



2017-004335

Klamath County, Oregon

04/25/2017 02:46:00 PM

Fee: \$77.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT (this "Agreement") is entered into as of this 18 day of April 2017 (the "Effective Date") by and between CLV Properties, LLC, an Oregon limited liability company ("Grantor") and Running Y Environmental, LLC, a Delaware limited liability company ("Grantee").

Recitals

A. Grantor is the owner of that certain real property located in Klamath County, Oregon, legally described as Parcel 1, Land Partition 33-07, as shown on the plat recorded in the official records of Klamath County, Oregon, as Document No. 2007-017405 ("Grantor's Property").

B. Grantee operates a utility company that provides sewer services to the Running Y Ranch Resort Community. Grantee owns and uses a sewer line that is located within a sixteen-foot (16') wide strip of Grantor's Property, which strip of land is legally described on the attached **Exhibit A** as "Easement A" and "Easement B" (collectively, the "Easement Area").

C. Grantee has requested a utility easement over the Easement Area for purposes of retaining, using, maintaining, repairing and replacing the sewer line, and Grantor has agreed, subject to Grantee's agreement to maintain insurance, to repair any damage to Grantor's Property caused by any work Grantee performs to the sewer line in the Easement Area, and to indemnify Grantor. The parties have agreed, all on the terms and conditions contained herein.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Subject to the rights and restrictions set forth in this Agreement, Grantor hereby grants Grantee a permanent, non-exclusive easement over, on and across the Easement Area for the use, maintenance, repair and replacement of a sewer line. Such easement shall permit access to the sewer line as Grantee deems necessary by Grantee and its employees, agents, licensees and contractors. Neither party shall relocate the Easement Area or reconfigure the sewer line within the Easement Area without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Grantor shall not install any improvements or take any action that would damage, or interfere with the use of, or Grantee's access to, the sewer line.

2. Maintenance. Grantee shall promptly repair damage to the sewer line within the Easement Area at Grantee's sole cost. Grantee shall repair any damage to the Easement Area or any other property caused by the Grantee's exercise of its rights hereunder or the use of the sewer line in the Easement Area. Grantee shall comply with all laws, ordinances,

rules and regulations of appropriate governmental agencies and all rules and regulations of Grantor in connection with the use, operation and maintenance of the sewer line in the Easement Area. Grantee shall pay when due all claims for work performed or material furnished on the sewer line within the Easement Area. Grantee shall keep the Easement Area free of any liens arising out of the failure to pay any such claims or arising out of any other activity of Grantee.

3. Indemnification; Insurance.

3.1 Grantee accepts the condition of the Easement Area in its "as is" condition. Grantee shall indemnify, protect, defend and hold Grantor harmless from and against any and all claims, demands, actions, suits, judgments, losses, liabilities, damages, costs or expenses (including attorneys' fees and costs) arising from or in any way related to the use, maintenance, repair or replacement of the sewer line in the Easement Area by Grantee or any of its members, contractors, agents, invitees or employees pursuant to this Agreement. The foregoing release and indemnification shall not apply to any claims, demands, actions, suits, judgments, losses, liabilities, damages, costs or expenses to the extent arising from or caused by the negligent acts or omissions by the Grantor or Grantor's members, contractors, agents, employees or invitees.

3.2 Insurance. Grantee shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, general liability insurance in commercially reasonable amounts covering all of Grantee's activities relating to the sewer line within the Easement Area and Grantee's use of the Easement Area pursuant to this Agreement. The policy shall name Grantor as an additional insured and shall provide that it is primary insurance, and not in excess of or contributing with any other insurance maintained by Grantor. Grantee shall provide Grantor with an insurance certificate or, at Grantor's request, a copy of the insurance policy that evidences the required insurance coverage and shall thereafter promptly provide to Grantor copies of all renewals or extensions thereof.

4. Binding Effect. This Agreement and its terms, including the easement granted hereunder, shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Without limiting the generality of the foregoing, Grantee's interest in this Agreement, including the easement granted to Grantee herein, shall automatically transfer and be assigned to any individual or entity who acquires all or substantially all of Grantee's assets or who acquires the portion of Grantee's assets used to provide sewer or wastewater services within the Running Y Ranch Resort Community. Grantee may memorialize any transfer pursuant to this Section 4 with a written assignment agreement, but such written assignment agreement shall not be necessary to effect the assignment of this Agreement and the easement granted hereunder.

5. Attorneys' Fees. If a suit, action or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its attorneys' fees and other fees and costs actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

6. Notices. Any notice or other communication given pursuant to this Agreement shall be in writing and shall be sent by: (i) United States certified mail, return receipt requested, postage prepaid; (ii) nationally recognized overnight courier guarantee next day delivery, or (iii) personal delivery. Notices given to either party shall be delivered to the mailing address on file with the Oregon Secretary of State. All notices shall be deemed

given three (3) business days following deposit in the United States mail with respect to certified letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

7. Waiver. The failure of either party to exercise its rights in connection with any breach or violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

8. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument signed by both parties and recorded in the official records of Klamath County, Oregon.

9. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

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

GRANTOR:

CLV PROPERTIES, LLC, an Oregon limited liability company

By: 

Name: William D. Lynch

Title: Manager

GRANTEE:

RUNNING Y ENVIRONMENTAL, LLC,
a Delaware limited liability company,

By: NV Oregon Resorts Investors, LLC, a
Delaware limited liability company

Its: Authorized Agent

By: _____

Name: _____

Title: _____

given three (3) business days following deposit in the United States mail with respect to certified letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

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GRANTOR:

CLV PROPERTIES, LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

GRANTEE:

RUNNING Y ENVIRONMENTAL, LLC,
a Delaware limited liability company,

By: NV Oregon Resorts Investors, LLC, a
Delaware limited liability company
Its: Authorized Agent

By:  _____
Name: **Simon Hallgarten** _____
Title: **Authorized Signatory** _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

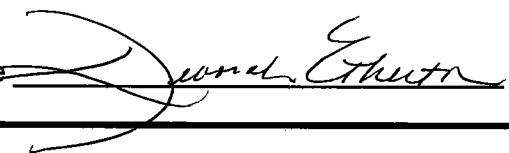
On April 17, 2017 before me, Deborah Etherton, Notary Public,
(insert name and title of the officer)

personally appeared William D. Lynch,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

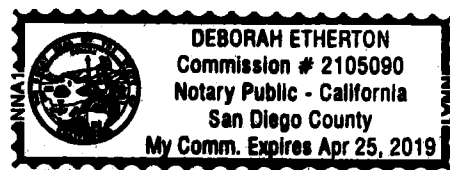
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____ 2017, by _____, who is the _____ of CLV Properties, LLC, an Oregon limited liability company, on behalf of the company.

Notary Public for _____
My Commission Expires: _____

STATE OF Connecticut)
) ss.
County of Lainfield)

The foregoing instrument was acknowledged before me on this 18th day of April 2017, by Simon Halpern, who is the authorized signatory of NV Oregon Resorts Investors, LLC, a Delaware limited liability company, the authorized agent of Running Y Environmental, LLC, a Delaware limited liability company, on behalf of Running Y Environmental, LLC.



Notary Public for _____
My Commission Expires: _____

Catherine Smerigilo
Notary Public - Connecticut
My commission expires 11/30, 2020

"EXHIBIT A"
Legal Description of Easement Area
UTILITY EASEMENT

Across Parcel 1 of Land Partition 33-07

A sixteen foot (16') wide Strip of land situated in the S1/2 of Section 9, Township 38 South, Range 08 East of the Willamette Meridian, Klamath County Oregon; going across Parcel 1 of Land Partition 33-07, a duly recorded Land Partition on file at the Klamath County Clerk's office, the centerlines of which are intended to be along the existing sewer line and being more particularly described as follows:

Easement "A"

Commencing at corner common to Parcel 1, Parcel 2 and the right of way line of Coppers Hawk Road of said Land Partition 33-07, thence, along said right of way line of Coopers Hawk Road, South 28°05'16" East, 5.35 feet to the TRUE POINT OF BEGINNING; thence North 07°21'41" West, 101.55 feet; thence North 36°50'04" East, 249.89' feet; thence North 39°39'03" East, 165.25 feet to Point "A"; thence North 14°37'58" East, 31.54 feet; thence North 13°38'45" East, 127.88 feet to the right of way line of said Coopers Hawk Road and the point of terminus; said point of terminus bears North 75°44'53" West, 10.41 feet from a point of curvature of said right of way line.

Easement "B"

Beginning at Point "A" as described above; thence South 14°37'58" West, 133.63 feet; thence South 35°40'25" East, 249.27 feet; thence South 62°34'35" East, 264.14 feet; thence South 38°16'56" East, 320.11 feet to the southeasterly line of said Parcel 1 and the point of terminus; said point of terminus bears North 40°11'05" East, 185.89 feet from the corner common to said Parcel 1 and Lot 86 of Tract 1319, Running Y Resort Phase 1.

Excepting therefrom:

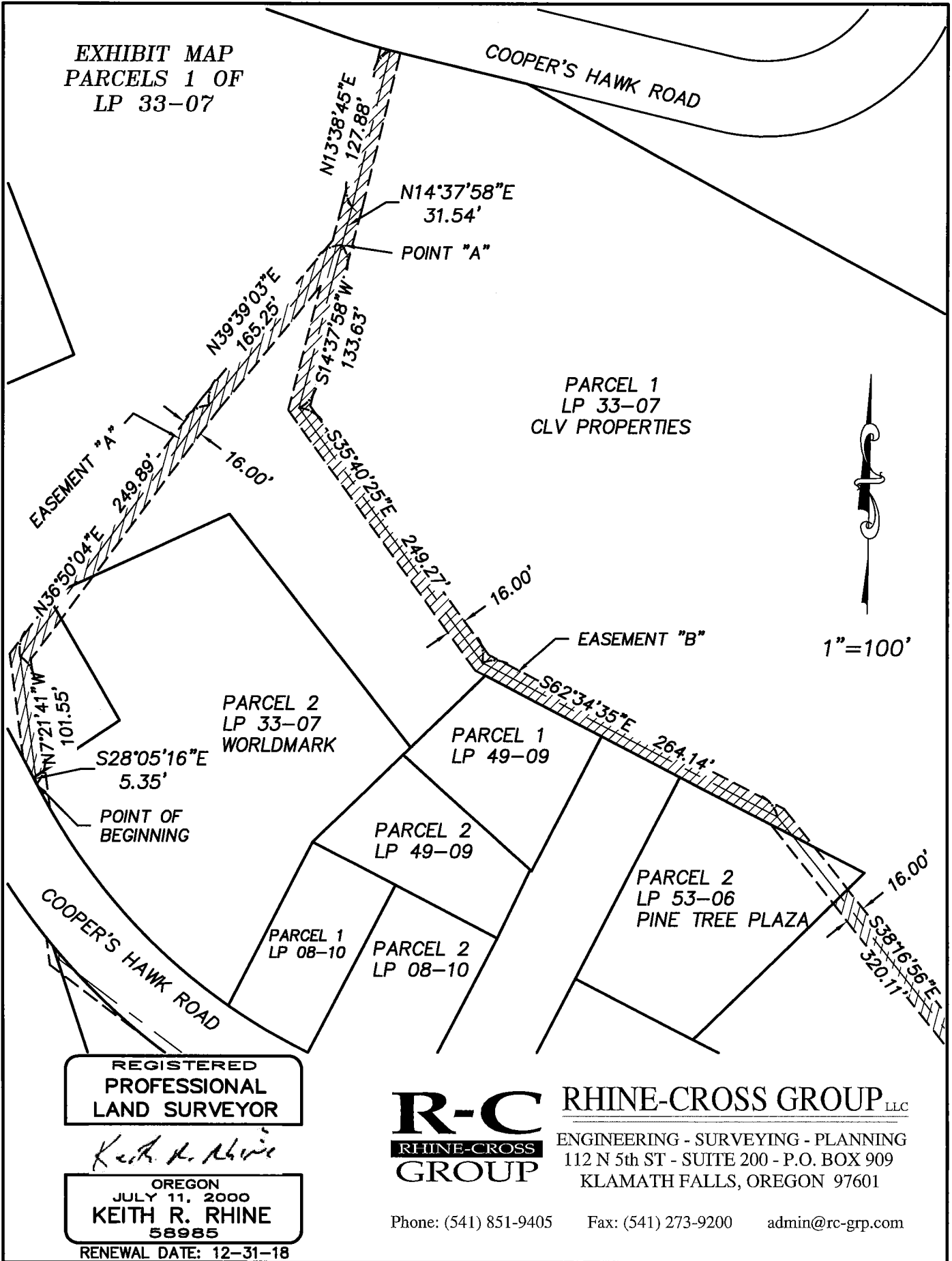
Those portions crossing Parcel 2 of said Land Partition 33-07 and Parcel 2 of Land Partition 53-06.

Sidelines of easements are to lengthen or shorten to terminate at the right of way lines of Coopers Hawk Road, at Parcel line of Parcel 2 of Land Partition 33-07, at Parcel line of Parcel 2 of Land Partition 53-06 and the southeasterly line of Parcel 1 of Land Partition 33-07.

Basis of Bearings is Land Partition 33-07.

Containing 24,266 square feet, more or less.

EXHIBIT MAP
PARCELS 1 OF
LP 33-07



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith R. Rhine

OREGON
JULY 11, 2000
KEITH R. RHINE
58985

RENEWAL DATE: 12-31-18

R-C
RHINE-CROSS
GROUP

RHINE-CROSS GROUP LLC

ENGINEERING - SURVEYING - PLANNING
112 N 5th ST - SUITE 200 - P.O. BOX 909
KLAMATH FALLS, OREGON 97601

Phone: (541) 851-9405

Fax: (541) 273-9200

admin@rc-grp.com