than 15 feet between the crowns and pruned to remove dead and low branches.

Secondary Fuel Break: The secondary fuel break extends a minimum of 100 feet downslope from the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so fire will not spread to the Primary Safety Zone via the tree crowns. Small trees and brush growing underneath larger trees should be thinned or pruned to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

Fuel breaks may not extend beyond the boundary of the affected lot unless an easement exists upon the adjacent property that allows for such use.

#### **Geotechnical Requirements**

A geotechnical investigation for the first addition portion of the MountainGate development has been conducted by KA Engineering. KA Engineering prepared a report dated January 30, 2006 that

provides specific recommendations for the level of geotechnical review appropriate for the individual lots. The geotechnical report is attached as Exhibit “A” and is to be used with individual lot development. An evaluation of the building sites is to be conducted by a geotechnical engineer prior to house construction. Either of two levels of review is required depending upon specific site conditions. The attached geotechnical report lists the requirements for the levels of evaluation specified for each lot.

### **Grading, Slopes, and Drainage**

#### **Grading, Slopes, and Drainage**

There shall be no interference with the established drainage patterns or systems over or through any other lot or common area or any adjacent property unless adequate alternative provisions are made by a licensed engineer for proper drainage and approved by the city engineer. The term established drainage shall mean predominant slopes, the drainage swales, conduits, inlets, and outlets designed, maintained, and constructed for MountainGate, 1st Addition.

Stormwater sewer laterals have been extended to each lot for conveyance of roof drains, building foundation drains, and private property surface drainage.

#### **Private Storm Drainage Easements**

1. Private storm drainage easements are designated on the plat and are located across portions of Lots 14, 15, 22, 23, 39, 40, and 42. These are private easements for drainage of private storm water. Management goals of the drainage easements include the maintenance and enhancement of natural, scenic and environmental qualities while maintaining storm water quality and a functional storm water system. All effort shall be made to avoid allowing any pesticides, herbicides, fertilizers, petroleum-based products or other hazardous or foreign substances from entering or contaminating the easements. Natural vegetation shall not be disturbed except as necessary for maintenance, to reduce fire hazards or to control noxious and invasive overgrown vegetation such as blackberry vines. No tree shall be cut within the drainage easement except for diseased, dead, damaged or hazardous trees. No building shall be allowed within the drainage easements.

Lot owners shall perform any maintenance necessary to cause drainage to occur as planned. Provided, that any maintenance, repair or other work necessary as the result of any wrongful act or omission of another party shall be performed by that party. If that party fails to do so, the same shall be performed by the homeowners association subject to reimbursement as provided in the CCRs. Subsurface drainage systems and open swales or ditches have been constructed in certain locations along the back side of curbs or sidewalks within the public street rights-of-way. The purpose of these systems is to improve individual lot drainage and intercept water in sloping areas and direct it into the public storm water system. These drainages are within the City street maintenance system and shall not be blocked or diverted by adjacent lot owners.

## **ARTICLE 6**

### **ARCHITECTURAL AND SITE DEVELOPMENT REVIEW**

The terms and provisions of ARTICLE 6 of the CC&Rs are hereby adopted and incorporated herein except for and with the following changes, provided further that the function and authority of the Architectural Review Committee (“the ARC”) as it relates to approval of house and improvement plans and site development shall be administered and conducted for Lots within MOUNTAINGATE 1<sup>ST</sup> ADD by the Declarant until such time that turnover, as hereafter described, occurs:

- 1. ARC Prior to Turnover.** Prior to turnover, Declarant reserves the right to create a committee to assist it or any successor declarant in the performance of the duties, responsibilities and functions of the ARC as described herein. Declarant further reserves the right to create rules and regulations for the operation of this committee and further to allow it to continue to function after turnover has occurred so long as the original Declarant or, if turnover has occurred for MOUNTAINGATE, the Association concur in a written document that shall be recorded as an amendment to this Supplementary Declaration.

## **ARTICLE 7**

### **ASSOCIATION**

The terms and provisions of ARTICLE 7 are hereby adopted and incorporated herein except for and with the following changes:

- 1.** By acceptance of a deed to a lot in MOUNTAINGATE 1<sup>ST</sup> ADD, the Owner (1<sup>ST</sup> ADD Owner”) agrees to become a member of the Association described in Article 7 of the CC&Rs and to pay assessments in accordance with Article 10. 1<sup>ST</sup> ADD Owners further agree that they shall not be entitled to any votes in the Association until turnover by the Declarant occurs.
- 2.** Prior to turnover, Declarant may, but is not required to, form a subassociation of the 1<sup>ST</sup> ADD Owners to perform any function and assume any duties or responsibilities that are delegated to it by Declarant so long as such are not in conflict with other provisions of the CC&Rs or this Supplemental Declaration. The subassociation shall be established by Declarant’s recordation of a supplemental declaration in accordance with Section 2.2 of the original CC&Rs described herein. Such subassociation may continue to exist and function even after turnover has occurred so long as the Original Declarant, or if turnover has occurred for MOUNTAINGATE, the Association concur as evidenced by recordation of a document to that effect, except that if either the Original Declarant or the Association do not concur, then the subassociation shall cease to function and exist and all of the 1<sup>ST</sup> ADD Owners shall, upon the date of turnover, become voting members of the Association.
- 3.** If a subassociation of 1<sup>st</sup> ADD Owners is created, it can function and operate in accordance with the authority granted by this Article to the Association, so long as it

does not take action which conflicts with any other provisions of the CC&Rs or this Supplemental Declaration.

4. Declarant shall be a member of the Association so long as it owns a Lot in MOUNTAINGATE 1<sup>ST</sup> ADD but shall not have any votes.

## **ARTICLE 8**

### **DECLARANT CONTROL**

The terms and provisions of ARTICLE 8 of the CC&Rs are hereby adopted and incorporated herein except that the provisions therein apply only to the Original Declarant as to MOUNTAINGATE and to the Declarant for MOUNTAINGATE 1<sup>ST</sup> ADD.

## **ARTICLE 9**

### **DECLARANT'S SPECIAL RIGHTS**

The terms and provisions of ARTICLE 9 of the CC&Rs are hereby adopted and incorporated herein except that the provisions therein apply only to the Original Declarant as to MOUNTAINGATE and to the Declarant for MOUNTAINGATE 1<sup>ST</sup> ADD.

## **ARTICLE 10**

### **FUNDS AND ASSESSMENTS**

The terms and provisions of ARTICLE 10 of the CC&Rs are hereby adopted and incorporated herein except for and with the following changes:

1. Upon purchase of a Lot from the Declarant, 1<sup>ST</sup> ADD Owners 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 to the Association at the time of or prior to the purchase. The Declarant may establish other fees or charges that are payable at the time of purchase.
2. **Assessments for MOUNTAINGATE 1<sup>ST</sup> ADD.** It is the intent of the Declarant in adopting this Supplementary Declaration to require the purchasers of Lots within MOUNTAINGATE 1<sup>ST</sup> ADD to pay assessments to the Association in accordance with the terms and provisions of this Article in amounts and shares that are equal to those paid by the owners of Lots in MOUNTAINGATE, including, but not limited to, the initial assessment described in paragraph 1 above. By execution of this

Supplementary Declaration, the Association agrees to accept 1<sup>ST</sup> ADD Owners as voting members of the Association upon turnover of MOUNTAINGATE and turnover by the Original Declarant by the Declarant of MOUNTAINGATE 1<sup>ST</sup> ADD, except that the function and responsibilities of the ARC may continue to be conducted separately for each phase or addition of the Master Plan Property even after turnover.

**ARTICLE 11**

**GENERAL PROVISIONS**

The terms and provisions of ARTICLE 11 of the CC&Rs are hereby adopted and incorporated herein except for and with the following changes:

- 1. Declarant may not amend, alter or change the original CC&Rs or this Supplemental Declaration without the written concurrence of the Original Declarant or, if turnover has occurred, the written concurrence of the Association, which concurrence shall be recorded in Lane County Property Records.

IN WITNESS WHEREOF, Declarant and the Original Declarant have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2006.

ALBERTS DEVELOPMENT LLC

MOUNTAINGATE DEVELOPMENT LLC

\_\_\_\_\_  
By: Todd M. Alberts, Managing Member

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

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 2006 by MICHAEL P. EVANS, Managing Member of MountainGate Development, LLC.

\_\_\_\_\_

Notary Public for Oregon  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 2006 by TODD M. ALBERTS, Managing Member of Alberts Development, LLC.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_