

2010-007513

Klamath County, Oregon



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06/21/2010 01:02:12 PM

Fee: \$92.00

MITC87697-LN

AFTER RECORDING RETURN TO:

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

RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT
(Sewer/Water/Storm Water/Drainage Systems, Heating/Cooling System & Restrooms)

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 D and D-1. The Exhibit D and D-1 property shall hereafter be referred to as the "Parcel D."

B. Second Party is the owner of the property described in the attached Exhibits B and B-1, which shall hereafter be referred to as the "Parcel B."

C. There currently exists on Parcel B a heating and cooling system (hereinafter "HC System") that provides heating and cooling through a piping loop that connects to individual commercial buildings situated on portions of Parcels B and D. (The primary components of the HC System exist on Parcel B with the secondary components existing on Parcel D.) The parties desire to grant to each other reciprocal rights and obligations in relation to the use, operation, maintenance, repair and replacement of said HC System.

D. There currently exists on Parcels B and D a sanitary sewer system (including a collection system), sewer forcemain, pump, water lines and a storm water/drainage system, that connects to individual commercial buildings situated on Parcels B and D. The parties desire to grant to each other

92 HLT

reciprocal rights and obligations in relation to the use, operation, maintenance, repair and replacement of said sanitary sewer system, water lines, sewer forcemain, pump and storm water/drainage system (hereinafter "Shared Systems").

E. There currently exists in Building 3 on Parcel D and in Building 1 on Parcel D Public Restrooms. The First Party desires to grant to Second Party rights and obligations in relation to the use, operation, maintenance, repair and replacement of said "Public Restrooms" and Second Party desires to obtain said rights and accept said obligations.

AGREEMENT

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

Section I. HC System and Shared Systems Covenants and Restrictions.

1. First Party (as owner of Parcel D) grants and conveys to Second Party (as owner of Parcel B), its successors and assigns, for the benefit of said Second Party, its tenants, agents, heirs, successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath Parcel D (including any necessary ingress and egress) for the purpose of the use, maintenance, repair and replacement of the Shared Systems, as exist now or in the future on said Parcel B and/or Parcel D.

2. Second Party (as owner of Parcel B) grants and conveys to First Party (as owner of Parcel D), its successors and assigns, for the benefit of said First Party, its tenants, agents, heirs successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath Parcel B (including any necessary ingress and egress) for the purpose of the use, maintenance, repair and replacement of the Shared Systems, as exist now or in the future on said Parcel D and/or Parcel B.

3. First Party (as owner of Parcel D) grants and conveys to Second Party (as owner of Parcel B), its successors and assigns, for the benefit of said Second Party, its tenants, agents, heirs, successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath Parcel D (including any necessary ingress and egress) for the purpose of the use, maintenance, repair and replacement of the HC System (including but not limited to boilers, control units and electronics, cooling towers, circulation pumps, power systems, thermostats and /or primary distribution pipes or lines) as exist now or in the future on said Parcel B and/or Parcel D.

4. Second Party (as owner of Parcel B) grants and conveys to First Party (as owner of Parcel D), its successors and assigns, for the benefit of said First Party, its tenants, agents, heirs successors and assigns, a reciprocal, nonexclusive, perpetual and appurtenant easement in, to, over, under, along, across and beneath Parcel B (including any necessary ingress and egress) for the purpose of the use, maintenance, repair and replacement of the HC System (including but not limited to boilers, control units and electronics, cooling towers, circulation pumps, power systems, thermostats and /or primary distribution pipes or lines) as exist now or in the future on said Parcel D and/or Parcel B.

5. 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, (ii) interfere with or permit either owner's respective tenants, customers, invitees, employees, agents, or the customers, invitees and employees of such tenants, to interfere with any rights or obligations created herein, or (iii) locate or permit any fence or other barrier which would unreasonably prevent or obstruct access to any easements granted herein for the purposes herein permitted within or across the easement areas.

6. Should one or more of the Shared Operating Components of the Shared Systems and/or HC System need to be replaced, repaired, and/or maintained, all parties, as defined below, shall bear the cost of said replacement. Each party's respective portion of said costs shall be determined by a fraction wherein the numerator is equal to the number of square feet of the building improvements on the party's respective parcel and the denominator is equal to the total number of square feet of the building improvements located on all parcels, calculated as of the time the particular cost is incurred. It is agreed that, as of the date of this Agreement, the foregoing results in the following allocation of costs: First Party 82% and Second Party 18%. This percentage is subject to change based on changes in improvements on the Parcels. Unless each party's use is separately metered, the cost of power natural gas, water, or other utility required to operate said Shared Systems and HC System shall be similarly allocated to each party. Each party shall pay its respective portion of the costs described above within fifteen (15) days of receipt of a billing for said costs.

"Shared Operating Components" shall include but not be limited to:

a) HC System: Boilers, circulation pumps, control units, thermostats, valves, electronics, switches, cooling tower, power system, meters, gauges and primary distribution pipes or lines utilized to operate the shared HC System.

b) Shared Systems: Pipes, lines, wires, switches, pumps, control units, electronics, drains, and valves utilized to operate the Shared System.

c) Shared Operating Components do not include such items that are located in or on a Party's individual Parcels and that are primarily designed to provide a particular service to said Parcel only. The cost and expense related to those items shall be paid solely by the owner of the Parcel to which the individual particular service is designed to serve. Each Party shall bear the cost to use, maintain, repair and/or replace the distribution portion of the systems located on its respective Parcel(s) in a safe, attractive and fully operating condition and state of repair and maintenance and in compliance with all applicable operating instructions, warranties, laws, rules, regulations, covenants, conditions, orders and ordinances, and this Agreement.

7. Replacement, maintenance and repair of any Shared Operating Component of the Shared System and/or HC System shall be undertaken by the owner of the Parcel on which that work is primarily required, or as the owners may otherwise agree from time to time ("Primary Owner"), with the cost thereof shared as provided in Section 6. If the Primary Owner does not commence or continue the work as required, and the failure continues for 10 business days after written notice from the other Owner ("Non-Primary Owner"), the Non-Primary Owner shall have the right to commence and/or complete the work, with the cost thereof shared as provided in Section 6. All construction, maintenance, remodeling and building on

the respective parcels shall be done in such a manner as to not disrupt, interfere with, alter, damage and/or negatively impact, in any significant manner, the HC System and/or the Shared Systems, or the other improvements on the Parcel.

Section II. Restrooms/Easements.

1. First Party (as owner of Parcel D) grants and conveys to Second Party (as owner of Parcel B), its successor and assigns, for the benefit of said Second Party, its tenants (and the customers, invitees, and employees of such tenants), customers, invitees, agents, heirs, successors and assigns (hereinafter "Users"), a nonexclusive, perpetual and appurtenant easement into, on and across Parcel D for the purpose of allowing and permitting said Users to utilize (including any ingress and egress), any and all Public Restroom facilities that are located on said Parcel D.

2. In consideration for the right to use said Public Restrooms, Second Party agrees to share and pay the cost of repair, remodeling, improvement, maintenance (and cleaning), and replacement for said Public Restrooms. Such work shall be done in a diligent and commercially reasonable manner so as to not disrupt, interfere with, alter, damage and/or negatively impact, in any significant manner, said Public Restrooms or the right to use the Public Restrooms under this Agreement. Each Party's respective portion of said costs shall be determined by a fraction wherein the numerator is equal to the number of square feet of the building improvements on their respective Parcel and the denominator is equal to the total number of square feet of the building improvements located on all Parcels, calculated as of the time the particular cost is incurred. The cost of power or other utility required to use and operate said Public Restrooms shall be similarly allocated and paid by each Party. Each Party shall pay their respective portion of the costs described above within fifteen (15) days of receipt of a billing for said costs. It is agreed that, as of the date of this Agreement, the foregoing results is the following allocation of costs: First Party 82% and Second Party 18%. This percentage is subject to change based on changes in improvements on the Parcels. Such work shall be done in a diligent and commercially reasonable manner so as to not disrupt, interfere with, alter, damage and/or negatively impact, in any significant manner, said Public Restrooms or the right to use the Public Restrooms under this Agreement.

3. Neither Party shall: (i) take or permit any action which causes the easements granted hereby to be dedicated for public use or maintenance, (ii) permit either owner's respective tenants, customers, invitees, employees, agents, or the customers, invitees and employees of such tenants, to damage said Restrooms, or (iii) locate or permit any barrier which would unreasonably prevent or obstruct the use, repair, maintenance and/or replacement of said Restrooms (including any necessary ingress and egress) for the purposes herein permitted.

4. The owners of Parcels D and B agree to form an association that will govern compliance of the Public Restrooms with all terms of this easement, applicable laws and legal requirements, and in a clean and sanitary condition and in good order and repair, in keeping with the standards prevailing generally in the Running Y Ranch Resort, or its successors or assigns. The costs of such an association would be shared by the Parties in the manner identified in Paragraph 2, Section II, above.

5. The use of the Public Restrooms is reserved for both parties and their tenants (and the customers, invitees and employees of such tenants), customers, invitees, employees, agents, heirs, successors and assigns.

6. Each party shall use its diligent, commercially reasonable efforts to require its employees and customers, and the employees and customers of any of its tenants, to keep the Public Restrooms clean, sanitary, secure and in good order.

Section III. General Provisions.

1. This easement is appurtenant to the real property owned by First Party described in Exhibit D and to the real property owned by Second Party described in Exhibit B; 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 transferred, and the owners of each of the parcels shall together have the rights and responsibilities 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. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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

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

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 limitation shall not affect in any manner any other rights or remedies which an owner may have hereunder by reason of any such breach.

18. Time is of the essence of this Agreement.

19. Each party shall, in timely fashion, take all actions and execute, with acknowledgment or affidavit (if required) any and all documents, amendments and other writings, including but not limited to amendments to this Agreement and grants of additional easements, that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Worldmark, The Club

Frank Gallagher

By: David W. Herrick

Its: President

~~WA~~
STATE OF ~~OREGON~~)
) ss
County of Klamath)

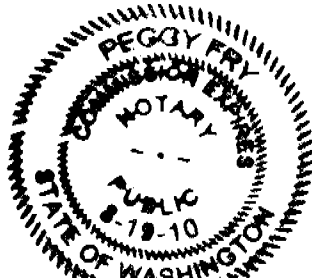
This instrument was acknowledged before me on this ____ day of _____, 2010 by Frank Gallagher.

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

WA
STATE OF ~~OREGON~~)
) ss
County of ~~Klamath~~)

This instrument was acknowledged before me on this 17th day of June, 2010 by David Herrick as President of Worldmark, The Club.



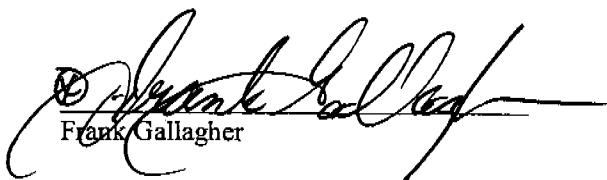
NOTARY PUBLIC FOR OREGON WA
My Commission Expires: 8/14/10

18. Time is of the essence of this Agreement.

19. Each party shall, in timely fashion, take all actions and execute, with acknowledgment or affidavit (if required) any and all documents, amendments and other writings, including but not limited to amendments to this Agreement and grants of additional easements, that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Worldmark, The Club

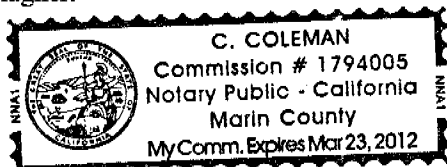

Frank Gallagher

By: _____

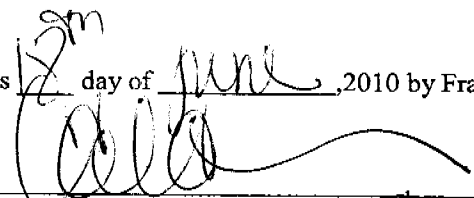
Its: _____

California
STATE OF OREGON)
Marin) ss
County of *Klamath*)

This instrument was acknowledged before me on this 12th day of June, 2010 by Frank Gallagher.



STATE OF WASHINGTON)
) ss
County of King)


NOTARY PUBLIC FOR OREGON *California*
My Commission Expires: 3/23/12

This instrument was acknowledged before me on this _____ day of _____, 2010 by _____ as _____ of Worldmark, The Club.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

APRIL 12, 2010

FRANK GALLAGHER – RUNNING Y RESORT
LEGAL DESCRIPTION – 1ST 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.

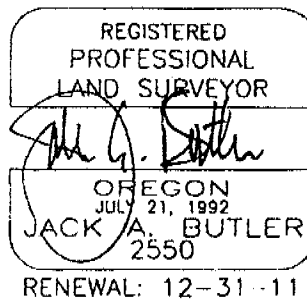


EXHIBIT B-1

PARCEL 1,
LP 53-06

PARCEL 2,
LP 33-07

PARCEL 2,
LP 49-09

PARCEL 2,
LP 53-06

LOT 95

RESORT
LOT 92

LOT 956

LOT 81 RUNNING PHASE

LOT 91

COOPERS HAWK
ROAD (PRIVATE)



SCALE



(FEET)
1" = 100'

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

 $1^{\circ}=100'$

SHEET 21 OF 21

DRAYN	SCB
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CHECKED JAB

LAST EDIT	4/12/2013
PLOT DATE	4/12/2013

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.

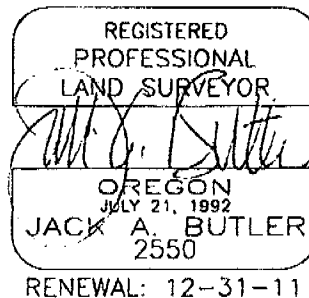
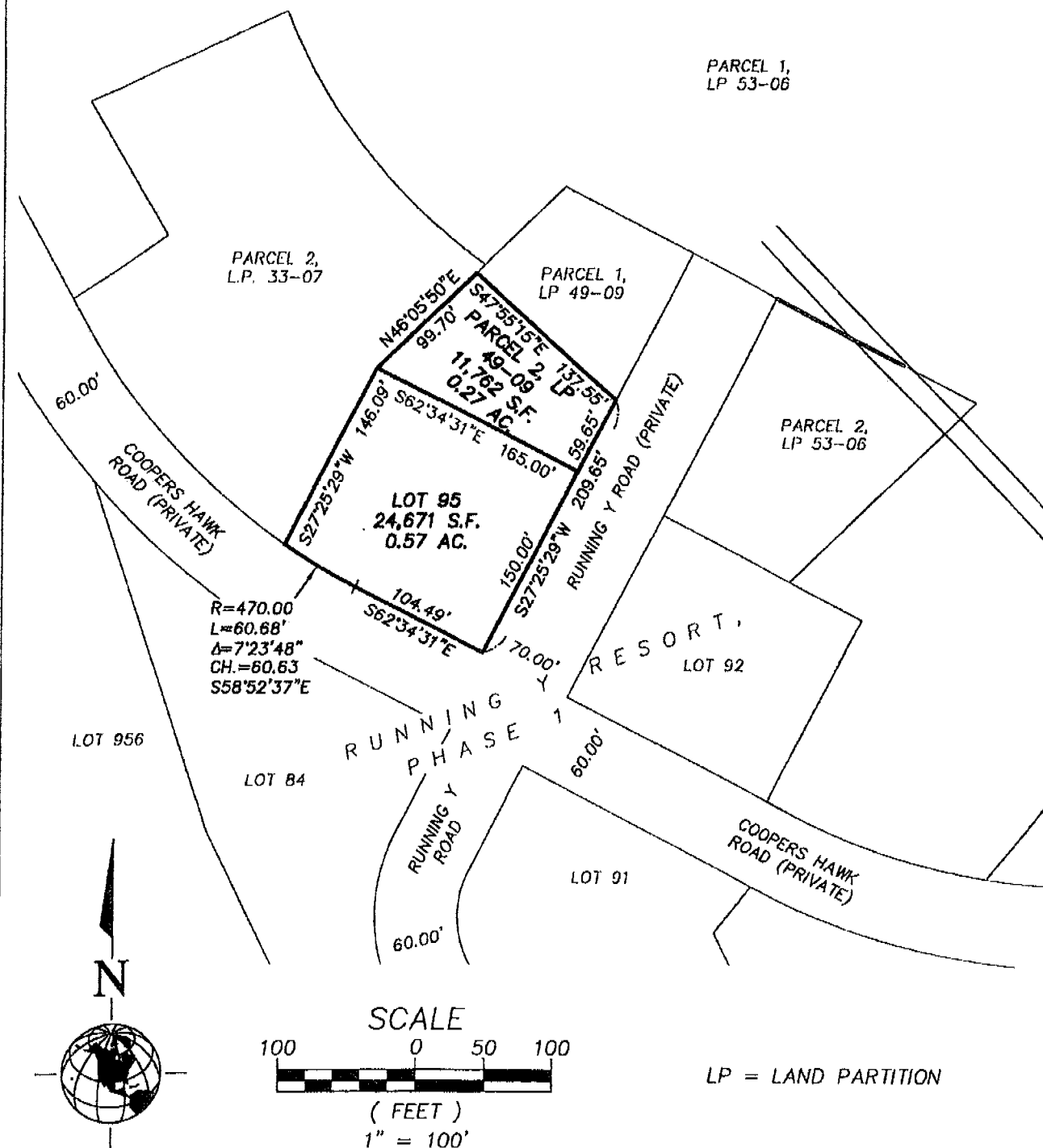



EXHIBIT D-1



LP = LAND PARTITION

SHEET NUMBER	SKETCH TO ACCOMPANY LEGAL DESCRIPTION PARCEL 2, LP 49-09 AND LOT 95, RUNNING Y RESORT, PHASE 1	DRAWING INFO	SHEET INFO		
			DRAWN	SCB	
1 of 1		035780	CHECKED	JAS	
		35780-EXHIBIT 4	LAST EDIT	6/97/2010	
		1"=100'	PLOT DATE	6/27/2010	