

1117
Vol 183 p 556

DECLARATIONS, RESTRICTIONS,
PROTECTIVE COVENANTS AND CONDITIONS

for

TOLLGATE
DESCHUTES COUNTY, OREGON

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

WHEREAS, Declarant is the owner 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, Declarant desires to subject 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 will convey said property subject thereto,

NOW, THEREFORE, Declarant 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 purpose of enhancing and protecting 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 upon 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 interest therein.

ARTICLE I

DEFINITIONS

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

(1) "Association" shall mean THE TOLLGATE PROPERTY OWNERS ASSOCIATION, a nonprofit corporation organized under the laws of the state of Oregon, its successors and assigns.

(2) "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.

(3) "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.

(4) "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat of said property.

(5) "Member" shall mean every person or entity who holds membership in the Association.

(6) "Owner" shall mean the record 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.

(7) "Roadway" means any street, highway or other thoroughfare as shown on the recorded plat of said property.

ARTICLE II

SUBJECTING ADDITIONAL PROPERTY TO THIS DECLARATION

Section 1. At any time before January 31, 1999, Declarant, its successors and assigns, shall have the right to bring within the scheme of this declaration additional properties in future stages of development if such additions are in accord with a general plan of development prepared prior to the sale of any lot and made known to every purchaser prior to a sale to such purchaser.

Such general plan of development shall show the proposed additions to said property and contain:

(a) The general indication of size and location of each additional development stage and proposed land uses in each;

(b) The approximate size and location of the common area proposed for each stage;

(c) A statement that proposed additions if made will become subject to assessment for their just share of Association expenses.

Unless otherwise stated therein such general plan shall not bind Declarant, its successors and assigns, to make the proposed additions or to adhere to the plan in any subsequent development of the land shown therein.

Section 2. 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.

Section 3. Additions Not in Accordance With the General Plan of Development. Additions which are not in accord with the general plan of development may be made by the Declarant or any other owner of property, who with Declarant's consent desires to add such property to the scheme of this declaration and to subject it to the jurisdiction of the Association, upon approval of the Association pursuant to a vote of its members.

ARTICLE III

MEMBERSHIP

Members of the Association shall be every Owner and shall be subject by covenants of record to assessment by the Association. There shall be no other qualification for membership except as set forth above. Membership shall terminate on transfer of fee simple title by an owner or the contract 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 IV

VOTING RIGHTS

All members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. 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 V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member of the Association shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot; subject, however, to the following provisions:

(a) The right of the Association to limit the number of members permitted to use the Common Area.

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

(c) 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 unpaid, and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations.

(d) 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 of the votes of the membership has been recorded in the appropriate records of Deschutes County, Oregon, 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.

(e) The right of the directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such Common Area of the members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property.

Section 2. 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 tenants, provided they reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants that it will convey to the Association title to the Common Area, subject to any necessary reservation of an easement or easements for utilities including but not limited to water, electricity, gas, sewage, telephone, and television.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for all of said Property, each Owner of any Lot by acceptance of a deed or contract of purchase therefor, 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: (1) Regular annual or other regular periodic assessments or charges, provided, however, that Declarant is exempt from any assessment until ninety percent (90%) of the Lots have been sold, and (2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. 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 property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the following purposes:

(a) Payment of the cost of maintaining the roads, signs, common areas, and semipublic recreational or service areas at Tollgate.

(b) Payment of taxes and assessments levied against the platted private roads, common areas, and semipublic recreational or service areas.

(c) Payment of the cost of providing the level of fire protection deemed appropriate by the Board of Directors.

(d) Payment of the cost of insurance against liability arising out of the existence of the Association and its Board of Directors.

(e) Payment of the cost of enforcing the provisions contained in this Declaration and the covenants and provisions contained in any future Tollgate Declaration.

(f) Payment for other services which the Board of Directors deem to be of general benefit to residents of Tollgate.

(g) Payment of costs incurred in collecting assessments.

(h) Payment of expenses incurred in organizing the Tollgate Association or any section association and of maintaining the same as corporations.

(i) 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.

(j) 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.

Section 3 Annual Assessments. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix a regular flat assessment upon a monthly, quarterly, or annual basis. Any annual assessment paid within 30 days of the date billed shall be entitled to a three percent discount. The first annual assessment shall not be more than \$7.00 per month. The annual assessment shall not be increased by more than 8 percent per annum unless approval of members is obtained in the manner described in Section 4 for special assessments for capital improvements.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that, except for repairs or replacements,

any such assessment for structural alterations, capital additions or capital improvements reflecting an expenditure of in excess of \$1,000 shall require the assent of a two-thirds (2/3) majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which 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.

Section 5. Uniform Rate of Assessment. Both regular periodic flat charges and any special assessments must be fixed at a uniform rate for all Lots not exempt and may be collected on an annual, quarterly, or monthly basis in the discretion of the Directors.

Section 6. Quorum For Any Action Authorized Under Sections 3 and 4. At the meeting called, as provided in Section 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) 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 3 and 4, 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.

Section 7. Date of Commencement of Annual Assessments. Due Dates. All Lots not exempt shall be subject to the annual or monthly assessments provided for herein on the date specified by the Board of Directors. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. When Declarant has sold ninety percent (90%) of the Lots it shall advise the Association in writing.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. 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 the rate of six percent (6%) per annum. The Secretary of the said Association shall file in the office of the Director of Records, County Clerk or appropriate recorder of conveyances of Deschutes County, state of Oregon, within thirty (30) days after delinquency, a statement of the amount of any such charges or assessments, together with interest as aforesaid,

which have become delinquent with respect to any Lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs, and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot, with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of said Director of Records or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs, and disbursements, including reasonable attorney's fees of the Declarant or of the Association, as the case may be, of processing and, if necessary, enforcing such liens, all of which expense, costs, and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and 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.

Section 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. Sale or transfer of any Lot shall not affect the assessment lien. 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; and 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII

RESTRICTIONS ON USE OF PROPERTY

Section 1. Each Lot shall be used for residential purposes only, nor shall more than one detached single family dwelling not to exceed two (2) stories in height and not more than one double garage or carport and two accessory buildings such as workshops or stables be constructed or placed upon each Lot in the subdivision.

Section 2. All driveways must be composed of cinders, gravel, or asphalt.

Section 3. The floor area of constructed residences shall be not less than 600 square feet exclusive of one story porches and garages.

Section 4. Buildings must be suitable for year around use and must be placed on permanent foundations, consisting of concrete, brick, pumice blocks, or stone masonry. Pitch of the roof and size and spacing and ceiling joists must be adequate to withstand heavy snow packs. Roofs must be of wood shingle. All buildings, fences, and improvements must be constructed in workmanlike manner and kept in a condition of good repair. Exposed portion of foundation must be painted or sided if more than 12" above the ground.

Section 5. Setback line shall be at least twenty-five (25) feet back from all Lot lines to any structure upon the Lot with the exception of a fence, not to exceed 72 inches in height. Fences must be constructed of properly finished material and shall harmonize with the surroundings.

Section 6. All land owners must comply with the laws and regulations of the state of Oregon, county of Deschutes, and any municipality applicable to fire protection, building construction, water, sanitation, and public health.

Section 7. Mobile homes will be confined to lots specifically designated on the plat map for their use. They must be 12' x 40' or larger and be skirted and appear as permanent installations.

Section 8. No more than 18 months' construction time shall elapse for the completion of a permanent dwelling nor shall a temporary structure be used as living quarters except during the construction of a permanent dwelling. An exterior latrine shall be allowed only during the construction of a permanent residence.

Section 9. No commercial, professional, noxious, or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

Section 10. The cutting or removal of living trees will only be permitted where necessary for the construction of buildings or thinning for the beautification of the property. Such cutting or removal must be approved by the Association, or by a committee designated by the Association, before it is actually begun. A plan

showing the lot, location, and identification of the tree or trees to be cut or removed must be submitted to the Association or its designated committee at least 30 days in advance of the intended cutting or removal date. Failure of the Association or its designated committee to respond within 25 days after the receipt of such plan shall be deemed approval.

Section 11. No animals other than domestic household pets or horses shall be kept on any part of said property.

Section 12. Lot signs will be limited to one 10" x 24" olive green wooden sign with black lettering to identify the lot name, if any, the owner and his address. Signs advertising lots for sale shall only be those provided by the Association. The Association may limit the number of for sale signs exhibited in any one area at any one time. In such instances, for sale signs will be allotted on a just and equitable basis determined by the Association.

Section 13. 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.

Section 14. 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 a fire hazard.

Section 15. Individual wells not allowed; must connect to domestic water systems.

Section 16. Septic tanks and drainfields must meet County Health Department standards.

Section 17. No motorized vehicles other than automobiles may be operated on property without prior approval of the Board of Directors of the Association.

Section 18. Parking must be provided for on each building site. Only one driveway not to exceed 10 feet across common property between street and lot is allowed per lot.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. 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 covenant 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 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 with the reasonable cost of such action to be a charge against the owner's land.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

Section 3. 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 which time 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 seventy-five percent (75%) of the votes of each class of membership. All such amendments must be recorded in the appropriate Deed Records of Deschutes County, Oregon, to be effective.

Section 4. No Right of Reversion. Nothing herein contained in this Declaration, or in 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 of violation of any one or more of the provisions hereof.

Section 5. Books and Records. The books and records of the Association, upon demand, in writing, stating the purpose thereof, may be inspected by any member, or his attorney or agent, for any proper purpose, at any reasonable time.

Section 6. Benefit of Provisions; Waiver. The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association, and the owner or owners of any portion of said property, and their heirs and assigns,

VOL 183 567

and each of their legal representatives, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors, or assigns, to enforce any of such conditions, restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so.

IN WITNESS WHEREOF, the undersigned, the owner of all Said Property, has hereunto caused these presents to be executed this 3rd day of April, 1972.

BROOKS RESOURCES CORPORATION

By Robert L. Harrison
President

STATE OF OREGON, County of Deschutes, ss: April 3, 1972

Personally appeared ROBERT L. HARRISON, who, being sworn, stated that he is the President of BROOKS RESOURCES CORPORATION and that this instrument was voluntarily signed in behalf of the corporation by authority of its Board of Directors.



Before me:

Charles D. Austin
Notary Public for Oregon
My Commission Expires: 8/25/74

1117

STATE OF OREGON
County of Deschutes

I hereby certify that the within instrument of writing was received for Record the 3 day of April A.D. 1972 at 4:46 o'clock P. M. and recorded in Book 183 on Page 556. Records of Deschutes

INDEX

ROSEMARY PATTERSON

County Clerk

By Lucie Kunkelton Deputy

Page - 12 Declarations, Restrictions
Protective Covenants and Conditions