

AFTER RECORDING, RETURN TO:

Ms. Lesley Edwards  
Resort Resources, Inc.  
P. O. Box 1466  
Bend, OR

1999 SEP 13 PM 3:25

*MTC 1396-1287*  
**DECLARATION ANNEXING PHASE 3  
OF EAGLES LANDING  
TO  
RUNNING Y RANCH RESORT**

AMERICAN has recorded this  
instrument by request as an accommodation only,  
and has not examined the regularity and sufficiency  
of its effect upon the title to any real property  
that may be described therein.

**THIS DECLARATION** is made this 10<sup>th</sup> day of September, 1999, by **RUNNING Y RESORT, INC.**, an Oregon corporation ("**Declarant**") and **The Pennbrook Company**, an Oregon corporation, ("**Pennbrook**").

**RECITALS**

A. Declarant is the Declarant under that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort dated August 2, 1996 and recorded August 2, 1996 in the records of Klamath County, Oregon, in Volume M96, Page 23548 (the "**Master Declaration**").

B. Declarant wishes to annex the real property described on attached Exhibit A (the "**Additional Property**") to the Master Declaration and to designate the Additional Property as Phase 3 of a Project known as "**Eagles Landing**".

C. The Master Declaration provides that additional properties may be annexed to Running Y Ranch Resort pursuant to the provisions of Section 2.2 of the Master Declaration. Declarant wishes to annex the Additional Property to Running Y Ranch Resort upon the terms and conditions set forth in this Declaration.

D. Pennbrook, as owner of certain property within the Additional Property, consents and agrees to all terms and conditions of this Declaration.

**NOW, THEREFORE**, Declarant does hereby declare and provide as follows:

1. **DEFINITIONS.** As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 **Additional Property.** Additional Property means all the real property described in the attached **Exhibit A**.

1.2 **Master Declaration.** Master Declaration means the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort, dated August 2, 1996 and recorded August 2, 1996, in the records of Klamath County, Oregon, in Volume M96, Page 23548.

1.3 **Incorporation by Reference.** Except as otherwise specifically provided in this Declaration, each of the terms defined in Article 1 of the Master Declaration shall have the meanings set forth in such Article.

2. **ANNEXATION**. The Additional Property is hereby annexed to Running Y Ranch Resort and made subject to the Master Declaration on the terms and conditions set forth in this Declaration.

3. **PROJECT**. The Additional Property shall be Phase 3 of the Project known as Eagles Landing for purposes of the Master Declaration.

4. **LAND CLASSIFICATIONS**. The Additional Property is included in one or another of the following classifications:

4.1 **Residential Lots**. Platted lots numbered 310 through 329 within the plat of Replat Running Y Resort, Phase 4, 1ST Addition, but excluding any tract labeled as "Common Area" or "Common Lot" on such plat, shall be Residential Lots as defined in Section 1.32 of the Master Declaration.

4.2 **Common Areas**. Swallow Court and Merlin Way within the plat of Replat Running Y Resort, Phase 4, 1ST Addition shall be Common Areas as defined in Section 1.8 of the Master Declaration.

4.3 **Project Common Areas**. All other portions of the Additional Property not defined as Residential Lots or Common Areas in Sections 4.1 or 4.2 above, shall be Project Common Areas as defined in Section 1.28 of the Master Declaration. Within the Project Common Area "A" as shown on the plat of Replat Running Y Resort, Phase 4, 1ST Addition, the Owner of each adjacent Lot shall have the use of a driveway crossing the Project Common Area and connecting to each Lot.

4.4 **Common Easement Areas**. The sewer easement located on Common Area "A" and bordering platted Lots 310 - 327 along with the utility easement and drainage easement crossing Lots 313 and 314 and Lots 327 and 328 as shown on the plat of Replat Running Y Resort, Phase 4, 1ST Addition shall be Common Easement Areas as defined in Section 1.9 of the Master Declaration.

5. **MASTER DECLARATION**. The Additional Property shall be subject to all of the terms and provisions of the Master Declaration, except that Section 7.16 (Minimum Dwelling Size) and Section 7.20 (Time-Sharing or Fractional Interest Ownership) shall not be applicable to the Additional Property.

6. **ADDITIONAL RESTRICTIONS**. The Additional Property shall be subject to the following additional restrictions:

6.1 **Access at Reasonable Hours**. For the purpose of performing the maintenance provided for in this Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Living Units at reasonable hours. The Association shall also have a right of entry for purposes of effecting emergency repairs or action to prevent imminent damage or injury to the Living Unit, other Living Units, to other Owners and their guests or invitees, or to the Project Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

6.2 **Noise; Exterior Lighting and Noise-making Devices**. Occupants of Living Units shall exercise extreme care not to make noises which may disturb occupants of other Living Units. Except with the consent of the Association and the Architectural Review Committee, no

exterior lighting or noise-making devices shall be installed or maintained on any Lot within Eagles Landing. Owners shall not tamper with exterior lighting except to replace expended bulbs with similar new bulbs.

6.3 **Windows, Decks, Porches, Outside Walls and Yards.** In order to preserve the attractive appearance of Eagles Landing, the Association may regulate the nature of items which may be placed in or on windows, decks, entry porches, outside walls and yards so as to be visible from outside of the Lot. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches or decks.

6.4 **Alterations.** Owners are expressly prohibited from painting or changing the exterior of the building or other structure without written permission of the Architectural Review Committee and the Association. No structure may be installed outside of the Living Unit except structures, including without limitation fences, installed with written approval of the Association and Architectural Review Committee.

6.5 **No Increased Insurance.** Nothing shall be done or kept on any Lot or Project Common Area which will increase the cost of insurance on the Living Units or Project Common Areas. No Owner shall permit anything to be done or kept in his Living Unit or in the Project Common Areas which would result in cancellation of insurance on any Lot or any part of the Project Common Areas.

6.6 **Landscape.** All exterior landscape installations and plantings must be approved by the Association and the Architectural Review Committee.

6.7 **Project Policies and Procedures.** In addition, the Association from time to time may adopt, modify or revoke such policies and procedures governing the conduct of persons in the operation and use of Lots, Living Units and Project Common Areas within Eagles Landing as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of Eagles Landing. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Association Board of Directors to each Owner within Eagles Landing and shall be binding upon all Owners and occupants of all Lots within Eagles Landing upon the date of delivery. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws of the Association.

6.8 **Exterior Maintenance.** The Association shall be responsible for maintaining the Project Common Areas of Eagles Landing, the paved driveways, parking lots and paved pathways connecting to each Living Unit, the roof (replacement only) and exterior structure of each Living Unit within Eagles Landing (including exterior painting), septic tanks and septic tank pumps, and all landscaping and landscape irrigation systems (including water and power for such systems) within Project Common Areas and Lots.

6.9 **Insurance.** The Association, through the Board of Directors, shall obtain and maintain at all times and shall pay for out of Project Assessments the following insurance covering both the Project Common Areas and the Living Units within Eagles Landing, including fixtures, equipment, and other property which would ordinarily be required to be covered by a holder of a first mortgage:

(a) Insurance including, but not limited to, fire, extended coverage, vandalism, and malicious mischief and

(b) Insurance covering the legal liability of the Association, the Owners individually and the manager, including but not limited to, the Association Board of Directors, the public and the Owners and their invitees or tenants, incident to ownership, supervision, control or use of Eagles Landing. There may be excluded from the policy required under this subsection, coverage of an Owner, other than coverage as a member of the Association or Board of Directors, for liability arising out of the acts or omissions of that Owner and the liability incident to the ownership or use of the part of Eagles Landing as to which that Owner has the exclusive use or occupancy. Liability insurance required under this subsection shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement providing that the rights of named insured under the policy shall not prejudice any action against another named insured.

Notwithstanding any of the forgoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to in this Declaration as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each owner appoints any Insurance Trustee or substitute Insurance Trustee designated by the Association, as an attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first mortgage holders as their interest may appear.

6.10 **Damage or Destruction.** If any Living Unit within Eagles Landing is destroyed and the Owners of all Living Units situated in the affected building elect not to rebuild and if the election not to rebuild is approved by a seventy-five percent (75%) vote of the Owners within Eagles Landing, the affected Lots shall be cleared of debris and Living Units of an alternate design may be constructed subject to approval of Declarant and the Architectural Review Committee.

6.11 **Project Assessments.** The costs of maintenance and insurance as set forth in Sections 6.8 and 6.9 together with the costs of enforcing the restrictions contained in this Declaration, including reasonable administrative costs relating thereto, shall be assessed to each Lot within Eagles Landing on an equal basis as Project Assessments and enforced as Individual Assessments under the Master Declaration.

6.12 **Project Association.** Declarant, the Association or the Owners within Eagles Landing (by majority vote) may elect to establish a Project Association for Eagles Landing. In such event, Declarant or the Association shall adopt Articles of Incorporation and initial Bylaws for the Project Association and supervise the organization of and election of directors for the Project Association. Upon establishment of the Project Association, the Project Association shall be responsible for enforcement of the restrictions contained in this Declaration in the manner provided in the Master Declaration, adoption of Project Policies and Procedures, maintenance of the Project Common Areas and exterior of Living Units within Eagles Landing as provided in this

Declaration, and assessment and collection of Project Assessments in the same manner as provided in the Master Declaration for assessment and collection of assessments thereunder. The Project Association shall have the same classes of membership and the same voting rights as provided in the Master Declaration for the Master Association.

## 7. **PARTY WALLS.**

7.1 **Party Wall Declaration.** The dividing wall adjacent to the Living Units situated in the same building is hereby declared to be a party wall. The cost of maintaining the party wall shall be borne equally by the Owners of the adjacent Living Units.

7.2 **Damage to Party Wall.** In the event of damage or destruction of any party wall from any cause, other than the negligence of an adjacent Owner, the Association shall repair or rebuild the party wall, and each Owner, his successors and assigns, shall have the right to the full use of the party wall so repaired or rebuilt. If an adjacent Owner's negligence shall cause damage to or destruction is not covered by insurance, such negligent party shall bear the entire cost of repair or reconstruction. If any negligent Owner shall neglect or refuse to pay his share within fifteen (15) days after written demand by the Association, the Association shall be entitled to have a lien on the Living Unit of the negligent Owner for the amount of such defaulting party's share of the repair or replacement cost. Any such lien may be foreclosed in the same manner as an Individual Assessment.

7.3 **Drilling Through Party Wall.** With the prior written consent of the Architectural Review Committee, either adjacent Owner shall have the right to break through the party wall for the purpose of repairing or restoring sewerage, water, or utilities, subject to the obligation to restore the party wall to its previous condition at his own expense and the payment to the adjoining Owner of any damages caused thereby.

7.4 **Destruction of Living Unit.** If one or more of the buildings are damaged, destroyed, or partial condemned, the Association Board of Directors shall immediately proceed to rebuild and restore the building or buildings so damaged, destroyed, or partially condemned so that the same will be returned to substantially the same condition in which the building or buildings existed prior to such damage, destruction, or partial condemnation. Each Living Unit shall have the same vertical and horizontal boundaries as before. If the insurance proceeds are insufficient to rebuild and restore, the Owners shall be liable for assessment for any deficiency.

7.5 **Easement.** No Owner shall alter or change a party wall in any manner, interior decoration excepted. Each party wall shall always remain in its present location. Each adjacent Owner shall have a perpetual easement in that part of the Living Unit of the adjacent Owner on which the party wall is located, for party wall purposes.

8. **AMENDMENT.** This Declaration may be amended by Declarant at any time prior to the closing of the sale of the first lot in the Additional Property. Thereafter, this Declaration may only be amended by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Lots within Eagles Landing, together with the written consent of the Class B member of the Association, or if a Project Association has been established, the written consent of the Class B member of the Project Association for Eagles Landing, if such Class B membership has not been terminated. Any such Amendment shall become effective only upon recordation in the Deed Records of Klamath County, Oregon, of a certificate of the President or Secretary of the

the Deed Records of Klamath County, Oregon, of a certificate of the President or Secretary of the Association, or of the Project Association if a Project Association has been established, setting forth in full the amendments so approved and certifying that the Amendment has been approved in the manner required by this Declaration. In no event shall such an Amendment create, limit or diminish special Declarant rights without Declarant's written consent.

9. **BINDING EFFECT.** The Additional Property, including all Lots, Common Areas, Common Easement Areas and Project Common Areas therein, shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved only in accordance with the provisions of the Master Declaration, as modified by this instrument, which easements, covenants, restrictions, and charges shall run with the Additional Property and shall be binding upon all parties having or acquiring any right, title or interest in the Additional Property, or any part thereof, and shall inure to the benefit of each Owner thereof. Declarant may assign its status as Declarant under this Declaration to a Successor Declarant for Eagles Landing.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first set forth above.

**"DECLARANT"**

**RUNNING Y RESORT, INC.**, an Oregon corporation

By Lauri Miller  
Its Asst Secretary

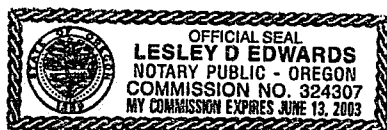
**"PENNBROOK"**

**THE PENNBROOK COMPANY**, an Oregon corporation

By [Signature]  
Its Vice President

STATE OF OREGON           )  
  )ss.  
County of Deschutes       )

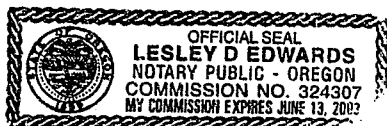
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 1999, by Lauri Miller, the asst. Secretary of RUNNING Y RESORT, INC., an Oregon corporation.



Lesley D. Edwards  
Notary Public for Oregon  
My commission expires: 6/13/2003

STATE OF OREGON           )  
  )ss.  
County of Deschutes       )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 1999, by Tim Vezie, the Vice President of THE PENNBROOK COMPANY, an Oregon corporation.



Lesley D. Edwards  
Notary Public for Oregon  
My commission expires: 6/13/2003

**EXHIBIT A****"Additional Property"**

All of the following described property as shown on Replat Running Y Resort, Phase 4, 1ST Addition plat recorded August 24, 1999 in the office of the County Recorder, Klamath County, Oregon.

- Residential Lots:                Lots 310 – 329 as shown on Replat Running Y Resort, Phase 4, 1ST Addition plat.
- Common Areas:                Swallow Court and Merlin Way as shown on Replat Running Y Resort, Phase 4, 1ST Addition plat.
- Common Easement Areas:    The sewer easement located on Common Area "A" and bordering Lots 310 – 327, utility easement and drainage easement crossing Lots 313 and 314, and Lots 327 & 328 as shown on Replat Running Y Resort, Phase 4, 2ND Addition plat.
- Project Common Areas:        Common Lots A & B as shown on Replat Running Y Resort, Phase 4, 1ST Addition plat.

State of Oregon, County of Klamath  
Recorded 9/13/99, at 3:25 p.m.  
In Vol. M99 Page 36539  
**Linda Smith,**  
County Clerk                Fee\$ 45.00