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**DECLARATIONS, RESTRICTIONS,
PROTECTIVE COVENANTS
AND CONDITIONS**

FOURTH AMENDMENT

for

**TOLLGATE
DESCHUTES COUNTY, OREGON**

*Edy
PNC*

**TOLLGATE PROPERTY OWNERS
6100 TOLLGATE
SISTERS, OR. 97759**

**TOLLGATE
DECLARATIONS, RESTRICTIONS, PROTECTIVE
COVENANTS AND CONDITIONS
FOURTH AMENDMENT**

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**TOLLGATE
DECLARATIONS, RESTRICTIONS,
PROTECTIVE COVENANTS AND CONDITIONS,
FOURTH AMENDMENT Adopted November 10, 1998**

DECLARATION

THIS DECLARATION made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant:"

WHEREAS, there exists recorded documents setting forth Ownership of certain real property in the county of Deschutes, State of Oregon, hereinafter referred to as "Said Property," more particularly described as follows:

West Half, West Half of the Southeast Quarter,
Southeast Quarter of the Southeast Quarter
of Section Thirty-one (31),
Township Fourteen (14) South, Range Ten (10),
East of the Willamette Meridian.

WHEREAS, such documents, hereinafter referred to as the "Declaration," and including all duly approved and recorded amendments thereto, subjects Said Property to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges for the benefit of Said Property and its present and subsequent Owners as hereinafter specified, and

WHEREAS, subsequent Owners, according to the Declaration and in the manner prescribed as hereinafter specified, have accepted the role of Declarant for purposes of this document, further specified herein as the "Association," through acceptance of responsibilities hereinafter set forth,

WHEREAS, the immediately preceding Declarant (Brooks Resources Corporation) no longer holds any legal interest in Said Property, but through this document retains limited development rights hereinafter further specified and shall therefore be hereinafter defined and referred to as "Declarant,"

NOW, THEREFORE, The Association hereby declares that all of the Said Property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth; all of which are for the purposes of enhancing the value, desirability, and attractiveness of Said Property. These easements, covenants, restrictions, conditions, and reservations shall constitute covenants to run with the land and shall be binding on all persons claiming under them and also that these conditions, covenants, restrictions, easements, and reservations shall inure to the benefit of and be limitations upon all future Owners of Said Property, or any proportional interest therein.

ARTICLE I**DEFINITIONS**

Whenever used in this Declaration, the following terms shall have the following meanings:

1.1 "Planning and Land Use Review Committee" (PLURC) shall mean the Committee designated by the Board to administer planning and use guidelines and regulations pursuant to Article 8.

1.2 "PLURC Regulations" are the architectural, planning and land use guidelines and procedures adopted by the PLURC pursuant to Article 8, and applicable to all Lots within Said Properties.

1.3 "Articles of Incorporation" (Articles) are the Articles of Incorporation of Tollgate Property Owners Association, Inc., as filed with the Secretary of State, Corporate Division of the Business Registry for the State of Oregon.

1.4. "Association" shall mean the TOLLGATE PROPERTY OWNERS ASSOCIATION, a corporation organized under the laws of the state of Oregon, its successors and assigns.

1.5. "Board" (Board) shall mean the then duly constituted Board of Directors of the Association.

1.6. "Bylaws" are the Bylaws of the Association and incorporated herein by reference as they may be amended.

1.7. "Common Area" shall mean all of the land and appurtenances thereto now or hereafter owned by the Association including Roadways, and intended to be devoted for the common use and enjoyment of the Members of the Association.

1.8. "Declaration:" shall mean the Protective Covenants, Conditions and Restrictions and all other provisions herein set forth in this entire document, as same may from time to time be amended and duly recorded in the Office of County Clerk, Deschutes County, Oregon.

1.9. "Declarant:" shall mean and refer to Brooks Resources Corporation, and its assigns, together with any successor to all or substantially all of its business of developing the Tollgate subdivision, and who is designated as the "Declarant" in all previously recorded instruments and amendments identified herein as the Declaration.

1.10. "Lot" shall mean any numbered Lot of land shown upon any recorded subdivision plat of Said Property.

1.11. "Member" shall mean every person or entity who holds Membership in the Association.

1.12. "Office of the County Clerk" shall mean the designated recording Office of Deschutes County, State of Oregon.

1.13. "Owner" shall mean the recorded Owner, whether one or more persons or entities, of fee simple title to any Lot situated upon Said Property, or a contract Purchaser if his record Owner retains such title merely to secure an obligation and is registered as a Purchaser in the Association records.

1.14. "Roadway" means any street, highway or other thoroughfare as shown on the recorded plat of Said Property.

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1.15. "Said Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association by recorded Declarations in the manner hereinafter set forth.

1.16. "Renter / Resident" Shall mean the person or persons other than the owner who occupy a residence.

ARTICLE 2

SUBJECTING ADDITIONAL PROPERTY TO THIS DECLARATION - ANNEXATION

2.1. Subject to the consent of the Owner thereof, the Association may annex real property other than that contained within the boundaries of Said Properties, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing two thirds (2/3) of all Members eligible to vote in such matters.

2.2. Annexation shall be accomplished by filing of record in the Office of the County Clerk a Supplemental Declaration describing the property to be annexed and setting forth all such applicable Covenants, Conditions and Restrictions. Any such Supplemental Declaration shall be signed by the Chair and Secretary of the Association, and by the Owner of the property being annexed, and any such annexation shall not be effective unless otherwise provided therein.

2.3. The relevant provisions of Article 4 of the Bylaws shall apply to determine the time required for and the proper form of Notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 1 and to ascertain the presence of a Quorum at such Regular or Special Meeting.

2.4. Method of Making Additions. Additions authorized under this Article shall be made by filing of record a Supplemental Declaration of covenants and restrictions with respect to the additional property. Such Supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property. In no event, however, shall such Supplemental Declaration revoke, modify, or add to the covenants established by this Declaration with respect to Said Property.

ARTICLE 3.

MEMBERSHIP

3.1. Members of the Association shall be every Owner. There shall be no other qualification for Membership except as set forth above. Every Owner shall be subject, by covenants of record, to Assessment by the Association. Membership shall terminate on transfer of fee simple title by an Owner or the contract of Purchaser's interest by a contract Purchaser who qualifies as a Member. If an Owner sells the Lot by contract of sale, upon written notification to the Association the Owner's Membership shall terminate and the contract Purchaser's Membership shall commence.

ARTICLE 4.

VOTING RIGHTS

4.1. All Members shall be entitled to one vote for each Lot in which they hold the interest required for Membership by Article 3. When more than one person holds such interest in any Lot all such persons shall be Members. The vote for each Lot shall be exercised as they

among themselves determine, or if unable to agree, they may cast fractional votes proportionate to their Ownership interests, but in no event shall more than one vote be cast with respect to any one Lot.

ARTICLE 5.

PROPERTY RIGHTS

5.1.1. Members' Easements Of Enjoyment. Every Member of the Association shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject however, to the following provisions:

5.1.2. The right of the Association to limit the number of Members permitted to use the Common Area simultaneously.

5.1.3. The right of the Association to charge reasonable admission fees for the use of any recreational facility situated upon the Common Area.

5.1.4. The right of the Association to suspend any Member's voting rights and/or right to use of any of the recreational facilities owned by the Association, for any period during which any Assessment against said Member's property remains delinquent.

5.1.5. The right of the Association to regulate use of and traffic on Tollgate roadways and pedestrian ways.

5.1.6. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such considerations as may be agreed to by the Members. No such condition or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Membership has been recorded in the Office of the County Clerk, agreeing to such dedication or transfer, and unless written Notice of the proposed action is sent to every Member not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer.

5.1.7. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such rights of use and the imposition of reasonable fines for infractions thereof, from time to time, in the interest of securing maximum safe usage of such Common Area, by the Members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of Said Property.

5.1.8. Delegation Of Use. Any Member may delegate, in accordance with the rules and regulations adopted from time to time by the Directors, his right of enjoyment to the Common Area and facilities to the Members of his family, his guests or his Tollgate tenants.

ARTICLE 6.

COVENANT FOR MAINTENANCE ASSESSMENT

6.1. Each Owner of any Lot, by acceptance of a deed or contract of Purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association:

6.1.1. Regular annual or other regular periodic Assessments or charges, and

6.1.2. Special Assessments for capital improvements, such Assessments to be fixed, established and collected from time to time as hereinafter provided.

6.1.3. The Regular and Special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made.

6.2. Purpose Of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes:

6.2.1. Payment of the cost of maintaining the roads, signs, Common Areas, and semipublic recreational or service areas at Tollgate.

6.2.2. Payment of taxes and Assessments levied against the platted private roads and Common Areas.

6.2.3. Payment of the cost of providing the level of fire protection deemed appropriate by the Board and as provided for by rural fire protection district guidelines.

6.2.4. Payment of the cost of insurance against liability arising out of the existence of the Association and its Board.

6.2.5. Payment of the cost of enforcing the provisions contained in this Declaration and the covenants and provisions contained in any future Tollgate Declaration, inasmuch as such enforcement costs are not borne by the Owner(s) against which such enforcement actions are taken, according to the provisions of Article 10, Section 2.

6.2.6. Payment for other services which the Board deems to be of general benefit to residents of Tollgate.

6.2.7. Payment of costs incurred in collecting Assessments.

6.2.8. Payment of expenses incurred in organizing the Tollgate Association and of maintaining the same as a corporation.

6.2.9. Payment of any expense reasonably incurred by the Association Board or its delegated Manager in carrying out any function for which it has been given responsibility hereunder.

6.2.10. Payment of expenses reasonably incurred in the maintenance of the entrance road leading across U.S. Forest Service property from Highway 20 to Tollgate in accordance with terms and conditions of Special Use Permit issued by U.S. Forest Service for access to Tollgate, including permit fees.

6.2.11. Placing funds in accounts mandated by legislative financial reserve requirements.

6.3. Annual Assessments. After consideration of current maintenance costs and future needs of the Association, the Board may fix a regular flat Assessment upon a monthly, quarterly or annual basis. Any Annual Assessment paid within thirty (30) days of the date billed shall be entitled to a three percent (3%) discount. The Annual Assessment shall not be increased by more than eight percent (8%) per annum unless approval of Members is obtained in the manner described in Section 6.4. for Special Assessments for capital improvements.

6.4. Other Special Assessments. In addition to Other Assessments provided for herein, the Board may at any time levy a Special Assessment against all Owners. Such Special Assessment shall be applicable within one year of enactment, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Prior to becoming effective, any Special Assessment reflecting an expenditure in excess of \$5000 shall be approved by the affirmative vote of at least two-thirds (2/3) of the votes represented in person or by proxy at a Regular or Special Meeting of the

Members duly called for that purpose and according to the provisions of Section 6 of this Article. Written Notice of such Meeting shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the Meeting setting forth the purpose of the Meeting.

6.5. Uniform Rate Of Assessment. Both regular periodic flat charges and any Special Assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly, or monthly basis at the discretion of the Directors.

6.6. Quorum For Any Action Authorized Under Sections 6.3. and 6.4. At the Meeting called, as provided in Section 4 hereof, the presence at the Meeting of Members or of proxies entitled to cast two-thirds (2/3) of all the votes of the Membership shall constitute a Quorum. If the required Quorum is not forthcoming at any Meeting, another meeting may be called, subject to the Notice of requirement set forth in Sections 6.3. and 6.4. hereof and the required Quorum at such subsequent Meeting shall be one half of the required Quorum at the preceding Meeting. No such subsequent Meeting shall be held more than sixty (60) days following the date of the Meeting at which no Quorum was forthcoming.

6.7. Date Of Commencement Of Annual Assessments & Due Dates. All Lots shall be subject to the annual, monthly or quarterly Assessments provided for herein on the date specified by the Board. The Board shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each Assessment period. Written Notice of the Assessment, together with due dates, shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

6.8. Effect Of Nonpayment Of Assessments & Remedies Of The Association.

6.8.1. Any Assessments which are not paid when due shall be delinquent.

6.8.2. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at an annual interest rate to be fixed by the Board annually. This rate may exceed the prevailing Portland, Oregon, prime rate by as much as three (3) percentage points per annum, but is not to exceed the lawful rate of interest under the laws of the State of Oregon.

6.8.3. The secretary of the Association may, thirty (30) days after delinquency, cause a lien to be filed in the Office of the County Clerk.

6.8.4. Said lien shall include a statement of the amount of such charges or Assessments, together with interest as aforesaid, which have become delinquent, with respect to any Lot on Said Property.

6.8.5. Upon payment in full thereof, the Secretary shall execute and file a proper release of the lien securing the same.

6.8.6. The aggregate amount of such Assessments, together with interest, costs, expenses, reasonable attorney's fees for filing, enforcement, arbitration, and appeals, if any, shall constitute the amount of the lien on the Lot.

6.8.7. Said aggregate amount of the lien shall accrue and compound from the date the Notice of Delinquency is filed in the Office of the County Clerk, until the same has been paid or released as herein provided.

6.8.8. Such lien may be enforced by the Association in the manner provided by the laws of the state of Oregon with respect to liens upon real property.

6.8.9. The Owner of Said Property at the time said Assessment is levied shall be personally liable for the aggregate amount of said lien.

6.8.10. Such Owner at the time such Assessment is levied shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his dwelling unit, Lot, or building site.

6.9. Subordination Of The Lien To Mortgages. The lien of the Assessments provided for herein shall be inferior, junior, and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon Said Property or any part thereof.

6.9.1. Sale or transfer of any Lot shall not affect the Assessment lien.

6.9.2. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to amounts thereof which became due prior to such sale or transfer.

6.9.3. Such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied.

6.9.4. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

ARTICLE 7.

RESTRICTIONS ON USE OF PROPERTY

7.1. Compliance. All land Owners shall comply with the laws and regulations of the state of Oregon, County of Deschutes, municipality or other regulatory agency having jurisdiction applicable to fire protection, building construction, water, sanitation, and public health.

7.2. Buildings and Use of. Each Lot shall be used for residential purposes only, nor shall more than one detached single family dwelling not to exceed two stories or a height of thirty (30) feet above the average original grade elevation be constructed, and not more than one garage or carport and two accessory buildings such as workshops or a recreational vehicle shelter be constructed upon each Lot in the subdivision. Manufactured or prefabricated housing as defined in Deschutes County Zoning Ordinances shall not be permitted.

7.3. Driveways / Parking. Each Lot is allowed one (1) driveway not to exceed sixteen (16) feet in breadth across common area property between Roadway and Lot. Driveways may flair out to twenty-four (24) feet width immediately adjacent to the roadway to provide a generous turning radius. Parking must be provided for each dwelling site. Native dirt shall be kept covered with gravel, cinders, or asphalt for driveways and parking areas. Additional driveway and parkway topping materials may be approved by action of the Board.

7.4. Minimum Floor Areas. The floor area of constructed residences shall be no less than eight-hundred (800) square feet exclusive of porches, garages, accessory buildings, and carports.

7.5. Survey. Within the prior two years of the initial construction on any Lot a certified survey must be completed. A copy of the surveyor's report will be placed with the PLURC prior to any construction activities. All property corners will be clearly marked with iron rods.

7.6. Construction. All dwellings and garages shall be suitable for year-round use and shall be placed on permanent foundations of concrete, brick, stone masonry, or pumice or cinder blocks. Additional suitable foundations may be approved by action of the Board.

7.6.1. The pitch of roofs shall be not less than four (4) in twelve (12). Roofing materials shall be of fire-retardant wood shakes, fire-retardant wood shingles, shake tile products, metal roofing with bonded paint finish, or class A fire-retardant asphalt and/or fiberglass shingles. However, wood shakes and wood shingles are not allowed on new construction or when more than five-hundred square feet (500 ft²) of roofing is being replaced. If asphaltic or fiberglass shingles are used they must have a weight of at least 285 lbs. per square and simulate wood shingles in profile, style, and appearance. All roofing materials and exterior colors shall complement the earth tone colors of the Tollgate area and fall within specific ranges of colors approved by the PLURC. Exact samples and a signed statement concerning the specifications of the roofing material to be used must be submitted for approval. Color samples for exterior colors of siding and trim for all buildings must also be submitted for approval prior to use. Exteriors of accessory buildings shall match, in appearance, the dwelling building on the same Lot.

7.6.2. All buildings, fences, structures and other improvements must be kept in good repair.

7.6.3. All exposed portions of foundation must be painted or sided if more than twelve inches (12") projects above the adjacent ground.

7.7. Setback And Fences. Setback line shall be at least twenty-five (25) feet from all Lot lines to any structure upon the Lot other than fences. Fences are not to exceed 72 inches in height and shall harmonize with the surroundings.

7.8. Construction Time Limit. No more than 18 months construction time shall elapse for the completion of a permanent dwelling nor shall a temporary structure or recreational vehicle be used as living quarters except during the construction of a permanent dwelling. An exterior, commercial, portable latrine shall be allowed only during construction. Water connection and the required fees paid shall be done prior to the completion of foundation work.

7.9. Use. No commercial, professional, trade or other activities shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Unsuitable activities include, but are not limited to, repetitive increases in vehicular traffic, readily discernible atypical noise, or increased safety hazards.

7.9.1. Any child care operation where more than three unrelated children are being cared for and for which remuneration is being paid shall be considered a commercial use falling under the provisions of this Article.

7.10. Trees. Removal of living trees greater than eighteen inches (18") in girth at a point thirty six inches (36") above the original ground level at the tree will only be permitted where necessary for the construction of buildings, to avoid impending damage to existing structures, thinning for the beautification of the Lot, or for fire safety. Prior to any such cutting approval must be obtained from PLURC. At least two weeks before any cutting, a plan, at least 7" X 10" in size is to be placed in the hands of the PLURC showing the location of affected trees. Concurrent with submitting the diagram the property owner must place brightly colored ribbons around each candidate tree for easy identification. The PLURC is responsible for replying in written form the extent to which the requested cutting may be allowed. Such reply must be mailed or delivered to the residence at least one week before the proposed cutting date.

7.11. Animal Wastes. Animal waste shall be removed not less frequently than every seven days. Lot Owner shall be responsible for the control and abatement of pests and odors produced from such waste. At no time shall the presence of animals be allowed to become offensive.

7.12. Signs. Signs displayed on Lots are limited in number, size, and design as set forth more specifically in the PLURC Regulations.

7.13. Screening. All garbage trash, cuttings, refuse, garbage and refuse containers, fuel tanks, clothes lines and other service facilities shall be screened from view from neighboring units and Common Areas. Screening shall harmonize with the surroundings.

7.14. Property Maintenance. Each Lot and its improvements shall be maintained in a clean and attractive condition in good repair and in such fashion as not to create an eyesore or hazard to person or property.

7.15. Wells. Individual wells are not allowed; all Lots shall connect to the Tollgate domestic water system no later than the completion of the foundation of the first building placed on the Lot.

7.16. Vehicles. No motorized vehicles other than licensed automobiles and highway licensed motorcycles may be operated on roadways within the Tollgate sub-division.

7.17. Exterior Lighting. Exterior lighting shall be designed, placed and maintained in such a manner as to prevent becoming offensive to neighboring Owners or becoming a hazard.

ARTICLE 8.

ASSOCIATION FUNCTIONS

8.1. The Association shall be the entity responsible for management, operation and control of the Common Areas. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of Said Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the Planning and Land Use standards and controls set forth in this Declaration and in the PLURC Regulations. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles of Incorporation, PLURC Standards and Regulations and Oregon Law.

ARTICLE 9.

PLANNING AND USE REGULATIONS

9.1. Construction. No construction, which shall include within its definition staking, clearing, excavation, grading, and other site work; and no removal of trees shall take place except in strict compliance with this Article and the PLURC Regulations; and until the requirements thereof have been fully met; and until the approval of the PLURC pursuant to provisions contained within this Article.

9.2. Administration. Responsibility for administration of the PLURC Regulations as defined further in this Article, and review of all applications for construction and modifications, shall be handled by the Planning and Land Use Review Committee. Such Committee shall consist of not less than three nor more than five persons appointed by the Board, who shall serve and may be removed at the discretion of the Board.

9.3. Adoption of Rules.

9.3.1. The Board shall

9.3.1.1. Adopt and design guidelines and applications;

9.3.1.2. Adopt and review maintenance enforcement procedures (PLURC Regulations) consistent with this Declaration, applicable Owner rights, and property use restrictions described in this Section.

9.3.2. The PLURC may formulate, promulgate, and enforce detailed procedures and standards governing its area of responsibility. Said procedures and standards shall be consistent with those set forth in the PLURC Regulations, this Article, and be subject to review and approval, disapproval, or amendment by the Board.

9.4. This was a section pertaining to PLURC fees. It was deliberately omitted from the Fourth Amendment just prior to distributing it to the Association members.

9.5. **Precedent.** Approval or consent by the PLURC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a waiver or precedent impairing its right to withhold approval as to any other matter thereafter proposed or submitted to it for consent. Each Member acknowledges that the Members of the PLURC will change from time to time and that interpretation and application of the PLURC Regulations may vary accordingly. Approval of applications for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval of similar applications or other matters subsequently or additionally submitted for approval.

9.6. **Responsibility.** Neither the PLURC nor the Board shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the PLURC nor any Member thereof shall be liable to any Owner or the Association 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 only that the Committee Member, in accordance with actual knowledge possessed by him or her, has acted in good faith.

9.7. **Appeals.** All PLURC decisions are subject to appeal, utilizing the appeal procedure contained in the published PLURC Regulations. The Board has ultimate responsibility and authority over all PLURC decisions and may, by majority vote, confirm, modify, or reverse any decision thus appealed.

ARTICLE 10

GENERAL PROVISIONS

10.1. Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on such Owner's Lot an improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the Association, acting through its Board of Directors, may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for the remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association, acting through its Board of Directors, shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

10.1(a). **Fines.** Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation;

10.1(b). Remove Cause of Violation. Enter upon the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Maintenance and Operations Fund; or

10.1(c). Suit or Action. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

10.2. Interest, Expenses and Attorney's Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, 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. 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. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder, or to foreclose a lien, the owner/defendant shall pay to the Association all costs and expenses incurred by and in connection with such suit or action, including a foreclosure title report. The prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney's fees at trial and upon any appeal or petition for review thereof.

10.3. Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue and remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive, but shall 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.

10.4. Enforcement. The Association, or any Owner, or the Owner of any recorded mortgage upon any part of Said Property, 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 this Declaration. Failure by the Association, or by any Owner, to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If any Owner constructs or permits to be constructed on his property any improvement or allows the condition of his property to violate any provision of this Declaration, the Association may, no sooner than sixty (60) days after delivery to such Owner of written Notice of the violation, enter upon the offending property 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. Reasonable cost of such action shall be charged as a lien against the Owner's Lot as provided for in Article 6.8, herein.

10.5. Owner Responsibility. Owners shall be responsible for the acts and omissions of persons occupying their property and may be penalized for such violations. Owners renting or leasing or otherwise having resident other than themselves occupying said property shall be responsible for said Renters or Residents violations of the Covenants, Articles, Bylaws, and rules of the Association as set forth herein and may be subject to the penalty provisions thereof.

10.6. Penalties. Each Owner may be penalized for violations of any covenants herein or of any provisions of the Articles or Bylaws (or Board Rules and Regulations specifically pertaining to the Commons and/or Roadways) by the Board assessing a fine against such Owner and/or suspend the right of such Owner to use the recreational Common Areas and/or suspend the right of such Owner to vote at meetings of the Association; provided that such fine not exceed two (2) times the annual Dues of the Tollgate Property Owners Association per violation and such use and/or suspension may not be imposed for a period of more than thirty (30) days per violation. If any such fine imposed on the Owner by the Association is not paid by said Owner within sixty (60) days after said Owner has received from the Association written notice of the imposition of such fine, the amount of such fine shall be added to the amount of Association dues charged to said Owner and shall be enforceable as an Assessment in accordance with Article 10 Section 2, Interest, Expenses and Attorney's Fees, Enforcement, herein. No penalty may be imposed under this paragraph until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a Committee designated by the Board to conduct such a hearing, or has in writing waived such right. Each Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson at any such hearing.

10.7. Fiscal Responsibility. Should either party, Association or Member take any judicial action to enforce or interpret any of the terms of this Declaration, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney's fees, whether incurred in a suit or action or appear from a judgment or decree therein.

10.8. Arbitration. Any dispute or controversy arising in connection with this Declaration, as amended, or breach thereof, may be settled by arbitration in the County of Deschutes, Oregon in accordance with the rules then existing of the American Arbitration Association. Any award rendered therein shall be final and binding upon each and all of the parties thereto, and judgment may be entered thereon in any court having jurisdiction thereof. In any such dispute or controversy, the prevailing party shall recover from the other party reasonable attorney fees and related expenses as approved by the arbitrator.

10.9. Captions. The headings and captions herein are inserted solely for the purpose of convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

10.10. Severability. Invalidation of any one of the terms, covenants or restrictions by judgment or by court order shall in no way affect any other provisions which shall remain in full force and effect.

10.11. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. After the initial twenty-five (25) years said covenants shall be automatically extended for successive periods of ten (10) years. Any of the covenants and restrictions of this Declaration except the easements herein granted may be amended during the first twenty-five (25) year period by an instrument signed by Members entitled to cast not less than two-thirds (2/3) of the votes of all eligible Members. All such amendments must be recorded in the appropriate deed records, Office of the County Clerk, to be effective.

10.12. No Right Of Reversion. Nothing herein contained in this Declaration, or any form of deed which may be used by Declarant, or its successors or assigns, in selling Said Property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof.

10.13. Books And Records. The books and records of the Association may, upon demand in writing stating the purpose thereof, be inspected by any Members, or their attorney or agent, for any proper purpose, at any reasonable time under guidelines established by the Board.

10.14. Benefit Of Provisions Wavier. The provision contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Declarant or the Association, and the Owner or Owners of any portion of Said Property, and their heirs and assigns and each of their legal representatives. Failure by the Declarant or by the Association or by any of the Owners or their legal representatives, heirs, successors, or assigns, to enforce any of conditions, restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so.

10.15. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, the undersigned, the Chair of the Tollgate Board of all Said Property, has hereunto caused these presents to be executed this 24th day of

November, 1998.
By /s/

Kent Thie
Kent Thie

CHAIR, TOLLGATE PROPERTY OWNERS ASSOCIATION BOARD OF DIRECTORS

Personally appeared, KENT THIE who, being sworn, stated that he is the Chair of The Tollgate Property Owners Association and that this instrument was voluntarily signed in behalf of the corporation by authority of its Board.

Before me: Rochelle A Johnson
/s/ Rochelle A. Johnson

Notary, State of Oregon

My Commission Expires: 4/23/2001



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:

98 DEC -1 AM 9:32

MARY SUE PENHOLLOW
COUNTY CLERK

BY ms DEPUTY
NO 98-54278 FEE 80
DESCHUTES COUNTY OFFICIAL RECORDS