

94-21530
PLAN OF
MOUNTAIN GATE

341 - 0472

OBJECTIVES

Mountain Gate is a development located in Deschutes County, Oregon, owned and being developed by Aspen Development Corporation, an Oregon corporation, the "Developer".

Developer plans to organize Mountain Gate under the development plan embodied in this Declaration. Developer expects to provide common areas which will be available for use by all of the property owners of Mountain Gate and their guests.

Developer will organize and administer Mountain Gate during the development period, but expects property owners in Mountain Gate to accept responsibility for administration by the time development is complete. By such time the Developer will have conveyed to the Mountain Gate Association title to all common areas and private ways.

Funds for the maintenance of common areas, private ways and certain other areas generally will be provided through assessments against those who purchase property in Mountain Gate.

By adoption of the Plan of Mountain Gate, Developer is not committing itself to take any action for which definite provision is not made below. One who acquires property in a particular section shall not have any legal right to insist that there be development except as provided in the instrument creating the section in which he acquires property and except as otherwise provided in this Plan and in instruments which hereafter may be filed subjecting areas to this Plan.

The following is the Plan of Mountain Gate:

SECTION 1. Definitions.

When used herein the following terms shall have the following meanings:

- 1.1 "Architecture Review Committee" or "Architectural Committee" shall mean the committee appointed pursuant to the provisions of Section 8 herein.
- 1.2 "Mountain Gate" shall mean the real property described in Exhibit "A" attached hereto together with any additional area which hereafter may be owned by Developer any portion of which shall lie within one half mile of any portion of the property described on Exhibit "A" and with respect to which Developer has filed a Declaration in the records of deeds of Deschutes County, Oregon, providing that such property shall be a part of Mountain Gate.
- 1.3 "Mountain Gate Association" shall mean the association to be organized by Developer pursuant to the provisions of Section 10 herein.
- 1.4 "Mountain Gate Declaration" shall mean any instrument provided for in Section 2 for the subjection of an area within Mountain Gate to the Plan.
- 1.5 "Plan of Mountain Gate" and "Plan" shall mean this instrument, together with any amendments or supplements thereto.
- 1.6 "The Mountain Gate Rules and Regulations" shall mean the rules and regulation adopted as provided in Section 6 herein.

- 1.7 "Common Area" shall mean any area which is designated as such in Mountain Gate Declaration or in the plat of the section.
- 1.8 "Condominium" shall mean any property submitted to unit ownership in the manner provided by ORS 91.505 through 91.675 as such statutes may be amended.
- 1.9 "Developer" shall mean Aspen Development Corporation, its successors or assigns.
- 1.10 "Guest" shall mean any person who is in Mountain Gate at the invitation of a resident of Mountain Gate and who, to the extent required by the Mountain Gate Rules and Regulations, is accompanied by a resident of Mountain Gate.
- 1.11 "Maintenance Assessment" or "Assessment" shall mean any assessment imposed in accordance with the provisions of Section 7 herein.
- 1.12 "Maintenance Fund" shall mean the fund to be established pursuant to Section 7 herein.
- 1.13 "Manager of Mountain Gate" and "Manager" shall mean Developer until such time as Developer has delegated and assigned to the Mountain Gate Association all of Developer's powers and responsibilities given to or imposed upon it hereunder, has conveyed to the Mountain Gate Association all of its rights, title and interest in the common areas, private ways, and semipublic recreational or service areas in all of the sections in Mountain Gate and has transferred to Mountain Gate Association all monies in Maintenance Fund, after which the Manager of Mountain Gate shall be the Mountain Gate Association.
- 1.14 "Original Unit" shall mean a lot or unit as originally platted.
- 1.15 "Private Area" shall mean any area which is designated as such in a subdivision plat of a section or in a Mountain Gate Declaration.
- 1.16 "Private Way" shall mean any area which is designated as such in a Mountain Gate Declaration.
- 1.17 "Resident of Mountain Gate" shall mean any person who is a unit owner or the lessee of a unit, together with members of his immediate family, provided that a person shall be a "resident of Mountain Gate", only during periods in which he is in possession of his unit.
- 1.18 "Section" shall mean any area subject to the Plan in the manner provided in Section 2 which contains private areas for residential use, together with any areas which may be annexed thereto.
- 1.19 "Section Association" shall mean any association organized by or with the approval of the Manager of Mountain Gate for a particular section in such manner as to entitle at least one of the unit owners of each unit within the section to membership in the association by virtue of his being a unit owner. "Section Association" shall include any association of unit owners organized pursuant to the provisions of ORS 91.505 to 91.675 for the administration of a condominium subject to the Plan.
- 1.20 "Semipublic Recreational or Service Area" shall mean any area devoted to a service or recreational facility which is made available for use by the public as well as by residents of Mountain Gate as provided in Section 4.6 herein.

- 1.21 "Unit" shall mean each lot described in any subdivision plat of a section which is designated as a private area, any condominium unit within a section and any single family dwelling unit contained within a section. Developer may specify additional areas which shall constitute "units" in any instrument subjecting property within Mountain Gate to this plan. If in any case a unit owner shall have consolidated a lot or portion thereof with another lot in the manner set forth in Section 5 herein, then the area consolidated shall be considered one unit. Lots may be classified into two parts, the "buildable area" and the "open area". "Unit" means both the buildable area and open area of any lot which otherwise constitutes a unit.
- 1.22 "Unit Owner" shall mean the person or persons who hold legal title to any unit unless provision is made in the instrument creating a section that a lessee or other person entitled to possession of a unit shall be the unit owner, in which case the person so designated shall be the unit owner.
- 1.23 "Time Share" is hereby defined as follows:
- (a) A dwelling unit, lot or parcel divided into periods of time under any arrangement, plan, scheme or device; whether by membership, agreement, share, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or otherwise; where a purchaser; in exchange for consideration; receives a right to use the dwelling unit, lot, or parcel for a period of time less than a full year during any given year; but not necessarily for consecutive years; which extends for a period of more than three years; or
 - (b) A dwelling unit, lot, or parcel created into interests sold under an agreement to be subsequently divided or created into interests for the purpose of sale or lease or other similar arrangement as set out in Subparagraph (a) above, whether immediate or future, into four (4) or more other interests, or any other similar arrangement of interests in the dwelling unit, lot or parcel.

SECTION 2. Subjection of Property to the Plan.

Property within Mountain Gate may be subjected to the Plan by either of the following methods:

- 2.1 Filing of Declaration. Developer may file a declaration in the records of deeds of Deschutes County, Oregon, providing that a particular area shall be subject to the Plan, or
- 2.2 Statement in Lease. Developer may state in any lease that an area described in the lease shall be subject to the Plan.

SECTION 3. Withdrawal of Property From the Plan.

- 3.1 Method of Withdrawal. An area which has been subjected to the Plan may be withdrawn therefrom by either of the following methods:
- (a) The owners of all of the property in an entire area subjected to the Plan pursuant to a declaration as provided in Section 2.1 hereof may file a declaration stating that the area is withdrawn from the Plan.
 - (b) Property subjected to the Plan pursuant to a lease as provided in Section 2.2 hereof shall be withdrawn from the Plan automatically upon termination or expiration of the lease pursuant to which the property

was subjected to the Plan except to the extent that provision to the contrary is made in such lease.

3.2 Effect of Withdrawal. Withdrawal of an area from the Plan shall have the following effects:

(a) No person who does not own property within the area which is withdrawn shall any longer be entitled to use any of the common areas within the area withdrawn.

(b) Unit owners within the area which has been withdrawn shall no longer be entitled by virtue of ownership of their units and of the provisions of this Plan to use any common areas or semipublic recreational or service areas or the Developer's areas in any area which remains subject to the Plan.

(c) Following withdrawal of an area from the Plan the Manager of Mountain Gate shall no longer expend monies from the Maintenance Fund for any purpose within the area which is withdrawn except for the maintenance of any private ways referred to in Subparagraph (e) of this Section 3.2, even though some part of such fund was contributed by unit owners within the area which has been withdrawn.

(d) Unit owners within the area which has been withdrawn shall no longer be subject to maintenance assessments due prior to the time of withdrawal and withdrawal shall not affect the right of the Manager of Mountain Gate to enforce assessments made prior to the time of withdrawal by imposition of a lien or otherwise.

(e) The Manager of Mountain Gate may vacate any private ways within the area which is withdrawn which are not necessary for the purpose of providing access to a unit by a unit owner whose unit remains subject to the Plan. Within such limits the Manager may vacate a private way by filing a declaration to that effect in the records of deed of Deschutes County, Oregon, setting forth with particularity the private ways which are vacated. Following the vacation the Manager shall not expend monies from the Maintenance Fund for the maintenance of the private ways which were vacated.

SECTION 4. Land Classifications and Uses Within Mountain Gate.

4.1 Classifications presently contemplated. Land classifications presently contemplated within areas to be subjected to the Plan are private areas, common areas, private ways, public roads and streets, semipublic recreational or service areas, commercial areas, and Developer's areas. Developer reserves the right to create and make provisions for additional land classifications in any Mountain Gate Declaration. The Manager of Mountain Gate will hold and retain title to common areas and private ways, subject, however, to the right of residents of Mountain Gate and others to use such areas as herein provided and subject to the provisions of Section 9.4.

4.2 Private Areas. Restrictions on Rules and Regulations governing the use of private areas within a particular section shall be set forth in the Mountain Gate Declaration used to create the section. By accepting a deed or lease to a private area within a section the grantee will be deemed to have covenanted that he will use and permit the use of the property only in accordance with, and that he will abide by and cause all those who come upon his premises to abide by the restrictions, covenants and conditions contained in the Plan and in the Mountain Gate Declaration creating the section and in the Rules and Regulations promulgated thereunder; that he will pay to the Manager of Mountain

Gate all amounts provided for in the Plan and such Mountain Gate Declaration; and that his property will be subject to a lien or liens as provided in such instruments. For the protection of all residents of Mountain Gate the Manager of Mountain Gate will be generally responsible for the enforcement of such restrictions, covenants, conditions, rules and regulation.

- 4.3 Private Ways. Each unit owner and each resident of Mountain Gate is hereby granted a nonexclusive easement to use private ways for the purposes of walking thereon or traveling thereon by appropriate means. Each resident of Mountain Gate may permit his guests and invitees to use the private ways for such purposes. The easement herein granted shall be appurtenant to and assignable with the unit with respect to which it is granted, but shall not otherwise be assignable. Use of private ways shall be subject to the Mountain Gate Rules and Regulations. The Manager of Mountain Gate in its discretion may dedicate private ways to the public after consultation with the Board of Directors of the Mountain Gate Association. The Manager also may grant free access on private ways to police, fire and other public officials, to employees of utility companies serving Mountain Gate and to such other persons to whom the Manager believes access should be given for the benefit of residents of Mountain Gate. Developer may use the private ways for its own purposes and for the purpose of location of utilities thereon. By granting the right to residents of Mountain Gate and others to use private ways Developer does not intend to dedicate private ways to the public, but rather intends to preserve the private character of such ways. The Manager shall be deemed to have dedicated such ways to the public only if it shall file in the records of Deschutes County, Oregon, an instrument clearly evidencing its intention to dedicate such ways to the public.
- 4.4 Common Areas. Each resident of Mountain Gate is hereby granted a nonexclusive easement to use common areas for such recreational purposes as may be permitted by the Mountain Gate Rules and Regulations and in the manner permitted therein. Each resident of Mountain Gate may permit his guest to use common areas for such purposes and in such manner. Common areas shall not be platted or otherwise divided into parcels for residential use. The Manager of Mountain Gate may develop special recreational or service facilities on portions of the common areas for the general use and benefit of all residents of Mountain Gate and their guests after consultation with the Board of Directors of Mountain Gate. The Manager may from time to time permit residents of Mountain Gate to use designated portions of common areas for recreational or service uses of benefit to such residents only (as, for example, maintaining a volley ball or badminton court) provided that such permission shall be revocable at any time. The easement and rights herein granted shall be appurtenant and assignable with the unit in respect of which it is granted, but shall not otherwise be assignable. The Manager may dedicate common areas to the public for park purposes after consulting with the Mountain Gate Association Board of Directors, and may use common areas for the purpose of location of utilities thereon. The Manager may bar any unit owner, members of his family and his guests from using common areas during periods in which the owner's maintenance assessments are delinquent.
- 4.5 Developer's Areas. Developer will own certain areas to be known as Developer's Areas.
- 4.6 Semipublic Recreational or Service Areas. Certain recreations and service facilities can be made available to the residents of Mountain Gate only if the general public is allowed to use the facilities along with the residents of Mountain Gate on a fee basis. Therefore,

Developer may subject areas to the Plan which will constitute "semipublic recreational or service areas" if each of the following conditions are met:

(a) Provisions must be made for use of the facility by the residents of Mountain Gate and their guests.

(b) Fees charged residents of Mountain Gate and their guests for the use of the facility may be no higher than those charged members of the public for an equivalent use or service.

(c) The Manager shall be free to convert any semipublic recreational or service area into a common area at anytime it deems this desirable.

4.7 Commercial Areas. Developer believes it will be possible to make certain commercial facilities available in a manner consistent with the overall development of Mountain Gate. Therefore, Developer may subject areas to the Plan which will constitute "commercial areas". Any improvement located in a commercial area must be approved by the Architecture Review Committee in accordance with Section 8 herein.

4.8 General Restrictions. No activity will be permitted on common area, private ways or private recreational areas which will be injurious to land or vegetation unless the Manager consents. There shall be no discharge of firearms within the boundaries of Mountain Gate unless the Manager consents. The operation of snowmobiles, trail bikes, motorcycles and other motorized non-transportation or off-road vehicles is prohibited within the boundaries of Mountain Gate unless the Manager consents. The Manager will be the only person who can authorize the erection of any improvement on common areas. The Manager will consult with the Mountain Gate Association Board of Directors before consenting to such operation or before erecting such improvements.

4.9 Transient Rental Use. No owner or owners of any residential unit within Mountain Gate shall be permitted to rent their unit to any person or persons for transient occupancy which shall be for a period of 30 days or less. A rental shall be defined as the use or possession or the right to use or possess for lodging or sleeping purposes any unit in Mountain Gate and rent shall mean the consideration charged whether or not received by the owner for the occupancy of the unit any money, goods, labor, credits, property or other consideration valued in money without any deduction. Transient use shall not include a rental of any unit for a period of in excess of 30 consecutive calendar days. This restriction against transient rental use shall not be applicable to any commercial area as designated by the Developer and subjected to the Plan.

SECTION 5. Consolidation of Lots Within Private Areas.

Whenever a person shall own all of a lot restricted to single family residence use within a private area (the "basic lot"), together with one or more contiguous portions thereof also restricted to single family residential use (the "additional lot" or "additional portion") and shall wish to consolidate the basic lot and the additional lot or additional portion, he may do so. The consolidation shall be effected by the owner's filing in the records of deeds of Deschutes County, Oregon, a declaration stating that the two areas are consolidated.

The consolidation provided for in this section shall have the following effects:

(a) The consolidated areas shall constitute one unit for all purposes under the Plan and under the Section Declaration for the section on which the consolidated areas are located except for the payment of

assessments and voting.

(b) No residence or other structure may be placed upon the remainder of a lot, a portion of which was consolidated with another lot but which remainder has not been consolidated with another lot, unless the area of such remainder constitutes at least 95 percent of the original area of the lot.

(c) Areas which have once been consolidated may at no time in the future be partitioned.

SECTION 6. Mountain Gate Rules and Regulations.

In the exercise of its powers and in the performance of its obligations pursuant to the Plan and to any Mountain Gate Declaration the Manager of Mountain Gate, after consulting with the Mountain Gate Association Board of Directors, may adopt, amend or repeal rules and regulations to be known as the Mountain Gate Rules and Regulations to provide for the manner in which common areas (including special recreational facilities established thereon), private ways, and any other areas which all residents of Mountain Gate are entitled to, shall be used. A petition signed by 25 percent of the unit owners proposing amendment, adoption or repeal of existing rules applying to the above areas shall be handled by the Manager as set forth above, subject to a mandatory vote of all unit owners. To the extent provided in a Mountain Gate Declaration the Mountain Gate Rules and Regulations may provide for the manner in which private areas may be used. Amendment, adoption and repeal procedures for such private area rules and regulations, if any, will be set out in such Mountain Gate Declaration.

Mountain Gate Rules and Regulations may, among other things, provide for any of the following:

- (a) For speed and other traffic controls, safety patrols, parking controls and restrictions upon the type of vehicles which may use private ways;
- (b) As to the spaces within common areas which may be used for Mountain Gate Rules and Regulations may, among other things, provide for any of the times and manner in which such spaces may be used;
- (c) For charges for use of recreational facilities and for services to be supplied by the Manager of Mountain Gate to be applied uniformly to all residents of Mountain Gate and their guests;
- (d) For the control of noise, for litter control and trash disposal and for the personal conduct of residents of Mountain Gate and their guests while in the common areas and private ways;
- (e) For the conditions upon which guests of residents of Mountain Gate will be entitled to use common areas and private ways.

All Rules and Regulations must be applicable on a nondiscriminatory basis. However, provisions uniformly applicable to a class of persons, such as children of particular ages, will not be deemed discriminatory. A current copy of the Mountain Gate Rules and Regulations shall be kept on file at the principal office of the Manager of Mountain Gate at all times. Such Rules and Regulations shall have the same force and effect as if set forth herein as part of the Plan. Such rules and regulations and any changes thereto will be available in the office of the Manager.

SECTION 7. Maintenance and Development Fund.

- 7.1 **Imposition of Regular Assessments.** The Manager of Mountain Gate shall have the right to impose an assessment against each unit owner within Mountain Gate in an amount not in excess of \$50 per month for each original unit owned by each unit owner unless such amount shall be increased as provided in Section 7.2 or 7.3 herein. Such assessments shall be applied uniformly to all original units except that Developer shall not be assessed with respect to a unit owned by it upon which no dwelling house has been erected; no assessment shall be imposed with respect to a condominium unit which has never been sold or rented. On or before December 1 of each year the Manager shall fix the amount of the assessment to be imposed during the ensuing calendar year and shall notify each person who is then a unit owner of the amount of the assessment to be imposed for each such year. In the event that a person shall acquire a unit or his unit shall first become subject to assessment during the course of a calendar year his first assessment shall come due on the first day of the month following the month during which he has acquired his unit or during which the unit first became subject to assessment. At that time the prorated monthly fee shall be paid for the balance of the calendar year.
- 7.2 **Cost of Living Adjustment in Maximum Amount of Assessments.** The maximum amount of the assessment provided in Section 7.1 shall be increased by 5 percent for each 5 percent increase occurring after January 1, 1995, over the level on January 1, 1994, of the United States, Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Items, United States City Average.
- 7.3 **Increase in Maximum Amount of Assessment with Consent of Unit Owners.** In the event that the Manager shall deem the Maintenance Fund to be inadequate for the purposes for which it is to be maintained, taking into account the need for reasonable reserves for special purposes, the annual assessment may be permanently increased above the amounts provided for in Sections 7.1 and 7.2 provided that such increases shall have been approved in writing by unit owners owning at least 50 percent of the units within Mountain Gate which are subject to assessment.
- 7.4 **Special Purpose Assessments.** In the event that the Manager of Mountain Gate deems it to be to the advantage of the residents of Mountain Gate to impose a special purpose assessment to provide funds for the development of a particular improvement for the benefit of all unit owners of Mountain Gate, it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved in writing by the unit owners, other than Developer, owning at least 50 percent of the units which will be subject to the assessment. All special assessments shall be applied uniformly to all original units including Developer's. In the event that such an assessment is imposed, the Manager shall add the monies derived therefrom to the Maintenance Fund; but shall keep the same in a special account and shall use the same only for the purposes set forth in the instrument by which the unit owners consented to the special assessment.
- 7.5 **Maintenance Fund.** The Manager shall keep all monies which it may collect from assessments together with all other monies which it is required to add to the Maintenance Fund pursuant to the provisions hereof or of any Mountain Gate Declaration in a separate fund to be called the "Maintenance Fund" and shall use the monies in the Maintenance Fund only for the following purposes:

- (a) Payment of the cost of maintaining and developing private ways (including street lights, entrance and other signs) common areas, and special recreational and other facilities on common areas or areas available for use by all of the residents of Mountain Gate.
- (b) Payment of taxes and assessments levied against private ways, common areas, and the improvements thereon.
- (c) Payment of the cost of providing patrol and fire prevention and control service, garbage and trash disposal, if provided.
- (d) Payment of the cost of insurance, including insurance protecting the Manager of Mountain Gate, the Architectural Committee, the Mountain Gate Association and any section association against liability arising out of their function and activities in the administration of the Plan.
- (e) Payment of the cost of enforcing the provisions contained in the Plan, the Mountain Gate Rules and Regulations and the covenants and provisions contained in any Mountain Gate Declaration.
- (f) Payment to the Mountain Gate Association or to a section association of costs incurred in the performance of any obligation of the Manager of Mountain Gate which has been delegated to the Mountain Gate Association or to the section association.
- (g) Payment of the reasonable expenses and fees of the Architecture Review Committee.
- (h) Payment for other services which the Manager deems to be of general benefit to residents of Mountain Gate.
- (i) Payment of costs incurred in collecting maintenance assessments.
- (j) Payment of expenses incurred in organizing the Mountain Gate Association or any section association and of maintaining the same as corporations.
- (k) Payment of any expense reasonably incurred by the Manager in carrying out any function for which it has been given responsibility hereunder.
- (l) Payment to the Manager of Mountain Gate of a portion of its overhead reasonably attributable to the performance of the functions set forth in (a) through k) above.
- (m) Payment to Developer of reasonable costs for the maintenance and operation of its facilities which are made available to all residents of Mountain Gate.
- (n) Payment of fire and extended coverage insurance for 100 percent of the replacement cost of insurable common property now or hereinafter at any time made subject to this Plan of Mountain Gate.
- (o) Payment of a comprehensive policy of public liability insurance covering the common property now or hereinafter at any time made subject to this Plan of Mountain Gate in an amount not less than \$1,000,000.00 per occurrence for personal injury and/or property damage.

Included among the monies which are to be paid into the Maintenance Fund are all maintenance assessments, penalties, fees for use of recreational facilities located on common areas, Architecture Review Committee fees, interest on amounts

payable into the maintenance fund and payments to reimburse the Manager for monies expended from the Maintenance Fund. Except as stated above no part of the Maintenance Fund will inure to the benefit of Developer.

- 7.6 Annual Accounting. Within 90 days following the close of each calendar year the Manager shall render to each unit owner an accounting which shall set forth the amount and source of all income received in the Maintenance Fund and all disbursements from the fund during the previous calendar year together with a statement of the assets of and liabilities of the Maintenance Fund at the close of the last calendar year. The Manager of Mountain Gate shall maintain records of all amounts received into the maintenance fund and of all disbursements therefrom, which records shall be open to inspection by any unit owner or by the officer of any section association or the Mountain Gate Association at any reasonable time during normal business hours.
- 7.7 Joint and Several Liability. If a unit owner comprises more than one person each shall be jointly and severally liable for any assessment or charge.

SECTION 8. Architecture Committee.

- 8.1 Function of Architecture Review Committee. The Architecture Review Committee shall exercise the functions for which it is given responsibility in any Mountain Gate Declaration and in this Plan. Generally, this Committee will be responsible for the approval of plans and specifications for the development of private areas and for the promulgation and enforcement of its rules and regulations governing the use and maintenance of private areas and the improvements thereon.
- 8.2 Members: Term and Removal. The Architectural Review Committee shall consist of five regular members and two alternates appointed by the Board of Directors of Mountain Gate Association. The alternates shall have full voting privileges in the absence of one or more of the regular members of the Architectural Review Committee. Members may be removed and replaced at any time by their appointors. The Manager shall keep on file at its principal office a list of the names and addresses of the members and alternates of the Architectural Review Committee.
- 8.3 Action. Except as otherwise provided herein, any three regular members of the Architectural Review Committee shall have the power to act on behalf of the Committee without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. At any duly scheduled meeting of the Committee, any three members of the Committee, including any alternate present at the meeting, shall have the power to act on behalf of the Committee. The Committee may render its decisions only by written instruments setting forth the action taken by the members consenting thereto.
- 8.4 Failure to Act. If at any time the Architecture Review Committee shall for any reason fail to function, the Board of Directors of the Mountain Gate Association shall have complete authority to serve as a pro tem Architecture Review Committee.
- 8.5 Duties and Rules. The Architecture Review Committee shall consider and act upon all matters properly submitted to it pursuant to the Plan or in any section declaration. In furtherance of this function, the Architectural Review Committee may, by any combination of any five regular members or alternates present at a duly scheduled meeting of the Architectural Review Committee, from time to time, and at its sole discretion, adopt, amend, repeal rules and regulations to be known as

the "Architectural Review Committee Rules" establish its operating procedures and interpretations, detailing the implementing of the provisions of the instruments pursuant to which it is charged with the responsibility. The Architecture Review Committee may establish a reasonable fee to be paid to it to cover its costs incurred in considering and acting upon matters submitted to it. Such fees shall be paid into the maintenance fund. A current copy of the Architecture Review Committee Rules shall be kept on file at the principal office of the Manager of Mountain Gate at all times. Such rules shall have the same force and effect as if set forth herein as part of the Plan.

- 8.6 Nonwaiver. Consent by the Architecture Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.
- 8.7 Estoppel Certificate. Within 30 days after written demand therefore by a unit owner the Architecture Review Committee shall execute and deliver to the unit owner requesting the same an Estoppel Certificate certifying with respect to the unit of such unit owner that as of the date of the certificate either (a) all improvements and other work within said unit comply with the Plan and with all restrictions and rules and regulations adopted in or pursuant to any Mountain Gate Declaration, or (b) that such improvements and work do not so comply for reasons specified in the certificate. Any purchaser or mortgagee of a unit may rely on such certificate with respect to the matters set forth therein, such matters being conclusive against the Manager of Mountain Gate and all unit owners in Mountain Gate.
- 8.8 Liabilities. Neither the Architecture Review Committee nor any member thereof shall be liable to any unit owner or the Manager of Mountain Gate for any damages, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member thereof, provided that only the member, in accordance with actual knowledge possessed by him, has acted in good faith.

SECTION 9. Manager of Mountain Gate.

- 9.1 Powers of the Manager. In addition to such other powers as shall be given to or imposed upon it by this Plan and by any Declaration, the Manager of Mountain Gate shall have the following powers:
- (a) Maintaining all private ways, common areas, and the improvements thereon.
 - (b) After consultation with the Board of Directors of Mountain Gate Association, the construction of such improvements on the private ways and common areas, as it deems will be of benefit to the residents of Mountain Gate and their guests in accordance with the Mountain Gate Rules and Regulations.
 - (c) Enforcement of all covenants and restrictions contained in the Plan and in any Mountain Gate Declaration.
 - (d) The promulgation and enforcement of the Mountain Gate Rules and Regulations and the enforcement of the Architecture Review Committee Rules and the decisions of the Architecture Review Committee.
 - (e) Payment of all ad valorem taxes and assessments imposed on any of the common areas and private ways within Mountain Gate.

(f) Provision of such services to the residents of Mountain Gate as it shall deem to be of benefit to the residents of Mountain Gate.

(g) Procuring and maintaining insurance on all improvements constructed on the common areas.

(h) Collection of Assessments and Penalties.

(i) Fixing of fees for use of recreational facilities within the common areas and for the collection thereof. All such fees shall be paid into the Maintenance Fund.

(j) The Manager may organize a section association at any time it deems it desirable to do so, and shall organize such association upon written request of at least 50 percent of the unit owners in that section.

9.2 Delegation of Functions. The Manager of Mountain Gate may at any time delegate to the Mountain Gate Association or to any section association responsibility for the performance of any duty or function of the Manager of Mountain Gate and the Mountain Gate Association or section association shall accept such responsibility, provided that the Manager shall arrange to pay to the Mountain Gate Association or section association the expenses which it shall reasonably incur in the performance of such duty or function.

9.3 Limitation of Liability. The Manager of Mountain Gate shall not be liable for failure to carry out any power enumerated in Section 9.1 herein or elsewhere in the Plan in cases in which there are not sufficient monies in the Maintenance Fund to enable it to carry out its power. The Manager shall have sole power to determine for which authorized purposes monies in the Maintenance Fund shall be spent including the power to determine how much shall be held in reserve. Neither the Manager or any officer or director thereof shall be liable to any unit owner, to any resident of Mountain Gate, to the Mountain Gate Association, nor to any section association on account of any action or failure to act of the Manager, provided only that in accordance with actual knowledge possessed by it, it has acted in good faith.

9.4 Required Transfer of Functions. At such times as the Developer deems it desirable or in any event when the development of Mountain Gate is substantially completed, Developer will delegate and assign to the Mountain Gate Association all of its powers and responsibilities given to or imposed upon it by this Plan or by any Mountain Gate Declaration; will convey to the Mountain Gate Association all of its right, title and interest in and to the private ways and common areas, and will transfer over to the Mountain Gate Association all monies then in the Maintenance Fund and the Mountain Gate Association shall accept the same. The development of Mountain Gate shall be deemed to be substantially completed at the earlier of (a) the time when Developer shall declare it to be so; (b) the time when Developer shall have sold, leased or converted into common areas, private ways, private areas, or public streets, roads or parks, 90 percent of the total land area within Mountain Gate; or (c) January 1, 2002.

9.5 Consultation. In all cases where the Manager is directed to consult with the Board of Directors of the Mountain Gate Association, the following will apply:

(a) Such consultation will be required only during the time period before the transfer of functions per Section 9.4 above.

- (b) The Manager will send by registered mail written notice to the Chairman of the Board of Directors of items requiring consultation at least 21 days before the intended implementation of such items.
- (c) If a majority of the Board disagrees with the Manager's proposal, it will submit such proposal to the unit owners for a vote, either at an annual meeting, a special meeting called for this purpose, or by mail. A majority vote against the proposal will be deemed a defeat of such proposal and the Manager will refrain from implementing it.
- (d) The Board, within 21 days of the mailing in (b) above, shall reply. Failure to reply within 21 days or if applicable, to provide a record of the vote of unit owners, will conclusively be deemed agreement with the Manager's proposal.

SECTION 10. The Mountain Gate Association.

Developer expects to delegate from time to time to an Association representing all unit owners within Mountain Gate responsibilities which Developer has assumed pursuant to this Plan and as provided in Section 9.4, eventually will delegate to such Association all of its responsibilities to the end that the association shall become the Manager of Mountain Gate. In order to facilitate the accomplishment of such purposes Developer shall organize an Association to represent all unit owners within Mountain Gate not later than January 1, 2002. Developer shall have the right to organize the Association on such basis as shall appear to Developer to be most advantageous to the unit owners of Mountain Gate at the time of the organization, subject, however, to the following conditions:

- (a) The Association shall be incorporated as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon.
- (b) The articles of incorporation of the Association shall provide for its perpetual existence, but in the event the Association shall at any time be dissolved, whether inadvertently or deliberately, it shall immediately be succeeded by an unincorporated association of the same name. In that event all of the powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyance and assignments by the incorporated association. To the greatest extent possible any such successor unincorporated association shall be governed by the articles of incorporation and Bylaws of the incorporated association as if they had been made to constitute the governing documents of the unincorporated association.
- (c) The Articles of Incorporation of the Association shall provide for the representation of each unit owner in Mountain Gate on one of the following basis:
 - (i) The Articles may provide that each unit owner shall be a member of the Association with the vote for each original unit owned by him.
 - (ii) The Articles may provide that each section association will be a member with one vote for each original unit within the section which the section association represents; or
 - (iii) The Articles may provide that with respect to designated sections the owners of each unit within the designated section shall be a member of the Association with one vote for each original unit owned by him and that with respect to other designated sections the section association

representing such designated section will be a member with one vote for each original unit contained within the section.

The Articles shall provide that representation of each unit owner through membership in the Association in one of the provisions set forth above shall commence, exist and continue simply by virtue of ownership of a unit, shall expire automatically upon termination of such ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

(d) The Articles of Incorporation shall provide that the Association will at any time and from time to time accept any responsibilities of Developer contained in the Plan which Developer may delegate to the Association, provided that Developer shall provide funds from the Maintenance Fund to the Association necessary to enable it to carry out the responsibilities which it assumes. Also, the Articles of Incorporation shall provide that the Association will accept title to the private ways and common areas within Mountain Gate at such time as Developer may elect to convey the same to the Association.

(e) The Articles of Incorporation of the Association shall provide that the Association shall exercise and perform all of the following powers and obligations:

(i) The powers and obligations delegated, conveyed or otherwise assigned to the Association by Developer;

(ii) The powers and obligations of a non-profit corporation pursuant to the general nonprofit corporation laws of the State of Oregon; and

(iii) Any additional or different powers and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Plan or otherwise promoting the general benefit of unit owners within Mountain Gate.

(f) The Articles of Incorporation of the Association shall be subject to amendment as provided in the Oregon nonprofit corporation law and the Bylaws of the Association shall be subject to amendment by the Board of Directors of the Association.

(g) Any agreement entered into by the Association for the professional management of Mountain Gate, including any contract providing for the services of the Developer, may not exceed three years. Any such agreement must also provide for termination by either party without cause and without payment of a termination fee upon ninety days or less written notice.

Neither the Association nor any officer or director thereof shall be liable to any unit owner, to Developer or to any section association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Association, provided only that the association, in accordance with actual knowledge possessed by it, has acted in good faith.

SECTION 11. Enforcement.

11.1 General Provisions. The Manager, the Mountain Gate Association or any unit owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations,

liens, and charges now or hereafter imposed by the provisions of the Plan or any Mountain Gate Declaration. Failure by any such person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- 11.2 Violation of Mountain Gate Declaration by non-qualifying improvement. In the event any unit owner constructs or permits to be constructed on his unit an improvement contrary to the provisions of a Mountain Gate Declaration or in the event that a unit owner maintains or permits any improvement, condition or thing on his unit contrary to the provisions of a Mountain Gate Declaration, the Manager may no sooner than 60 days after delivery to such unit owner of written notice of the violation enter upon the offending unit and remove the cause of such violation, or alter, repair or change the item which is in violation of such Declaration in such manner as to make it conform thereto. The Manager may charge such unit owner for the entire cost of the work done by it pursuant to this section. Such amounts shall become payable upon delivery by the Manager to the unit owner of notice of the amount due, and shall be paid into the Maintenance Fund to the extent that the costs being reimbursed were paid out of the Maintenance Fund.
- 11.3 Default in payment of maintenance assessments and charges. Each maintenance assessment or charge levied or imposed pursuant to the Plan or any Mountain Gate Declaration, together with interest thereon, shall be a separate, distinct, and personal debt and obligation of the unit owner or resident of Mountain Gate against whom the maintenance assessment or charge is levied or imposed or from whom the amount is due. If the unit owner fails to pay any such assessment or charge or any installment thereof when due, the unit owner shall be in default and the assessment or charge not paid together with interest, costs and attorneys' fees as elsewhere provided for herein shall become a lien upon the unit or units owned by the person from whom the assessment or charge is due upon the filing by the Manager in the records of mortgages of Deschutes County, Oregon, a Notice of Lien setting forth the amount due and a description of the units against which the lien is imposed. Such lien shall not take effect until notice thereof has been so filed and notice is served upon any first mortgagee of the property against which lien is imposed. Such lien shall be subordinate to any lien of any mortgage upon any unit which is accepted in good faith and for value which was recorded prior to the filing of Notice of Lien and a mortgagee shall be in no way responsible for past due maintenance, assessments and charges which accrue prior to the acquisition of title to any unit subject to said maintenance assessments and charges by the mortgagee.
- 11.4 Right of Entry. The Manager or any member of the Architecture Review Committee authorized by the Manager may at any reasonable time, and from time to time at reasonable intervals, enter upon any unit within Mountain Gate for the purpose of determining whether or not the use of such unit or any improvement thereon is then in compliance with the Plan or any Mountain Gate Declaration. No such entry shall be deemed to constitute a trespass or otherwise to create any right of action in the unit owner or occupant of such parcel.
- 11.5 Interest. Any amount not paid to the Manager when due in accordance with the Plan or in any Mountain Gate Declaration shall bear interest from the date due until paid at the rate of 10 percent per annum.
- 11.6 Expenses and Attorneys' Fees. In the event that the Manager shall bring any suit or action to enforce any provision contained in the Plan or in a Mountain Gate Declaration to collect any money due to it thereunder or to foreclose a lien, the defendant in such suit or action

shall pay to the Manager all costs and expenses which the Manager shall incur in connection with such suit or action, including a foreclosure title report, and such amount as the court may determine to be reasonable as attorneys' fees therein, including attorneys' fees incurred in connection with any appeal from a decision of the trial court or an intermediate appellate court.

Nonexclusiveness and accumulation of remedies. Election by the Manager to pursue any remedy provided for the violation of any provision of the Plan or of a Mountain Gate Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted thereunder or which is permitted by law. The remedies provided in the Plan and in any Mountain Gate Declaration are not intended to be exclusive but shall be in addition to all other remedies, including actions for damages or suits for injunctions or for specific performance available under applicable law.

12. Miscellaneous Provisions.

12.1 Amendment and Repeal. Any provision of this Plan may at any time be amended or repealed or provisions may be added by either of the following methods:

(a) Unit owners owning 65 percent of the units may consent in writing to the amendment or repeal of a provision or to the addition of a new provision; or

(b) The Mountain Gate Association may consent to such amendment, repeal or addition.

The Mountain Gate Association shall be deemed to have consented to the amendment or repeal of a provision contained in the Plan or to the addition of a new provision if the following procedures have been followed:

(a) The Board of Directors of the Mountain Gate Association shall have adopted a resolution setting forth the proposed amendment, provision for repeal or proposed additional provisions and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or a special meeting.

(b) Written notice setting forth the proposed amendment, provision for repeal or proposed additional provisions, or a summary of the changes to be effected thereby, shall be given to each unit owner and to each section association at least 60 days prior to the time of the meeting at which the proposed amendment is to be considered.

(c) At the meeting of the members at which the proposed amendment, provision for repeal or proposed additional provisions is to be considered, the proposal amendment, provision for repeal or proposed additional provision shall be submitted to a vote of the members. The proposed amendment, provision for repeal or proposed additional provision shall be adopted upon receiving two thirds of the votes entitled to be cast by all of the members of the Association.

Any amendment or repeal of a provision of the Plan or additional provision shall become effective only upon the filing in the records of deeds of Deschutes County, Oregon, of a certificate of the Secretary or Assistant Secretary of the Manager setting forth in full the amendment, amendments, additional provision or repeal approved as provided in this section and certifying that said amendment, amendments, additional provision or repeal have been approved in the

manner required therefor herein.

- 12.2 Joint Owners. In any case in which two or more persons share the ownership of any unit, regardless of the form of ownership, the responsibility of such persons to comply with the provisions of the Plan and the Mountain Gate Declarations shall be a joint and several responsibility. The act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interests provided, however, that in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Manager or the Mountain Gate Association, as the case may be, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matters.

- 12.3 Construction, Severability; Number; Captions. The Plan shall be construed as an entire document to accomplish the purposes stated in the introductory paragraphs of the Plan. Nevertheless, each provision of the Plan shall be deemed independent and severable, and the invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used herein the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of the Plan.

- 12.4 Nothing contained within the Plan of Mountain Gate shall give a unit owner, or the Developer, or any other party, priority over any rights of a first mortgagee of a unit in Mountain Gate pursuant to its mortgage in the case of a distribution to a unit owner of insurance proceeds or condemnation award for losses to or a taking of any common area of Mountain Gate.

- 12.5 Notices. Any notice permitted or required by the Plan or any Mountain Gate declaration may be delivered either personally or by mail. Delivery by mail shall be deemed to have been accomplished 24 hours after the notice has been deposited as certified or registered mail in the United States mail, with postage prepaid, addressed as follows:

If to Developer, the Architecture Review Committee, or the Manager of Mountain Gate:

Mountain Gate
61165 River Buff Trail
Bend, Oregon 97702

or to such other address as the Manager may designate in the rules and regulations of Mountain Gate.

If to a unit owner, at the address given by him at the time of his purchase of a unit or at the address of his unit within Mountain Gate.

The address of any person may be changed by him at any time by notice in writing delivered as provided herein.

341 - 0489

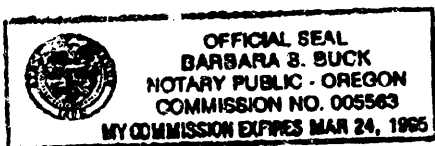
IN WITNESS WHEREOF, The Aspen Development Corporation has caused this declaration setting forth the Plan of Mountain Gate to be executed this 31 day of May, 1994

ASPEN DEVELOPMENT CORPORATION
an Oregon corporation

By *Brad A. Evert*
President

STATE OF OREGON, County of Deschutes, ss)

Personally appeared at the above named Brad A. Evert, who, being first duly sworn, stated that he is the PRESIDENT of ASPEN DEVELOPMENT CORPORATION, and the foregoing instrument was voluntarily signed on behalf of said corporation by authority of its Board of Directors. Before me:



Barbara S. Buck
NOTARY PUBLIC FOR OREGON
My Commission expires: 3/24/95

PLAN OF
MOUNTAIN GATE

341 - 0490

EXHIBIT "A"

The land as shown on the official plat of **MOUNTAIN GATE**, City of Bend, Deschutes County, Oregon, recorded as Deschutes County Plat No. D-52, excluding that property designated as the **MOUNTAIN GATE OFFICE PARK**.

STATE OF OREGON)
COUNTY OF DESCHUTES) ss.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND
RECORDER OF CONVEYANCES, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS RECORDED THIS DAY:

94 MAY 31 PM 2:53

MARY SUE PENHOLLOW
COUNTY CLERK

BY. T. Moore DEPUTY

NO. 94-21530 FEE 95.00
DESCHUTES COUNTY OFFICIAL RECORDS

May 31, 1994