

**BYLAWS**  
**FIFTH AMENDMENT**

**of the**

**TOLLGATE WATER**  
**COMPANY**

15004 Saddle

Sisters, Oregon 97759

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**ADOPTED 4/28/08**

# **TOLLGATE WATER COMPANY BYLAWS**

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# TOLLGATE WATER COMPANY

## BYLAWS

### **Article 1. NAME**

**1.1.** The name of this corporation is Tollgate Water Company ("Corporation"), and its duration shall be perpetual.

### **Article 2. PURPOSE**

**2.1.** The Corporation is organized for the purpose of owning and operating a mutual domestic and irrigation water distribution system and providing water to Tollgate, a duly recorded subdivision in Deschutes County, Oregon.

### **Article 3. PRINCIPAL OFFICE**

**3.1.** The principal office of the Corporation shall be located at 15004 Saddle, Sisters, Oregon, 97759, or at such other place as may be fixed from time to time by the Corporation's Board of Directors.

### **Article 4. MEMBERSHIP AND VOTING RIGHTS**

**4.1. Eligibility.** All Owners (as defined in the Declarations, Restrictions, Protective Covenants and Conditions for Tollgate, as amended from time to time and recorded in Deschutes County, Oregon, deed records) of lots in Tollgate and other Users of water supplied by Corporation shall be members of Corporation.

**4.2. Appurtenance.** Membership shall be appurtenant to (and may not be separated from) ownership of a Lot in Tollgate or, in the case of other users outside of Tollgate, shall be appurtenant to such users' land served by the Corporation.

**4.3. Voting Rights.** Each Owner shall have one vote per Lot owned in Tollgate or, in the case of users outside of Tollgate, one vote per lot served by the Corporation. Owners who own a Lot jointly (whether as tenants in common, joint tenants or tenants by the entirety) shall have a single vote for each Lot. If such joint owners cannot agree upon a vote, each such joint owner shall be entitled to a proportionate fractional vote.

### **Article 5. MEETINGS OF MEMBERS**

**5.1. Annual Meeting.** The annual meeting of the members of Corporation shall be held at the same time and place as, and in conjunction with, the annual meeting of, the Tollgate Property Owners' Association.

**5.2. Special Meetings.** In the event a written petition for a special meeting is signed by members entitled to one-fourth (1/4) of the votes of the membership, the Chair must call such meeting.

**5.3. Notice.** Notice of all meetings of members shall be mailed to each member, postage prepaid, at the address as shall appear in the records of the Corporation. Such notice shall be mailed not less than fifteen (15) days nor more than sixty (60) days prior to the date of such meeting. The notice of a meeting shall specify the place, date and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**5.4. Quorum.** Those members present at any annual or special meeting of members shall constitute a quorum for any action of the members. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at any annual or special meeting of members at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by ORS Chapter 61.

**5.5. Proxies.** A member may vote at any meeting in person or by proxy executed in writing and filed with the Secretary of the Corporation. Each such proxy shall be revocable and shall automatically terminate upon such member's termination as a member in the Corporation.

## **Article 6. BOARD OF DIRECTORS**

**6.1. General.** The business and the property of the Corporation shall be managed and controlled by a Board of Directors. Such Board shall have the power and authority to

**6.1.1.** Make rules and regulations not inconsistent with the laws of the state of Oregon, Corporation's Articles of Incorporation, these Bylaws, or Section 501(c)(12) of the Internal Revenue Code.

**6.1.2.** Call meetings of the membership when deemed advisable.

**6.1.3.** Generally exercise all powers necessary for the transaction of Corporation's business.

**6.2. Number and Eligibility.** The Board of Directors shall consist of seven persons. Directors must be members of the Corporation and Lot Owners within Tollgate.

**6.3. Election and Term.** Directors shall be elected by the members for terms of three years and shall serve staggered terms consistent with the terms of the Tollgate Property Owners' Association with at least two positions elected at the annual meetings of members.

**6.4. Manner of Election.** Prospective directors shall run for a specific position. Directors will be nominated by a nominating committee appointed by the Chair, which may send a list of its nominees to the members prior to the meeting. Cumulative voting is not permitted. The person receiving the most votes for each position shall be elected.

**6.4.1. Membership on Both Boards.** It is recognized that the persons who are members of the Corporation are the same as the persons who are members of the Tollgate Property Owners Association and that it is in the interests of both the Corporation and the Tollgate Property Owners Association and their Members that the same individuals serve at the same time as Members of both Boards of Directors. Accordingly, the Corporation and the Tollgate Property Owners Association may conduct joint Board nominations and elections; provided, however, that no person who is not a member of the Corporation may vote to elect Directors for the Corporation.

**6.5. Vacancies.** Any vacancy in the Board of Directors shall be filled, for the full remaining term, by a vote of the remaining Directors.

**6.6. Removal of Directors.** Any Director or Directors may be removed from office before expiration of his or her term, with or without cause, by majority vote of the members, whether voting by proxy or in person, at an annual or special meeting of the members.

**6.7. Compensation.** No director shall receive compensation for any service he or she may render to the Corporation as a Director. However, any director may be reimbursed for his or her actual expenses incurred in the performance of duties for the Corporation and may receive compensation for services the Corporation in a capacity other than that of Director.

## **Article 7. MEETINGS OF DIRECTORS**

**7.1. Regular Meeting.** A regular meeting of the Board of Directors of the Corporation shall be held annually, without notice other than this Bylaw, on the same date as the annual meeting of members of Corporation. The Board of Directors may, by Resolution, establish other dates, times and places for additional regular meetings of the Board.

**7.2. Special Meetings.** Special meetings of the Board of Directors may be called by the Chair of Corporation or by any three Directors after not less than three days notice to each Director. All special meetings shall be held at such reasonable time and place as the Board Chair shall determine and shall be limited to only those items of business as are described in the notice of such special meeting. Attendance at a special meeting shall constitute a waiver of notice thereof.

**7.3. Notice.** Notice of any special meeting of Directors shall be deemed sufficient if deposited in the United States mail, addressed to the last known mailing address of the Director, or emailed to the address supplied by the Director, no later than three days before the date of such meeting.

**7.4. Quorum.** A majority of the members of the Board of Directors shall constitute a quorum for the transaction of any and all business of the Corporation. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**7.5. Action Without a Meeting.** Any action required to be taken, or which may be taken, at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Directors.

## **Article 8. OFFICERS**

**8.1. Enumeration and Eligibility.** The Officers of the Corporation shall be a Chair, Vice Chair, a Secretary/Treasurer. All officers shall be chosen from the Corporation's Board of Directors.

**8.2. Election.** Officers shall be elected by and shall serve at the pleasure of the Board of Directors. The election of Officers shall take place at the annual meeting of the Board of Directors following each annual meeting of the members of Corporation. Such Officers shall take office immediately upon election.

**8.3. Term of Office.** Officers shall hold office for a term of one year.

## **Article 9. OPERATION AND ASSESSMENTS**

**9.1. Rates. Accumulation of Funds.** Members of the Corporation shall have the right to receive water services from the Corporation at rates substantially equal to the Corporation's cost for such service. The Corporation will accumulate or retain funds only to the extent necessary to meet its current losses and operating expenses and other reasonable needs such as, but not limited to, retiring indebtedness; maintaining, improving and expanding its water distribution system; or maintaining reserves for necessary purposes.

**9.2. Refunds.** Any excess income of the Corporation, not retained in reasonable reserves for future losses and expenses, belongs to the Corporation's current members and shall be accounted for in the names of Users of the Corporation's services in proportion to their business done with the Corporation. In the event the Corporation's Board of Directors determines that the Corporation has funds in excess of such reasonable needs, the Corporation's current Members shall have the right to receive a refund of such excess funds in amounts to be determined by the Board of Directors, in proportion to their business done with the Corporation.

**9.3. Method of Assessment.** The Corporation's Board of Directors or its Officers may assess reasonable charges for providing water and water-related services to Members. Members shall pay Assessments on a monthly basis or otherwise as may be fixed from time to time by the Board of Directors.

**9.4. Lien.** Whenever any charges ascribed as assessments under the foregoing Section 3 of this Article are not paid within thirty (30) days after mailing of notice of the same, such charge shall become a lien against the property (or the premises within Tollgate leased or otherwise used by any other member) of the member failing to make such payments and Corporation may file a notice of lien in Deschutes County, Oregon. From the date such charge becomes a lien, it shall commence to bear interest at a rate to be determined by the Board of Directors until paid in full. When any such charge or assessment becomes a lien and then continues unpaid for a period of four months, the Board may give notice of intent to foreclose by mailing notice to the delinquent member. If the lien is not paid within ten days following such notice, the Board may foreclose such lien in the manner provided by law for foreclosures of mortgages. The expense of such foreclosures and collection, included but not limited to reasonable attorneys' fees and costs shall be added to the assessment. As an additional remedy and not as an alternative, the Board may disconnect water services under its control from the premises, after giving fifteen (15) days' written notice to the owner of the intent to disconnect, if the delinquency is not paid.

### **9.4. Effect of Nonpayment Of Assessments & Remedies Of The Association**

**9.4.1.** Any Assessments which are not paid when due shall be delinquent pursuant to Water Policy, Section 8, Termination of Water Services.

**9.4.2** This section revised to read as follows: "If the assessment is not paid in full within fifteen (15) days after giving owner written notice of delinquency, the Board may disconnect water service under its control to the premises. The assessment amount shall bear interest from the date of delinquency at an annual interest rate of twelve percent (12%) per annum until paid in full."

**9.4.3.** Upon payment in full of the delinquency and any established reconnection charge, full water service will be restored. The Secretary of the Association may within thirty (30) days after delinquency, cause a lien to be filed in the Office of the County Clerk.

**9.4.4.** 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.

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

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

**9.4.7.** The lien shall be effective from the date that notice of delinquency is filed in the office of the Deschutes County Clerk and Recorder and shall remain in full force and effect until the lien has been paid or is otherwise released by the Board.

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

**9.4.9.** The Owner of Said Property at the time said Assessments are levied shall be personally liable for the aggregate amount of said lien.

**9.4.10.** Such Owner at the time such Assessments are levied shall also be liable for any deficiency remaining unpaid after any foreclosure sale.

**9.4.11.** Such Owner at the time such Assessments is levied shall also be liable for any delinquency 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 or her dwelling unit, Lot, building site.

**9.5. Subordination Of The Lien To Mortgages.** The lien of the assessment provides for herein shall be inferior to the lien of all mortgages, trust deeds, and other liens placed of record against the property prior to the filing of the notice of delinquency with the Deschutes County Clerk and Recorder's Office.

**9.5.1.** Sale or transfer of any lot shall not affect the assessment lien.

**9.5.2.** The assessment lien shall attach to any net proceeds of sale remaining after payment of prior mortgages, trust deeds, and other liens.

**9.5.3.** No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.

## **Article 10. RECORDS**

**10.1.** The Corporation shall keep such records as the Board of Directors determines are necessary to determine at any time each Member's rights and interest in the assets of the Corporation, based on the proportion of each member's business done with the Corporation.

## **Article 11. TERMINATION OF MEMBERSHIP**

**11.1.** As Membership is appurtenant to the property and to users' operations, such membership will terminate at any time a Member sells his or her Lot or a User terminates operations. A former Member's right and interest in the Corporation's assets will be forfeited upon withdrawal or termination of membership.

**Article 12. DISSOLUTION**

**12.1.** Upon dissolution, the Corporation's assets, after payment of all debts and obligations, will be distributed equally to all current Members in proportion to their business done the Corporation, insofar as is practical.

**Article 13. FISCAL YEAR**

**13.1.** The fiscal year of the Corporation shall be January 1 through December 31.

**Article 14. AMENDMENT**

**14.1.** These Bylaws or any portion of them may be amended by a majority vote of Members present or represented by proxy at any special or annual meeting for which notice was given which includes a description of the proposed Bylaw amendment.

AMENDED: April 28, 2008  
Tollgate, Sisters, Oregon