



2017-004941

Klamath County, Oregon

05/10/2017 02:30:00 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 Running Y Ranch Resort Owners Association, an Oregon non-profit corporation ("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 Lot 86, Running Y Resort Phase 1, as shown on the plat recorded August 2, 1996 in the official records of Klamath County, Oregon, at Book 23, Pages 63-69 ("Grantor's Property").

B. Pursuant to that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort, recorded August 2, 1996 in the real property records of Klamath County, Oregon, at Volume M96, Page 23548, Grantor is the owners' association for the planned unit development known as Running Y Ranch Resort, Klamath County, Oregon (the "Running Y Community").

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

D. 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.

{00074197;2} AMERITITLE, has recorded this  
Instrument by request as an accommodation only,  
and has not examined it for regularity and sufficiency  
or as to its effect upon the title to any real property  
that may be described therein.

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 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.

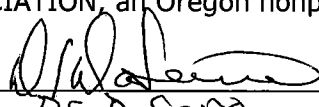
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

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:

RUNNING Y RANCH RESORT OWNERS  
ASSOCIATION, an Oregon nonprofit corporation

By:   
Name: D.E. Dasaro  
Title: PRESIDENT

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: \_\_\_\_\_

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GRANTOR:

RUNNING Y RANCH RESORT OWNERS  
ASSOCIATION, an Oregon nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

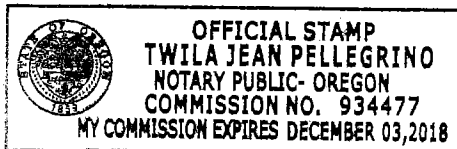
RUNNING Y ENVIRONMENTAL, LLC,  
a Delaware limited liability company,

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

By:  \_\_\_\_\_  
Name: **Simon Hallgarten**  
Title: **Authorized Signatory**

STATE OF Oregon )  
 ) ss.  
County of Klamath )

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of April 2017, by Donald DaSaro ~~Twila Pellegrino~~, who is the President of Running Y Ranch Resort Owners Association, an Oregon nonprofit corporation, on behalf of the corporation.



Twila Jean Pellegrino  
Notary Public for Oregon  
My Commission Expires: 12-3-2018

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2017, by \_\_\_\_\_, 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: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2017, by \_\_\_\_\_, who is the \_\_\_\_\_ of Running Y Ranch Resort Owners Association, an Oregon nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF Connecticut )  
 ) ss.  
County of Fairfield )

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of April 2017, by Erin Hallgren, 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, 20 20

"EXHIBIT A"  
Legal Description of Easement Area  
UTILITY EASEMENT

Across Lot 86 of Tract 1319

A sixteen foot (16') wide Strip of land situated in the SE1/4 of Section 9, Township 38 South, Range 08 East of the Willamette Meridian, Klamath County Oregon; going across Lot 86 of Tract 1319, Running Y Resort Phase 1, a duly recorded Subdivisions 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:

Commencing at the corner common to Parcel 1 of Land Partition 33-07, Lot 86 of said Tact 1319 and the northerly right of way line of Coppers Hawk Road; thence, along the northwesterly line of said Lot 86, North 40°11'05" East, 185.89 feet to the TRUE POINT OF BEGINNING; thence, along the existing sanitary sewer line, South 38°16'56" East, 173.37 feet to the northerly right of way line of said Coppers Hawk Road and the point of terminus; said point bears North 86°50'10" East, 51.56 feet from a point of curvature of said right of way line.

Sidelines of easement are to lengthen or shorten to terminate at the northwesterly line of said Lot 86 and the right of way lines of Coopers Hawk Road and Autumn Gold Drive and the southeasterly line of Lot 67 of Tract 1468.

Basis of Bearings is Tract 1319.

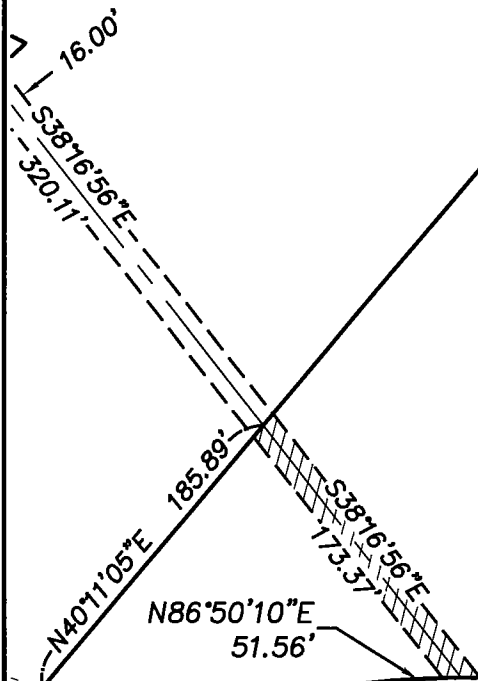
Containing 2,775 square feet, more or less.

EXHIBIT MAP  
RYR PH1 LOT 86

PARCEL 1  
LP 33-07  
CLV PROPERTIES

LOT 86  
TRACT 1319 RUNNING  
Y RESORT PH 1  
RUNNING Y RESORT

1"=100'



COOPER'S HAWK ROAD

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