

2010-007512

Klamath County, Oregon



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06/21/2010 01:01:12 PM

Fee: \$112.00

MT087497-LW

AFTER RECORDING RETURN TO:

Frank Gallagher  
101 Morris Street, Ste 205  
Sebastopol, CA 95472

**RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT**  
(Common Areas, Utilities & Parking)

DATE: June 18, 2010

FIRST PARTY: Frank Gallagher  
101 Morris Street, Ste 205  
Sebastopol, CA 95472

SECOND PARTY: Worldmark, The Club, a California corporation  
9805 Willows Road  
Redmond, WA 98052

**Recitals**

A. First Party is the owner of certain real property located in Klamath County, Oregon, more particularly described in the attached Exhibits A and D. The Exhibit A & D property shall hereafter be referred to as "Parcel A" and "Parcel D," respectively. Parcel D is a portion of Parcel A.

B. Second Party is the owner of the property described in the attached Exhibit B, which shall hereafter be referred to as the "Parcel B."

C. First Party and Second Party each own fractional interests as Tenants-in-Common in the property described on the attached Exhibit C, hereafter referred to as the "Parking Parcel."

D. The parties desire to grant to each other reciprocal, perpetual, nonexclusive and appurtenant easements in relation to the parcels under the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereinafter set forth.

RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT  
(Common Areas, Utilities & Parking)

Jun 17, 2010

Page 1 of 7

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## **Section I. Common Area Covenants and Restrictions on Parcels A and B.**

1. First Party grants and conveys to Second Party, its successors and assigns, as the owner of Parcel B, for the benefit of Second Party, its tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath that portion of Parcel A whereon the walkway, steps, and exterior improved open spaces (such as paved squares, sidewalks and steps) are located for the purpose of pedestrian, workman and delivery person use of and ingress and egress to Parcel B; and, for the purpose of use, repair, replacement and/or maintenance of any utility running over, under, across or beneath said Parcel A that serves Parcel B now or in the future.

2. Second Party grants and conveys to First Party, its successors and assigns, as the owner of Parcel A, for the benefit of First Party, its tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath that portion of Parcel B whereon the walkway, steps, and exterior improved open spaces (such as paved squares, sidewalks and steps) are located for the purpose of pedestrian, workman and delivery person use of and ingress and egress to Parcel A; and, for the purpose of use, repair, replacement and/or maintenance of any utility running over, under, across or beneath said Parcel B that serves Parcel A now or in the future.

3. The utilities to which Sections 1 and 2 apply shall not include the heating and cooling system and the Shared System for storm, drainage and sanitary sewer that are the subjects of the Reciprocal Easement and Maintenance Agreement of even date herewith between First Party and Second Party.

4. Neither First Party or Second Party shall: (i) take or permit any action which causes the easements granted hereby to be dedicated for public use or maintenance, or (ii) locate or permit any fence or other barrier which would unreasonably prevent or obstruct the use of and passage of pedestrian or vehicular travel for the purposes herein permitted within or across the easement areas; provided, however, that the foregoing provision shall not prohibit maintenance activities or the installation of convenience facilities (such as mailboxes, public telephones, benches or public transportation shelters), of landscaping, berms or planters, nor of limited curbing and other forms of traffic controls. In no case shall the installation of convenience facilities, landscaping, berms, planters, nor limited curbing or other forms of traffic control interfere with the ability of First Party or Second Party (and their tenants, customers, invitees, employees, agents, etc.) to utilize their property.

5. First Party and Second Party shall each bear their own respective costs to use, maintain, repair and replace the utilities located on their respective parcels and shall, at their own cost, maintain, repair and/or replace the paved squares, sidewalks, steps and landscaping located on its respective parcel(s) in a safe, attractive condition and state of repair and in compliance with all applicable laws, rules, covenants, conditions, regulations, orders and ordinances, and this Agreement.

6. Nothing herein will restrict the construction, remodeling, or expansion of a commercial building into or onto the walkway or exterior open space situated within the boundary of each owner's parcel; provided, any remaining walkway and/or exterior open space after such construction, remodeling or expansion of a commercial building shall be subject to the rights and responsibilities of the Parties as

identified above; and further, provided that all utilities shall be protected and preserved or relocated at the expense of the Party performing the construction, remodel, or expansion with the written agreement of the other Party.

7. Within the walkway and/or exterior open space areas on Parcel A and/or Parcel B, no temporary structures, portable buildings, tents, kiosks, or other obstacles shall be placed or permitted by any Party without the approval of all parties.

8. Each party shall be responsible for any maintenance, repair, replacement, cleaning, liability and insurance on their respective Parcels A or B, including those areas to which this reciprocal easement applies.

## **Section II. Parking Parcel Covenants and Restrictions.**

1. First Party (as co-Tenant owner of the Parking Parcel) grants and conveys to Second Party, its successors and assigns, as the owner of Parcel B, for the benefit of Second Party, its tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns, a nonexclusive, perpetual, appurtenant easement in, to, over, under, along, across and beneath the Parking Parcel for the purposes of ingress and egress to said Parking Parcel; and, for the parking of vehicles on said Parking Parcel for purposes related to the use by the Second Party (and its tenants, customers, invitees, employees, agents, etc.) of Parcel B. In addition, said grant by First Party shall include the right to repair, replace and/or maintain any utility running over, under or across said Parking Parcel to Parcel B, now or in the future.

2. Second Party (as co-Tenant owner of the Parking Parcel) grants and conveys to First Party, its successors and assigns, as the owner of Parcel A, for the benefit of First Party, its tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns, a nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath the Parking Parcel for the purposes of ingress and egress to said Parking Parcel; and, for the parking of vehicles on said Parking Parcel for purposes related to the use by the First Party (and its tenants, customers, invitees, employees, agents, etc.) of Parcel A. In addition, said grant by First Party shall include the right to repair, replace and/or maintain any utility running over, under, or across said Parking Parcel to Parcel A, now or in the future.

3. Neither First Party or Second Party shall: (i) take or permit any action which causes the easements granted hereby to be dedicated for public use or maintenance; or (ii) locate or permit any fence or other barrier which would unreasonably prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein permitted within or across the easement areas; provided, however, that the foregoing provision shall not prohibit maintenance activities or the installation of convenience facilities (such as mailboxes, public telephones, benches or public transportation shelters), of landscaping, berms or planters, nor of limited curbing and other forms of traffic controls. In no case shall the installation of convenience facilities, landscaping, berms, planters, nor limited curbing or other forms of traffic control interfere with the ability of First Party's or Second Party's (and its tenants, customers, invitees, employees, agents, etc.) to utilize their property and/or the Parking Parcel.

4. Both parties (their successors and assigns) shall bear all costs and expenses in relation to the Parking Parcel, including but not limited to: a) maintenance, repair, painting and repainting stripes, arrows and drive lanes; b) the removal of snow within a reasonable time after snowfall; c) the cleaning, lighting and utilities; d) the paving, repaving and sealing; e) the installation and maintenance of proper draining; f) the installation and maintenance of landscaping to include weeding and replacing the bushes, trees and other landscape vegetation to keep them in a healthy condition; g) to sand and control ice; h) to remove rubbish; i) to repair and replace any sidewalks and steps; j) to repair, maintain and replace any signs; k) all property taxes and assessments; and, l) to provide insurance for the parking area. Each party's respective portion of said costs and expenses shall be determined by their percentage of ownership as a tenant-in-common in said Parking Parcel. The Parties acknowledge that there exists a property line bisecting the Parking Parcel from the westerly side of Parcel B and the westerly side of Parcel A; said line lying approximately in a North-South direction. In order to provide for the allocation of responsibility for costs and expenses between the Parties for those items described in items a) through l) in this paragraph, the Parties agree as follows:

1) Parties owning an interest in the Parking Parcel (now or in the future), their heirs, executors and assigns, shall be responsible for costs and expenses of items a) through l) incurred in relation to said items on the Parking Parcel side of said property line, pro rated in accordance with their respective fractional interests. As of the date of this Agreement, those fractional interests are as follows:

First Party 91%  
Second Party 9%

2) The Parties owning an interest in Parcel B and the Parties owning an interest in that portion of Parcel A, as described on Exhibit D and D-1 (Parcel D), shall be responsible for costs and expenses of items a) through l) incurred in relation to said items on their respective Parcel B or Parcel D.

3) Provided, that should any of the aforementioned costs and expenses be incurred due to intentional or reckless conduct or the sole negligence of one Party, that Party shall be solely responsible for the payment of said costs and expenses.

5. The use of the Parking Parcel is reserved for parking on and for vehicular and pedestrian ingress and egress to said Parking Parcel, Parcel A and/or Parcel B by both parties and their tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns.

6. No party shall place or permit any obstacle, commercial vehicle, tent, portable structure, kiosk, construction equipment or materials for property other than the Parking Parcel, or any other obstacle on said parking area without the written consent of all parties.

7. Each party shall use its diligent, commercially reasonable efforts to require its employees and the employees of any of its tenants to park in parking spaces on said Parking Parcel, which are the most distant from the commercial buildings on said Parking Parcel, so that the closest parking spaces can be utilized by customers.

### **Section III. General Provisions.**

1. This easement is appurtenant to the real property owned by First Party described in Exhibits A and C and to the real property owned by Second Party described in Exhibits B and C; however, in the event that either property is partitioned, subdivided or sold in more than one parcel, this easement shall remain appurtenant to each of the parcels created, and the owners of each of the parcels shall together have the rights granted to First Party and Second Party hereby.

2. If either party does not pay their pro rata share of the obligations described above, said sum shall incur 9% interest per annum from the date that the cost and/or expense was first billed to the non-complying party. Said obligation and all other terms of this Agreement may be enforced by the Circuit Court of the State of Oregon. Venue shall be in Klamath County, Oregon.

3. As used in this agreement, "utility" shall include any and all pipes, wires, conduits, or any other items used or to be used for drainage, sewer, water, electricity, telephone, internet, communications, natural gas or any similarly related services to any Parcel described herein.

4. Each party warrants that it will defend the title and the other party's interest under this Agreement against any trust deed, encumbrance, mortgage, tax lien or construction lien claim affecting the property on which the easement is located which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

5. No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties' respective interests pursuant to this agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

6. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

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

8. Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

9. This Agreement supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

10. This Agreement will be governed and construed in accordance with the laws of the State of Oregon.

11. Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the other party three (3) business days after being deposited in the US Mail, postage prepaid, and sent by registered or certified mail to the other party's address for notices. Each party shall give notice to each other party of its address for notice by written notice to the other party. In the absence of such notice of a party's address for notice purposes, any notice under this Agreement may be given to the address to which property tax statements are delivered by the taxing authority.

12. Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of the County in which the property is located.

13. The easement herein established shall be perpetual, shall run with the land and be binding upon the parties, their heirs, successors and assigns.

14. Except as otherwise expressly herein provided, nothing herein contained shall be deemed to be a gift or dedication of any portion of the property or of any portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any owner hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

15. Whenever performance is required of any party hereunder, that party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of a party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any owner from the prompt payment of any monies required by this Agreement.

16. Invalidity of any provisions contained in this Agreement, or of the application thereof to any party by judgment or court order shall in now way affect any of the other provisions hereof or the application thereof to any other party and the same shall remain in full force and effect.

17. In all situations arising out of this Agreement, all parties shall attempt to avoid and minimize the damages resulting from the conduct of any other owner.

18. It is expressly agreed that no breach of this Agreement shall (i) entitle any owner to cancel, rescind or, otherwise terminate this Agreement, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any party of the property. However, such



Jun 17, 2010



APRIL 12, 2010

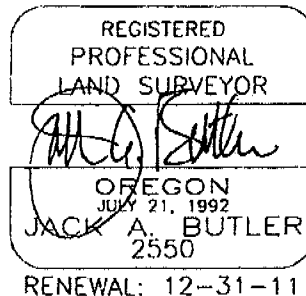
FRANK GALLAGHER – RUNNING Y RESORT  
LEGAL DESCRIPTION - SHARED PARKING AGREEMENT PROJECT NO. 34398

## EXHIBIT "A"

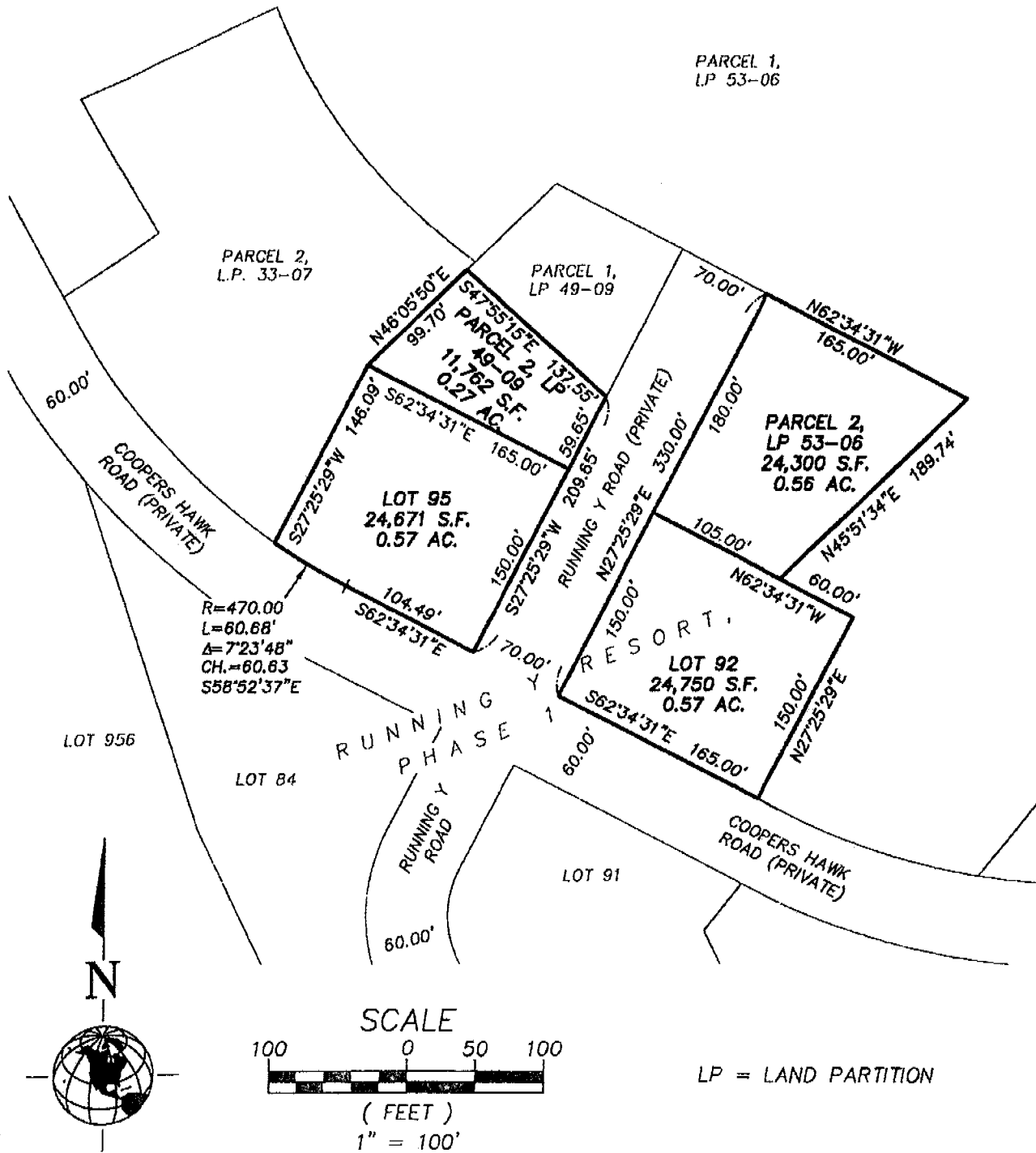
A PORTION OF TRACT 1319, RUNNING Y RESORT, PHASE 1, A PORTION OF LAND PARTITION 53 – 06 AND A PORTION OF LAND PARTITION 49 – 09 OF THE KLAMATH COUNTY SURVEY RECORDS, ALL BEING LOCATED IN THE SOUTH ONE - HALF OF SECTION 9, TOWNSHIP 38 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 92 AND 95 OF SAID TRACT 1319, RUNNING Y RESORT, PHASE 1, PARCEL 2 OF SAID LAND PARTITION 53 – 06, AND PARCEL 2 OF SAID LAND PARTITION 49 – 09.

CONTAINING APPROXIMATELY 85,483 SQUARE FEET OR 1.96 ACRES.



# EXHIBIT A-1



From: C:\p1\035780\Drawings\35780-Exhibit 1.dwg, 8.5x11p, 4/12/2010, 2:42:58 PM.  
 User: jacob@wheeler.com  
 Plot: 8.5 x 11, 1:1

SHEET NUMBER	<b>SKETCH TO ACCOMPANY LEGAL DESCRIPTION</b> PARCEL 2, LP 53-06; PARCEL 2, LP 49-09 AND LOTS 92 & 95, RUNNING Y RESORT, PHASE 1	DRAWING NO. P11-0	SHEET INFO	
1 of 1		035780	DRAWN: SCB	
		35780-EXHIBIT 1	CHECKED: JAB	
		1"=100'	LAST EDIT: 4/12/2010 PLOT DATE: 4/12/2010	

APRIL 12, 2010

FRANK GALLAGHER – RUNNING Y RESORT  
LEGAL DESCRIPTION – 1<sup>ST</sup> PARCEL TO BE SOLD

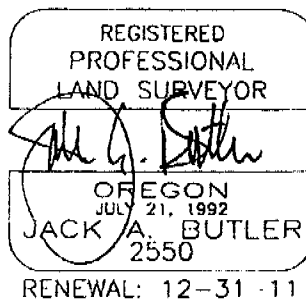
PROJECT NO. 34398

## EXHIBIT "B"

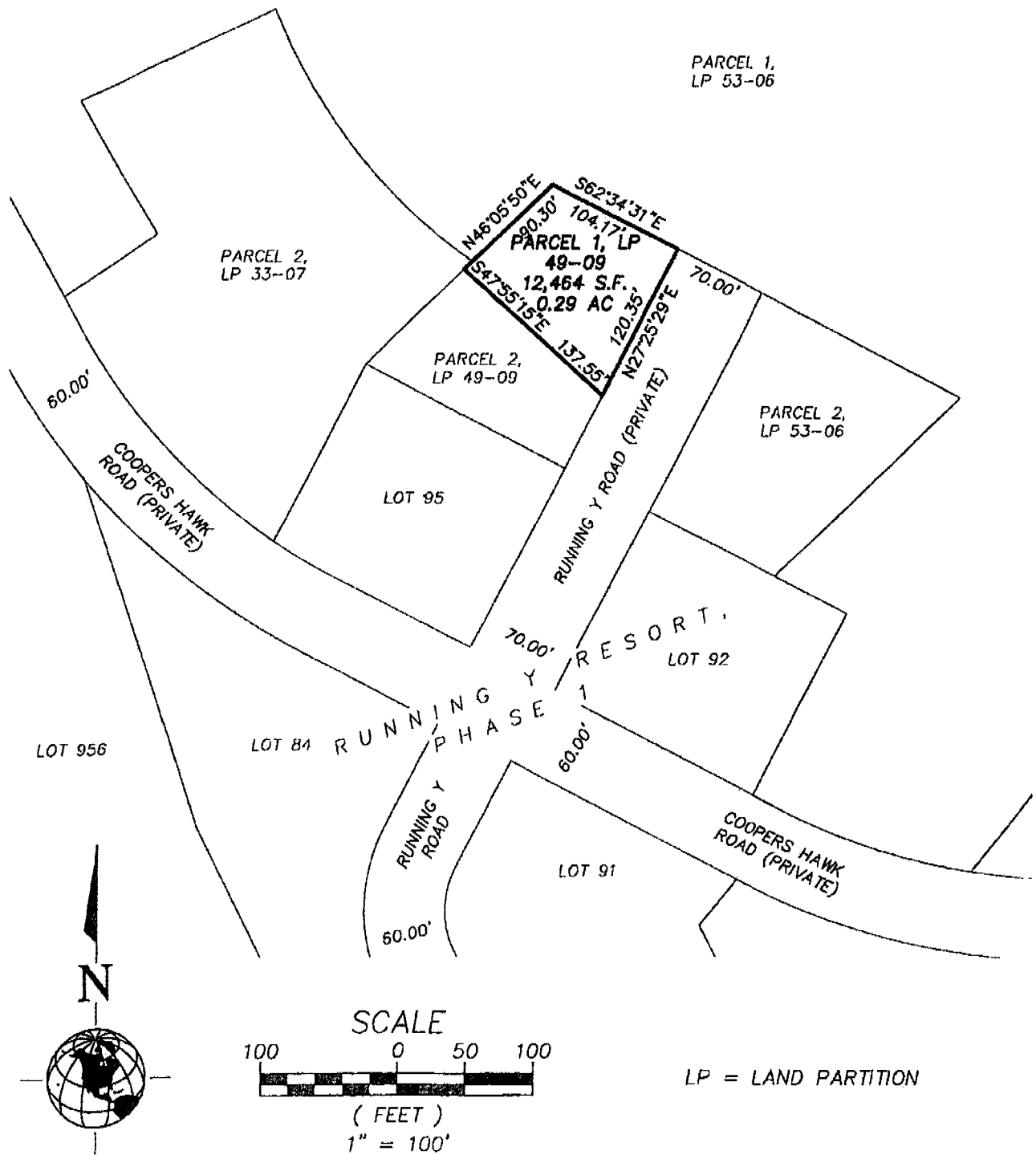
A PORTION OF LAND PARTITION 49 – 09 OF THE KLAMATH COUNTY  
SURVEY RECORDS, AND BEING LOCATED IN THE SOUTH ONE - HALF OF  
SECTION 9, TOWNSHIP 38 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN,  
KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

PARCEL 1 OF SAID LAND PARTITION 49 – 09.

CONTAINING APPROXIMATELY 12,464 SQUARE FEET OR 0.29 ACRES.



# EXHIBIT B-1



LP = LAND PARTITION

SHEET NUMBER  
1 of 1

SKETCH TO ACCOMPANY  
LEGAL DESCRIPTION

PORTION OF LOT 94, RUNNING Y RESORT, PH. 1

DRAWING INFO

035780  
35780-EXHIBIT 2  
1"=100'

SHEET INFO

DRAWN: SCB  
CHECKED: JAB  
LAST EDIT: 4/12/2010  
PLOT DATE: 4/12/2010

**WHPacific**

APRIL 12, 2010

WHPacific

FRANK GALLAGHER - RUNNING Y RESORT  
LEGAL DESCRIPTION - EXISTING PARKING AREA

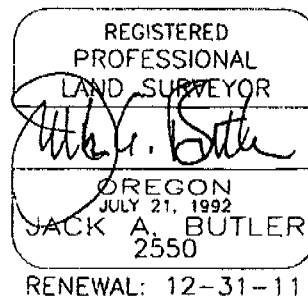
PROJECT NO. 34398

**EXHIBIT "C"**

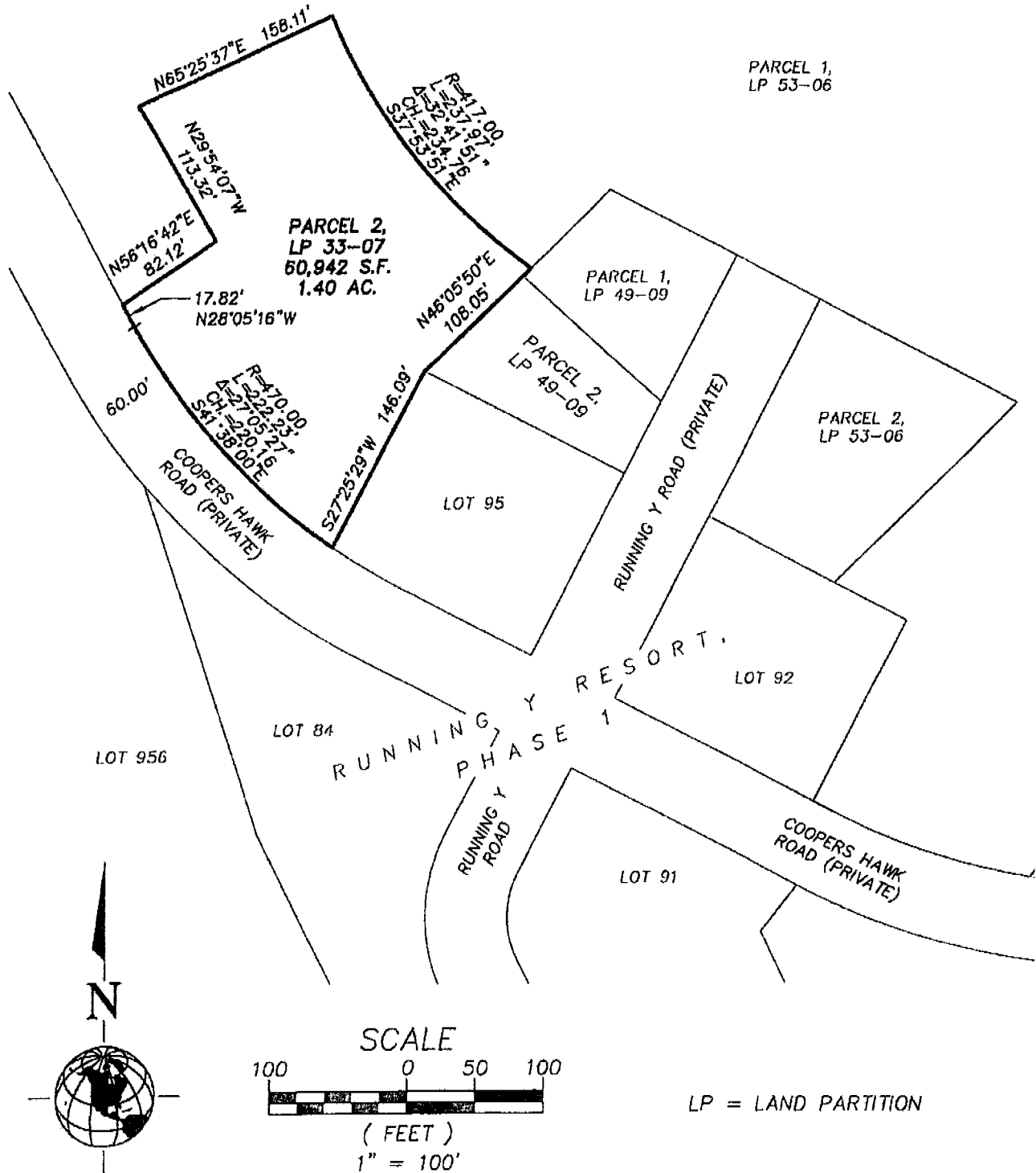
A PORTION OF LAND PARTITION 33 - 07 OF THE KLAMATH COUNTY  
SURVEY RECORDS, AND BEING LOCATED IN THE SOUTH ONE - HALF OF  
SECTION 9, TOWNSHIP 38 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN,  
KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

PARCEL 2 OF SAID LAND PARTITION 33 - 07.

CONTAINING APPROXIMATELY 60,942 SQUARE FEET OR 1.40 ACRES.



# EXHIBIT C-1



Printed: 4/12/2010 2:47:08 PM  
 User: JMB  
 Project: 35780-EXHIBIT C-1  
 Sheet: 1 of 1

SHEET NUMBER  
 1 of 1

SKETCH TO ACCOMPANY  
 LEGAL DESCRIPTION

PARCEL 2, L.P. 33-07, RUNNING Y RANCH

DRAWING INFO

035780  
 35780-EXHIBIT 3  
 1"=100'

SHEET INFO

DRAWN: SCB  
 CHECKED: JAB  
 LAST EDIT: 4/12/2010  
 PLOT DATE: 4/12/2010

**WHPacific**

MAY 27, 2010

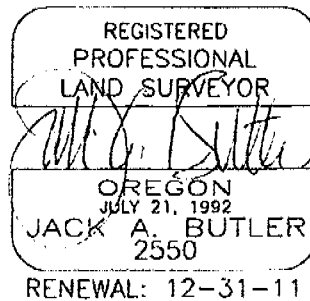
FRANK GALLAGHER – RUNNING Y RESORT  
LEGAL DESCRIPTION - SHARED PARKING AGREEMENT PROJECT NO. 34398

**EXHIBIT "D"**

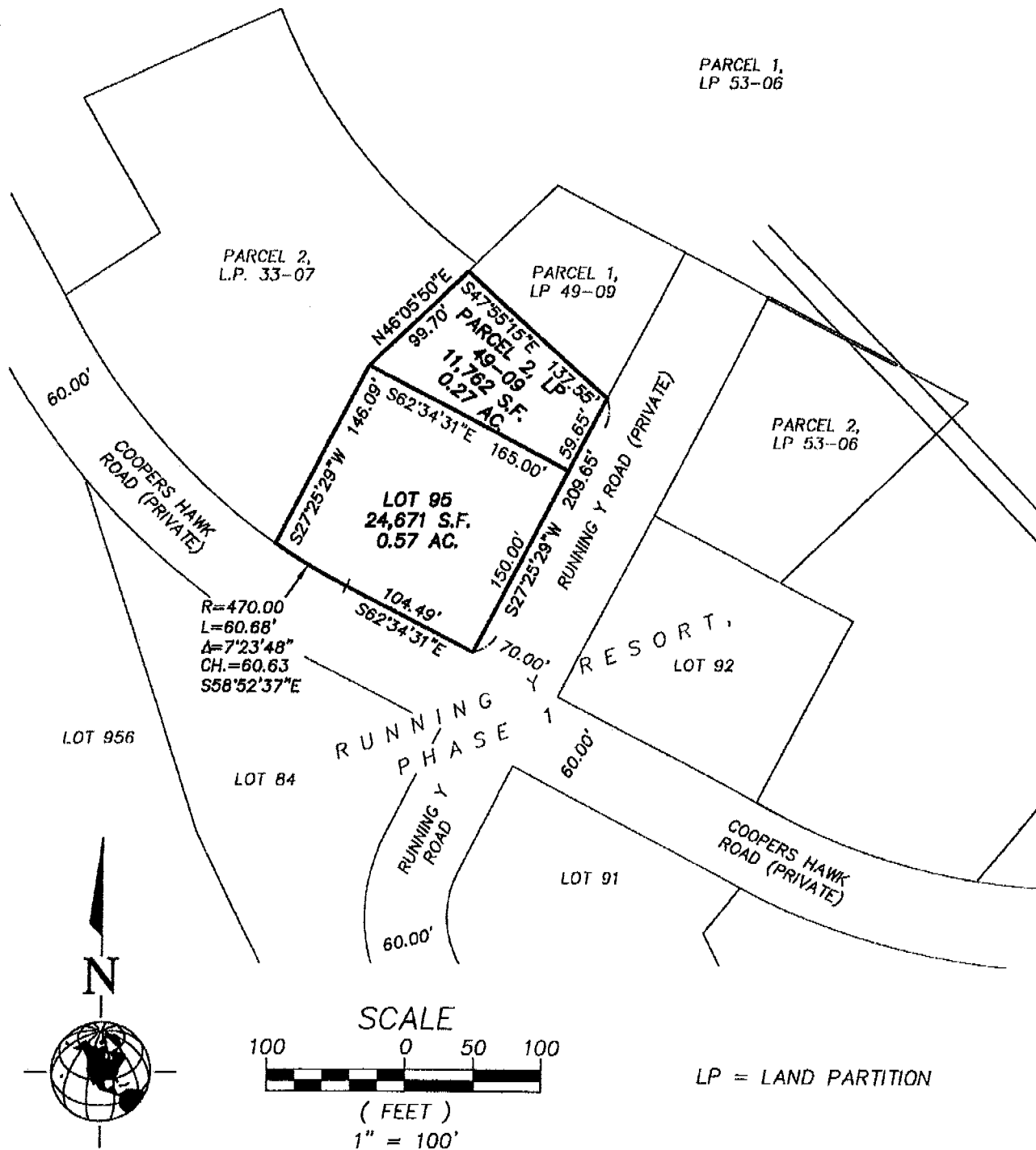
A PORTION OF TRACT 1319, RUNNING Y RESORT, PHASE 1 AND A PORTION OF LAND PARTITION 49 – 09 OF THE KLAMATH COUNTY SURVEY RECORDS, ALL BEING LOCATED IN THE SOUTH ONE - HALF OF SECTION 9, TOWNSHIP 38 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 95 OF SAID TRACT 1319, RUNNING Y RESORT, PHASE 1, AND PARCEL 2 OF SAID LAND PARTITION 49 09.


CONTAINING APPROXIMATELY 36,433 SQUARE FEET OR 0.84 ACRES.



## EXHIBIT D-1



LP = LAND PARTITION

SHEET NUMBER  1 of 1	SKETCH TO ACCOMPANY LEGAL DESCRIPTION PARCEL 2, LP 49-00 AND LOT 95, RUNNING Y RESORT, PHASE 1	DRAWING INFO  035780  35780-EXHIBIT 4  1"=100'	SHEET INFO  DRAWN ECE CHECKED JAB LAST EDIT 6/21/2010 PLOT DATE 5/27/2010	
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