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AFTER RECORDING, RETURN TO:

Bt  
Ms. Karen Smith  
Resort Resources, Inc.  
PO Box 1466  
Bend, OR 97709

**DECLARATION OF CO-OWNERSHIP PROGRAM**

**AT**

**EAGLES LANDING**

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

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**DECLARATION OF CO-OWNERSHIP PROGRAM  
AT EAGLES LANDING**

**THIS DECLARATION OF CO-OWNERSHIP PROGRAM AT EAGLES LANDING**  
is made as of the 9<sup>th</sup> day of February, 2001, by RUNNING Y RESORT, INC., an  
Oregon corporation ("Declarant").

**RECITALS**

A. Declarant owns certain lots improved with living units in Eagles Landing, a project within The Running Y Ranch Resort located in Klamath County, Oregon.

B. Declarant wishes to establish a co-ownership program whereby Declarant will convey undivided interests in lots and living units in Eagles Landing to various purchasers of such interests.

C. Declarant wishes to provide in this Declaration for covenants and restrictions on the use, occupancy, ownership and disposition of interests in such lots and living units, for the sharing of expenses, for delegation of responsibility for maintenance and repair of the same and for all other aspects of the use and ownership of such interests.

D. Declarant will annex lots to this Declaration by Annexation Declarations which will identify the lots to be annexed, set forth the minimum ownership interests for such lot and the occupancy schedule applicable to such ownership interests.

E. Declarant declares that each lot annexed to this Declaration shall hereafter be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the limitations, restrictions, covenants and conditions contained in this Declaration, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the lots. All such limitations, restrictions, covenants and conditions are intended to run with the lots, and to inure to the benefit of and be binding upon all parties having or acquiring any right, title, interest or estate therein.

F. This Declaration shall constitute a timeshare instrument for purposes of the Oregon Timeshare Act, ORS 94.803 to ORS 94.945.

NOW, THEREFORE, Declarant provides as follows:

1. **DEFINITIONS.**

1.1 **"Annexation Declaration"** means a declaration executed by Declarant and recorded in the Real Property Records of Klamath County, Oregon, subjecting one or more units to this Declaration and the Program.

1.2 **"Common Furnishings"** means the furnishings and appliances listed on any inventory schedule attached to an Annexation Declaration, together with any other additional personal property acquired by the Owners in accordance with Section 4.1 of this Declaration.

1.3 **"Declarant"** means Running Y Resort, Inc., an Oregon corporation.

1.4 **"Eagles Landing"** means the Project created by the recording of the Declaration Annexing Phase 3 of Eagles Landing to Running Y Ranch Resort in Klamath County, Oregon and all Lots subsequently annexed thereto by the recording of annexation declarations in Klamath County, Oregon.

1.5 **"Home"** means a lot, including the living unit located thereon, in Eagles Landing subjected to this Declaration and the Program pursuant to an Annexation Declaration.

1.6 **"Major Decision"** means any of the decisions described in Section 6.3 below.

1.7 **"Manager"** means the managing agent designated in accordance with Section 7 below.

1.8 **"Master Association"** means the owners association established under the Master Declaration.

1.9 **"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, as Volume M96, Page 23548, as supplemented by Declaration Annexing Phase 3 of Eagles Landing to Running Y Ranch Resort dated September 10, 1999, and recorded September 13, 1999, in the Records of Klamath County, Oregon, in Volume M99, Page 36539.

1.10 **"Mortgage"** means a mortgage, trust deed or other security instrument.

1.11 **"Occupancy Interest Number"** means the designation given to each undivided interest in a Home consisting of the Home identification number, plus a letter of the alphabet identifying the applicable Use Period.

1.12 **"Occupancy Schedule"** means the annual calendar setting forth the Use Periods allocated to each Occupancy Interest Letter.

1.13 **"Owner"** means the owner of an undivided co-ownership interest in a Home.

1.14 **"Policies and Procedures"** means the rules, policies, and procedures governing the use of the Home and the conduct of its occupants adopted pursuant to Section 5.10 below.

1.15 **"Program"** means the co-ownership program established under this Declaration.

1.16 **"Supervisory Committee"** means the committee elected pursuant to Section 6.2 below.

1.17 **"This Declaration"** means this Declaration of Co-Ownership Program at Eagles Landing, as the same may be subsequently amended.

1.18 **"Use Allocation Policies"** means the Co-ownership Use Policies governing the allocation of Use Periods to each Owner attached as **Exhibit A** to this Declaration, as the same may be amended pursuant to Section 6.3(d) below.

1.19 **"Use Periods"** means those time periods during which an Owner is entitled to the exclusive use and occupancy of the Home, Common Furnishings, the Common Areas and other amenities of Running Y Ranch Resort and the Project Common Areas and Project Common Easement Areas of Eagles Landing in accordance with the Use Allocation Policies.

## 2. **SUBMISSION OF HOMES TO PROGRAM.**

Homes shall be submitted to this Declaration and the Program pursuant to an Annexation Declaration, which declaration shall designate the Home or Homes so submitted, an inventory of the Common Furnishings in such Homes, the minimum undivided interest an Owner may hold in any such Home, the Initial Occupancy Schedule applicable to such Home and whether or not smoking is permitted in such Homes. Undivided interests in Homes submitted to the Program will be conveyed to Owners by Warranty Deed.

## 3. **EXCLUSIVE USE AND OCCUPANCY.**

Each Owner shall have the exclusive right to occupy such Owner's Home, use the Common Furnishings and, as between Owners, to use and enjoy the Common Areas and other amenities of Running Y Ranch Resort and the Project Common Areas and Project Common Easement Areas of Eagles Landing and the rights and easements appurtenant to a Home during the Use Periods assigned pursuant to Section 3.1 below. No Owner shall occupy a Home, or exercise any other rights of ownership in respect to a Home at any time, except as expressly provided in this Declaration.

3.1 **Allocation of Use Periods.** Use Periods shall be allocated among Owners in accordance with the Use Allocation Policies attached as **Exhibit A** to this Declaration.

3.2 **Rental of Homes.** Each Owner may rent the Owner's Home during the Owner's scheduled Use Periods. Any rent received by the Owner will belong solely to such Owner. The tenant may be required to pay the Manager prior to occupancy a minimum security deposit in an amount to be set forth in the Policies and Procedures. The Owner will be responsible for the Owner's tenant, including payment of any damage caused by the tenant, items of personal property found missing after the tenant's stay, any fee charged for rental of the Home and the use charges described in Section 5.8 below.

3.3 **Day Use.** An Owner and an Owner's family, on a space available basis, shall be entitled to day use of the Common Areas and other common amenities of Running Y Ranch Resort on days other than during such Owner's Use Periods, subject to such day use charges and restrictions as may be imposed by the Master Association or as may be contained in the Policies and Procedures.

3.4 **Reserved Easement for Declarant.** Declarant reserves an easement to show the Home as a model unit during any Use Period in which an Owner is not occupying the Home.

#### 4. **PERSONAL PROPERTY.**

4.1 **Furnishings.** The Common Furnishings of each Home are owned jointly by all the Owners of undivided interests in such Home in the same proportion as the ownership of the Home. The Manager is hereby authorized to repair or replace the Common Furnishings within a Home as needed to maintain the uniform quality of the Homes.

4.2 **Personal Items.** At the end of each Use Period, each Owner will remove all personal items, such as clothes and food, from the Home. Any such items left at the Home are left at the Owner's risk. Any food or grocery items left at the Home may be used by the next occupant free of charge.

#### 5. **USE AND OCCUPANCY RESTRICTIONS.**

5.1 **Occupancy.** The Home shall not be occupied at any time by more than the number of persons specified in the Policies and Procedures or Master Association policies and procedures. No one under the age of 21 may use a Home without parental supervision. Each Owner shall vacate the Home promptly at the expiration of the Owner's Use Period by the time of day specified in the Use Allocation Policies.

5.2 **Condition.** Each Owner, his family, guests and invitees, shall keep the Home and the Common Furnishings therein in good condition and repair during such Owner's Use Period



and shall leave the Home in a reasonably clean and orderly condition for the next occupant. The Manager will take an inventory of furnishings, appliances, dishes and the like at the end of each Use Period and assess the Owner for the replacement cost of any missing items. An extra cleanup fee will be charged if the Home is left in a messier than normal condition.

5.3 **Nuisances, Etc.** No Owner, nor any family member, guest or invitee of an Owner, shall create or permit to exist any nuisance in the Home, commit waste with respect to the Home or permit anything to be done or kept in the Home which would increase the rate of insurance upon the Home or the contents therein.

5.4 **Damage.** Each Owner shall exercise reasonable care in the manner in which he uses the Home, and Common Furnishings. Each Owner will be assessed for and shall pay for any damage or losses sustained, however caused, during such Owner's Use Period.

5.5 **Alterations.** No Owner shall make any improvements, decorations or repairs to the Home or the Common Furnishings, or contract to do so.

5.6 **Pets.** No animals or pets of any kind shall be allowed or kept in or at the Home, except guide dogs or service animals, for which a cleaning fee may be charged.

5.7 **Smoking.** Smoking of cigarettes, cigars or pipes will not be allowed in the Home. All occupants including, but not limited to, Owners, guests, tenants, invitees and exchange users will be prohibited from smoking in the Home. Smoking is allowed on the patio/deck and in the outdoor areas.

5.8 **Use Charges.** Each Owner shall be responsible for payment of any housekeeping charges in excess of the standard housekeeping services provided for in the annual budget and any other services provided during the Owner's Use Periods.

5.9 **Compliance with Laws and Covenants.** Each Owner, his family, guests or invitees, shall comply with all applicable laws and ordinances and with all covenants, conditions and restrictions set forth in the following documents:

- (a) The Master Declaration;
- (b) The Policies and Procedures of the Master Association; and
- (c) This Declaration.

5.10 **Policies and Procedures.** In addition to the Use Allocation Policies, the Supervisory Committee may adopt and amend Policies and Procedures governing the use of the Home and the conduct of its occupants. The Policies and Procedures shall be binding on all Owners after adoption; provided, however, that any such policies must be consistent with this

Declaration and the Use Allocation Policies and the laws and covenants described in Section 5.9 above.

**6. VOTING AND DECISIONS.**

**6.1 Management and Ownership Decisions; Voting Rights.** Each Owner will participate in certain decisions relating to the operation, management, use and ownership of all of the Homes by casting a vote on matters submitted to the Owners for decision. Each Owner shall have one vote for each annual one-week Use Period held by such Owner. For example, an Owner having a 1/12th interest in a Home will have four votes. Declarant shall be entitled to vote any unsold Use Periods. A Majority of Owners shall mean a majority (more than 50%) of the voting rights cast by the Owners. A vote may be cast in person or by proxy. The proxy will not be valid after the meeting or ballot for which it was solicited unless otherwise expressly stated in the proxy. It is contemplated that many decisions will be made by polling the Owners with written ballots sent by mail to the Owners by the Manager. Such ballots will give a brief explanation for the proposal and an estimated cost of the proposal, if applicable.

**6.2 Supervisory Committee.** Initially, Declarant shall appoint the Supervisory Committee. At such time as seventy-five percent (75%) of the Use Periods of Homes have been sold by Declarant, the Owners shall elect a Supervisory Committee composed of three persons. Elections shall be conducted by the Manager annually thereafter. The initial term of office of two of the committee members shall be two years and the initial term of office of one of the committee members shall be one year. Thereafter, members shall be elected for two-year terms. Vacancies shall be filled by appointment of the remaining committee members or member. Prior to the sale of seventy-five percent (75%) of the Use Periods, Declarant shall appoint the Supervisory Committee. The Supervisory Committee shall have such duties and authority as may be designated to it by this Declaration. The Supervisory Committee shall meet at least semi-annually, and decisions shall be by majority vote of the committee members voting. A majority of the committee members shall constitute a quorum for the transaction of business.

**6.3 Major Decisions.** Major decisions must be approved by at least seventy-five percent (75%) of the voting rights cast by the Owners according to the procedure provided in Section 6.1. Major decisions are defined to be:

- (a) A decision to borrow funds.
- (b) A decision to alter or improve the Homes or acquire additional personal property on behalf of the Owners, where the cost would require a special assessment under Section 8.2(d) in excess of twenty percent (20%) of the annual budget. However, a decision to provide necessary maintenance, repair or replacement of worn, defective or damaged components or items is not a major decision.

(c) A decision to terminate the Manager, except in the case of abandonment or substantial breakdown of management services as provided for in this Declaration.

(d) A decision to change the Use Allocation Policies.

6.4 **Master Association Votes.** The Manager shall be authorized to cast the votes attributable to the Homes in matters pertaining to the Master Association after first submitting such matters to the Owners for vote in the manner provided in Section 6.1 above. The votes allocable to the Homes under the Master Declaration shall be cast in approximately the same percentages as the votes of the Owners submitted to the Manager. For example, if seventy-five percent (75%) of the voting rights cast by the Owners, computed in accordance with Section 6.1 vote in favor of a matter submitted by the Master Association, then seventy-five percent (75%) of the votes in the Master Association established by the Master Declaration held by the Homes shall be cast in favor of the proposal. The Manager shall round the Master Association votes so as to approximate the vote of the Owners as closely as possible. The Supervisory Committee shall determine how the votes of the Homes shall be cast for election of directors of the Master Association.

6.5 **Other Decisions.** Unless otherwise provided in this Declaration, all other decisions relating to the operation, management, or ownership of the Homes will be made by the Supervisory Committee, unless the Supervisory Committee decides that the decision should be made by a Majority of Owners as provided in Section 6.1.

6.6 **Owner Voting.** An executor, administrator, guardian or trustee may vote with respect to any individual tenancy in common interest owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that such person shall satisfy the Manager that he or she is the executor, administrator, guardian or trustee holding such interest in such capacity. Whenever any interest is owned by two or more persons jointly, the vote of such interest may be exercised by any one of the Owners in the absence of protest by a co-Owner. In the event of such protest, no one co-Owner shall be entitled to vote without the approval of all co-Owners. In the event of disagreement among the co-Owners, the vote of such individual tenancy shall be disregarded completely in determining the proportion of votes given with respect to such matter.

6.7 **Submission of Matters for Voting.** The Supervisory Committee or Owners holding twenty percent (20%) or more of the voting rights may submit matters for decision by the Owners as provided in Section 6.1 by submitting a written notice thereof to the Manager. The Manager shall then arrange for a meeting or written ballot. The Owners shall cast their votes as provided in Section 6.1. If the Manager fails to submit a matter to vote as required by this Declaration, the Supervisory Committee or requesting Owners may do so directly.

## 7. MANAGEMENT OF THE UNITS.

7.1 **Appointment of Manager.** Management of the Homes, maintenance and repair of the Homes, acquisition, maintenance, repair and replacement of personal property, and administration of the affairs of the Owners with respect to the use of the Homes, occupancy of the Homes, and payment of expenses and costs provided or required by this Declaration shall be under the direction and control of Running Y Resort, Inc., or any other agent appointed by the Supervisory Committee with the approval of a Majority of Owners (both referred to in this Declaration as the "Manager"). Upon recording of this Declaration, the Supervisory Committee has entered into a management agreement with Running Y Resort, Inc. on behalf of the Owners.

The Supervisory Committee, on behalf of the Owners, shall execute all management agreements, including any extensions or modifications to existing management agreements, and shall be responsible for general supervision of the Manager thereunder. The Supervisory Committee, with the approval of a Majority of Owners, may immediately terminate the Manager in the case of abandonment or a substantial breakdown of management services as provided for in this Declaration. The Owners delegate responsibility, authority and decisions to the Manager as provided in Section 7.2 below, which it may exercise without further consultation with or approval of the Owners or the Supervisory Committee, unless otherwise provided in this Declaration.

7.2 **Duties of Manager.** The Manager has the authority and responsibility to perform the following functions and make the following decisions on behalf of the Owners:

(a) **Maintenance.** To contract for maintenance and repair of the Homes, or the repair or replacement of defective or damaged Common Furnishings. The Manager shall have the authority to contract for such maintenance or repairs without the necessity of obtaining the approval of the Supervisory Committee or the Owners if (i) the item is in the approved budget, (ii) emergency action is necessary, regardless whether the item is in the approved budget, or (iii) if the item is not in the approved budget, but the specific item of maintenance or repair does not exceed \$10,000 and would not exceed \$30,000 in the aggregate for the current annual period.

Such amounts shall be adjusted annually for changes in the Consumer Price Index, All Urban Consumers, All Items, for the Portland, Oregon, Metropolitan Area, compared to the index figure in effect on the date this Declaration is recorded. If such index is no longer published, the Manager shall select a substitute index reflecting the changes in cost of living. If the cost of a non-emergency maintenance or repair is not reflected in the budget and exceeds the permitted amount, the Manager must first obtain the approval of the Supervisory Committee or a Majority of Owners.

(b) **Voting.** To prepare and mail out written ballots or proxies to poll the Owners or set the time and location and provide notice of meetings whenever required by this Declaration.

(c) **Insurance.** To obtain or renew a policy of property insurance insuring the Common Furnishings against loss or damage by fire and other hazards covered by a standard extended coverage endorsement written for their full replacement value, and, if available at reasonable cost, coverage for loss of use. The Manager will also obtain or renew a policy of public liability and property damage insurance with a single limit of not less than \$1,000,000. The policies will name Manager and the Owners as insureds. The Supervisory Committee may, at any time, change the type of insurance coverage to be obtained by the Manager.

(d) **Assessments.** To collect and deposit the assessments due from each Owner into a checking account established for the Owners; to mail written notice to any Owner who is more than fifteen (15) days delinquent in payment of any assessments; to mail written notice to the Owners for additional assessments whenever it appears that the funds on hand will be insufficient to cover future expenses.

(e) **Payment of Expenses.** To pay when due the monthly expenses of the Owners, the maintenance and repair bills duly authorized, and all other expenses or payment duly authorized by this Declaration.

(f) **Records.** To maintain complete and accurate records of all receipts and expenditures for the Owners, and maintain a roster listing the name and address of each Owner, which roster shall be distributed to any Owner after payment of a reasonable fee for reproduction costs upon written demand and reasonable notice, by an Owner or his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interests as an Owner. The Manager may restrict the use of information from the roster by requiring Owners to sign a written agreement not to use or allow use of such information for commercial or other purposes not reasonably related to the affairs of the Program.

(g) **Master Association Decisions.** To submit to the Owners for their determination any decisions that may arise through the Master Association.

(h) **Use Allocation Policies.** To administer the Use Allocation Policies.

(i) **Enforcement of Policies and Procedures.** To enforce the restrictions contained in this Declaration and the Policies and Procedures.

(j) **Cleaning.** To hire or provide a cleaning service that will clean each Home after each occupancy.

(k) **Enforce Declaration.** To otherwise enforce the terms and conditions of this Declaration and the Master Declaration by commencing arbitration, initiating legal action, or by pursuing any other course of action reasonable under the circumstances.

(l) **Easements.** To execute, acknowledge, deliver and record on behalf of the Owners, any easement, right of way, license or other similar interest affecting the Homes approved by the Owners.

(m) **Reports.** To provide a regular accounting at least quarterly to the Supervisory Committee as to all matters affecting the Homes.

(n) **Inspection of Homes.** To inspect and inventory the contents of each Home between stays.

(o) **Appeal of Property Tax Value.** If the taxing authorities separately assess and bill each Owner for that Owner's undivided interest in a Home, then each Owner shall be individually responsible for any appeal of the property tax value of such interest. If one property tax assessment and bill is sent by the taxing authorities for all interests in a Home, then upon request of the Supervisory Committee, the Manager will give notice and appeal of the property tax value of the Homes.

(p) **Other Responsibilities.** To carry out such other responsibilities as are designated in ORS 94.846(3).

7.3 **Cooperation of Owners.** Each Owner will promptly notify the Manager of needed maintenance, repairs or replacement items. No Owner shall have the authority to contract for repairs on behalf of the Owners. Each Owner will cooperate with the Manager in collecting assessments and charges from the Owners.

7.4 **Right of Entry.** The Manager shall have a right of entry to any Home during maintenance weeks and at any other reasonable times, upon giving reasonable notice if such Home is occupied (or without notice if unoccupied), for the purpose of cleaning, maid service, inventory, maintenance and repair; and at any reasonable time without notice for the purpose of making emergency repairs, abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, protecting property rights and welfare of Owners, or for any other purpose reasonably related to the performance by the Manager of its responsibilities under the terms of this Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment of such Home by the Owner or occupant at the time and shall be preceded by reasonable notice by telephone or written note whenever the circumstances permit.

7.5 **Declarant or Affiliate of Declarant as Manager.** In the event the Manager is Declarant or an affiliate of the Declarant, contracts for goods and services for the Homes entered into by the Manager without approval by the elected Supervisory Committee or of a Majority of Owners shall be subject to termination by a vote of Majority of Owners.

7.6 **Annual Approval.** At least annually, but not later than the last day of November of each year, the Manager shall present to the Supervisory Committee proposals for the following:

- (a) A budget for the next calendar year, including recommended replacement reserves.
- (b) Any other matters as required by this Declaration.
- (c) Any other matters as determined to be appropriate by the Manager.

## 8. **EXPENSES; BUDGET; ASSESSMENTS.**

8.1 **Annual Budget; Expenses.** At least annually, and not later than the last day of November of each year, the Manager will submit a preliminary budget of anticipated expenses for the next calendar year. The final budget will be adopted by the Supervisory Committee, and will include provisions for payment of the following expenses:

- (a) Utility charges for telephone, electricity, cable television and heat.
- (b) The cost of insurance required by this Declaration.
- (c) Real Property taxes on the Homes if not assessed directly to the Owners.
- (d) The costs of refurbishing and cleaning of the Home.
- (e) Assessments of the Master Association, including Project Assessments for Eagles Landing.
- (f) Management fees and the cost of administration of this Declaration.
- (g) Landscaping, maintenance, repairs, supplies, legal and accounting services, and miscellaneous expenses.
- (h) Replacement reserves for Common Furnishings, which funds shall be placed in a separate reserve account and not commingled with other funds.
- (i) A contingency for bad debt expense.
- (j) Any other expenses or reserves agreed upon by the Supervisory Committee or a Majority of Owners as provided in this Declaration.

8.2 **Assessments.** Each Owner agrees to pay all assessments, as and when due, as provided in this Declaration. The Owner's obligation to pay assessments is not waived because of voluntary or involuntary non-use or non-occupancy of the Home.

(a) **Assessment for Budget.** Each Owner will be assessed each year in advance for such Owner's pro rata share of the budgeted expenses for the next calendar year. Each Owner's pro rata share is the total amount of the expenses divided by the total number of one-week Use Periods in the Program and multiplied by the number of one week Use Periods held by the Owner. Unless the Manager determines otherwise, the assessments will be assessed annually and will be due and payable in installments as determined by the Supervisory Committee.

(b) **Assessments for Damage or Violation of Agreement.** Each Owner will be assessed individually for the payment of any and all damage to the Home or Common Furnishings during the Owner's Use Periods, and any and all other charges, penalties, or fees imposed on the Owner by this Declaration for delinquencies or breach. These assessments will be due and payable within fifteen (15) days after the Manager notifies the Owner of the amount due.

(c) **Use Charges.** The Use Charges described in Section 5.8 above shall be due and payable within fifteen (15) days after billing by the Manager.

(d) **Special Assessments.** If any expenditure not included in the budget is approved by the Supervisory Committee or Owners (to the extent required by Section 6.3(b)), each Owner will be assessed such Owner's pro rata share of the cost of the item. Such special assessments will be due and payable as determined by the Supervisory Committee or, if no such determination has been made, at the same time as the next assessment billing.

(e) **Additional Assessments.** If the above assessments become inadequate for any reason to cover the actual expenses validly incurred in owning, operating or maintaining the Homes, each Owner will be assessed such additional amounts as may be needed to cover the Owner's pro rata share of the actual expenses incurred. In the event any Owner fails to pay any assessments or other charges required under this Declaration and the Manager needs such funds for purposes of carrying out its functions under this Declaration, then the Manager may assess the other Owners for the deficiency, based upon the number of one week Use Periods held by such Owners. If the delinquent amounts are subsequently collected from the defaulting Owner, such funds shall first be used to reimburse the other Owners for the funds advanced to cover the default. Nothing in this Section shall be construed as limiting the right of the Manager to bring legal action against a defaulting Owner for failure to pay amounts due under this Declaration. Any additional assessments under this Section will be due and payable within fifteen (15) days after the Manager notifies the Owner of such additional assessment.



(f) **Excess Funds.** If in any calendar year, the actual operating expenses are less than the collected assessments (other than for reserves), the Supervisory Committee shall elect whether to return the excess to the Owners or to apply the same against amounts that would otherwise be assessed to the Owners for the following year.

9. **FAILURE TO PAY ASSESSMENTS; ENFORCEMENT.**

9.1 **Interest.** Each Owner agrees to pay interest at a rate set from time to time by the Supervisory Committee or the maximum legal rate, whichever is less, on any assessment or installment thereof not paid within fifteen (15) days of the date it is due.

9.2 **Late Charges.** Each Owner acknowledges that such Owner's failure to pay assessments when due will unfairly burden and cause damage to the other Owners in an amount that is difficult to ascertain. Therefore, each Owner agrees to pay a late charge set from time to time by the Supervisory Committee for any assessment or installment thereof that is not paid within thirty (30) days of the date it is due, in addition to interest.

9.3 **Debt Obligation; Money Judgment.** Each Owner is personally liable for the payment of assessments, interest, and charges as provided in this Declaration. If any Owner fails to pay such assessment, interest, and/or charges, the Manager may bring an action for a money judgment against the defaulting Owner, or pursue any other remedies available under this Declaration.

9.4 **Loss of Occupancy Rights.** Any Owner that is more than ninety (90) days delinquent in the payment of any assessment or installment thereof or is otherwise in breach of such Owner's obligations under this Declaration, shall be deemed a "defaulting Owner". Any defaulting Owner shall have no right to occupy the Home, rent it to others or to utilize any exchange rights associated with the Home or with the Owner's Use Periods. The Manager may rent the Home during such Use Periods and apply the net rental proceeds, after deducting the costs associated with rental of the unit, to the amounts owed by the defaulting Owner, with any surplus in such rentals to be paid to the defaulting Owner. Payment of the delinquent amount or curing of the default within thirty (30) days prior to commencement of a Use Period will not result in restoration of the defaulting Owner's right to use such Use Period.

9.5 **Lien.** The Manager, as agent for the other Owners, shall have a lien against an Owner's undivided interest in the Home for any assessment, interest or other charge imposed under this Declaration if not paid when due. The provisions of ORS 94.856 shall be applicable to the attachment, notice, recordation, duration and foreclosure of the lien. The Manager, on behalf of the other Owners, may bid on the undivided interest at such foreclosure sale, and may acquire and hold, mortgage and convey such interest.

9.6 **Violation of Restrictions.** In the event any Owner violates any of the use restrictions contained in this Declaration or the Master Declaration or in the rules or Policies and

Procedures adopted hereunder, and the Owner is unable, unwilling or refuses to comply with the Manager's or other Owners' specific directives for remedy or abatement, then within sixty (60) days of written notice thereof to the Owner, the Manager or other Owners may remedy the violation or bring suit or action against the offending Owner on behalf of the other Owners. An Owner may contest any such alleged violation by appealing the same to the Supervisory Committee. Written notice of such appeal must be given to the Supervisory Committee within ten (10) days after receipt of the notice of violation.

**9.7 Notice to First Mortgagees.** The Manager shall notify any first mortgagee of any individual Owner's undivided interest in the Home of any default in performance of this Declaration by an Owner which is not cured within sixty (60) days, if the mortgagee has requested such notice.

**9.8 Costs and Attorneys' Fees.** In the event the Manager shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by the Supervisory Committee. In the event any suit or action is brought to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner defendant shall pay all costs and expenses incurred in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as a court may determine to be reasonable as attorneys' fees at trial and on any appeal or petition for review thereof.

**9.9 Nonexclusiveness and Accumulation of Remedies.** An election by the Manager to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted by this Declaration or at law or in equity. The remedies provided in this Declaration are nonexclusive, but shall be in addition to all of the remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Manager or other Owners. In addition, any aggrieved Owner may bring an action against another Owner to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

## **10. DAMAGE OR DESTRUCTION.**

**10.1 Restoration of Damage.** In the event of any damage or destruction to a Home or Common Furnishings, unless otherwise provided in this Declaration, the Manager shall cause such damage to be repaired and shall so apply any available insurance proceeds. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient to repair the damage, the Managing Agent shall repair the damage in accordance with the procedure set forth in Section 7.2(a), except as otherwise provided in Section 10.2 below.

10.2 **Damage Caused by Owner.** In the event of any damage or destruction to a Home or Common Furnishings during an Owner's Use Period, the cost of repair shall be paid by such Owner to the extent not covered by insurance proceeds. In addition, if the damage prevents any of the other Owners from using the Home during any of their scheduled Use Periods and such loss of use is not covered by loss of use insurance, the Owner responsible for the damage shall relinquish subsequent Use Periods to the aggrieved Owners, so that the aggrieved Owners, in the sequence in which their missed Use Periods arose, shall select subsequent Use Periods of their choice, and one Use Period at the time in rotation, from the subsequent scheduled Use Periods of the Owner responsible for the damage, during the remainder of the current calendar year and the subsequent calendar year.

## 11. **LIENS AND ENCUMBRANCES.**

11.1 **Financing of Individual Owner's Interest.** An Owner may grant a Mortgage in such Owner's undivided interest in his Home and Common Furnishings. Such Mortgage shall be subordinate to all of the provisions of this Declaration, and, in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by power of sale, judicial foreclosure, deed in lieu of foreclosure or otherwise.

11.2 **Restrictions on Liens and Encumbrances.** Except as otherwise provided in this Declaration, no Owner shall:

- (a) Subject the Owner's Home or Common Furnishings to any liens or encumbrances for any purpose, except as provided in this Declaration.
- (b) Attempt to mortgage or otherwise encumber in any manner whatsoever the Home or the Common Furnishings, or any part thereof, except as to individual interests therein.
- (c) Permit his interest in the Home or Common Furnishings to be subject to any lien, claim, or charge, the enforcement of which may result in any interference with the use or enjoyment of the Home or Common Furnishings by any other Owner.
- (d) Fail to pay when due all real property taxes and assessments against the Owner's undivided interest in the Home.
- (e) Permit his interest in any funds from time to time in the possession of the Manager to be subjected to any attachment, lien, claim, charge or other legal process.

## 12. RESTRICTION ON TRANSFER.

12.1 Minimum Interest. Each Owner agrees that the Owner will not transfer or dispose of such Owner's interest in the Home, or any part thereof, if such transfer or disposition creates an undivided ownership interest in the Home less than the minimum interest established in the Annexation Declaration submitting such Home to the Program or a multiple thereof. Any attempted transfer in violation of this provision shall be null and void and of no legal effect.

12.2 Partition. During the term of this Declaration, no Owner may seek or obtain through any legal procedures a judicial partition of a Home or sale of a Home in lieu of partition. However, this provision shall not prevent two or more persons owning a single ownership interest as tenants-in-common, joint tenants, or tenants by the entirety from obtaining a judicial partition or sale of their ownership interest in lieu of partition as between themselves.

12.3 Notice to Manager. The Manager shall be promptly notified in writing of any transfer of any Owner's interest in the Home, including the name, address and telephone number of the transferee. The Manager may charge a reasonable fee for processing the transfers. A transferring Owner shall be relieved of such Owner's obligations under this Declaration only under the circumstances described in Section 15.1.

## 13. WITHDRAWAL OF UNIT.

Any Home may be withdrawn from the Program and this Declaration upon vote of seventy-five percent (75%) of the voting rights in such Home and recording of a Declaration executed by the holders of such voting rights.

## 14. AMENDMENT AND TERMINATION.

14.1 How Approved. This Declaration may be amended or terminated only by a recorded written instrument executed by the Manager and certifying that the amendment or termination has been approved by Owners holding, in the aggregate, at least a seventy-five percent (75%) of the voting rights; provided, however, that no such amendment may affect or alter the right of any Owner exclusively to occupy such Owner's Home during the Owner's scheduled Use Periods, or reduce the number of Use Periods to which an Owner is entitled, unless such Owner expressly so consents. Subject to the foregoing provision, any amendment shall be binding upon every Owner and their ownership interest whether the burdens thereon are increased or decreased.

14.2 Regulatory Amendments. Notwithstanding the provisions of Section 14.1 above, Declarant shall have the right to amend this Declaration in order to comply with the requirements of any applicable statute, ordinance or regulation of any department, bureau, board, commission or agency of the United States or the State of Oregon or any other state in which the Program is registered, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon.

14.3 **Effect of Termination.** In the event this Declaration is terminated as to any Home for any reason, each of such Homes, together with the Common Furnishings located in each Home, shall be owned by the Owners having an interest therein as tenants in common in accordance with their respective ownership interests in such Home. Thereafter, each such Home and the Common Furnishings therein will be listed by Manager with a broker and at a sales price approved by the Owners holding a majority of the ownership interest in the Home. If such Owners cannot agree upon a broker, Manager shall select the broker. If the Owners cannot agree on a sales price, then the Manager shall retain an appraisal firm to establish the current market value for the Home, which shall then become the selling price. Upon sale of the Home, all Owners shall execute such documentation as is reasonably necessary by the Manager to complete the sale, and the net proceeds of the sale shall be distributed to the Owners having an interest in such Home in accordance with their ownership interest. If the Home has not been sold within one year after termination of this Declaration, any Owner may seek judicial partition of the Home.

15. **MISCELLANEOUS PROVISIONS.**

15.1 **Successors in Interest.** The provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in the Homes or any part thereof, and shall inure to the benefit of each Owner and such Owner's heirs, successors and assigns. Each Owner shall be fully discharged and relieved of liability on the covenants hereunder insofar as the same relate to such Owner's interest only upon ceasing to own any interest therein, upon such Owner's successor-in-interest expressly assuming and agreeing in writing to be bound by the terms of this Declaration, and upon paying all sums and performing all obligations hereunder in respect of such Owner's interest to the time such Owner's ownership interest terminated. The Manager shall not, however, be discharged and relieved of his obligations as Manager until such time as he shall resign or be replaced as Manager and has performed his obligations as Manager to the time of resignation or replacement.

15.2 **Intent of the Owners.** It is the express intent of the Owners that the Homes and Common Furnishings be held by them as tenants in common, and that nothing herein shall be construed so as to create a partnership.

15.3 **Severability and Rule Against Perpetuities.** If any provision of this Declaration shall be held invalid, it shall not affect the validity of the remainder of this Declaration. If any provisions of this Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provision shall be deemed to remain in effect only for the maximum permissible period permitted by law.

15.4 **Exclusive Rights to Use Name of Development.** No person shall use the name "Eagles Landing" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Eagles Landing" in printed or promotional material where such term is used solely to identify their ownership interest

within the Program and the Supervisory Committee shall be entitled to use the words "Eagles Landing" in its name.

15.5 **No Waiver.** Any failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce such provision at any time thereafter.

15.6 **Notices.** Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or when deposited in the United States mail addressed to the Owner at the last address such Owner designates to the Manager for delivery of notices or, in the event of no such designation, at such Owner's last known address or, if there be none, to the address of the Home, with postage prepaid.

15.7 **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Declaration, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees in arbitration and at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

15.8 **Interpretation.** The headings at the beginning of each numbered section and paragraph of this Declaration are for convenience only, and the words contained therein shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used in this Declaration, the singular shall include the plural, and the masculine, feminine or neuter gender shall include the other genders.

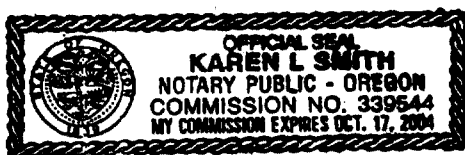
15.9 **Governing Law.** This Declaration shall be governed by the laws of the State of Oregon.

RUNNING Y RESORT, INC., an Oregon corporation

By Jerol E. Andres  
Its President

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

The foregoing was acknowledged before me this 9<sup>th</sup> day of February, 2001, by Jerol E. Andres, President of RUNNING Y RESORT, INC., an Oregon corporation, and acknowledged the foregoing instrument to be its voluntary act and deed.



Karen L. Smith  
Notary Public for Oct 17, 2004  
My Commission Expires:

**EXHIBIT A**  
**DECLARATION OF CO-OWNERSHIP PROGRAM**  
**CO-OWNERSHIP USE POLICIES**

**Definitions**

The definition of certain terms used in these policies is important to the understanding of the use of the Eagles Landing Homes under the terms of the Declaration. You should familiarize yourself with these terms and their definitions.

**OCCUPANCY SCHEDULE**, means an annual calendar which shows the start and end of all Use Periods, the Week Number assigned to all use Periods for ease of reference, and the Owner letter designation identifying the Regular Use Periods during which that Owner has exclusive use and occupancy of the Home.

**MANAGER**, means the entity appointed by the Owners pursuant to the Declaration to provide all services and to manage the Owner tenancy affairs, including reservation procedures. The current managing agent is Running Y Resort, Inc., and they can be contacted in writing or calling Running Y Resort, Inc., 5115 Running Y Road, Klamath Falls, Oregon 97601, telephone number (541) 850-5560.

**OWNER**, means the current owners of each tenancy in common interest in the Home.

**REGULAR USE**, means those use periods that are fixed on the Occupancy Schedule.

**USE PERIODS**, means those time periods during which an Owner has exclusive use of the Home, all of its furnishings and the related facilities at Eagles Landing. Use Periods are one week in duration, from Friday to Friday. The Home will be cleaned after each occupancy, and the Manager will set check-in and checkout times as needed to allow for these cleaning services.

**BONUS WEEK**, means the one-week period, if any, assigned to Owners in a particular calendar year on a rotating basis in addition to the Regular Use Periods assigned every calendar year to Owners. Such Bonus Weeks, if any, are designated in the Occupancy Schedule by the letters "BW - " followed by the Owners' letter designation.

**Use Allocation Policies**

1. Each Owner shall be assigned a letter designation at the time of purchase which will identify the Owner's Regular Use Periods as shown on the Occupancy Schedule. This letter designation is contained in the Occupancy Interest Number in the Annexation Declaration.

2. Each year, the Owners' assigned weeks are rotated. During each calendar year, two weeks are designated for maintenance purposes as designated in the Occupancy Schedule by the letter "MW". In calendar years during which there is a week 52A, three weeks are assigned for maintenance purposes as designated in the Occupancy Schedule by the letters "MW".

3. Owners assigned a Bonus Week have all the same use rights and responsibilities for the time period as for regular Use Periods. These rotating, assigned Bonus Weeks are not included in the count of Use Periods for purposes of calculating voting rights described in Section 6.1 of the Declaration or assessments as described in Section 8.2(a) of the Declaration.

4. Owners may exchange their Use Periods with other Owners. See "Exchanges" under the policies for making reservations for more information.