

2007-014566

Klamath County, Oregon

AFTER RECORDING, RETURN TO:

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



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08/17/2007 01:42:45 PM

Fee: \$61.00

**DECLARATION ANNEXING PHASE 1
OF ASPEN RUN
TO
RUNNING Y RANCH RESORT**

THIS DECLARATION is made this 25th day of July, 2007, by
RUNNING Y RESORT, INC., an Oregon corporation, ("Declarant").

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 1 of a Project to be known as "**Aspen Run**".

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.

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

1. **DEFINITION.** 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 attached **Exhibit A**.

1.2 **Aspen Run.** Aspen Run means the Additional Property, together with any property annexed thereto by supplemental declarations.

1.3 **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.

1.4 **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.** Aspen Run is hereby declared to be a Project for purposes of the Master Declaration and the Additional Property shall be a Project Parcel 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 6 through 19 within the Additional Property shall be Residential Lots as defined in Section 1.34 of the Master Declaration.

4.2 **Common Areas.** Autumn Gold Drive from the intersection with Cooper's Hawk Road to the intersection with Autumn Gold Court, Common Area D and Common Area G shall be Common Areas as defined in Section 1.8 of the Master Declaration. Within Aspen Run, the Owner of each Lot shall have the exclusive use of the parking space or spaces assigned to such Lot by the Association and the non exclusive use of any driveway and walkway, if any, connecting to such Lot.

4.3 **Project Common Areas.** Common Area F and Common Area H shall be Project Common Areas as defined in Section 1.28 of the Master Declaration. Within the Project Common Areas as shown on the plat, the Owner of each adjacent Lot shall have the use of a driveway and walkway, if any, crossing the Project Common Area and connecting to each Lot.

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 **Overnight Lodging Units.** For purposes of complying with criteria established by the applicable Governmental Authority for destination resorts in the state of Oregon, each Living Unit in the Additional Property is designated as an "Overnight Lodging Unit". Each Overnight Lodging Unit shall be made available for overnight rental use by the general public through a central reservation and check-in service operated by the Declarant or its affiliate or by a real estate property manager selected by Owner for a minimum of thirty-eight (38) weeks per calendar year or such lesser number of weeks as may be approved by the applicable Governmental Authority. Each Owner shall give written notice to Declarant of the identity, address and phone number of the real estate property manager selected by such Owner, including any change of property manager. This Section 6.1 cannot be amended or removed without the written consent of Klamath County, Oregon, a Political Subdivision of the State of Oregon.

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 Aspen Run. 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 Aspen Run, 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 **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 Aspen Run as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of Aspen Run. 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 Aspen Run and shall be binding upon all Owners and occupants of all Lots within Aspen Run 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 **Maintenance.**

(a) **Exterior Maintenance.** The Association shall provide exterior maintenance upon each Living Unit as follows: paint, caulk, repair, replace and care for roofs, roof overhangs, eaves, gutters, downspouts, flashings, exterior building surfaces, patios, decks, exterior lights (except light bulbs) and other exterior improvements. Such exterior maintenance does not include repair or replacement of exterior light bulbs, doors, windows and other glass surfaces, except to the extent of the proceeds of the Association's insurance. The Association shall also maintain party walls as provided in Section 7.2. The Association shall maintain walkways, driveways, parking areas and all landscaping within the Lots, including landscape irrigation systems and water and power for such systems, and will be responsible for snow removal on such walkways, driveways and parking areas, and installation and removal of foundation vent covers and outdoor faucet covers. The cost of such maintenance by the Association shall be assessed as provided in Section 6.14. In the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

(b) **Maintenance and Lighting of Project Common Areas.** In addition to the exterior maintenance as set forth in Section 6.8(a), the Association shall maintain any exterior lighting for and perform all maintenance upon the Project Common Areas and the improvements located thereon, including, without limitation, sidewalks, landscaping and irrigation systems.

(c) **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, located in the Project Common Areas and Lots. Each Owner shall maintain at such Owner's expense utility lines to the extent located within the Living Unit.

(d) **Owner's Maintenance Responsibilities.** Each Owner shall be responsible for maintaining such Owner's Living Unit and Lot, to the extent such maintenance is not the responsibility of the Association under this Declaration, in a clean and attractive condition, in good repair and in such fashion as not to create a hazard. Such maintenance responsibility shall include, but not be limited to, the following:

(i) Repair, replace, restore and clean the interior of the Living Unit, including, but not limited to interior and exterior glass;

(ii) Maintain exterior window casements, sashes and frames, window screens, storm windows, hose bibs, exterior doors, door sills and thresholds and garage doors, but not including caulking, painting or staining of the exterior of the same;

(iii) Repair and replace exterior light bulbs and keep all mechanical and electrical systems and hardware in the Living Unit and on the exterior of the Living Unit (except exterior light fixtures) in good repair and working order, including, without limitation, maintaining, repairing and replacing as necessary electrical wiring, fixtures (except exterior light fixtures), plumbing, appliances, heating, air conditioning, sewage disposal and fire protection systems.

The Association shall have the authority to require each Owner to keep his or her respective Lot and Living Unit at a high standard of maintenance. In the event an Owner fails to maintain his or her Living Unit or Lot to the standards established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standard and charge the respective Owner for such repairs and maintenance as an Individual Assessment.

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 Aspen Run, including fixtures, equipment, and other property which would ordinarily be required to be covered by a holder of a first mortgage:

(a) Property 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 Aspen Run. 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 Aspen Run 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 foregoing 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 interests may appear.

6.10 **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 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 Lot or Living Unit, other Lots or Living Units, to other Owners and their guests or invitees, or to the Project Common Areas.

6.11 **Right of Entry.** In addition to any easements shown on the recorded plat and as set forth herein and in the Master Declaration, the Additional Property shall be subject to an easement for the benefit of utility service providers and their agents or employees to access all parts of the Owner's Lot, with the exception of any dwelling on such Lot, and the Common Areas on which utility services may be located, for the purpose of operating, maintaining or constructing such facilities, inspecting the condition of pipes and facilities, and completing repairs. The Owner will be given advance notice if possible. In the case of an emergency, as determined solely by the utility service provider, no prior notice will be required. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

6.12 **Use of Walkways.** Each Lot shall be subject to a non-exclusive easement in favor of other Lots for use of any walkways that provide access to such other Lots.

6.13 **Damage or Destruction.** If any Living Unit within Aspen Run 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 Aspen Run, 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.

6.14 **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 Aspen Run on an equal basis as Project Assessments and enforced as Individual Assessments under the Master Declaration.

6.14 **Project Association.** Declarant, the Association or the Owners within Aspen Run (by majority vote) may elect to establish a Project Association for Aspen Run. 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 Aspen Run 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 of the party wall and if such damage 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 partially 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 substantially 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 be amended by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Lots within Aspen Run, 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 Aspen Run, 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 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, 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 Aspen Run.

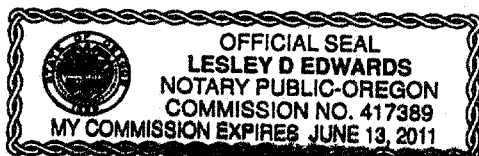
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first set forth above.

RUNNING Y RESORT, INC., an Oregon corporation

By: Jerry Andres
Its: President

STATE OF OREGON)
)Ss.
County of Deschutes)

The foregoing instrument was acknowledged before me this 25th day of July, 2007 by Jerry Andres the President of RUNNING Y RESORT, INC., an Oregon corporation.



Lesley D. Edwards
Notary Public for Oregon
My commission expires: 6/13/2011

EXHIBIT A

"Additional Property"

All of the following described property as shown on Tract 1468, Aspen Run, Phase 1 plat recorded AUGUST 17, 2007 in the office of the County Recorder, Klamath County, Oregon:

Residential Lots: Lots 6 - 19

Common Areas: Autumn Gold Drive from the intersection with Cooper's Hawk Road to the intersection with Autumn Gold Court, Common Area "D" and Common Area "G"

Project Common Areas: Common Area "F" and Common Area "H"

Excluded Areas: Lots 66 and 67