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AFTER RECORDING, RETURN TO:

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M05-66609

Klamath County, Oregon

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**DECLARATION OF ANNEXATION COMMERCIAL LOTS TO
RUNNING Y RANCH RESORT
(Lots 93, 94 and 95, Running Y Resort, Phase 1)**

**THIS DECLARATION OF ANNEXATION COMMERCIAL LOTS TO
RUNNING Y RANCH RESORT** is made as of this 10th day of October, 2005, by
RUNNING Y RESORT, INC., an Oregon corporation ("**Declarant**").

Recitals

A. Declarant is the declarant under the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort recorded August 2, 1996 in the Records of Klamath County, Oregon, in Volume M96 at page 23548 (the "**Declaration**"). The definitions contained in the Declaration are hereby adopted by reference.

B. Pursuant to Section 2.2 of the Declaration, Declarant wishes to annex certain Commercial Lots to Running Y Ranch Resort as Additional Property and subject the same to the Declaration.

NOW, THEREFORE, Declarant hereby declares as follows:

1. **PROPERTY ANNEXED.** Declarant hereby declares that all of the property described below shall be annexed to Running Y Ranch Resort and the Declaration as Additional Property and that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the Declaration and this Declaration of Annexation:

Lots 93, 94 and 95 of Running Y Resort, Phase 1, Klamath County, Oregon.

2. **LAND CLASSIFICATIONS.** Each of the Lots within the Additional Property annexed shall be a Commercial Lot for purposes of the Declaration and this Declaration of Annexation.

3. **APPLICATION OF DECLARATION.** Unless otherwise provided in the applicable Declaration of Annexation, all Commercial Lots, including the Additional Property, shall be subject to the provisions of the Declaration, except as follows:

3.1 **Use Restriction and Architectural Review Committee.** Commercial Lots shall not be subject to Article 7 of the Declaration, containing restrictions on use of Residential Lots, or Article 8, relating to the Architectural Review Committee.

3.2 **Amendments.** No amendment to the Declaration under Section 14.1 of the Declaration shall be applicable to Commercial Lots unless approved by seventy-five percent (75%) of the Voting Units of Commercial Lots.

4. **RESTRICTION ON USE OF COMMERCIAL LOTS.** Unless otherwise provided in the applicable Declaration of Annexation, all Commercial Lots, including the Additional Property, shall be subject to the following restrictions on use:

4.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Commercial Lot except structures approved by the Commercial Architectural Review Committee pursuant to Section 5 below.

4.2 **Commercial Use.** Commercial Lots shall be used for any retail, commercial or professional purposes permitted by applicable zoning regulations and this Declaration of Annexation; provided, however, that Commercial Lots may not be used for any of the following: adult book store, betting parlor; bingo parlor; bowling alley, carnival; check cashing services; facility primarily devoted to training or education; flea market; tattoo or body piercing parlor; fortune telling, palm reading or other business relating to the occult; gambling establishment; illegal, offensive, noisy or dangerous trade; any church or religious facility; novelty shop or store; nude or partially nude entertainment; pet grooming or boarding; pornographic shop or store; sale of firearms and/or ammunition; thrift shop; sale of drug paraphernalia; self service laundry; skating rink; store or shop engaged primarily in the sale of used products; veterinarian's services. Unless expressly permitted in the applicable Declaration of Annexation, no Commercial Lot may be used as a real estate sales or property management office.

4.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Commercial Lot. No unlawful use shall be made of a Commercial Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Noise levels may not exceed standards established by the Commercial Architectural Review Committee.

4.4 **Animals.** No animals of any kind shall be raised, bred or kept in or upon any Commercial Lot.

4.5 **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Commercial Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Commercial Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Commercial Lot neatly trimmed, property

cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

4.6 **Prohibited Vehicles.** No vehicle shall be parked on a Commercial Lot over night. No mobile home, recreational vehicle (including campers) exceeding 1,500 pounds in gross weight, trailer of any kind, truck with a rated load capacity greater than 3/4 ton, or boat, shall be kept, placed, maintained or parked for more than six hours or such other period as may be permitted pursuant to the Commercial Architectural Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Commercial Lot or Common Area.

4.7 **Parking and Street Obstructions.** Parking of vehicles of any type whatsoever on any portion of the streets within the Resort shall be permitted only as set forth in the Association Policies and Procedures. No Owner shall do anything which will in any manner prevent the streets within the Resort from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

4.8 **Signs.**

(a) **General Prohibition; Exceptions.** No sign or billboard of any kind (including but not limited to, political signs) shall be displayed to the public view on any Commercial Lot, except for:

(i) Commercial signs meeting guidelines established by the Commercial Architectural Review Committee;

(ii) directional signs established by Declarant or the Association;

(iii) such signs as may be required for legal proceedings;

(iv) during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall have been approved by the Commercial Architectural Review Committee; and

(v) signs, billboards and other advertising devices or structures used by Declarant in connection with the development, subdivision, advertising and sale of any interest in a Commercial Lot.

The size and design of such signs shall be in accordance with the Design Guidelines established by the Commercial Architectural Review Committee.

(b) **Commercial Architectural Review Committee Regulation.** Signs advertising any interest in a Commercial Lot "for sale" or "for rent" shall be prohibited unless, in the sole discretion of the Commercial Architectural Review Committee, such prohibition as applied to a specific Commercial Lot would work an unusual hardship, in which case a waiver

may be granted. If such a waiver is approved, such signs shall be customary and reasonable dimensions and of a professional type and dignified appearance, and placed only in such location(s) as specified by the Commercial Architectural Review Committee.

4.9 **Outside Storage.** Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Commercial Lot, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Commercial Architectural Review Committee. Colored tops and covers shall be of a color approved by the Commercial Architectural Review Committee. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Commercial Lot within the Resort only during the days on which rubbish is collected and after 9 p.m. of the preceding evening.

4.10 **Completion of Construction.** The construction of any building on any Commercial Lot, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the building shall not be occupied until so completed. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Commercial Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Commercial Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

4.11 **Landscape Completion.** Landscaping plans for each Commercial Lot shall be submitted to the Commercial Architectural Review Committee and shall be in compliance with sod and planting limitations and tree preservation guidelines as may be established by such Committee from time to time. Such landscaping must be completed within six months from the date of issuance of the certificate of occupancy for the building constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Commercial Architectural Review Committee.

4.12 **Antennas and Satellite Dishes.** Exterior antennas and satellite receiver and transmission dishes shall not be permitted to be placed upon any Commercial Lot except as approved by the Commercial Architectural Review Committee or as required by FCC Regulations.

4.13 **Limitations on Open Fires.** No incinerators or other open fires (except outdoor cooking facilities such as propane grills or portable barbecue units) shall be kept or maintained on any Commercial Lot.

4.14 **Pest Control.** No Owner shall permit any thing or condition to exist upon any Commercial Lot which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

4.15 **Exterior Lighting.** All exterior lighting of a Commercial Lot shall be subject to approval of the Commercial Architectural Review Committee. Seasonal holiday lighting and decorations are permissible if installed not more than thirty (30) days before and removed within thirty (30) days after the celebrated holiday.

4.16 **Application to Additional Property.** The provisions of Sections 4.1 through 4.15 shall not apply to Commercial Lots if the declaration annexing the Commercial Lots so specifies. The declaration annexing such Additional Property may establish additional or different restrictions governing the use of such Commercial Lots.

5. **COMMERCIAL ARCHITECTURAL REVIEW COMMITTEE**

5.1 **Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Commercial Lot, except Commercial Lots owned by Declarant, until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Commercial Architectural Review Committee. It is the intent and purpose of this Declaration of Annexation to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of Commercial construction may be set forth in Design Guidelines adopted from time to time by the Commercial Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases which the Commercial Architectural Review Committee consent is required by this Declaration of Annexation, the provisions of this Section 5 shall apply.

5.2 **Committee Decision.** The Commercial Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration of Annexation has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration of Annexation shall be deemed to have been fully complied with.

5.3 **Committee Discretion.** The Commercial Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Commercial Lot or incompatible with the design standards that the Committee intends for Running Y Ranch Resort. Consideration such as siting, shape, size, color, design, height, solar access, impairment of the view from other Commercial Lots within Running Y Ranch Resort or other effect on the enjoyment of other Commercial Lots or the Common Area, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

5.4 **Variance.** The Commercial Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration of Annexation; or (c) estop the Commercial Architectural Review Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

5.5 **Membership: Appointment and Removal.** The Commercial Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. Declarant may at any time delegate to the Commercial Directors of the Association the right to appoint or remove members of the Commercial Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Commercial Architectural Review Committee, the Commercial Directors shall assume responsibility for appointment and removal of members of the Commercial Architectural Review Committee, or if they fail to do so, the Commercial Directors shall serve as the Commercial Architectural Review Committee.

5.6 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Commercial Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

5.7 **Liability.** Neither the Commercial Architectural Review Committee nor any member of the Committee shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

5.8 **Nonwaiver.** Consent by the Commercial Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

5.9 **Effective Period of Consent.** The Commercial Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

5.10 **Estoppel Certificate.** Within fifteen (15) business days after written request is delivered to the Commercial Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the

Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Commercial Lot owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Commercial Lot by the Owner comply with this Declaration of Annexation, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being conclusive as between Declarant, the Commercial Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

6. **VOTING RIGHTS.** Except as otherwise provided in any applicable Declaration of Annexation, each Commercial Lot, including the Additional Property, shall be entitled to three Voting Units for purposes of Section 9.3(a) of the Declaration.

7. **ASSESSMENTS.** Except as otherwise provided in any applicable Declaration of Annexation, each Commercial Lot, including the Additional Property, shall be allocated three Assessment Units for purpose of Section 11.3(b) of the Declaration. Assessments, including Assessment for reserves, shall commence for each Commercial Lot when the Lot is first occupied for a commercial use. The owners, tenants, occupants and customers of Commercial Lots shall not have any rights to use the Sports and Fitness Center and shall not be responsible for any of the costs of operating or maintaining the Sports and Fitness Center.

8. **AMENDMENT.**

8.1 This Declaration of Annexation may be amended by either of the following methods: (a) by amendment of this Declaration of Annexation approved by not less than seventy-five percent (75%) of the Voting Units of Commercial Lots within Running Y Ranch Resort, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in the Declaration, or (b) prior to the date that all of the Commercial Lots in the Additional Property have been conveyed to Owners other than a successor Declarant, by a vote or written consent of the Owners of seventy-five percent (75%) of the Commercial Lots in the Additional Property, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in the Declaration.

8.2 In no event shall an amendment under this Section 8 create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Commercial Lot or any uses to which any Commercial Lot is restricted under this Declaration of Annexation or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Commercial Lot unless the Owners of the affected Commercial Lots unanimously consent to the amendment.

8.3 Any such amendment shall become effective only upon recordation in the Deed of Records of Klamath County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment so approved and certifying that such amendment has been approved in the manner required by the Declaration or this Declaration of Annexation,

as applicable, and ORS 94.590, and acknowledged in the manner provided for acknowledgement of deeds.

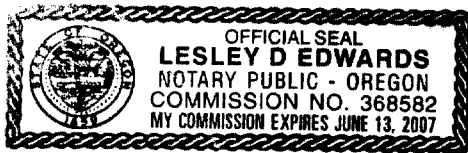
IN WITNESS WHEREOF, Declarant has executed this Declaration of Annexation as of the day first written above.

RUNNING Y RESORT, INC.
an Oregon corporation

By: *Jeff Andes*
Its: *President*

STATE OF OREGON)
)ss.
County of *Deschutes*)

The foregoing instrument was acknowledged before me this 10th day of October, 2005, by *Jenol Andres*, *President* of Running Y Resort, Inc., an Oregon corporation, on its behalf.



Lesley D. Edwards
Notary Public for Oregon
My commission expires: *6/13/2007*