

October ²¹, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UP__ Oregon Resorts, LLC's Application for Approval of the Sale of Running Y Water, LLC to SouthWest Water Company.

Oregon Resorts, LLC encloses for filing its Application for Approval of a Proposed Property Sale.

Oregon Resorts, LLC respectfully requests that all data requests regarding this matter be addressed to:

Seller

By e-mail (preferred):	mt@nvhg.com and curt@nvoregonresorts.com	wrolfe@water-law.com
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By regular mail:	Matthew Trevenen Partner, Northview Hotel Group 36 Narrow Rocks Rd. Westport, CT 06880 And Curt Heimuller Northview Community Services 8300 Coopers Hawk Dr. Redmond, OR 97756	Wyatt Rolfe Of Counsel, Schroeder Law Offices, P.C. 1915 NE Cesar E. Chavez Blvd. Portland, OR 97212
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Buyer

By e-mail (preferred):	bbahr@swwc.com	irion@sanger-law.com
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By regular mail:	Brian Bahr Director, Regulatory Affairs SouthWest Water Company 1325 N. Grand Covina, Suite 100 Covina, CA 91724-4044	Irion Sanger Sanger Law PC 1117 SE 53rd Ave Portland, OR 97215
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Please direct informal inquiries with respect to this filing to Matt Trevenen (Seller) at (203) 654-7004 or Brian Bahr (Buyer) at (626) 543-2552.

Sincerely,

A handwritten signature in black ink, appearing to read 'MT', followed by a long horizontal flourish line.

Mathew Trevenen
Partner, Northview Hotel Group

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UP _____**

In the Matter of
Oregon Resorts, LLC
Application for approval of the Sale of Running Y Water, LLC.

Under ORS 757.480(1)(a) and in accordance with OAR 860-036-0710, Oregon Resorts, LLC (Oregon Resorts or Seller) seeks approval from the Public Utility Commission of Oregon (Commission) of the proposed property sale between Oregon Resorts and SouthWest Water Company (SouthWest or Buyer) for all assets owned by Running Y Water, LLC (Running Y), as contemplated in the Asset Purchase Agreement (APA).

Under the APA, SouthWest intends to acquire from Oregon Resorts the assets of certain regulated and unregulated water and wastewater systems in Oregon. The assets of the following systems are to be acquired:

<u>Rate-regulated entities</u>	<u>Unregulated entities</u>
Cline Butte Water, LLC Running Y Water, LLC	Cline Butte Environmental, LLC Running Y Environmental, LLC

I. BACKGROUND

Northview Hotel Group (NVHG) is an owner/operator of hotels and resorts that was formed to make opportunistic hotel investments in the U.S. The company provides hotel management, asset management and construction management services for owners and co-investors. Oregon Resorts is an affiliate of NVHG that owns and manages two resorts in the State of Oregon, including Eagle Crest Resort and Brasada Ranch. An affiliate of NVHG is the former owner of Running Y Ranch Resort, located in Klamath Falls.

Running Y is a wholly-owned subsidiary of Oregon Resorts that provides water services to approximately 600 customers (residential, commercial, non-golf irrigation, and golf irrigation) located in Running Y Ranch Resort. Running Y's sister company, Running Y Environmental, LLC, provides wastewater services to the same customers. Per ORS 757.061(3)(a), the Commission regulates Running Y, but not Running Y Environmental, LLC.

Running Y's most recent general rate case was filed in 2008, at which time the Commission approved a rate of return of 3.736% on a rate base of \$4,067,337. (Docket No. UW 132, Order No. 09-094) Running Y's 2015 annual affiliated interest report is docketed with the Commission as RW 37 (4). Running Y currently has affiliated interest agreements with Running Y Development, LLC; NVHG OR Hotel Operator, LLC; and Oregon Resorts Acquisition Partners, LP. These affiliated interests will be replaced by affiliated interest agreements with SouthWest

and Suburban Water Systems (Suburban), applications for which will be filed in accordance with ORS 757.015 and 757.495

On September 27, 2016, the Buyer and Seller signed the APA, with the effective date of the transaction being not less than 60 days after the signing date, subject to approval from the Commission. The transaction is a privately-negotiated, non-auction sale between the Buyer and Seller. The aggregate consideration for the purchase of Cline Butte Water, LLC, Cline Butte Environmental, LLC, Running Y, and Running Y Environmental, LLC is \$ [REDACTED]. The preliminary purchase price allocation to Running Y's water system is \$ [REDACTED]. The final purchase price allocation will be finalized per section 3.1.c of the APA.

With this application, Oregon Resorts is requesting authorization of the APA and the ownership transfer of the assets of Running Y from Oregon Resorts to SouthWest.

SouthWest is based in Covina, California and is an investor-owned utility. SouthWest is focused on ownership and operation of regulated water and wastewater systems. It currently serves over half a million residential and business customers with approximately 138,000 active connections in five states: Alabama, California, Oklahoma, South Carolina, and Texas. SouthWest has been in the water and wastewater business since the early 1900s. Throughout its history, SouthWest has provided high quality customer service, community citizenship, and environmental stewardship.

SouthWest is owned by an open-ended, perpetual life investment fund with a long-term "hold" investment strategy. The investment strategy of the fund places emphasis on mature entities and low volatility. Its investors, which include pension funds and other entities looking for stable, long-term investments, share this long-term "hold" investment philosophy.

SouthWest has a long history of effectively owning and operating water systems and has annual revenues of \$ [REDACTED] and a net book value in excess of \$ [REDACTED], thereby positioning SouthWest to effect successful ownership, provide the customers of Running Y with excellent customer service, and make the necessary investments to ensure safe, clean and reliable water and wastewater services to the current residents and future generations.

II. INFORMATION PURSUANT TO OAR 860-036-0710

A. Name and Address

The Buyer's exact name and address of its principal business office are:

SouthWest Water Company
1325 N. Grand Suite 100
Covina, CA 91724-4044
(626) 543-2500
www.southwestwatercompany.com

B. Communications and notices

All notices and communications with respect to this application should be addressed to:

Seller

By e-mail (preferred):	mt@nvhg.com and curt@nvoregonresorts.com	wrolfe@water-law.com
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By regular mail:	Matthew Trevenen Partner, Northview Hotel Group 36 Narrow Rocks Rd. Westport, CT 06880 And Curt Heimuller Northview Community Services 8300 Coopers Hawk Dr. Redmond, OR 97756	Wyatt Rolfe Of Counsel, Schroeder Law Offices, P.C. 1915 NE Cesar E. Chavez Blvd. Portland, OR 97212
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Buyer

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By regular mail:	Brian Bahr Director, Regulatory Affairs SouthWest Water Company 1325 N. Grand Covina, Suite 100 Covina, CA 91724-4044	Irion Sanger Sanger Law PC 1117 SE 53rd Ave Portland, OR 97215
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C. Asset Purchase Agreement

Please refer to Confidential Exhibit A for a copy of the APA agreed to on September 27, 2016, between the Seller and Buyer.

D. Description of utility property affected by this transaction

Running Y provides water and wastewater services to approximately 600 customers (residential, commercial, non-golf irrigation, and golf irrigation). In 2015, the company’s water sales were just under \$0.5 million, of which \$285,872 was from metered residential sales. Running Y also recorded commercial sales in 2015 in the amount of \$60,478. Revenues received from irrigation customers were \$55,393, and golf course revenues were \$69,648. Running Y currently does not have any long-term debt or notes payable.

Running Y’s net book value is \$8,705,818 (see Exhibit D). This amount includes assets that were considered “excess capacity” in Running Y’s last general rate case. Running Y’s last general rate case was filed on November 12, 2008, and approved by the Commission on March 20, 2009 by Order No. 09-094. Plant categorized as excess capacity is placed into service as customer growth continues.

Property affected by the sale will include all assets, real or personal, owned or titled in the name of Running Y and utilized in the provision of water to its customers. There are three deep-water wells at Running Y, although only two are in production as one well was impacted by performance. There is one storage reservoir at Running Y which also houses a booster station on the same land parcel. Running Y Water services approximately 600 home sites, a hotel, and an 18-hole golf course situated on 3,600 acres. The RidgeWater community has approximately 16 completed homes in an amenitized community that is planned for over 650 home sites. It has one deep-water well, one storage reservoir, and one booster station that services the property. A listing of Running Y assets included in the sale is included as Section 2.1 of the Sellers' Disclosure Schedule, included with the APA as Confidential Exhibit A.

Additional detailed information regarding Running Y can be obtained from the following sources:

- Order in Running Y's last general rate case – Order No. 09-094
- Running Y's most recent annual affiliated interest report - Docket No. RW 26 (4)
- Running Y's most recent annual report of operations - Docket No. RW 37 (4)

E. Consideration

The price of the property being acted upon is \$ [REDACTED], payable as set forth in the APA attached to the application as Exhibit A. This amount is the total sale price for Running Y and Running Y Environmental, LLC, as well as Cline Butte Water, LLC and Cline Butte Environmental, LLC. Per section 3.1.c of the APA, the sale price will be allocated amongst the purchased systems within 60 days of closing; however, the preliminary purchase price allocation to Running Y's water system is \$ [REDACTED].

F. Reasons Seller desires to sell property

As discussed in the Background section of this application, the Seller is engaged primarily in the ownership and management of hotels and resort properties. Managing and operating utilities is not part of the Seller's core business. Oregon Resorts desires to sell the utility property in order to divest itself of operations that are not primary aspects of its core business. The Seller was able to identify a buyer in SouthWest that has extensive experience successfully managing and operating water utilities throughout the country and will continue to provide safe, reliable, high-quality service at reasonable rates to customers. The transaction is a privately negotiated, non-auction sale between the Seller and Buyer, and no other entities were a party to the transaction.

G. Effects of transaction on customers

This transaction will not cause harm to the public as customers will not be materially affected by this transaction. SouthWest is committed to providing safe, reliable, high-quality service at reasonable rates.

The day-to-day operations of Running Y will be managed locally by current employees. General management, accounting, human resources, and customer service support will be provided to Running Y by Suburban, the largest subsidiary of SouthWest. Suburban's main office is located

in southern California, making it geographically situated to be best able to accommodate the general management and customer service functions for Running Y.

Running Y will also be supported by SouthWest's corporate functions, which are:

- executive management;
- legal;
- human resources;
- facilities;
- finance;
- information technology; and
- regulatory affairs.

H. Benefits to customers

Customers of Running Y will immediately begin to see benefits of this transaction as it will be owned and managed by SouthWest, a company dedicated to providing such services and bringing with it a wealth of experience and knowledge to provide water effectively and efficiently. As stated on its website:

Our Mission: SouthWest Water Company takes pride in stewardship of valuable water resources. We provide safe and reliable water, wastewater services and resource management for homes, businesses and communities nationwide.

SouthWest earnestly approaches its mission through a commitment to excellence in the following areas:

- Job Safety
- Stewardship of the Environment
- Customer Care
- Employee Success
- Community Citizenship

Generally, customers of SouthWest benefit through its dedication to being responsible stewards of water resources, maintaining positive relationships with customers through exceptional customer service, and participating in events and activities to strengthen and better the communities in which it serves. SouthWest is committed to providing its customers with dependable, high-quality water that meets all federal and state health and safety standards.

SouthWest has extensive experience in all facets of water system operation including:

- Ensuring safe water quality to customers
- Providing excellent customer service
- Designing and constructing infrastructure improvements and replacement
- Maintaining and operating reliable water systems

- Partnering with local agencies to help serve their residents
- Managing a financially sound utility

SouthWest's primary responsibility is to ensure that all water produced, stored, and distributed to customers is safe and exceeds all regulations. SouthWest's professional operators have years of experience operating a range of complex water systems with various types of water sources. Our technicians monitor the system and ensure compliance and timely filing of regulatory permits, annual reports and the Consumer Confidence Report (CCR). They are also integral to our service mindset by taking calls and visiting customers to discuss any concerns they have with water quality.

To minimize the cost to customers and ensure long-term viability, SouthWest leverages a number of technologies to improve efficiency and streamline its business processes. SouthWest's Enterprise Resource Planning (ERP) system integrates all of the company's Information Technology Systems and uses Mobile Data Terminals to connect field operations personnel with the ERP system while they are working in the field to ensure timely delivery of information to our customers.

SouthWest also provides its customers with courteous and responsive customer service. One of the primary benefits customers will enjoy from SouthWest's ownership will be in having access to a dedicated call center. In each month of 2016, Suburban's call center has exceeded California Public Utilities Commission customer service key performance measure of 80 percent of customer calls answered within 30 seconds. The call center is staffed by knowledgeable, friendly employees well-equipped to interact with customers to answer questions, provide information, and resolve issues when appropriate.

Paperless billing and the ability to make payments online using bank cards is a convenience many customers value greatly. Customers of Running Y will benefit from access to paperless billing and online payment options provided through ownership by SouthWest. In addition, customers will have access to information provided on SouthWest's website, including history of the company, contact information, rates and tariffs, conservation information, job opportunities, and other helpful information.

I. Financial and operational ability of SouthWest to acquire Running Y

SouthWest has a BBB rating with Standard & Poor's rating agency with positive outlook. SouthWest has access to capital to finance the current operations and future capital expenditure requirements.

Please refer to Confidential Exhibit B for SouthWest's June 30, 2016 quarterly financial statements.

In addition to the Company's financial viability to acquire Running Y, SouthWest is also advantageously equipped to acquire the water systems from an operations standpoint. Suburban, which will provide general management to Running Y, has a strong executive leadership team with years of experience of operating regulated water utilities and impressive levels of industry

expertise and experience, including certifications in relevant professional fields such as engineering, water treatment, and water distribution.

J. Grants of Easement and water rights transferred with sale

Please see Exhibit C for copies of all grants of easements and water rights to be transferred with the purchase and sale of Running Y.

III. LIST OF EXHIBITS

Exhibit A—Asset Purchase Agreement (CONFIDENTIAL)

Exhibit B—June 30, 2016 SouthWest quarterly financial statements (CONFIDENTIAL)

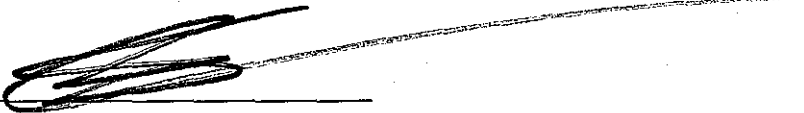
Exhibit C—Easements and water rights transferred with transaction

Exhibit D—Calculation of net book value

IV. PRAYER FOR RELIEF

Oregon Resorts respectfully requests this application be addressed by the Commission on or before December 20, 2016, and a Commission order (1) approving the APA and finding the proposed property sale will not harm customers and is consistent with the public interest; and (2) granting other such relief as the Commission deems necessary and proper.

Respectfully submitted this 21 day of October, 2016.



Signature of Water Utility Officer or Owner

State of Connecticut) ss.
County of Sherfield)

Simon Hallgarten

(Name of Party signing above)

Authorized Signatory

being first duly sworn, deposes and says he/she is (Title) _____ of

(Name of Utility) Running Y Water, LLC the applicant in the foregoing application, that he/she has read said application, including all exhibits thereto, knows the contents thereof, and the same are true to the best of his/her knowledge and belief.

(Signature) 

(Notarial Seal).

Catherine Smerigilo
Notary Public - Connecticut
My commission expires 11/30, 20 20

Exhibit A

Asset Purchase Agreement

CONFIDENTIAL

Parts of this Exhibit are confidential and are provided under separate cover.

ASSET PURCHASE AGREEMENT

among

CLINE BUTTE WATER, LLC,

CLINE BUTTE ENVIRONMENTAL, LLC,

RUNNING Y WATER, LLC, and

RUNNING Y ENVIRONMENTAL, LLC,

as Sellers,

OREGON RESORTS, LLC,

as Parent,

and

SOUTHWEST WATER COMPANY,

as Purchaser

Dated as of September 27, 2016

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”) is made and entered into as of September 27, 2016 among Cline Butte Water, LLC, a Delaware limited liability company (“*CBW*”), Cline Butte Environmental, LLC, a Delaware limited liability company (“*CBE*”, and together with CBW, “*Cline Butte*”), Running Y Water, LLC, a Delaware limited liability company (“*RYW*”), and Running Y Environmental, LLC, a Delaware limited liability company (“*RYE*”, and together with RYW, the “*RY Utilities*”, and the RY Utilities collectively with Cline Butte, the “*Sellers*”) and Oregon Resorts, LLC, a Delaware limited liability company (“*Parent*”), on the one hand, and SouthWest Water Company, a Delaware corporation (the “*Purchaser*”), on the other hand. Each of CBW, CBE, RYW, RYE, Parent and the Purchaser may be referred to in this Agreement as a “*Party*”, and collectively as the “*Parties*”. Certain capitalized terms in this Agreement have the meanings ascribed thereto in Article I.

RECITALS

A. The Sellers desire to sell, and the Purchaser desires to purchase, substantially all of the assets of the Sellers that are used and held for use for the purposes of providing water utility and wastewater services within the Sellers’ respective service areas (the “*Purchase*”) upon the terms and subject to the conditions set forth herein.

B. The Sellers and the Purchaser desire to make certain representations, warranties, covenants and other agreements in connection with the Purchase and the transactions contemplated herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements and respective representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I – DEFINITIONS

1.1 Certain Defined Terms

Unless the context requires otherwise, the following terms have the respective meanings specified below (such meanings to be equally applicable to the singular and plural forms of the terms defined):

“*Affiliate*” means, with respect to a specified Person, any other Person who directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

“*Agreement*” is defined in the introductory paragraph.

“*Applicable Survival Period*” is defined in Section 8.1(d).

“*Arbitrator*” means an independent accounting firm of national or regional standing experienced in working capital disputes, mutually selected by the Purchaser and the Parent, other than any firm which performs, or within the past two (2) years has performed, audits or financial statement reviews or

financial statement compilations for Parent, any Seller, the Purchaser, or any of their respective Affiliates.

“*Assets*” is defined in Section 2.1.

“*Assignment and Assumption Agreement*” is defined in Section 2.8.1.

“*Assignment of Intellectual Property*” is defined in Section 2.8.1.

“*Assumed Contracts*” means any Contract arising from or related to the Businesses or the Assets to which a Seller is a party, under which a Seller may have any rights or by which a Seller, the Businesses or any of the Assets is bound, and all bids, quotations and proposals therefor, including those set forth in Section 1.1(a) of the Sellers’ Disclosure Schedule, provided, however, that unless otherwise agreed by Purchaser in writing, the Assumed Contracts shall not be deemed to include any Contract or series of related contracts not set forth in Section 1.1(a) of the Sellers’ Disclosure Schedule to the extent such Contract or series of related contracts involves annual expenditures in excess of \$37,500.

“*Assumed Liabilities*” is defined in Section 2.3.

“*Balance Sheet*” is defined in Section 4.7.

“*Benefit Arrangement*” means any employment, consulting, severance or other similar contract, arrangement or policy and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits (including any “voluntary employees’ beneficiary association” as defined in Section 501(c)(9) of the Code providing for the same or other benefits) or for deferred compensation, profit-sharing bonuses, stock options, stock appreciation rights, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits that (i) is not a Welfare Plan, Pension Plan or Multiemployer Plan; (ii) is entered into, maintained, contributed to or required to be contributed to, as the case may be, by a Seller or any of its ERISA Affiliates; and (iii) covers any Business Employee.

“*Bill of Sale*” is defined in Section 2.8.1.

“*Businesses*” means the water and sewage utility businesses of the Sellers as such businesses are conducted by the Sellers on the date of this Agreement.

“*Business Day*” means any day that is not a Saturday, a Sunday or any other day on which banks generally are required or authorized to be closed in the State of Oregon.

“*Business Employee*” is defined in Section 7.7(a).

“*Business Group Employee*” is defined in Section 7.12(b).

“*Business Records*” mean all books, records, ledgers and files or other similar information of the Sellers (in any form or medium) related to, used or held for use in connection with the Businesses, including all client lists, vendor lists, correspondence, mailing lists, revenue records, invoices, advertising materials, brochures, records of operation, standard forms of documents, manuals of operations or business procedures, photographs, blueprints, research files and materials, data books, Intellectual Property disclosures and information, media materials and plates, accounting records and

litigation files (but excluding the organization and Tax documents (other than those Tax documents relating to employee withholding and payment of taxes on employment compensation and payment of property tax), and corporate seal of the Sellers).

“*Cap*” is defined in Section 8.5(a).

“*Claim*” is defined in Section 8.4(a).

“*Claim Notice*” is defined in Section 8.4(a).

“*Closing*” is defined in Section 2.7.

“*Closing Date*” means the date on which the Closing occurs.

“*Closing Proration List*” is defined in Section 3.2(a).

“*COBRA*” is defined in Section 7.7(e).

“*Code*” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

“*Computer Hardware*” means any computer hardware, equipment and peripherals of any kind and of any platform, including desktop and laptop personal computers, handheld computerized devices, servers, mid-range and mainframe computers, process control and distributed control systems, and network telecommunications equipment that is used internally in the operation of the Businesses.

“*Confidential Information*” is defined in Section 7.12(a)(ii).

“*Confidential Trade Secrets*” is defined in Section 7.12(a)(ii).

“*Confidentiality Agreement*” is defined in Section 7.2(a).

“*Contract*” means any legally binding contract, agreement, arrangement or understanding, whether written or oral.

“*Control*” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through ownership of voting securities or otherwise.

“*Corporate Administrative Functions*” is defined in Section 4.9(b).

“*Data*” means all information and data (including all files, documents, instruments, papers, books and records), whether in printed or electronic form and whether contained in a database or otherwise owned by a Seller, that has historically been or is now used or held for use in the operation of the Businesses, including, without limitation, all financial records, market data, customer and investor data, and sales and promotional literature, but excluding Tax records (other than those Tax records relating to employee withholding and payment of taxes on employment compensation and payment of property tax), and human resources and employee benefits data.

“*Debt*” means, with respect to any Person, without duplication, (a) the principal, accreted value, accrued and unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations in respect of (i) indebtedness of such Person for money

borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (b) all obligations of such Person issued or assumed as the deferred purchase price of property or services, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business (other than the current liability portion of any indebtedness for borrowed money)); (c) all obligations of such Person under any financing leases or leases required to be capitalized in accordance with GAAP; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (e) all obligations of such Person under interest rate or currency swap or other hedging transactions or agreements (valued at the termination value thereof); (f) all obligations of the type referred to in clauses (a) through (e) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Deductible Basket" is defined in Section 8.5(a).

"Deed" means a statutory special warranty deed, substantially in the form attached hereto as Exhibit A.

"Earnest Money" is defined in Section 2.6.

"Elongated Stay" is defined in Section 6.1(f)(iii).

"Employee Plans" mean all Benefit Arrangements, Multiemployer Plans, Pension Plans and Welfare Plans.

"Environment" means soil, land surface and subsurface strata, surface waters (including navigable and nonnavigable inland and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (indoor air), plant and animal life, and any other environmental medium or natural resource.

"Environmental, Health, and Safety Liability" means any loss or liability resulting from or arising under an Environmental Law or an Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);

(b) any fine, penalty, judgment, award, order, violation, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) any financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs, corrective action, or Remedial Action, including any cleanup, removal, containment, or other remediation or response actions ("***Cleanup***") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been

required or requested by any Governmental Authority or any other Person) and for any natural resource damages;

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law; or

(e) any Hazardous Activity.

The terms “removal,” “Remedial Action” and “response action” include the types of activities covered by CERCLA or any state equivalent.

“**Environmental Law**” means all Laws concerning human health, pollution and/or protection of the environment (including but not limited to those relating to the presence, use, production, handling, transport, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, recycling, control or cleanup of or exposure to any Hazardous Material) or natural resources, each as in effect as of the date hereof, including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (“**CERCLA**”); the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. Section 136 et seq.; the Resource Conservation and Recovery Act of 1976 (“**RCRA**”), 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; and any similar or implementing state or local law, and all amendments or regulations promulgated thereunder; and any common law doctrine, including but not limited to, negligence, nuisance, trespass, personal injury, or property damage related to or arising out of the presence or Release of, or exposure to, Hazardous Material.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means any trade or business, whether or not incorporated, under common control with any Seller and that, together with any Seller, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Escrow Agent**” means U.S. Bank National Association.

“**Escrow Agreement**” is defined in Section 2.6.

“**Escrow Funds**” is defined in Section 3.1(b)(i).

“**Excluded Assets**” is defined in Section 2.2.

“**Excluded Liabilities**” is defined in Section 2.4.

“**Existing Liabilities**” is defined in Section 7.10.

“**Final Proration List**” is defined in Section 3.2(c).

“**Fundamental Representations**” is defined in Section 8.1(a)(i).

“**GAAP**” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“**Governmental Authority**” means any government, governmental or regulatory authority, agency, instrumentality, department, court, commission, body, tribunal or other governmental entity, whether foreign or domestic and whether national, multinational, federal, state, provincial or local.

“**Government Official**” is defined in Section 4.23(b).

“**Hazardous Activity**” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Material.

“**Hazardous Material**” means any substance, material, or waste that is regulated by any Governmental Authority, including any material, substance, or waste that is defined or classified as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “pollutant,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “radioactive material,” or “toxic substance” under any provision of Environmental Law, including petroleum, petroleum products, products of hydrocarbon or geothermal energy extraction and produced waters resulting therefrom, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde, or polychlorinated biphenyls.

“**Immediate Family**” means, with respect to any specified natural Person, such Person’s spouse, domestic partner, parents, children, grandparents, grandchildren and siblings, including adoptive relationships and relationships through marriage, or any other relative of such Person that shares such Person’s home.

“**Indemnified Party**” is defined in Section 8.4(a).

“**Indemnifying Party**” is defined in Section 8.4(a).

“**Insurance Coverage**” is defined in Section 7.10.

“**Insurance Coverage Claim**” is defined in Section 7.10.

“**Insurance Policies**” is defined in Section 4.12.

“**Incremental Amount**” is defined in Section 6.1(f)(iii).

“**Intellectual Property**” means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the Laws of the United States or any other jurisdiction: (i) trade names, trademarks and service marks (registered and unregistered), domain names and other Internet addresses or identifiers, trade dress and similar rights and applications (including intent to use applications and similar reservation of marks and all goodwill associated therewith) to register any of the foregoing (collectively, “**Marks**”); (ii) patents and patent applications (collectively, “**Patents**”); (iii) copyrights (registered and unregistered) and applications for registration (collectively, “**Copyrights**”); and (iv) trade secrets, know-how, inventions, methods, processes and processing instructions, technical data, specifications, research and development information, technology including rights and licenses, product roadmaps, customer lists and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to

other Persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, “*Trade Secrets*”).

“*Interim Balance Sheet*” is defined in Section 4.7.

“*Inventory*” means all inventory, including raw and packing materials, work-in-progress, finished goods, supplies, parts and similar items used or held for use in connection with the Businesses.

“*IP Contracts*” is defined in Section 4.18.

“*IT Systems*” mean electronic data processing, information, record keeping, communications, telecommunications, account management, inventory management and other computer systems (including all computer programs, software, databases, firmware, hardware and related documentation) and internet websites and related content.

“*Laws*” any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, decree, statute or treaty or any other governmental requirement enacted, promulgated, entered into or imposed by any Governmental Authority.

“*Leased Real Property*” means the real property leased (as lessee), subleased, licensed or occupied by a Seller, or which a Seller otherwise has any legal or equitable right or option to use or occupy, together with, all buildings and other structures, facilities or improvements located thereon, all fixtures and all easements, licenses, rights and appurtenances relating to the foregoing.

“*Lien*” means any lien, encumbrance, mortgage, pledge, charge, security interest, preemptive right, option, conditional sale agreement or similar restriction of any kind or type whatsoever.

“*Losses*” is defined in Section 8.2.

“*Major Customers*” is defined in Section 4.19.

“*Major Suppliers*” is defined in Section 4.19.

“*Material Adverse Effect*” or “*Material Adverse Change*” means any change, development, occurrence or effect (each, an “*Effect*”) with respect to any Seller, any of the Businesses and any of the Assets associated therewith, that, individually or in the aggregate, is or would reasonably be expected to be materially adverse to the condition (financial or otherwise), or results of operations of the Businesses, taken as a whole; provided, however, that “*Material Adverse Effect*” or “*Material Adverse Change*” shall not include any Effect to the extent attributable to: (a) the transactions contemplated by this Agreement; (b) the identity of the Purchaser or its Affiliates or the Purchaser’s post-Closing plans for the Businesses; (c) changes in the general economic conditions or political climate in the United States, Oregon or any region where the Businesses operate; (d) changes generally applicable to the industries in which the Businesses are conducted, including changes in industry performance and changes in accounting principles and practices applicable to such industries; (e) changes in the financial, banking or securities markets; (f) changes in Laws applicable to the Sellers or the Businesses; (g) any failure by any Seller to meet any forecasts or projections (but not the underlying causes of such failure); or (h) any natural disasters, labor unrest, strikes, acts of war, terrorism, sabotage or other force majeure events; provided, however, that the exceptions described in clauses (c) through (f) and (h) shall not apply if the Effects described therein materially disproportionately affect a Seller or Business as compared to other

companies in the same industries as the Business that are also subject to such Effect, and provided, further, that the exception described in clause (h) shall not apply to a Release or other material violation of an Environmental Law.

“Material Consents” is defined in Section 6.1(c).

“Material Contracts” is defined in Section 4.11(a).

“Multiemployer Plan” means any “multiemployer plan,” as defined in Section 4001(a)(3) of ERISA, Section 3(37) of ERISA or Section 414(f) of the Code, (i) that any Seller or any of its ERISA Affiliates contributes to or is required to contribute to, or, within the five years prior to the Closing Date, contributed to or was required to contribute to, and (ii) that covers (or, within the five years prior to the Closing Date, covered) any Business Employee (with respect to his or her period of employment with such entities).

“Non-Solicitation Period” is defined in Section 7.12(b)(i).

“Non-Utility Side Letter” is defined in Section 2.8.1.

“Notice of Disagreement” is defined in Section 3.2(c).

“Occupational Safety and Health Law” means any Law that promotes safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., and any similar or implementing state or local law, and all amendments or regulations promulgated thereunder, each as in effect as of the date hereof.

“Order” means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

“Ordinary Course of Business” means, with respect to the Sellers and the Businesses, in the ordinary course of business of the Sellers and the Businesses, materially consistent in nature, scope, and magnitude with past practices.

“Other Ancillary Agreements” is defined in Section 2.8.1.

“Owned Real Property” means all the real property owned by the Sellers, including all buildings and other structures, facilities and improvements located thereon or related thereto, all fixtures, and all easements, licenses, rights and appurtenances relating to the foregoing, as more fully set forth in Section 4.10(a) of the Sellers’ Disclosure Schedule.

“Pension Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) (i) that any Seller or any of its ERISA Affiliates maintains, administers, contributes to or is required to contribute to and (ii) that covers any Business Employee.

“Parent” is defined in the introductory paragraph.

“Perkins Coie” is defined in Section 10.17.

“Permits” means all franchises, licenses, permits (unrelated to Intellectual Property), consents, waivers, registrations, exemptions, certificates, and other permits, authorizations or approvals issued or granted or required to be issued or granted by a Governmental Authority for the operation of any of the

Businesses and/or for the ownership, lease or operation of the Assets, and all pending applications therefor and amendments, modifications and renewals thereof.

“Permitted Liens” means with respect to any Asset (a) Taxes, assessments and other governmental levies, fees or charges imposed with respect to such Asset that are not due and payable as of the Closing Date; (b) mechanics’ liens and similar liens for labor, materials or supplies provided with respect to such Asset incurred in the Ordinary Course of Business for amounts that are not due and payable as of the Closing Date, or with respect to which Seller is contesting in good faith, which would not, individually or in the aggregate, materially impair the use or occupancy of such Asset or the operation of the Businesses; (c) zoning laws, building codes and other land use Laws regulating the use or occupancy of such Asset that constitutes Real Property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such Real Property; (d) easements, covenants, conditions, restrictions and other similar matters of record affecting title to such Real Property which do not materially impair the use or occupancy of such Real Property or the operation of the Businesses; and (e) with respect to any Real Property, any matter, other than matters that Seller has agreed to remove from title to the Real Property on or prior to the Closing Date as more fully described in Section 1.1(b) of the Sellers’ Disclosure Schedule, that (i) has been properly recorded against the Real Property, (ii) is disclosed in readily searchable state and local county public records (such as in lien docketts or court filings in the county in which the Real Property is located), or (iii) would be disclosed through a properly performed ALTA/NSPS survey of the Real Property.

“Person” means an individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, any other business entity, or a Governmental Authority.

“Personal Property” means all machinery, equipment, furniture, furnishings, rolling stock, tools, office supplies, vehicles, Computer Hardware and other tangible personal property owned or leased by any Seller and/or used or held for use in connection with the Businesses.

“Post-Closing Action Items” is defined in Section 7.13.

“Prepaid Items” mean all credits, prepaid expenses, advance payments, security deposits, escrows and other prepaid items arising from or related to the Businesses.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before any Governmental Authority, mediator or arbitrator.

“Prohibited Payment” is defined in Section 4.23(b).

“Proration Amounts” is defined in Section 3.2(a).

“PTO” is defined in Section 7.7(d).

“Purchase” is defined in the introductory recitals.

“Purchase Price” is defined in Section 3.1(a).

“Purchaser” is defined in the introductory paragraph.

“Purchaser Confidential Information” is defined in Section 7.12(a).

“Purchaser Indemnified Parties” is defined in Section 8.2.

“Purchaser Offer” is defined in Section 7.7(a).

“Real Property” means, together, all Leased Real Property and all Owned Real Property.

“Receivables” mean all receivables (including notes, accounts receivable, loans receivable and advances) arising from or related to the Businesses.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Related Party”, with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, partner or managing member of such Affiliate; (ii) any Immediate Family Member of such specified Person, or (ii) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person’s Immediate Family, more than 25% of the outstanding equity or ownership interests of such specified Person.

“Release” means any unpermitted release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, or migration on or into the Environment, or into or out of any property.


“Representatives” means, with respect to any Person, that Person’s officers, directors, employees, counsel, accountants, investment bankers, agents, advisors and others who act on such Person's behalf or at such Person’s direction or request in connection with the evaluation (including environmental assessments and other due diligence), negotiation, execution, effectuation or consummation of the transactions contemplated by this Agreement.

“Review Period” is defined in Section 3.2(c).

“Rights” mean all claims, causes of action, rights of recovery and rights of set-off against any Person arising from or related to the Businesses, the Assets or the Assumed Liabilities, including: (i) all rights under any Assumed Contract, including all rights to receive payment for products sold and services rendered thereunder, to receive goods and services thereunder, to assert claims and to take other rightful actions in respect of breaches, defaults and other violations thereof; and (ii) all rights under or in respect of any Seller Intellectual Property, including all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation, violation, unlawful imitation or breach thereof, and all rights of priority and protection of interests therein under the laws of any jurisdiction.

“Rollover PTO” is defined in Section 2.3.5.





“*Sanctions*” is defined in Section 4.22.

“*Selected Business Records*” means all Business Records created on or after November 19, 2010 relating to any rate case determination, including any materials submitted to any applicable Governmental Authority in support of, or in opposition thereto, and any water quality reports submitted to any applicable Governmental Authority.

“*Selected Real Property*” means those properties and facilities set forth in Section 1.1(c) of the Sellers’ Disclosure Schedule.

“*Seller Confidential Information*” is defined in Section 7.12(a).

“*Seller Intellectual Property*” means all Intellectual Property owned (in whole or in part) by or licensed to any Seller and/or used in connection with a Business, excluding off-the-shelf software licensed to such Seller in the same version, without customization, as also available to the general public.

“*Seller IT Systems*” mean all IT Systems used in connection with a Business.

“*Sellers*” is defined in the introductory paragraph.

“*Sellers’ Disclosure Schedule*” means the disclosure schedules delivered by the Sellers to the Purchaser concurrently herewith.

“*Seller Indemnified Parties*” is defined in Section 8.3.

“*Sellers’ Knowledge*” or “*to the Knowledge of the Sellers*” or any phrase of similar import means with respect to any matter or subject, the actual knowledge of each of Matthew Trevenen, Curt Heimuller, Mackay Burcher and Brett Limbeck.

“*State PUC*” means the Oregon Public Utility Commission.

“*State PUC Conditions*” is defined in Section 6.1(f)(i).

“*State PUC Consents*” means, with respect to CBW and RYW, the grant by the State PUC of its consent to the consummation of the applicable transactions contemplated hereby.

“*State PUC Cost Limit*” is defined in Section 6.1(f)(ii).

“*State PUC Costs*” is defined in Section 6.1(f)(ii).

“*Stay*” is defined in Section 6.1(f)(iii).

“*Subsidiary*” means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, of which: (a) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more

of its Subsidiaries; or (b) such Person or any other Subsidiary of such Person is a general partner (excluding any such partnership where such Person or any Subsidiary of such Person does not have a majority of the voting interest in such partnership).

“**Tax**” or “**Taxes**” means: (i) any or all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, escheat, customs, duties or other taxes, fees, assessments or charges in the nature of taxes of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of Law; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

“**Tax Return**” means all returns, declarations, reports, claims for refunds, information returns or similar documents (including any related or supporting schedules or statements of information) filed or required to be filed in connection with the determination, assessment or collection of Taxes or the administration of any laws relating to any Taxes.

“**Termination Date**” is defined in Section 9.1(b).

“**Third Party Claim**” is defined in Section 8.4(b)(i).

“**Title Company**” means AmeriTitle, Inc.

“**Transaction Documents**” means this Agreement, the Other Ancillary Agreements, and any other agreement, certificate, instrument or document executed or delivered in connection with this Agreement.

“**Transfer Taxes**” is defined in Section 7.8(b).

“**Transferred Employees**” is defined in Section 7.7(a).

“**Utility Trade Names**” means the names set forth in Section 1.1(d) of the Sellers’ Disclosure Schedule.

“**Water System**” is defined in Section 4.14(a).

“**Welfare Plan**” means any “employee welfare benefit plan,” as defined in Section 3(1) of ERISA, (i) that a Seller or any of its ERISA Affiliates maintains, administers, contributes to or is required to contribute to and (ii) that covers any Business Employee.

1.2 Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(iv) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time (but not after the date of this Agreement), including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect (but not after the date of this Agreement) and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(v) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section, Schedule or other provision hereof, unless otherwise specified;

(vi) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(vii) "or" is used in the inclusive sense of "and/or";

(viii) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(ix) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.

(d) Disclosure Schedules. If any section of the Sellers' Disclosure Schedule lists an item or information that appears on its face to be reasonably relevant to another section of the Sellers' Disclosure Schedule, the matter will be deemed to have been disclosed in such other section of the Sellers' Disclosure Schedule, notwithstanding the omission of an appropriate cross-reference to such other section.

ARTICLE II – PURCHASE AND SALE OF ASSETS

2.1 The Purchase.

Subject to the terms and conditions of this Agreement, at the Closing, the Sellers shall sell, transfer, convey, assign and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to the Purchaser, and the Purchaser shall purchase and acquire, all of the Sellers' right, title and interest in and to all assets, properties and rights of every nature, kind and description, whether tangible or intangible, real, personal or mixed, accrued or contingent (including goodwill), wherever located and whether now existing or hereafter acquired prior to the Closing Date, used or held for use in connection with the Businesses, as the same shall exist on the Closing Date, whether or not carried or reflected on or specifically referred to in the Sellers' books or financial statements or in the schedules hereto, other than the Excluded Assets (collectively, but excluding the Excluded Assets, the "*Assets*"), free and clear of all Liens other than Permitted Liens. The Assets shall include, without limitation, all of the Sellers' right, title and interest in and to those certain assets set forth in Section 2.1 of the Sellers' Disclosure Schedule, and:

2.1.1 Assets Generally

- (a) All assets recorded or reflected on the Interim Balance Sheet; and
- (b) All assets acquired by the Sellers since the date of the Interim Balance Sheet, which, had they been held by the Sellers on such date, would have been recorded or reflected on such Interim Balance Sheet.

2.1.2 Receivables

All Receivables.

2.1.3 Contract Rights

All rights under the Assumed Contracts, except as excluded under Section 2.2.

2.1.4 Real Property

All Real Property, including all rights in respect of any Leased Real Property (including any security deposits).

2.1.5 Personal Property

- (a) All Seller Intellectual Property, including the Utility Trade Names;
- (b) All Seller IT Systems;
- (c) All Personal Property;
- (d) All Inventory; and
- (e) The goodwill and going concern value and other intangible assets, if any, arising from or related to the Businesses.

2.1.6 Permits

To the extent legally assignable or transferable, all Permits relating to the Businesses.

2.1.7 Books and Records, Manuals and Documents

All Business Records, provided, that the Sellers shall be permitted to retain a copy of such Business Records in accordance with their applicable record retention policies.

2.1.8 Other

- (a) All Prepaid Items; and
- (b) All Rights.

2.2 Excluded Assets.

The Sellers and the Purchaser expressly understand and agree that the Sellers are not transferring to the Purchaser pursuant to this Agreement any of the following assets of the Sellers (all such other assets and rights being the “*Excluded Assets*”):

2.2.1 Cash

All cash and cash equivalents.

2.2.2 Seller Records

All minute books, corporate seals and records solely having to do with the organization, capitalization or Taxes of each Seller, except Business Records with respect to Taxes.

2.2.3 Employees

Any Records related to Business Employees that may not be transferred or disclosed to the Purchaser under Law.

2.2.4 Insurance Policies

Other than as agreed in writing between Purchaser and a Seller, and permitted by the applicable insurance carrier, any Insurance Policy.

2.2.5 Certain Rights.

Any Rights related to Excluded Assets or any Rights related to any Excluded Liabilities in respect of which and to the extent that Sellers (including any Seller Affiliate) provide applicable Purchaser Indemnified Parties with indemnification in accordance with this Agreement.

2.2.6 Excluded Assets Schedule

All assets listed in Section 2.2.6 of the Sellers’ Disclosure Schedule, if any.

2.3 Assumption of Liabilities.

Upon the terms and subject to the conditions of this Agreement, the Purchaser agrees, effective at the time of Closing, to assume the following obligations (the “*Assumed Liabilities*”):

2.3.1 Assumed Contracts

All obligations of the Sellers under the Assumed Contracts from and after the Closing Date (except that the Purchaser will not succeed to or assume, and the Sellers will be responsible for, any liability or obligation arising out of any breach of any Assumed Contract existing on the Closing Date).

2.3.2 Permits

All liabilities and obligations arising subsequent to the Closing Date in respect of Permits assigned to the Purchaser in accordance with this Agreement (Purchaser will not succeed to or assume, and the Sellers will be responsible for, any liability or obligation arising out of any violation or breach of any Permit existing on the Closing Date).

2.3.3 Current Liabilities

All liabilities incurred by the Businesses recorded on the Interim Balance Sheet, and all liabilities incurred by the Businesses subsequent to the date of the Interim Balance Sheet in the Ordinary Course of Business that are recorded on the balance sheets of the Businesses.

2.3.4 Post-Closing Liabilities

All liabilities accruing, related to or otherwise arising out of the conduct or operation of the Businesses by the Purchaser or the ownership, leasing or use of the Assets by the Purchaser after the Closing Date.

2.3.5 Rollover PTO

Forty (40) hours of accrued and unpaid PTO for each Transferred Employee who, as of the Closing Date, has elected in writing to retain forty (40) hours of accrued and unpaid PTO (“*Rollover PTO*”) from and after the Closing pursuant to Section 7.7(d)(i).

2.4 Excluded Liabilities.

Regardless of any disclosure to the Purchaser, except for the Assumed Liabilities, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of a Seller of any kind, character or description whatsoever, whether direct or indirect, known or unknown, absolute or contingent, matured or unmatured, and currently existing or hereinafter arising (the “*Excluded Liabilities*”), including the following:

2.4.1 Pre-Closing Liabilities

All liabilities accruing, related to or otherwise arising out of the conduct or operation of the Businesses by the Sellers or the ownership, leasing or use of the Assets by the Sellers on or prior to the Closing Date, other than Assumed Liabilities.

2.4.2 Taxes

All Taxes arising from or with respect to the Assets or the operation of the Businesses that are incurred in or attributable to any period, or any portion of any period, ending on or prior to the Closing Date.

2.4.3 Employees

All liabilities not expressly assumed by the Purchaser pursuant to Section 7.7 related to or otherwise arising from the Sellers' or their Affiliates' employment of the Business Employees or under any Employee Plan (including any salary, vacation pay, severance pay, bonus or other similar liabilities of Sellers or their Affiliates), other than Rollover PTO in accordance with Section 2.3.5.

2.4.4 Debt


Any Debt outstanding as of the Closing Date to the extent any such Debt is not fully satisfied and discharged in connection with the Closing.

2.4.5 Other Excluded Liabilities

(a) All liabilities and obligations in respect of any Excluded Asset, whether arising prior to or after the Closing Date;

(b) Any liability of the Sellers arising from or related to any compliance or noncompliance on or prior to the Closing Date with any Law applicable to any Seller, Business or Asset;

(c) Any liability of the Sellers arising from or related to any Proceeding against any Seller, Business or Asset pending as of the Closing Date;



(e) Any liability incurred by any Seller or any of their respective Related Parties arising out of or relating to the negotiation and preparation of this Agreement and the other Transaction Documents (including fees and expenses payable to all attorneys and accountants, other professional fees and expenses, and bankers', brokers' or finders' fees for Persons engaged by the Sellers or their Affiliates);

(f) Any liability of the Sellers to allocate or distribute to any Seller's members or Parent, or otherwise apply all or any part of the consideration to be received hereunder; and

(g) Any liability of the Sellers to indemnify, reimburse, or advance amounts to any present or former officer, director, employee or agent of any Seller or its Affiliates (including with respect to any breach of fiduciary obligations by any such party), except for indemnification obligations pursuant to Section 8.3.

2.5 Consents and Waivers; Further Assurances.

(a) Nothing in this Agreement or the other Transaction Documents shall be construed as an agreement to assign any Assumed Contract, Permit, Right or other Asset that by its terms or pursuant to applicable Law is not capable of being sold, assigned, transferred or delivered without the

consent or waiver of a third party or Governmental Authority unless and until such consent or waiver shall be given. Each of the Sellers, on the one hand, and the Purchaser, on the other, shall use their respective commercially reasonable efforts to obtain such consents and waivers, including but not limited to those consents and waivers set forth in Section 2.5(a) of the Sellers' Disclosure Schedule, and to resolve the impediments to the sale, assignment, transfer or delivery contemplated by this Agreement or the other Transaction Documents, and to obtain any other consents and waivers necessary to convey to the Purchaser all of the Assets. Subject to Sections 6.1 and 6.2 (below), in the event any such consents or waivers are not obtained prior to the Closing Date, the Purchaser shall continue to use its commercially reasonable efforts to obtain the relevant consents or waivers until such consents or waivers are obtained, and the Sellers will reasonably cooperate with the Purchaser in any lawful and economically feasible arrangement to provide that the Purchaser shall receive the interest of the Sellers in the benefits under any such Assumed Contract, Permit, Right, or Asset.

(b) If, subsequent to the Closing, any of the Purchaser, Parent or the Sellers discovers an Asset that is or has been used in, or necessary for, the operation, maintenance or management of the Businesses, or the provision of water utility and wastewater services, and that Asset was not specifically and effectively transferred and conveyed to the Purchaser at the Closing as contemplated by this Agreement, then such Party shall immediately notify the other such Parties of such discovery and, if requested in writing by Purchaser, such Parties shall take such actions and execute and deliver such instruments and other documents as are reasonably necessary to specifically and effectively transfer and convey such Asset to the Purchaser, for no additional consideration to the Sellers.

2.6 Earnest Money Deposit.

Concurrent with the execution of this Agreement, (a) the Sellers, the Escrow Agent, and the Purchaser will each deliver their respective executed copies of an escrow agreement, in form and substance satisfactory to the Sellers, the Escrow Agent and the Purchaser (the "*Escrow Agreement*"), and (b) the Purchaser will deposit, in accordance with the terms of the Escrow Agreement, \$1,000,000 with the Escrow Agent as earnest money to secure the performance of the Purchaser's obligations under this Agreement (the "*Earnest Money*"). If the Closing occurs, the Earnest Money shall be applied toward and shall be deemed part of the Escrow Funds. Concurrently with the deposit of the Earnest Money, each of the Purchaser, on the one hand, and the Sellers, on the other hand, shall cause to be delivered to the Escrow Agent one half (1/2) of the fees and expenses of the Escrow Agent, in accordance with the terms of the Escrow Agreement. The Sellers may terminate this Agreement if the Purchaser fails to make the Earnest Money deposit when due, with time being of the essence.

2.7 The Closing.

The closing of the Purchase (the "*Closing*") provided for in this Agreement will take place by email transmission of PDF copies of signature pages on or before the Business Day that is not more than five (5) Business Days following the satisfaction or waiver of all of the conditions to the obligations of the Parties set forth in Section 6.1 (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date), or at such other time as the Purchaser and the Parent may agree in writing; provided, that, notwithstanding the foregoing, the Parent and the Purchaser may mutually agree in writing to cause the Closing Date to occur on the last Business Day of the calendar month following the satisfaction or waiver of the conditions set forth in Section 6.1.

2.8 Closing Deliveries.

2.8.1 Sellers' Closing Deliverables.

At the Closing, the Sellers shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) certified copies of the certificates of formation of each Seller;
- (b) the organizational documents of each Seller not filed with a Governmental Authority in connection with its organization, certified as of the Closing Date by an authorized Person on behalf of such Seller;
- (c) certificates of valid existence or good standing, as applicable, for each Seller issued as of a recent date by the appropriate Governmental Authority;
- (d) certified resolutions of the managers and members of each Seller and Parent, authorizing the transactions contemplated by this Agreement and the other Transaction Documents;
- (e) a certificate executed by authorized Persons of each of the Sellers certifying as to the satisfaction of the conditions set forth in Sections 6.1(a), 6.1(b), and 6.1(e);
- (f) an executed copy of the non-utility side letter, in the form attached hereto as Exhibit B (the “*Non-Utility Side Letter*”);
- (g) an opinion of counsel to Sellers, dated as of the Closing Date, in the form of Exhibit C (the “*Opinion of Sellers' Counsel*”);
- (h) a bill of sale for the Assets, in the form of Exhibit D (the “*Bill of Sale*”), duly executed by the Sellers;
- (i) a counterpart of the Assignment and Assumption Agreement, in the form of Exhibit E (the “*Assignment and Assumption Agreement*”), duly executed by the Sellers;
- (j) an instrument of assignment of the Seller Intellectual Property, in the form of Exhibit F (the “*Assignment of Intellectual Property*”), duly executed by the Sellers;
- (k) Deeds conveying the Owned Real Property to the Purchaser, in the form of Exhibit A;
- (l) an executed copy of the operations and maintenance agreement in the form of Exhibit G;
- (m) a copy of the transition services agreement in the form of Exhibit H executed by Eagle Crest Management, LLC;
- (n) executed copies of each of the agreements listed on Exhibit I hereto and scheduled for completion pre-Closing, as indicated in Exhibit I, in each case in form and substance satisfactory to the Purchaser (the “*Other Ancillary Agreements*”);

(o) a payoff or similar letter duly executed by Bank of the Cascade, in customary form and substance, in which the payee agrees that upon payment of the amount specified in such letter all Liens in connection therewith on any Asset, will be automatically released; and the payee will either take all actions reasonably necessary to evidence and record such discharge and release promptly or authorize the Sellers or the Purchaser to do so;

(p) such other customary documents as the Purchaser may reasonably request, each in form and substance satisfactory to the Purchaser, and, if necessary, executed by the Sellers, for the purpose of facilitating the Closing (which documents will not include any additional liability or obligation of the Parent or the Sellers, except as contemplated by this Agreement); and

(q) a certificate of non-foreign status from each of the Sellers in compliance with Treasury Regulations Section 1.1445-2(b)(2).

2.8.2 Purchaser's Closing Deliverables.

At the Closing, the Purchaser shall deliver to the Sellers:

(a) a counterpart of the Assignment and Assumption Agreement, duly executed by the Purchaser; and

(b) a counterpart operations and maintenance agreement in the form attached as Exhibit G;

(c) a counterpart of the Non-Utility Side Letter;

(d) a counterpart of the transition services agreement in the form attached as Exhibit H;

(e) executed copies, as applicable, of the Other Ancillary Agreements; and

(f) such other customary documents and instruments, in form and substance reasonably satisfactory to the Sellers, as the Sellers may reasonably request or as may be otherwise necessary or desirable to evidence and effect the assumption by the Purchaser of the Assumed Liabilities (which documents will not include any additional liability or obligation of the Purchaser, except as contemplated by this Agreement).

ARTICLE III – CONSIDERATION

3.1 Consideration.

(a) Subject to Section 3.2, the aggregate consideration for the Assets (the “*Purchase Price*”) will be (a) [REDACTED]

(b) At the Closing, the Purchaser shall pay:

(i) [REDACTED] by wire transfer of immediately available funds to the Escrow Agent pursuant to the Escrow Agreement (collectively with the Earnest Money, the “*Escrow Funds*”); and

(ii) the Purchase Price less the Escrow Funds to the Sellers by wire transfer of immediately available funds to the account(s) designated by the Sellers in writing not less than two (2)

Business Days prior to the Closing. Not less than two (2) Business Days prior to the Closing, the Sellers shall further direct the Purchaser in writing on the amount of the Purchase Price to be paid to each Seller.

(c) Purchase Price Allocation.

(i) Within sixty (60) days after the Closing Date, the Purchaser and the Sellers will allocate the Purchase Price and amount of Assumed Liabilities among the Assets in accordance with Section 1060 of the Code and the regulations thereunder (and any similar provisions of other Law, as appropriate). The Purchaser and the Sellers agree to cooperate with each other, and to furnish each other with such information as is reasonably requested by the other Party, for purposes of determining the allocation of the Purchase Price and amount of Assumed Liabilities among the Transferred Assets.

(ii) If the Purchaser and the Sellers are unable, on or prior to the thirtieth (30th) day following the Closing Date, to agree on an allocation, then the Parties shall not later than five (5) Business Days thereafter engage a mutually agreeable nationally or regionally recognized firm of independent certified public accountants (the “*Independent Accountant*”) other than any firm which performs, or within the past three (3) years has performed, audits or financial statement reviews or financial statement compilations for any Party, or any of their respective Affiliates. The Parties will cooperate fully with the Independent Accountant to facilitate its determination of allocation, including by providing any Data the Independent Accountant reasonably requests, and making such Party’s personnel and accountants reasonably available to explain any such Data. The Independent Accountant shall be instructed to deliver a decision solely with respect to the allocation, within twenty (20) calendar days after the submission of such matter to the Independent Accountant. The determination of the Independent Accountant shall be final and binding on the Parties. Each of the Sellers, on the one hand, and the Purchaser, on the other hand, shall pay one half of the cost of the Independent Accountant and any related expenses.

(iii) If the Purchaser and the Sellers agree on an allocation, or following final determination of an allocation in accordance with Section 3.1(c)(ii), (A) the Purchasers and the Sellers shall make consistent use of such allocation for all Tax purposes and in all Tax Returns, including the reports and IRS Forms 8594 required to be filed under Section 1060 of the Code, to the maximum extent permitted by applicable Law and (B) in any Proceeding related to the determination of any Tax, no Party shall contend or represent that such allocation is not a correct allocation unless a final “determination” (within the meaning of Section 1313 of the Code) to the contrary has been made in respect thereof; provided, that the preceding shall not prevent either the Purchaser or any Seller from reaching a binding settlement or compromise to conclude a Proceeding that requires either the Purchaser or such Seller to concede to an allocation different from that which is determined pursuant to this Section 3.1(c)(iii), so long as (x) the Party with respect to whom the Proceeding relates promptly informs the other Party of the Proceeding to the extent it relates to the allocation, (y) in the course of such Proceeding, the relevant Party in good faith, initially defends and advocates in a manner consistent with the allocation determined pursuant to this Section 3.1(c)(iii) and (z) each Party reasonably cooperates with the other in the good faith defense of the allocation determined pursuant to this Section 3.1(c)(iii).

3.2 Prorations.

(a) Generally, all operating income and operating expenses of the Sellers shall be adjusted and allocated between the parties to the extent necessary to reflect the principle that all such income and expenses attributable to the operation of the Businesses on or before the Closing Date shall be for the account of the Sellers, and all income and expenses attributable to the operation of the Businesses after the Closing Date shall be for the account of the Purchaser. Prorations under this

Section 3.2 will be made separately for each Seller, and no later than five (5) Business Days prior to the Closing, the Sellers shall provide the Purchaser with an itemized list of all sums to be credited or charged (the “**Proration Amounts**”) against the account of the Purchaser, on the one hand, and of each Seller, on the other hand, with a brief explanation in reasonable detail of the credits or charges, consistent with Exhibit J (the “**Closing Proration List**”). At Closing, the Purchase Price shall be increased to the extent any Proration Amounts result in a credit to the account of the Sellers or a charge to the account of the Purchaser and decreased to the extent any Proration Amounts result in a credit to the account of the Purchaser or a charge to the account of the Sellers.

(b) The allocations and prorations to be made pursuant to this Section 3.2 shall be computed in a manner consistent with the assumptions, categories, classifications, judgments and allocation, valuation and estimation methodologies set forth on Exhibit J. To the extent not inconsistent with the express provisions of this Agreement, the allocations made pursuant to this Section 3.2 shall be made in accordance with GAAP. Such prorations shall include all (i) *ad valorem* and other property taxes, (ii) assessments, (iii) utility expenses, (iv) liabilities and obligations under the Assumed Contracts, (v) rents, (vi) deferred revenue and prepayments, (vii) customer deposits and advances in aid of construction, and (viii) all other expenses and obligations attributable to the ownership and operation of the Businesses that straddle the period before and after the Closing Date. To the extent not known within the time period contemplated in subsection (a) above, real estate and personal property Taxes will be estimated and apportioned on the basis of Taxes assessed in the most recent available bill.

(c) Within sixty (60) days following the Closing Date, or such later date as shall be mutually agreed to by the Sellers and the Purchaser, the Purchaser shall prepare and deliver to the Sellers a proposed final version of the Closing Proration List (the “**Final Proration List**”). The Final Proration List shall become final and binding upon the Parties 30 days following delivery thereof (the “**Review Period**”), unless a Seller gives written notice of its disagreement with the Final Proration List (the “**Notice of Disagreement**”) to the Purchaser prior to end of the Review Period. The Notice of Disagreement shall specify in reasonable detail the nature of any disagreement so asserted, indicating each disputed item, together with the amount thereof, and the basis for such Seller’s disagreement therewith. If a Notice of Disagreement is given to the Purchaser prior to the expiration of the Review Period, then the Final Proration List (as revised in accordance with clause (i) or (ii) below) shall become final and binding upon the parties on the earlier of (i) the date the Purchaser and the applicable Seller resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (ii) the date any disputed matters are finally resolved in writing by the Arbitrator. Within 15 days after the Final Proration List becomes final and binding on the Parties pursuant to the preceding sentence, the Parties shall compute an adjusted Purchase Price pursuant to subsection (a) using the Final Proration List in lieu of the Closing Proration List and (x) if the adjusted Purchase Price is greater than the Purchase Price computed pursuant to subsection (a) at the Closing, the Purchaser shall pay the difference to the Sellers or (y) if the adjusted Purchase Price is less than the Purchase Price computed pursuant to subsection (a) at the Closing, the Sellers shall pay the difference to the Purchaser. If a Seller disagrees with the Final Proration List determined by the Purchaser or with any other matter arising out of this subsection, and the Purchaser and the Seller cannot within 30 days resolve the disagreement themselves, the parties will refer the disagreement to the Arbitrator, whose decision shall be final. Each party shall have an additional 30 days from the end of the prior 30 day period to submit their respective positions and any relevant supporting materials. Each of the Sellers, on the one hand, and the Purchaser, on the other hand, shall pay one-half of the fees and expenses of the Arbitrator.

ARTICLE IV – REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Parent and each Seller hereby represents and warrants to the Purchaser as follows:

4.1 Organization, Qualification and Good Standing.

(a) Each Seller is duly organized, validly existing and in good standing, as applicable, under the laws of its jurisdiction of organization with full corporate or limited liability company power and authority to own, lease or use all of the property owned, leased or operated in connection with the conduct of its respective Business and to carry on the operations of its respective Businesses as currently being conducted. Each Seller is duly qualified to do business and is in good standing, as applicable, in each jurisdiction in which the nature of the business conducted by it or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as applicable, would not have a Material Adverse Effect.

(b) The Sellers have delivered to the Purchaser copies of the organizational documents of each of the Sellers. Since November 19, 2010, the Sellers have not conducted business under or otherwise used, for any purpose or in any jurisdiction, any legal, fictitious, assumed, or trade name other than the names listed in Section 4.1 of the Sellers' Disclosure Schedule.

4.2 Enforceability; Authority.

All corporate or limited liability company action on the part of each Seller necessary for the authorization, execution, delivery and performance of this Agreement and the other Transaction Documents to which such Seller is or will be a party has been taken. This Agreement has been, and each of the other Transaction Documents to which each Seller is a party at the Closing will have been, duly executed and delivered by such Seller, and this Agreement is, and each of the other Transaction Documents to which such Seller is or will be a party will be (assuming the due authorization, execution and delivery by the other parties hereto and thereto) at the Closing, a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except to the extent that enforceability hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by the principles of equity regarding the availability of remedies.

4.3 Subsidiaries.

The Sellers do not own, directly or indirectly, any capital stock or other ownership interests, or have any obligations to acquire any capital stock or other ownership interests or make any investment, in any corporation, partnership, joint venture or other Person.

4.4 No Violations; Consents.

The execution and delivery of this Agreement and the other Transaction Documents by the Sellers do not, and the performance by the Sellers of their obligations under this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby will not: (i) conflict with or violate any provision of the organizational documents of the Sellers; (ii) subject to receipt of the State PUC Consents, contravene, breach, or violate or give any Governmental Authority the right to challenge any transaction contemplated hereby, or to exercise any remedy or obtain any relief under, any applicable Law or any Order to which any Seller, or any Assets used in the conduct of any Business, are subject; (iii) subject to receipt of the State PUC Consents, contravene, breach, violate, result in the loss of any benefit to which the Businesses are entitled under, or give any Governmental Authority the right to revoke, suspend, cancel, terminate, or modify, any Permit that relates to the Businesses or to the Assets owned or used by the Sellers; or (iv) breach, conflict with or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in

creation of any Lien (other than a Permitted Lien) upon any Assets of the Sellers under, any Contract to which a Seller is a party or by which any Assets of the Sellers are bound. Except as set forth in Section 4.4(a) of the Sellers' Disclosure Schedule and subject to receipt of the State PUC Consents, no Seller is or shall be required to give notice to, or obtain any consent or approval from, any Person in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

4.5 Compliance with Laws; Permits.

(a) To Sellers' Knowledge, each Seller is in compliance with all Laws applicable to such Seller or to the conduct of the Businesses or the ownership or use of any of the Assets. Sellers have not, since November 19, 2010, received any written notice regarding any actual or alleged violation of, or failure to comply with, any Law.

(b) Section 4.5(b) of the Sellers' Disclosure Schedule contains a complete and accurate list of each material Permit that is held by any Seller in connection with the Businesses. To the Knowledge of Sellers, each Permit listed in Section 4.5(b) of the Sellers' Disclosure Schedule is valid and full force and effect. Except as set forth in Section 4.5(b) of the Sellers' Disclosure Schedule:

(i) Such Seller is in material compliance with all of the terms and requirements of each of its Permits identified in Section 4.5(b) of the Sellers' Disclosure Schedule;

(ii) To the Knowledge of the Sellers, no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) constitutes or results, or would reasonably be expected to constitute or result, in a material violation of, or failure to, comply with any term or requirement of any Permit listed in Section 4.5(b) of the Sellers' Disclosure Schedule, or (B) results or would reasonably be expected to result in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any such Permit; and

(iii) None of the Sellers has received, since November 19, 2010, any written notice from any Governmental Authority regarding any (A) actual or alleged violation of or failure to comply in any material respect with any term or requirement of any Permit set forth in Section 4.5(b) of the Sellers' Disclosure Schedule, or (B) revocation, withdrawal, suspension, cancellation, termination of or modification to any such Permit.

(c) All Certificates of Convenience and Necessity and similar franchises (collectively, "CCNs") issued in connection with any Business have, to the Knowledge of the Sellers, been validly and appropriately granted, and are in full force and effect, free and clear of all Liens. True and complete copies of all CCNs have been delivered to the Purchaser.

(d) The Permits listed in Section 4.5(d) of the Sellers' Disclosure Schedule collectively constitute all material Permits necessary to permit the Sellers to lawfully own or use its assets and properties, and to operate the Businesses in the Ordinary Course of Business. Sellers make no representation or warranty to the Purchaser as to whether it may use or take assignment of any Permit, or as to Permits it may be required to obtain to operate the Businesses.

4.6 Legal Proceedings; Orders.

(a) Except as set forth in Section 4.6(a) of the Sellers' Disclosure Schedule, there is no pending or, to the Sellers' Knowledge, threatened Proceeding by or against or involving, such Seller or

any of its officers, directors, employees, agents or members in their capacity as such, in any such case related to any Business or Asset, including but not limited to condemnation or eminent domain; and

(b) As of the date of this Agreement, there is no Proceeding pending, or, to the Sellers' Knowledge, threatened, that challenges, or that would reasonably be expected to have the effect of preventing, materially delaying, making illegal or otherwise materially interfering with, any transaction contemplated by this Agreement.

(c) Except as set forth in Section 4.6(c) of the Sellers' Disclosure Schedule, there is no Order to which any Seller, Business or Asset is subject.

(d) Except as set forth in Section 4.6(d) of the Sellers' Disclosure Schedule:

(i) Each Seller is in compliance in all material respects with all of the terms and requirements of each Order concerning any Business or Asset;

(ii) To Sellers' Knowledge, no event has occurred or circumstance exists that is reasonably likely to constitute or result in a material violation of or failure to comply in any material respect with any term or requirement of any such Order; and

(iii) Such Seller has not received, since November 19, 2010, any written notice or other communication from any Governmental Authority regarding any actual or alleged material violation of, or failure to comply in any material respect with, any term or requirement of any such Order.

4.7 Financial Statements/Books and Records.

(a) Set forth in Section 4.7 of the Sellers' Disclosure Schedule are: (i) a summary balance sheet based upon excerpts from the Sellers' audited balance sheet as of December 31, 2015 (the "**Balance Sheet**"), selected so as to provide complete and accurate balance sheet(s) with respect to the Businesses; (ii) statements of income for the Businesses for the fiscal years ended December 31, 2015 and December 31, 2014; (iii) a summary balance sheet based upon selected excerpts from Sellers' unaudited balance sheet as of June 30, 2016 (the "**Interim Balance Sheet**"), selected so as to provide complete and accurate balance sheet(s) with respect to the Businesses; and (iv) statements of income for the Businesses for the six-month period ended June 30, 2016. To the Sellers' Knowledge, such financial statements fairly present in all material respects the results of operations of the Businesses at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP. The financial statements referred to in this Section 4.7 reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. The financial statements have been and will be prepared from and are in accordance with the accounting Records of the Sellers. Except as and to the extent adequately accrued or reserved against in the Interim Balance Sheet, such Seller does not have any liability or obligation of any nature arising out of, relating to or affecting the Businesses, whether accrued, absolute, contingent or otherwise, and required by GAAP to be reflected in a balance sheet of the Businesses or disclosed in the notes thereto, except for (a) liabilities and obligations incurred in the Ordinary Course of Business since the date of the Interim Balance Sheet, or (b) that are disclosed in this Agreement or in the Sellers' Disclosure Schedules.

(b) Copies of the Selected Business Records have been provided to the Purchaser prior to the date of this Agreement. The Selected Business Records are complete and correct in all material respects, and represent actual, bona fide transactions, and have been maintained in accordance with

sound business practices in all material respects, including the maintenance of an adequate system of internal controls.

4.8 Absence of Certain Changes or Events.

Since December 31, 2015 (a) the Sellers have conducted the Businesses only in the Ordinary Course of Business; (b) there has not been any change, event or development that, individually or in the aggregate, has had or would reasonably be likely to have a Material Adverse Effect; (c) none of the Businesses nor the Assets have suffered any loss, damage, destruction or other casualty affecting any material properties or assets thereof or included therein, whether or not covered by insurance; and (d) no Seller has taken any of the following actions, except as set forth in Section 4.8 of the Sellers' Disclosure Schedule:

(a) issued, sold, pledged, disposed of or otherwise subjected to any Lien any material Asset, other than the disposition of used or obsolete Personal Property in the Ordinary Course of Business;

(b) incurred any Debt;

(c) amended, waived, modified or consented to the termination of any Material Contract, or amended, waived, modified or consented to the termination of such Seller's rights thereunder, or entered into any Contract in connection with any Business or the Asset, in each case, other than in the Ordinary Course of Business;

(d) authorized, or made any commitment with respect to, any single capital expenditure for any Business that is in excess of \$15,250 or capital expenditures that are, in the aggregate, in excess of \$35,000 for the Businesses taken as a whole for which the Businesses will be obligated following the Closing;

(e) acquired any corporation, partnership, limited liability company, other business organization or division thereof or any material amount of assets comprising a business, or entered into any joint venture, strategic alliance, exclusive dealing, noncompetition or similar Contract;

(f) entered into any lease of real or personal property or any extensions or renewals thereof in connection with the Businesses;

(g) increased the compensation payable or to become payable or the benefits provided to any Business Employee, or granted any severance or termination payment to, or paid, loaned or advanced any amount to, any Business Employee, or established, adopted, entered into or amended any Employee Plan, in each case other than in the Ordinary Course of Business;

(h) entered into any Contract with any Related Party of any Seller in connection with or affecting the Businesses or the Assets;

(i) made any change in any method of accounting or accounting practice or policy affecting the financial statements of the Businesses, except as required by GAAP;

(j) made, revoked or modified any Tax election, settled or compromised any Tax liability or file any Tax Return relating to the Businesses other than on a basis consistent with past practice;

(k) canceled, compromised, waived or released any Right, other than in the Ordinary Course of Business;

(l) permitted the lapse of any existing policy of insurance relating to any Business or the Asset;

(m) permitted the lapse of any material right relating to Seller Intellectual Property used in connection with the Businesses;

(n) commenced or settled any Proceeding relating to any Business, Asset or the Assumed Liability;

(o) knowingly taken any action that would require an amendment to any Permit or other registration with a Governmental Authority that it has not amended or registered; or

(p) committed in writing to take any of the foregoing actions.

4.9 Affiliate Interests and Transactions.

(a) Except as set forth in Section 4.9(a) of the Sellers' Disclosure Schedule and to the Sellers' Knowledge, no Affiliate or, to the Sellers' Knowledge, no Related Party of a Seller: (i) owns, directly or indirectly, any equity or other financial or voting interest in any competitor, supplier, customer, licensor, lessor, distributor or independent contractor of the Businesses; (ii) owns, directly or indirectly, or has any interest in any property (real or personal, tangible or intangible) used in the Businesses (other than in the interests of the Sellers); (iii) has any financial interest in any transaction with the Businesses or with a Seller involving the Businesses or any of the Assets, other than transactions conducted in the Ordinary Course of Business at prevailing market prices and on prevailing market terms; or (iv) is a Business Employee.

(b) Except for this Agreement and as set forth in Section 4.9(b) of the Sellers' Disclosure Schedule, there are no Contracts by and between any Seller, on the one hand, and any Affiliate, and to the Sellers' Knowledge, any Related Party of such Seller, on the other hand, pursuant to which such Related Party provides or receives any information, assets, properties, support or other services to or from the Businesses (including Contracts relating to billing, financial, Tax, accounting, data processing, human resources, administration, legal services, information technology and other corporate overhead matters ("*Corporate Administrative Functions*")).

(c) Except as set forth in Section 4.9(c) of the Sellers' Disclosure Schedule or expressly contemplated by this Agreement, at Closing, there will be no intercompany payable or Receivables between any Seller and any Affiliate of a Seller, other than amounts owed to the Sellers by Affiliates of the Sellers for water and sewage services in the Ordinary Course of Business.

4.10 Real Property.

Except as set forth in Section 4.10 of the Sellers' Disclosure Schedule:

(a) Section 4.10(a) of the Sellers' Disclosure Schedule lists all Owned Real Property, including the street address and tax parcel identification number of each property. The Sellers have delivered to the Purchaser copies of all title insurance policies and surveys in the possession of the Sellers or Parent relating to the Owned Real Property.

(b) Section 4.10(b) of the Sellers' Disclosure Schedule lists all Leased Real Property, including a description of the premises leased. All Leased Real Property is leased pursuant to valid written leases listed in Section 4.10(b) of the Sellers' Disclosure Schedule. Such leases contain the entire agreement between the landlord of each of the leased premises and such Seller, and there is no other Contract between the landlord and such Seller affecting such Leased Real Property. None of the Sellers leases any Real Property as a lessor or sub-lessor.

(c) To the Knowledge of the Sellers, no fact or condition exists which would result in the termination of (i) the current access from each parcel of the Real Property, and (ii) continued use, operation, maintenance, repair and replacement of all existing water lines and appurtenances used in connection with the Water System and the Businesses.

(d) To Sellers' Knowledge, if required for the use or occupancy thereof, certificates of occupancy are in full force and effect for each location of Real Property. To Sellers' Knowledge, the current use or occupancy of the Selected Real Property does not violate applicable zoning, building codes or other land use restrictions. The Sellers have not received, since November 19, 2010, any written notice that a location of Real Property materially violates any applicable zoning, subdivision, land use, or other Law. No Seller has entered into any Contract with a third party giving such third party a right to acquire any interest in the Owned Real Property or in such Seller's interests in the Leased Real Property that has not been terminated prior to the date of this Agreement. To Sellers' Knowledge, there is no existing or proposed plan to modify or realign any street or highway abutting a parcel of Real Property or any existing or proposed eminent domain Proceeding that would result in the taking of all or any part of any parcel of Real Property or that would prevent or materially hinder the continued use of any such parcel as used in the conduct of the Businesses.

4.11 Material Contracts.

(a) Set forth in Section 4.11(a) of the Sellers' Disclosure Schedule are, as of the date of this Agreement, all of the following contracts entered into by the Sellers or by which the Businesses or the Assets are subject or bound (collectively with the leases disclosed in Section 4.10(b) of the Sellers' Disclosure Schedule and IP Contracts, the "**Material Contracts**"):

- (i) any Contract evidencing Debt of the Sellers or the Businesses;
- (ii) any Contract or series of related Contracts, whether or not made in the Ordinary Course of Business, that (A) involves a payment or receivable, as the case may be, in excess of \$15,000 during the 12 months ended December 31, 2015, or (B) by its terms requires the payment or receipt of more than \$15,000 in a 12-month period ending after the date of this Agreement and, in either case, cannot be cancelled by such Seller without penalty or further payment and without less than 60 days' notice;
- (iii) any joint venture or partnership, merger, asset or stock purchase or divestiture Contract of the Sellers or any of their respective Affiliates relating to any Business or any Asset;
- (iv) any Contract with any Governmental Authority;
- (v) any Contract (excluding with the State PUC) that limits, or, to the Knowledge of the Sellers, purports to limit, the ability of a Seller or the Businesses to compete in any line of business or with any Person or to conduct the Businesses in Oregon or in any geographic area, or that restricts the

right of a Seller or the Business to sell to or purchase from any Person or to hire any Person or that grants to the other party or any third Person “most favored nation” status;

(vi) any Contract pursuant to which a Seller is the lessee or lessor of, or holds, uses, or makes available for use to any Person, any tangible personal property and that involves an aggregate payment or receivable, as the case may be, in excess of \$15,000 per year;

(vii) any Contract for the sale or purchase of any real property in an amount in excess of \$50,000 or for the sale or purchase of any tangible personal property in an amount in excess of \$15,000;

(viii) any Contract providing for indemnification to or from any Person with respect to liabilities relating to the Sellers, the Businesses or the Assets;

(ix) any hedging, futures, options or other derivative Contract;

(x) any Contract relating to settlement of any administrative or judicial Proceedings since November 19, 2010, other than rate cases;

(xi) any Contract that results in any Person holding a power of attorney that relates to a Seller, the Businesses or the Assets; and

(xii) any Contract with any labor union.

(b) The Sellers have delivered to the Purchaser true and complete copies of all of the Material Contracts, including any amendments or modifications thereto. Each Material Contract is valid, binding and enforceable in accordance with its terms against the Sellers and, to the Sellers’ Knowledge, each other party thereto, and to the Sellers’ Knowledge is in full force and effect. Neither the Sellers nor, to the Knowledge of the Sellers, any other party, is in breach or violation of, or (with or without notice or lapse of time or both) default in any material respect under, any Material Contract, nor has the Seller received written notice of any claim of any such breach, violation or default.

4.12 Insurance.

Section 4.12 of the Sellers’ Disclosure Schedule sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, directors’ and officers’ liability, fiduciary liability and other casualty and property insurance maintained with respect to the Business and the Assets, together with the carriers and liability limits for each such policy (collectively, the “*Insurance Policies*”), and true and complete copies of all such Insurance Policies have been delivered to the Purchaser. All such Insurance Policies are in full force and effect. All premiums with respect thereto have been paid to the extent due. Neither Parent nor any Seller has received written notice of any cancellation, termination, material reduction of coverage or material premium increases with respect to any such policy. No claim currently is pending under any such policy. Section 4.12 of the Sellers’ Disclosure Schedule identifies which insurance policies are “occurrence” or “claims made” and which Person is the policy holder. Sellers make no representation or warranty that relates to whether the Purchaser will receive any benefit under Sellers’ or their Affiliates’ Insurance Policies.

4.13 Title; Sufficiency of Assets.

(a) Except as set forth in Section 4.13(a) of the Sellers' Disclosure Schedule, and subject to Permitted Liens, the Sellers own good and transferable title to or a valid leasehold interest in all of the Assets, free and clear of any Liens other than Permitted Liens.

(b) At Closing, the Sellers shall have the power and right to sell, transfer, convey and assign the Assets.

(c) Other than with respect to Corporate Administrative Functions, the Assets constitute all of the assets of the Sellers and their Affiliates, tangible and intangible, of any nature whatsoever, necessary to carry on the operations of the Businesses as currently being conducted.

(d) To the Knowledge of the Sellers and subject to those matters set forth in Section 4.13(d) of the Sellers' Disclosure Schedule, the Assets will continue to be available to Purchaser immediately after the Closing, in the same manner as currently available to Sellers, and no Seller has received any written notice of a third party threatening to take, any action that would in any way limit the Purchaser's access to, or interrupt the availability of, the Assets. No Person has any right to purchase any equity or other interest in any Seller or a material part of any Seller's Assets or the Businesses, which right could affect the Purchaser's right to purchase the Businesses and the Assets.

4.14 Description of the Water System.

(a) The Sellers have provided to the Purchaser a description or map of the water system operated in connection with the Businesses (the "*Water System*"), which description or map identifies all water mains used in the Water System to the Sellers' Knowledge.

(b) The Sellers have provided to the Purchaser true and complete copies of all engineering reports relating to the Water System prepared for the Sellers on or after January 1, 2013.

(c) Except as set forth in Section 4.14(c) of the Sellers' Disclosure Schedule, all water supply sources, pump stations and storage facilities, mains and service connections used in connection with the Water System are located on Owned Real Property in fee simple, on Leased Real Property, within the public rights-of-way, or within permanent easements of record either in favor of such Seller and generally assignable, or in the form of a general utility easement.

4.15 Regulation as a Utility

Each of CBW and RYW is regulated as a public utility in Oregon. Neither CBW nor RYW is subject to regulation as a public utility or public service company (or similar designation) by any other state in the United States, by the United States or any agency or instrumentality of the United States, or by any foreign country. Neither CBE or RYE is subject to regulation as a public utility or public service company (or similar designation) by any state in the United States, by the United States or any agency or instrumentality of the United States, or by any foreign country.

4.16 Employee Benefit Plans.

(a) Section 4.16(a) of the Sellers' Disclosure Schedules sets forth a complete and correct list of the names of all current Business Employees, specifying their position and description of the areas of responsibility with respect to the Businesses, and their salary, bonus and incentive entitlements, date

of hire and business location and identifying which Business Employees are currently receiving long-term or short-term disability benefits or are absent from active employment on leave and their anticipated dates of return to active employment.

(b) Except as set forth in Section 4.16(b) of the Sellers' Disclosure Schedule:

(i) none of the Pension Plans is a Multiemployer Plan or a Pension Plan that is subject to either Title IV of ERISA or Section 412 of the Code;

(ii) to the Sellers' Knowledge, (A) each Employee Plan is operated in all material respects in accordance with its terms and the requirements of all applicable Laws, including ERISA, the Code, the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993, the Health Insurance Portability and Accountability Act of 1996, the Patient Protection and Affordable Care Act, and the Health Care and Education Reconciliation Act of 2010, and (B) each Seller has performed in all materials respects all obligations required to be performed by it and is not in any material respect in default under or in violation under any Employee Plan, nor does the Seller have any Knowledge of any such material default or violation by any other party to any Employee Plan;

(iii) each Pension Plan that is intended to be qualified under Section 401(a) of the Code is the subject of a current favorable determination letter from the Internal Revenue Service or is in the form of a prototype or volume submitter plan document that is the subject of a favorable opinion or advisory letter, and, to the Knowledge of Sellers, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such Pension Plan;

(iv) no Welfare Plan provides post-employment medical or life insurance benefits except (A) to the extent required by applicable Law, including Section 4980B of the Code, (B) benefits through the end of the month of termination of employment or service, (C) death benefits attributable to deaths occurring at or prior to termination of employment or service, and (D) conversion rights;

(v) each Welfare Plan that covers any Business Employee who is a resident of the United States and which is a "group health plan," as defined in Section 607(1) of ERISA, has been operated in material compliance with the provisions of Part 6 of Subtitle B of Title I of ERISA and Sections 4980B of the Code to the extent such provisions are applicable to such Welfare Plan; and

(vi) except to the extent required by applicable Law, neither the execution, delivery or performance of this Agreement or the other Transaction Documents nor the consummation of the transactions contemplated hereby or thereby (either alone or in connection with any other event) will result in the acceleration or creation of any rights of any Business Employee under any Employee Plan (including the acceleration of the vesting or exercisability of any stock options, the acceleration of the vesting of any restricted stock, the acceleration of the accrual or vesting of any benefits under any Pension Plan or the acceleration or creation of any rights under any severance, parachute or change in control agreement) and/or give rise to the payment of any amount that could reasonably be expected to be a "parachute payment" under Section 280G of the Code.

4.17 Labor and Employment Matters.

(a) None of the Sellers nor any of their Affiliates is a party to any labor or collective bargaining Contract that pertains to any Business Employees. There are no, and since January 1, 2014 there have been no, organizing activities or collective bargaining arrangements by Business Employees. There is no, and since January 1, 2014 there has been no, labor dispute, strike, controversy, slowdown,

work stoppage or lockout pending or, to the Knowledge of the Sellers, threatened against or affecting the Businesses or the Sellers in connection with the Businesses.

(b) Each Seller or Seller Affiliate, as applicable, is and since January 1, 2014 has been in compliance in all material respects with all applicable Laws respecting employment, including discrimination or harassment in employment, equal opportunity, terms and conditions of employment, termination of employment, wages, overtime classification, hours, occupational safety and health, employee whistle-blowing, immigration, employee privacy, employment practices and classification of employees, consultants and independent contractors, in connection with the Businesses. To the Knowledge of the Sellers, such Seller or Seller Affiliate is not engaged in any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws, in connection with the Businesses. No unfair labor practice or labor charge or complaint is pending or, to the Knowledge of the Sellers, threatened with respect to the Businesses or such Seller in connection with the Businesses before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Authority.

(c) Each Seller or Seller Affiliate, as applicable, has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts required to be withheld from Business Employees and, to the Knowledge of the Sellers, is not liable for any arrears of wages, Taxes, penalties or other sums for failure to comply with any applicable Laws relating to the employment of labor in connection with the Businesses. Such Seller or Seller Affiliate, as applicable, has paid in full to all Business Employees or adequately accrued in accordance with GAAP for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf thereof.

(d) Each Seller or Seller Affiliate, as applicable, is not a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to or affecting Business Employees or employment practices in connection with the Businesses. None of the Sellers, their Affiliate, nor, to the Knowledge of the Sellers, any of its executive officers has received since November 19, 2010 any written notice of intent by any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation relating to the Businesses and, to the Knowledge of the Sellers, no such investigation is in progress. As of the date of this Agreement, to the Knowledge of the Sellers, no current Business Employee has provided written notice of the employee's intention to terminate the employee's employment relationship with the Businesses following the consummation of the transactions contemplated hereby.

4.18 Intellectual Property; Systems.

Section 4.18 of the Sellers' Disclosure Schedules sets forth a complete and correct list of all registered Intellectual Property and material unregistered Marks and Copyrights owned by the Sellers and included in the Seller Intellectual Property, including any pending applications to register any of the foregoing. Such Seller exclusively owns, free and clear of any and all Liens, all Seller Intellectual Property identified in Section 4.18 of the Sellers' Disclosure Schedules. Section 4.18 of the Sellers' Disclosure Schedule sets forth each Contract by which any Seller licenses Intellectual Property, other than with respect to commercially available software products under standard end-user object code, "shrink wrap" or "check through" license agreements ("*IP Contracts*"). To the Sellers' Knowledge, no product or service marketed or sold by the Businesses violates any license or infringes on any Intellectual Property rights of any other Person. Since November 19, 2010, no Seller has received written notice alleging that it has violated or, by conducting its Business, would violate any of the patents, trademarks, service marks, trade names, copyrights, trade secrets, mask works or other proprietary rights or processes

of any other Person. To the Sellers' Knowledge, each Seller has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that it owns or leases or that it has otherwise provided to its employees for their use in connection with the Businesses. Each Seller has taken reasonable and customary measures consistent with generally accepted industry practices to safeguard and protect from unauthorized use and disclosure all Data in its possession or under its control, and since January 1, 2014 there have been no security breaches or unauthorized uses or disclosures with respect to any such Data.

4.19 Customers and Suppliers.

Section 4.19 of the Sellers' Disclosure Schedule lists for the first fiscal quarter of the current fiscal year and the most completed fiscal year the names of the respective customers that were the top twenty (20) largest customers in terms of dollar value of products or services, or both, sold by the Businesses ("**Major Customers**"). Section 4.19 of the Sellers' Disclosure Schedule also lists for each such period, the names of the respective suppliers that were the top five (5) largest suppliers in terms of dollar value of products or services, or both, to the Businesses ("**Major Suppliers**"). Since January 1, 2015 until the date of this Agreement, no Major Customer or Major Supplier has given any Seller or any Affiliate of any Seller written notice of such Person's intent to terminate or cancel any Contract with the Businesses.

4.20 Environmental Matters.

Except as set forth in Section 4.20 of the Sellers' Disclosure Schedule or disclosed in any environmental assessment obtained by or on behalf of, or delivered to, Purchaser:

(a) To the Knowledge of the Sellers, the Sellers and the Businesses have since January 1, 2011 complied with all applicable Environmental Laws in all material respects.

(b) None of the Sellers nor any other Person for whose conduct any of them is or would be held responsible has received since January 1, 2011 any Order or written notice that it is or asserts that it is or may be in violation of or has failed to comply with any applicable Environmental Law in any material respect, which either remains pending or unresolved, or is the source of an ongoing or unresolved Environmental, Health, and Safety Liability as of the Closing Date.

(c) There are no pending, or to the Knowledge of the Sellers, threatened Proceedings resulting from any Environmental, Health, and Safety Liability, with respect to or affecting the Businesses or any of the Assets.

(d) To the Knowledge of Sellers, there is no ongoing or unresolved Environmental, Health, and Safety Liability with respect to or affecting the Businesses or any of the Assets, other than liabilities incurred in the Ordinary Course of Business.

(e) To the Knowledge of Sellers, there have been no Releases on, in, at, from or under the Real Property attributable to (i) the operation of the Businesses or (ii) any geographically adjoining property ("**Adjoining Property**"), which could reasonably be expected to result in an Environmental, Health, and Safety Liability against any Seller, the Businesses or the Real Property. None of the Sellers nor, to the Knowledge of the Sellers, any other Person for whose conduct any of them is or would be held responsible has permitted or conducted, or is aware of, any activity conducted with respect to the Assets which could reasonably be expected to result in an Environmental, Health, and Safety Liability against any Seller, the Businesses or the Real Property.

(f) To the Knowledge of Sellers, none of the Real Property contains any (i) above-ground or underground storage tanks or (ii) landfills, surface impoundments, or disposal areas.

(g) Without representation as to the accuracy or completeness, Sellers have delivered to the Purchaser copies of all reports, studies, analyses, or tests initiated by or on behalf of or in the possession of such Seller pertaining to the environmental condition of, Hazardous Material or Hazardous Activity in, on, or under, the Real Property, or concerning compliance by the Businesses or the Sellers or any other Person for whose conduct any of them is or could be held responsible, with Environmental Laws.

(h) To the Knowledge of Sellers, such Seller is and has been for the past three (3) years in compliance with all applicable federal and state primary drinking water standards and secondary drinking water standards, and all applicable Laws pertaining to the wastewater treatment and discharge.

The Sellers make no other representation or warranty with respect to compliance with or knowledge of violation, or events or circumstances which could with the passage of time result in a violation, of Environmental Laws other than under this Section 4.20.

4.21 Taxes

(a) Such Seller has prepared and filed with the appropriate domestic, federal, state, local and foreign taxing authorities all Tax Returns required to be filed by such Seller with respect to the Businesses and the Assets, and has paid all Taxes attributable to the Businesses and the Assets owed or payable by it, including Taxes which such Seller is obligated to withhold, the nonpayment of which would result in Lien (other than a Permitted Lien) on any Asset, or would result in the Purchaser becoming liable or responsible therefor. Such Seller does not have a liability for unpaid Taxes attributable to the Businesses or the Assets, other than liabilities for (i) Taxes reflected as current liabilities in its Interim Balance Sheet that are not yet delinquent or being validly contested by such Seller and (ii) Taxes incurred since the date of its Interim Balance Sheet in the Ordinary Course of Business, that are not delinquent or being validly contested by such Seller.

(b) All Tax Returns filed by such Seller with respect to the Businesses and the Assets are true and correct in all material respects and include all statements and other information required to avoid penalties or additions to Tax.

(c) Neither the Sellers nor the Businesses are currently the subject of a Tax audit, or to the Knowledge of the Sellers, a Tax examination or investigation. Such Seller has not consented to extend the time, nor is it the beneficiary of any extension of time, in which any Tax is due to be assessed or collected by any Taxing authority. Such Seller has not received from any taxing authority any written notice of proposed adjustment, deficiency, underpayment of Taxes which has not been satisfied in full by payment or been withdrawn.

(d) To the Knowledge of the Sellers, no claim has been made by any Taxing authority in a jurisdiction where such Seller does not file Tax Returns that such Seller or the Businesses or the Assets are or may be subject to taxation by that jurisdiction.

(e) Such Seller is not a party to, is bound by, or has any obligation under, any Tax sharing agreement, Tax allocation agreement, Tax indemnity agreement or similar Contract (other than commercial Contracts not primarily related to Taxes).

4.22 Sanctions.

Each of Parent, each Seller and any Related Party is in compliance with all anti-money laundering Laws related to the prevention of money laundering and terrorist financing in the jurisdictions in which Parent, such Seller or the Businesses operate. Such Seller is not a Person that is, or is owned or controlled by Persons that are: (i) the subject of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions. None of the transactions contemplated by this Agreement will violate Sanctions applicable to any Seller. None of Parent, the Sellers, or any Related Party is a senior political control figure, an Immediate Family member of a senior political control figure, or a close associate of a senior political control figure. None of Parent, the Sellers or any Related Party is a shell bank.

4.23 Ethical Business Practices.

None of the Sellers nor any of their respective directors, officers, employees or Related Parties nor, to the Knowledge of the Sellers, any agents or other Persons acting on behalf of any of the foregoing, directly or indirectly in relation to the Assets or the Businesses, has:

(a) violated or is in violation of applicable anti-corruption laws, or

(b) made, offered or promised to make, or authorized the payment or giving of money, or anything else of value, to any (i) executive, official, employee or person acting in an official capacity for or on behalf of a Governmental Authority or a government-controlled entity or a public international organization (e.g., the International Monetary Fund or the World Bank), or (ii) political party or official thereof, or candidate for political office (each of the foregoing a "**Government Official**"), or (iii) any other person, while knowing or believing that all or some portion of the money or value will be offered, given or promised to a Government Official or other Person for the purposes of obtaining or retaining business or securing any improper advantage or in other circumstances when such offer, payment or promise would be unlawful (each a "**Prohibited Payment**"), or

(c) been subject to any investigation by any Governmental Authority or body of regulators with regard to any actual or alleged breach of any relevant anti-corruption law.

4.24 Brokers' Fees.

No investment banker, broker, finder, consultant or intermediary is entitled to any investment banking, broker, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby based upon arrangements made by or on behalf of the Sellers.

4.25 No Other Representations.

The Sellers make no representation or warranty with respect to the Sellers or the Businesses or the Assets except as specifically set forth in this Agreement, including not making any representation or warranty with respect to information delivered to, or to presentations to, the Purchaser in connection with due diligence or otherwise.

EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IV, THE SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY ASSETS, LIABILITIES OR OPERATIONS, INCLUDING WITH RESPECT TO CONDITION, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY FINANCIAL PROJECTIONS OR FORECASTS, AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE V – REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Sellers that:

5.1 Organization, Qualification and Corporate Power.

The Purchaser is duly organized, validly existing, and in good standing, as applicable, under the laws of the jurisdiction of its organization. The Purchaser is duly qualified to do business and is in good standing, as applicable, in each jurisdiction in which the nature of the business conducted by it or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as applicable, would not have a material adverse effect on their ability to consummate the transactions contemplated by this Agreement.

5.2 Enforceability.

All corporate action on the part of the Purchaser necessary for the authorization, execution, delivery and performance of this Agreement and the other Transaction Documents to which the Purchaser is or will be a party is or will be a party has been taken. This Agreement has been, and each of the other Transaction Documents to which the Purchaser is a party at the Closing will have been, duly executed and delivered by the Purchaser, and this Agreement is, and each of the other Transaction Documents to which the Purchaser is or will be a party will be (assuming the due authorization, execution and delivery by the other parties hereto and thereto) at the Closing a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent that enforceability hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by the principles of equity regarding the availability of remedies.

5.3 No Violations; Consents.

(a) The execution and delivery of this Agreement and the other Transaction Documents by the Purchaser does not, and the performance by the Purchaser of its obligations under this Agreement and the other Transaction Documents will not: (i) conflict with or violate any provision of the governing documents of the Purchaser, (ii) conflict with or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or result in creation of any Lien upon any properties or assets of the Purchaser under, any contract or agreement to which the Purchaser is a party or by which any material properties or assets of the Purchaser is bound, or (iii) subject to the State PUC Consents, result in a material violation of any law or any judgment, decree, order, regulation or rule of any court or other Governmental Authority applicable to the Purchaser.

(b) The execution and delivery of this Agreement and the other Transaction Documents by the Purchaser does not, and the performance of this Agreement and the other Transaction Documents by the Purchaser of its obligations hereunder and thereunder and consummation of the transactions

contemplated thereby will not, require any consent, approval, authorization or permit of, or filing by the Purchaser with or notification by the Purchaser to, any Governmental Authority, except for: (i) the consent or approval of or notice to any Governmental Authority listed in Section 5.3(b) of the Sellers' Disclosure Schedules; and (ii) notice filings that are not material to the Purchaser.

5.4 Funds.

The Purchaser has (and at Closing will have) sufficient immediately available unrestricted funds to pay when due the Purchase Price and to otherwise satisfy its financial obligations hereunder on and after the Closing Date.

5.5 Brokers' Fees.

No investment banker, broker, finder, consultant or intermediary is entitled to any investment banking, broker, finder's, or similar fee or commission in connection with this Agreement or the transactions contemplated hereby based upon arrangements made by or on behalf of the Purchaser.

5.6 Litigation.

No claim, action, suit, arbitration or proceeding is pending or, to the Purchaser's knowledge, threatened against the Purchaser, that questions the validity of this Agreement or any of the Transaction Documents to which the Purchaser is a party or any action taken or to be taken by the Purchaser hereunder or thereunder, and the Purchaser is not subject to any order, writ, judgment, injunction, decree, determination or award that prohibits or restricts any action taken or to be taken by it pursuant to this Agreement or any such Transaction Document.

5.7 Independent Investigation

The Purchaser has conducted an independent investigation of the Businesses and the Assets and, in making its determination to proceed with the transactions contemplated by this Agreement, the Purchaser has relied solely on the results of such investigation and on the representations and warranties of the Sellers expressly set forth in Article IV of this Agreement, including the Sellers' Disclosure Schedule. The Purchaser acknowledges, understands and agrees that the documents and information related to the Businesses and the Assets delivered to the Purchaser by the Sellers and their Representatives may have been prepared by parties other than the Sellers and that the Sellers make no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the documents and information. The Purchaser disclaims any reliance upon any statements or representations made or not made by the Sellers or their Representatives, except as expressly provided in this Agreement.

ARTICLE VI – CONDITIONS TO THE CLOSINGS

6.1 Conditions Precedent to the Obligations of the Purchaser.

The Purchaser's obligations to take the actions required pursuant to this Agreement to be taken by the Purchaser at the Closing are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Purchaser in whole or in part):

(a) Representations and Warranties.

(i) Subject to Section 6.1(a)(ii), each of representations and warranties made by the Sellers in this Agreement will have been accurate in all material respects as of the date of this Agreement and will be accurate in all material respects as of the Closing Date as if then made (except to the extent that any such representation and warranty expressly speaks as of a particular date, in which case such representation and warranty shall be true and correct in all material respects as of such date).

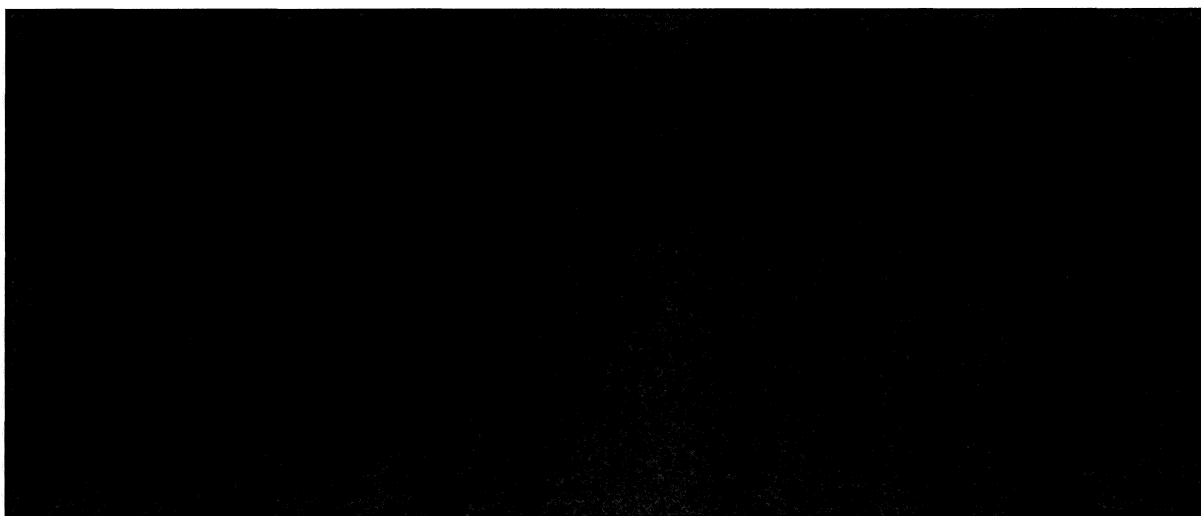
(ii) Each of the representations and warranties in Sections 4.1 (Organization, Qualification and Good Standing), 4.2 (Enforceability; Authority), 4.22 (Sanctions), 4.23 (Ethical Business Practices) and 4.24 (Brokers' Fees) and each of the representations and warranties in this Agreement that contains an express materiality qualification, will have been accurate in all respects as of the date of this Agreement and will be accurate in all respects as of the Closing Date as if then made (except to the extent that any such representation and warranty expressly speaks as of a particular date, in which case such representation and warranty shall be true and correct in all respects as of such date).

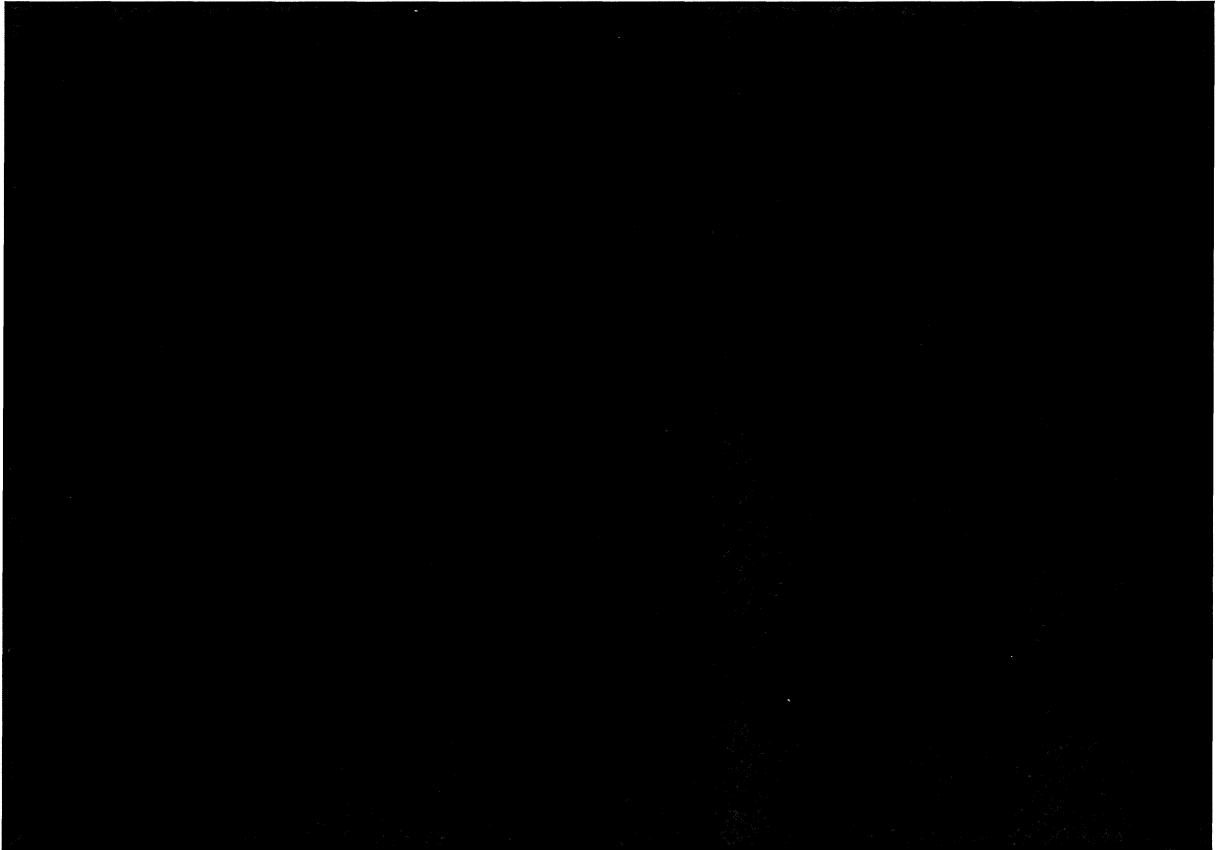
(b) Covenants. The covenants and obligations that the Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing will have been duly performed and complied with in all material respects.

(c) Consents and Other Ancillary Documents. Each of the consents or waivers set forth on Section 6.1(c) of the Seller's Disclosure Schedule (the "**Material Consents**") and each of the Other Ancillary Documents will have been obtained in form and substance reasonably satisfactory to the Purchaser and will be in full force and effect. Copies of the Material Consents and Other Ancillary Documents will have been delivered to the Purchaser at or prior to the Closing.

(d) No Governmental Action. No Governmental Authority having jurisdiction over the Sellers or the Purchaser shall have issued an Order or commenced any Proceeding enjoining or otherwise prohibiting consummation of the Purchase on the substantially the same terms contemplated by this Agreement.

(e) No Material Adverse Change. Since the date of this Agreement, the Businesses, taken as a whole, shall not have suffered any Material Adverse Change.





(g) Title. The Purchaser shall have received (or the Title Company shall have committed to deliver) one or more ALTA 2006 Standard Owner's Policy(s) of title insurance for the Owned Real Property.

(h) Closing Deliveries. Each of the items to be delivered pursuant to Section 2.8.1 shall have been delivered (or tendered subject only to the Closing) to the Purchaser.

(i) Operator. Bob McDaniel or another individual with an appropriate Grade III Treatment license shall be included as a Transferred Employee.

6.2 Conditions Precedent to the Obligations of the Sellers.

The Sellers' obligations to take the actions required pursuant to this Agreement to be taken by the Sellers at the Closing are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Sellers in whole or in part):

(a) Representations and Warranties. All of the Purchaser's representations and warranties in this Agreement shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made (except to the extent that any such representation and warranty expressly speaks as of a particular date, in which case such representation and warranty shall be true and correct in all material respects as of such date).

(b) Covenants. All of the covenants and obligations that the Purchaser is required to

perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects at and as of the Closing.

(c) No Governmental Action. No Governmental Authority having jurisdiction over the Sellers or the Purchaser shall have issued an Order or commenced any Proceeding enjoining or otherwise prohibiting consummation of the Purchase on the substantially the same terms contemplated by this Agreement.

(d) Regulatory. The State PUC Consents shall have been received by the Sellers.

(e) Closing Deliveries. Each of the items to be delivered pursuant to Section 2.8.2 shall have been delivered (or tendered subject only to the Closing) to the Seller.

ARTICLE VII – COVENANTS

7.1 Conduct of Business.

7.1.1 Prior to the Closing Date, the Sellers shall use commercially reasonable efforts to:

- (a) conduct the Businesses only in the Ordinary Course of Business;
- (b) preserve intact the current organization of the Businesses, keep available the services of the officers, employees, and agents of the Businesses, and maintain their respective relations and goodwill with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with it;
- (c) confer with the Purchaser prior to implementing operational decisions as they relate to the Businesses or the Assets, involving an expenditure in an amount or value in excess of \$10,000 and not incurred in the Ordinary Course of Business;
- (d) report periodically to the Purchaser concerning the status (including the operations and finances) of the Businesses and the Assets;
- (e) keep in full force and effect all material rights relating to the Businesses and the Assets, other than with respect to Excluded Assets;
- (f) ordinary wear and tear and other changes in the Ordinary Course of Business excepted, maintain the Assets in a state of repair and condition no worse than the state of repair and condition of such Assets on the date of this Agreement;
- (g) continue in full force and effect the insurance coverage under the policies set forth in Section 4.12 of the Sellers' Disclosure Schedule or substantially equivalent policies;
- (h) comply in all material respects with all Laws and contractual obligations applicable to the Assets and the operations of the Businesses;
- (i) preserve and maintain all Permits required to operate the Businesses in accordance with past practice;
- (j) perform all of its material obligations under the Assumed Contracts;

(k) subject to the terms of this Agreement, upon request from time to time, execute and deliver all documents and do all other acts that may be reasonably necessary or desirable to consummate the transactions contemplated hereby; and

(l) maintain all Business Records in the Ordinary Course of Business.

7.1.2 Except as expressly permitted by this Agreement, with the prior written consent of the Purchaser, which shall not be unreasonably withheld, delayed or conditioned, or as required by Law, the Sellers shall not take (or permit to be taken) any of the following actions:

(a) take any affirmative action or fail to take any reasonable action within its control that would have required disclosure in Section 4.8 of the Sellers' Disclosure Schedule;

(b) make any modification to any Material Contract which will be an Assumed Contract or Permit or enter into any Material Contract which will be an Assumed Contract, in each case other than in the Ordinary Course of Business;

(c) sell, transfer, lease, sublease, license, allow the expiration of lapse of or otherwise dispose of or encumber any of the Assets other than in the Ordinary Course of Business;

(d) enter into any compromise or settlement of any Proceeding relating to the Assets, the Businesses, or the Assumed Liabilities in excess of \$17,500 in the aggregate;

(e) except as required by Law, make any material change to the compensation, including salary and incentive compensation or other material terms of employment of any Business Employee;

(f) enter into or amend any agreement or settlement with any Tax authority for any taxable period or portion thereof that could reasonably be expected to have a material and adverse impact on any Business or any of the Assets;

(g) acquire a material portion of the assets of, or by any manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire any assets (other than in the Ordinary Course of Business) that are material, individually or in the aggregate, to the Sellers;

(h) amend or otherwise change any of its governing documents; or

(i) agree in writing to take any of the foregoing actions.

7.2 Access to Information; Confidentiality; Non-Solicitation.

(a) Prior to the Closing, the Sellers shall (i) afford Purchaser and its Representatives reasonable access during normal business hours to properties, books, contracts, documents, insurance policies and records of or with respect to the Sellers, the Businesses or the Assets as the Purchaser or its Representatives may from time to time reasonably request; (ii) furnish the Purchaser and its Representatives with copies of all such Contracts and Business Records as the Purchaser or its Representatives may reasonably request, (iii) furnish the Purchaser and its Representatives with such additional financial, operating, and other relevant data and information as the Purchaser may reasonably request, and (iv) otherwise cooperate and assist, and instruct the Representatives of the Sellers to

cooperate and assist, in each case (clauses (i) through (iv) above), to the extent reasonably requested by the Purchaser in connection with the transactions contemplated by this Agreement; provided, however, that in each case (clauses (i) through (iv) above), any such investigation shall be conducted during normal business hours upon reasonable advance notice to the Sellers and at a mutually agreeable time, under the supervision of an applicable Seller's personnel, and in such a manner as not to interfere with the normal operations of the Businesses. Nothing in this Agreement will require the Sellers to provide information Sellers are prohibited from providing under Law, or that would adversely affect attorney-client privilege. All requests by the Purchaser for access pursuant to this Section 7.2(a) shall be submitted or directed to Matthew Trevenen or such other individuals as the Sellers may designate in writing from time to time. Prior to the Closing, without the prior written consent of Matthew Trevenen (not to be unreasonably withheld, conditioned or delayed), the Purchaser shall not contact any vendors to, or customers of, or non-management level employees of the Businesses. The Purchaser shall have no right to perform invasive, subsurface or other intrusive investigations of the Real Property without the Sellers' prior written consent, which may be conditioned on the Purchaser's execution of customary release, hold harmless and indemnification agreements and require reasonable insurance. The Purchaser shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement, dated January 13, 2016 (the "*Confidentiality Agreement*"), by the Purchaser in favor of the Sellers with respect to any access or information provided pursuant to this Section 7.2(a).

(b) Until such time as this Agreement shall be terminated pursuant to Section 9.1, none of the Sellers shall, and the Sellers shall cause its respective Affiliates and each of their respective Representatives not to, directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from, any Person (other than the Purchaser) relating to any business combination transaction involving the Sellers, the Businesses, or the Assets. The Sellers shall promptly notify the Purchaser in writing of any such inquiry or proposal.

7.3 Commercially Reasonable Efforts.

Each of the Sellers and the Purchaser shall use commercially reasonable efforts to cause the conditions in Articles VI to be satisfied in accordance with the terms of this Agreement.

7.4 Filings and Notifications; Cooperation.

As promptly as practicable after the date of this Agreement, each of the Sellers and the Purchaser shall, and shall cause each of their Affiliates to, make all filings and notifications required by applicable Law to be made by them in connection with the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, promptly after the date of this Agreement, each of CBW and RYW shall make its submission to the State PUC to obtain the State PUC Consents (the "*State PUC Filing*"), which State PUC Filing shall be subject to the prior review and comment of the Purchaser and its Representatives. The Sellers may proceed with the State PUC Filing if the Purchaser does not provide comments within five (5) Business Days after delivery of a draft filing to the Purchaser. The Purchaser shall use its commercially reasonable efforts to cooperate with the Sellers with respect to the State PUC Filing and all proceedings before the State PUC related thereto, and make a joint application (if requested by Sellers) and promptly provide any documentation, information or filing required by the State PUC or reasonably requested by the Sellers in connection with the State PUC Filing and all proceedings before the State PUC related thereto. Without limiting the foregoing, the Sellers and the Purchaser agree to use their respective commercially reasonable efforts (a) to respond promptly, diligently and in good faith to all requests for data, documents or information by the State PUC in connection with the State PUC Filing, (b) to provide appropriate representatives to participate in any workshop, settlement conference or

other meetings convened by the State PUC, and (c) to provide appropriate witnesses and evidence for use in the proceeding(s) including any hearing. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall not be required to dispose of any assets or make any change to its business, incur any material obligation or commitment, or make any payment to any third party in order to comply with this Section 7.4.

The Sellers shall, and shall cause each of their Affiliates to, reasonably cooperate with the Purchaser, its Affiliates, and their respective Representatives (a) with respect to all filings and notifications that the Purchaser is required by applicable Law in connection with the transactions contemplated by this Agreement, (b) in identifying and obtaining the Permits required by Purchaser to own and operate the Businesses from and after the Closing Date, and (c) in obtaining all Material Consents. The Purchaser and its Affiliates shall as promptly as practical obtain all material Permits required to be obtained by the Purchaser for the operation of the Businesses.

7.5 No Violations.

Within fifteen (15) days after the receipt of notice of a violation, the Sellers shall notify the Purchaser of any violations of applicable state or federal drinking water standards which, if such violations existed on the date of this Agreement, would be required to be disclosed pursuant to Section 4.20(h) hereof, and shall promptly notify the Purchaser of the actions proposed to be taken by the Sellers to correct or otherwise respond to such violations.

7.6 Publicity.

No Party shall make, or permit or cause to be made, any press release or public announcement, including any communication to employees, customers, suppliers, or others having dealings with the Sellers or the Purchaser in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties hereto (such consent not to be unreasonably withheld, delayed or conditioned).

7.7 Employees and Employee Benefits.

(a) The Purchaser will extend offers of employment (each such offer, a ***“Purchaser Offer”***) to each of the employees set forth in Section 7.7(a) of the Sellers’ Disclosure Schedule (the ***“Business Employees”***), which includes salary and terms that are reasonably comparable, on an aggregate basis, to the salary and terms provided to other, similarly situated employees of the Purchaser. Employment pursuant to a Purchaser Offer will be contingent on the Closing. Business Employees who commence employment with Purchaser pursuant to a Purchaser Offer shall be referred to herein as ***“Transferred Employees.”*** The Sellers shall, or shall cause their respective Affiliates to, terminate the employment of all Transferred Employees immediately prior to the Closing and shall cooperate with the Purchaser in its efforts to secure employment arrangements with the Transferred Employees.

(b) The Purchaser shall not adopt, become a sponsoring employer of, or have any obligations under or with respect to the Employee Plans, and the Sellers shall be solely responsible for any and all liabilities and obligations that have been incurred or may be incurred under or in connection with any Employee Plan.

(c) The Sellers shall be solely responsible for any and all liabilities arising out of or relating to the employment by the Sellers or their Affiliates of Business Employees who do not become Transferred Employees, whether such liabilities arise before, on or after the Closing Date.

(d) At least five (5) Business days prior to Closing, Sellers will give each Business Employee who has agreed to become a Transferred Employee and who has at least 40 hours of accrued and unpaid vacation or paid-time-off (“**PTO**”) the option of either (i) retaining 40 hours of PTO and receiving cash for the balance of any accrued and unpaid PTO required to be paid at termination of employment or (ii) receiving cash for such Transferred Employee’s entire accrued and unpaid PTO required to be paid at termination of employment.

(e) The Sellers shall be solely responsible for any and all liabilities arising out of or relating to the employment of any Business Employee by Sellers or their Affiliates arising prior to the Closing Date, other than the assumption by the Purchaser of any Rollover PTO. For purposes hereof, with respect to the Welfare Plans, claims under any medical, dental, vision, or prescription drug plan generally will be deemed to be incurred on the date that the service giving rise to such claim is performed and not when such claim is made; provided, however, that with respect to claims relating to hospitalization, the claim will be deemed to be incurred on the first day of such hospitalization and not on the date that such services are performed. Claims for disability under any long or short term disability plan will be incurred on the date the Business Employee is first absent from work because of the condition giving rise to such disability and not when the Business Employee is determined to be eligible for benefits under the applicable Welfare Plan.

(f) The Sellers and their ERISA Affiliates shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as set forth in Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA (collectively, “**COBRA**”) and to the extent applicable, with respect to any employee, former employee or dependent of any such employee or former employee who is an M&A qualified beneficiary (as defined in Treasury Regulation Section 54.4980B-9, Q&A-3(b)) with respect to the transactions contemplated by this Agreement. The Purchaser shall comply with the provisions of COBRA with respect to Transferred Employees who are covered under any group health plan, as defined in Section 5000(b)(1) of the Code, maintained by the Purchaser on and after the Closing Date and the spouses and dependents of any such Transferred Employees.

(g) The Sellers shall be solely responsible for any liabilities under the Worker Adjustment and Retraining Notification Act or any similar state or local law with respect to terminations of employment of the Transferred Employees that occur on or prior to the Closing Date, including in connection with the transactions contemplated hereby.

(h) Nothing contained in this Agreement shall create any third-party beneficiary rights in any Transferred Employee, any beneficiary or dependents thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and benefits that may be provided to any Transferred Employee by the Purchaser or under any benefit plan that the Purchaser may maintain.

(i) Nothing contained in this Agreement shall confer upon any Transferred Employee any right with respect to continued employment by the Purchaser, nor shall anything herein interfere with the right of the Purchaser to terminate the employment of any Transferred Employee at any time, with or without cause, following the effective date of his or her employment with the Purchaser, or restrict the Purchaser in the exercise of its independent business judgment in modifying any of the terms and conditions of the employment of the Transferred Employees. Nothing in this Agreement shall be deemed to amend any employee benefit plan of the Purchaser.

7.8 Tax Matters.

(a) The Purchaser agrees to furnish or cause to be furnished to the Sellers, upon request and at the Sellers' sole cost and expense, as promptly as practicable, such information and assistance as is reasonably necessary for the filing of Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing authority, and the prosecution or defense of any claim, suit or Proceeding relating to any Tax; and provided that any payment or reimbursement to the Purchaser in connection with its furnishing of any such information or assistance shall be at a rate equal to the actual out-of-pocket expense incurred by the Purchaser in connection therewith. Such information and assistance shall include providing reasonable access to all of the Business Records delivered to the Purchaser at Closing; provided that such access or assistance does not interfere in any material respect with the operation of the Businesses or the Assets following the Closing. From and after the Closing, the Sellers agree to furnish or cause to be furnished to the Purchaser, as promptly as practicable and at the Purchaser's sole cost and expense, such information and assistance as is reasonably necessary for the filing of Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing authority and the prosecution or defense of any claim, suit or Proceeding relating to any Tax.

(b) All transfer, documentary, sales, use, stamp and registration Taxes incurred in connection with the Purchase (collectively, "**Transfer Taxes**") shall be paid by the Purchasers when due. The parties hereto and their Affiliates shall cooperate in connection with the filing of any Tax Returns with respect to Transfer Taxes, including joining in the execution of such Tax Returns. The Sellers and the Purchaser shall use their commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Assets from any such Transfer Taxes.

7.9 Further Assurances.

Each of the parties hereto shall execute such further documents, and perform such further acts, as may be reasonably necessary to consummate the transactions contemplated hereby, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated by this Agreement and the other Transaction Documents.

7.10 Insurance.

Prior to the Closing, the Sellers shall use commercially reasonable efforts to maintain, or cause to be maintained, those occurrence based insurance policies set forth in Section 7.10 of the Sellers' Disclosure Schedule for the benefit of the Businesses provided by third-party insurers for liabilities (the "**Existing Liabilities**") arising out of occurrences on or prior to the Closing Date (the "**Insurance Coverage**"). To the extent that any Loss with respect to such Existing Liabilities that arises out of any matter, act, event, omission, occurrence, fact or circumstance existing or occurring on or prior to the Closing Date is made against the Purchaser, and the Insurance Coverage by its terms applies to such Loss (an "**Insurance Coverage Claim**"), upon the Purchaser's request and their expense, the Sellers shall submit such Insurance Coverage Claim to the insurer under the applicable insurance policy for potential payment, and shall use commercially reasonable efforts to obtain the maximum recovery from the provider of the related Insurance Coverage. In addition, the Sellers agree to (i) cooperate with the Purchaser and to use commercially reasonable efforts to make the benefits of the Insurance Coverage available to the Purchaser (subject to the terms and conditions of such Insurance Coverage) and (ii) to use commercially reasonable efforts to continue, from and after the Closing, to process such Insurance Coverage Claims in the Ordinary Course of Business in substantially the same manner as similar claims were processed prior to the Closing. In the event that (i) the Sellers receive any proceeds of the Insurance Coverage with respect to any Insurance Coverage Claims thereunder and (ii) such claim has

been paid by the Purchaser (and not otherwise reimbursed by Sellers pursuant to Article VIII), such Seller shall promptly pay or reimburse the Purchaser with respect to the amount so paid.

The obligations of the Sellers under this Section 7.10 are subject to, for periods subsequent to the Closing, to the Purchaser paying in advance for (a) any premiums on the Insurance Policies, including those that result from the transfer of the Assets to maintain the Insurance Policies or to have the Purchaser become an additional named insured and (b) any cost to pursue any coverage. With respect to any Loss for which Sellers are obligated to indemnify any Purchaser Indemnified Person, Sellers' indemnification obligation shall be reduced in the amount of any insurance proceeds paid to the Purchaser Indemnified Persons in respect of such Loss. Notwithstanding the foregoing, this Section 7.10 is not intended to, and shall not, expand, impair or limit the indemnification rights of any Purchaser Indemnified Person under Article VIII hereof.

7.11 Access.

After the Closing Date, the Parties shall retain the Business Records in their possession for a period of time consistent with their respective bona fide record-retention policies on the Closing Date or for such longer period as may be required by Law or any applicable Order (but in any event not less than three (3) years from the Closing Date). The Parties shall also provide each other and their respective Representatives, for legitimate business purposes including, without limitation, any financial accounting audits, and upon reasonable notice, reasonable access to such Business Records, and to personnel having knowledge of the whereabouts and contents of such records, during normal business hours and without undue interruption of the provider's ordinary business activities. The requesting party will hold in confidence all confidential information identified as such by, and obtained from, the disclosing party or any of its Representatives.

7.12 Restrictive Covenants.

(a) Confidentiality.

(i) Each of the Parties acknowledges and agree that the Sellers have, and at the time of the Closing will have, Confidential Information, and that in accordance with the Confidentiality Agreement, the Sellers have provided to the Purchaser Confidential Information relating to the Businesses and the Assets ("**Purchaser Confidential Information**") and relating to such Seller's business and operations as a whole (other than relating to the Businesses) ("**Seller Confidential Information**"), and all physical embodiments of: (i) Purchaser Confidential Information are confidential and proprietary to, and are and will remain the sole and exclusive property of, the Businesses which the Purchaser shall acquire at the Closing, and (ii) Seller Confidential Information are confidential and proprietary to, and are and will remain the sole and exclusive property of such Seller, notwithstanding the Closing. At all times after the Closing Date, each of the Purchaser and the Sellers will hold such Seller Confidential Information and Purchaser Confidential Information, as applicable, in trust and strictest confidence, will take all necessary steps to protect such information from being disclosed to any third party, except as otherwise permitted by this Section 7.12, and will not, directly or indirectly, use, reproduce, distribute, divulge, disclose or otherwise disseminate such Confidential Information or any physical embodiments thereof other than to each other and their respective Representatives and may in no event take any action causing, or fail to take any action necessary in order to prevent, any Confidential Information to lose its character or cease to qualify as Confidential Information. To the extent that both Purchaser Confidential Information and Seller Confidential Information include the same Confidential Information, either party may freely use and reproduce such Confidential Information, however, neither may distribute, divulge, disclose or otherwise disseminate such Confidential Information unless

authorized to do so by the other party. Notwithstanding anything herein to the contrary, the Purchaser and its Related Parties shall be permitted to disclose the existence and content of this Agreement and the other Transaction Documents (i) as may be required by applicable Law or Order, and (ii) as may be requested by any bank examiner, regulatory examiner, or self-regulatory examiner in the course of such Person's examination, inspection or audit.

(ii) As used in this Section 7.12(a):

"Confidential Information" means all Confidential Trade Secrets and all other confidential and/or proprietary data and/or information relating to the Sellers' businesses, including any Business, and operations (which does not rise to the status of a Confidential Trade Secret) which is owned or used by a Seller or any of its Subsidiaries and which has value to such Seller's business, including any Business, and is not known to any of such Seller's competitors. Such Confidential Information shall include, but not be limited to, proprietary technology, operating procedures, financial statements or other financial information, know-how, market studies and forecasts, competitive analysis, pricing policies and procedures, the substance of arrangements with customers, suppliers and others, servicing and training programs and arrangements, marketing or similar arrangements, customer or supplier lists and any other documents embodying such Confidential Information. Confidential Information shall not include any data or information that: (w) has been voluntarily disclosed to the public by such Seller prior to the date hereof, (x) has been independently developed and disclosed to the public by others, (y) otherwise enters the public domain through lawful means, or (z) is required by law to be disclosed by a Party, provided that prior to such disclosure, the applicable Party provides written notice to the other Parties of its intent to disclose such matter, and further provides the other Parties a reasonable opportunity to contest such disclosure with the appropriate governmental or regulatory body.

"Confidential Trade Secrets" means business or technical information which is owned or used by a Seller or any of its Subsidiaries, relating to such Seller's business, including any Business, and operations, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: (x) derives independent commercial value (whether actual, potential or both) from not being generally known or readily ascertainable through independent development or reverse engineering by Persons who can obtain economic value from its disclosure or use; and (y) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Trade Secrets shall specifically include, without limitation, information relating to the design, manufacture, formulas, patterns, compilations, programs, devices, methods, techniques, processes, applications, know-how, research and development relating to the Businesses' present, past or prospective products and/or proprietary computer programs.

(b) Non-Solicitation.

(i) As an additional inducement to the Purchaser to enter into and to perform its obligations under this Agreement, each Seller and Parent agrees that, for a period of one (1) year after the Closing Date (the "**Non-Solicitation Period**"), it shall not knowingly, directly or indirectly, solicit for employment or recruit or hire any Person who at any time on or after the date of the Closing is a Business Group Employee (as hereinafter defined); provided, that the foregoing shall not prohibit (A) a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at Business Group Employees or (B) the Sellers or any of their Affiliates from soliciting, recruiting or hiring any Business Group Employee who has ceased to be employed or retained by a Seller, the Purchaser or any of their respective Affiliates for at least 6 months. For purposes of this 7.13(b)(i), "**Business Group Employees**" means, collectively, Transferred Employees and officers,

directors and employees of the Purchaser and its Affiliates who work or are engaged in connection with any Business.

(ii) If, at the time of enforcement of this Section 7.12(b), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the Parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area.

7.13 Post-Closing Obligations.

From and after the Closing, the Sellers will use their respective commercially reasonable efforts to complete the items set forth on Exhibit I and captioned as “Post-Closing” (collectively, the “*Post-Closing Action Items*”) within 180 days following the Closing. Without limiting the generality of the foregoing, during that period the Sellers will use their respective commercially reasonable efforts to continue to engage the services of Karen Smith of Resort Resources, Inc., and to cause Ms. Smith to complete the Post-Closing Action Items at the Sellers’ cost. The Purchaser will reasonably cooperate with the Sellers’ efforts to complete the Post-Closing Action Items and will reasonably assist the Sellers in completing such items, including by giving consideration to reasonably acceptable alternative resolutions to the Post-Closing Action Items, provided that the Sellers shall be responsible for the payment of all third-party costs and expenses incurred by the Purchaser or its Affiliates in connection with the completion of the Post-Closing Action Items. The Purchaser and its Affiliates will not incur third-party costs and expenses without the written consent of the Sellers (or an applicable Seller), not to be unreasonable withheld, conditioned or delayed.

ARTICLE VIII – SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

8.1 Survival.

(a) All representations and warranties of the Sellers in Article IV shall survive the Closing and shall remain in full force and effect until the date that is fifteen (15) months after the Closing Date; provided that:

(i) the representations and warranties in Sections 4.1(a) (Organization, Qualification and Good Standing), 4.2 (Enforceability; Authority), 4.13(a) (Title), 4.22 (Sanctions), 4.23 (Ethical Business Practices) and 4.24 (Brokers’ Fees) (collectively, the “*Fundamental Representations*”) shall survive until the sixth (6th) anniversary of the Closing Date; and

(ii) the representations and warranties in Section 4.21 (Taxes) shall survive until the expiration of the applicable statutes of limitations with respect to such matters.

(b) The representations and warranties of the Purchaser shall survive the Closing and remain in full force and effect until the date that is fifteen (15) months after the Closing Date, except that the representations and warranties set forth in Sections 5.1 (Organization, Qualification and Corporate Power), 5.2 (Enforceability) and 5.5 (Brokers’ Fees) shall survive until the sixth (6th) anniversary of the Closing Date.

(c) All covenants and agreements of the Parties contained herein shall survive the Closing for fifteen (15) months after the time by which the covenant was to be performed.

(e) The period for which a representation or warranty, covenant or agreement survives the Closing is referred to herein as the “*Applicable Survival Period*.” The foregoing provisions of this Section 8.1 notwithstanding, in the event a Claim Notice meeting the requirements of Section 8.4(a) is given within the Applicable Survival Period, the representation, warranty, covenant or agreement that is the subject of such indemnification claim (whether or not formal legal action shall have been commenced based upon such claim) shall survive with respect to such claim until such claim is finally resolved and, subject to Sections 8.4 and 8.5 and any other limitations set forth herein, the Indemnifying Party shall indemnify the Indemnified Party for all Losses that the Indemnified Party may incur in respect of such claim, regardless of when incurred; provided that such Claim will terminate unless either (i) the Indemnifying Party has accepted the Claim or (ii) Indemnified Party commences legal action against the Indemnifying Party prior to the first anniversary of the Indemnified Party’s receipt of the applicable Claim Notice.

8.2 Sellers’ Indemnification.

Subject to the limitations set forth in this Article VIII, from and after the Closing Date, Parent and the Sellers, jointly and severally, and each Seller severally solely with respect to matters pertaining to itself, shall indemnify the Purchaser and its officers, directors, Affiliates, successors and assigns (the “*Purchaser Indemnified Parties*”) for and hold them harmless from any and all losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, out-of-pocket costs or expenses of whatever kind, including reasonable out-of-pocket costs of investigation, attorneys’ fees and costs of enforcing any right to indemnification hereunder and whether or not involving a Third Party Claim (collectively, “*Losses*”), suffered or incurred by the Purchaser Indemnified Parties to the extent related to, or arising out of:

- (a) any breach of any representation or warranty made by the Sellers in this Agreement or in any certificate, document, writing or instrument delivered by the Sellers pursuant to this Agreement;
- (b) any breach of any covenant or obligation of the Sellers in this Agreement or in any certificate, document, writing or instrument delivered by the Sellers pursuant to this Agreement;
- (c) any Excluded Liabilities (except for Excluded Liabilities that arise out of or relate to any Environmental, Health, and Safety Liability); or
- (d) any brokerage or finder’s fees or commissions or similar payments based upon any agreement or understanding made by any Person with any Sellers (or any Person acting on a Sellers’ behalf) in connection with the transactions contemplated by this Agreement.

8.3 Purchaser’s Indemnification Obligations.

Subject to the limitations set forth in this Article VIII, from and after the Closing Date, the Purchaser shall indemnify each Seller and its officers, directors, Related Parties, successors and assigns (the “*Seller Indemnified Parties*”) for and hold the Seller Indemnified Parties harmless from any and all Losses suffered or incurred by them to the extent related to or arising out of:

(a) any breach of any representation or warranty made by the Purchaser in this Agreement or in any certificate, document, writing or instrument delivered by the Purchaser pursuant to this Agreement;

(b) any breach of any covenant or obligation of the Purchaser in this Agreement or in any certificate, document, writing or instrument delivered by the Purchaser pursuant to this Agreement; or

(c) the Assumed Liabilities; or

(d) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with the Purchaser (or any Person acting on the Purchaser's behalf) in connection with the transactions contemplated by this Agreement.

8.4 Claims.

(a) Notice and Determination of Claims. Any party seeking indemnification hereunder (the "**Indemnified Party**"), whether or not the applicable dollar amount limitations specified in Section 8.5 have been exceeded, shall promptly notify in writing (the "**Claim Notice**") the other party or parties from whom such Indemnified Party is seeking indemnification hereunder (the "**Indemnifying Party**," which term shall include all Indemnifying Parties if there be more than one) of any breach, claim, actions, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity (collectively, a "**Claim**") with respect to which the Indemnified Party claims indemnification hereunder. Any Claim Notice delivered under this Section 8.4 shall describe in reasonable detail the facts and circumstances on which the asserted indemnification claim is based, specify the amount of such indemnification claim if then ascertainable and, if not then ascertainable, the estimated amount thereof, specify all of the basis for indemnification pursuant to this Agreement and shall provide reasonable supporting documentation so that the Indemnified Party can evaluate the Claim.

(b) Third Party Claims.

(i) If any Claim against the Indemnified Party is made by or in respect of a third party (a "**Third Party Claim**"), the Indemnified Party shall promptly, but in any event within 10 days after becoming aware of such Third Party Claim, deliver to the Indemnifying Party a Claim Notice; provided, however, that the failure to provide such 10-day notice shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent, and only to the extent, that such failure results in a material detriment to the Indemnifying Party with respect to such Third Party Claim.

(ii) Upon written notice to the Indemnified Party within thirty (30) days after receipt of the Claim Notice, the Indemnifying Party shall have the right to direct, through counsel reasonably satisfactory to the Indemnified Party, the defense or settlement of any Third Party Claim at the Indemnifying Party's own expense; provided that the Indemnifying Party shall not be entitled to assume and control the defense of any Third Party Claim: (i) with respect to Taxes, unless such claim does not relate to a straddle period and can be severed from any other contest or dispute with respect to the Purchaser's liability for Taxes for Tax periods ending after the Closing Date unrelated to such claim; (ii) relating to any criminal matter or indictment; (iii) seeking injunctive or other equitable relief against the Indemnified Party; (iv) initiated by a Governmental Authority; and (v) where the Indemnified Party has been advised by counsel in writing that a conflict exists between the Indemnified Party and the

Indemnifying Party in connection with the defense of such Third Party Claim such that the Indemnifying Party cannot adequately represent the interests of the Indemnified Party. In any of the cases set forth in the preceding clauses (i) through (v), the Indemnified Party shall be entitled to assume the defense of the Third Party Claim with counsel of its choosing and reasonably satisfactory to the Parent. If the Indemnifying Party elects to direct the defense of any Third Party Claim, the Indemnified Party shall not pay, or permit to be paid, any part of such Third Party Claim, unless the Indemnifying Party consents in writing to such payment, or the Indemnifying Party has failed, following written notice and reasonable opportunity to cure, to appropriately pursue the defense under this Section 8.4(b)(ii) or unless a final judgment from which no appeal may be taken by or on behalf of the Indemnifying Party is entered against the Indemnified Party for such Third Party Claim. The Indemnifying Party shall keep the Indemnified Party timely apprised of the status of such Third Party Claim, and shall not, without the prior written consent of the applicable Indemnified Party (such consent not to be unreasonably withheld, or delayed), settle, compromise or offer to settle or compromise any Third Party Claim against such Indemnified Party.

The Indemnified Party shall retain the right to employ its own counsel and to participate, at its own expense, in the defense or handling of any Third Party Claim, the defense of which has been assumed by the Indemnifying Party pursuant hereto.

(iii) If the Indemnifying Party does not give written notice to the Indemnified Party within 30 days after receipt of the Claim Notice of a Third Party Claim that the Indemnifying Party has elected to assume the defense of such Third Party Claim, is not entitled to defend such Third Party Claim pursuant to Section 8.4(b)(ii) or if the Indemnifying Party shall fail to defend or, if after commencing or undertaking any such defense, shall fail to prosecute or shall withdraw from such defense, the Indemnified Party shall have the right, but not the obligation, to undertake the defense or settlement thereof, at the Indemnifying Party's expense. If the Indemnified Party assumes the defense of any Third Party Claim pursuant to this Section 8.4(b)(iii) and proposes to settle such Third Party Claim prior to a final judgment thereon or to forgo any appeal with respect thereto, then the Indemnified Party shall give the Indemnifying Party prompt written notice thereof, and the Indemnifying Party shall have the right to participate in the settlement or assume or reassume the defense of such Third Party Claim. If the Indemnified Party assumes the defense of a Third Party Claim pursuant to the terms of this Section 8.4(b)(iii), the Indemnified Party shall keep the Indemnifying Party timely apprised of the status of such Third Party Claim and shall, subject to this Section 8.4(b)(iii), not settle such Third Party Claim without the prior written consent of the Indemnifying Party (which shall not be unreasonably delayed or withheld). Notwithstanding any other provision of this Agreement, any settlement of a Third Party Claim without the Indemnifying Party's written consent shall relieve the Indemnifying Party from any liability to indemnify in respect of the subject matter of the Third Party Claim so settled. If an Indemnified Party defends or handles such Third Party Claim, the Indemnifying Party shall be entitled to participate in the defense or handling of such Third Party Claim with its own counsel and at its own expense.

(iv) In connection with any defense of a Third Party Claim, each of the Parties to this Agreement shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by any other party in connection therewith.

(v) The Indemnified Party and the Indemnifying Party shall use commercially reasonable efforts to protect material confidential information (consistent with applicable law) and to cause all communications among employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privilege.

(c) Reimbursement or payment pursuant to this Article VIII shall first be made from the Escrow Funds (to the extent available) pursuant to the terms of the Escrow Agreement.

8.5 Limitations; Exclusive Remedy.

The obligations set forth in this Article VIII are subject to the following limitations:

(a) Deductible Basket; Maximum Liability. The Purchaser Indemnified Parties shall not be entitled to indemnification for any Losses unless and until such time as the cumulative aggregate amount of all indemnifiable Losses exceeds \$100,000 (the “*Deductible Basket*”), after which the Purchaser Indemnified Parties shall be entitled to recover only for amounts in excess of the Deductible Basket. The aggregate maximum amount of Losses for which the Purchaser Indemnified Parties are entitled to indemnification under this Article VIII shall be limited to \$1,500,000 (the “*Cap*”); provided, that if (x) the aggregate maximum amount of Losses for which the Purchaser Indemnified Parties are entitled to indemnification under this Article VIII equals the Cap; (y) the Purchaser Indemnified Parties have incurred additional Losses that arise out of or relate to Claims based on [REDACTED] and (z) but for the Cap, the Purchaser Indemnified Parties would be entitled to indemnification under this Article VIII for such Claims, then the Purchaser Indemnified Parties will be entitled to indemnification under this Article VIII solely with respect to such Claims, up to an additional \$500,000 in excess of the Cap. The Deductible Basket and the Cap shall not apply to any Claims based upon intentional fraud, breaches of the Fundamental Representations, breaches of covenants or the Excluded Liabilities (except with respect to Claims based on Excluded Liabilities that arise out of or relate to [REDACTED] which shall be subject to the Deductible Basket and the Cap, and solely to the extent that indemnity is provided pursuant to Section 8.2(c), above); provided that in every case other than intentional fraud by the Parties, the Purchaser shall not be entitled to recover more than the Purchase Price.

(b) Calculation of Losses. For purposes of determining the amount of Losses relating to any inaccuracy or breach of any representation or warranty contained herein, any qualifications as to materiality, Material Adverse Change or words of similar import contained in, or otherwise directly or indirectly applicable to, such representation or warranty shall be disregarded. The calculation of Losses applicable to [REDACTED] and [REDACTED] may include reasonable, foreseeable diminution of the value of the Businesses reflective of any judgment in respect thereof, or subsequent identifiable limitation of the earning capability of the Businesses reasonably related thereto.

(c) Insurance. Concurrently with any Purchaser Indemnified Party enforcing any claim for indemnification against the Sellers under this Agreement and subject to the Sellers’ continuing compliance with its obligations under Section 7.10 of this Agreement, including with respect to the prompt submission of Insurance Coverage Claims, the Purchaser Indemnified Party shall administratively file in good faith with any insurers all forms and submissions required by applicable policies for the proceeds or other benefits of insurance coverage, if any, applicable to the claim or event from which such indemnification right arose. In the event that insurance proceeds are paid to the Purchaser Indemnified Party respecting an event to which an indemnification right applies hereunder, such indemnification right shall apply only to the extent that the amount of damages indemnified against exceeds such insurance proceeds actually paid to the Purchaser Indemnified Party; provided, however, that: (a) such insurance proceeds shall not affect or be applied towards the maximum liability established in Section 8.5(a); and (b) collection by judicial or legal process of such insurance proceeds shall not be a condition precedent to asserting or collecting such indemnification claim under this Agreement. If the Indemnifying Party pays indemnity damages under this Agreement, and the Indemnified Party subsequently receives insurance

proceeds for the same claim or event, then the Indemnified Party shall refund such indemnity payments to the Indemnifying Party from such insurance proceeds to the extent that the Indemnified Party has received benefits from both sources (*i.e.*, payments of indemnity damages from the Indemnifying Party and such insurance proceeds) in excess of the amount of indemnity damages incurred by or asserted against the Indemnified Party, provided, however, that if such indemnity damages were paid from the Escrow Funds in accordance with the terms of the Escrow Agreement, such refund shall be made to the Escrow Agent for inclusion with the remaining Escrow Funds (to be released in accordance with the terms thereof).

(d) Exclusive Remedy; No Consequential Damages, etc.

(i) Each of the Purchaser Indemnified Parties and Seller Indemnified Parties hereby acknowledges and agrees that, following the Closing, its sole and exclusive remedy with respect to any and all Losses relating to the breach of any representation, warranty, covenant, agreement or obligation set forth in this Agreement or the Transaction Documents, other than any Losses arising from the intentional fraud of a Party, or related to, or arising out of, the transactions contemplated by, or subject matter of, this Agreement and the Transaction Documents, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation (other than with respect to intentional fraud of a Party) it may have against the other Parties and their Affiliates and each of their respective Representatives arising under or based upon this Agreement, except pursuant to the indemnification provisions set forth in this Article VIII.

(ii) In no event shall any Purchaser Indemnified Party or Seller Indemnified Party be liable for any special, indirect, incidental, loss of profits, punitive or consequential damages.

(e) Adjustment to Purchase Price. All payments made pursuant to this Article VIII shall be deemed adjustments to the Purchase Price for Tax and all other purposes.

(f) Purchaser's Knowledge. In the event Purchaser obtains actual knowledge prior to Closing that any representation or warranty was false, misleading, or inaccurate when given or has become false, misleading, or inaccurate but Purchaser nonetheless Closes the Purchase, the applicable representation or warranty will be deemed automatically modified to reflect the actual knowledge of Purchaser.

ARTICLE IX – TERMINATION

9.1 Termination.

This Agreement may be terminated and the transactions contemplated herein may be abandoned at any time prior to the Closing:

(a) by mutual written consent of all Parties hereto;

(b) by either the Sellers or the Purchaser, if the Closing has not occurred by the sixth (6th) month anniversary of the date of this Agreement, or such later date as the Parties may agree in writing (the "**Termination Date**"); provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the primary cause of the failure of the Closing to occur on or before such date

(unless the Party can demonstrate that the failure was primarily caused by the action or inaction of the other Party);

(c) by either the Sellers or the Purchaser, if there shall be any Law that makes consummation of the Purchase illegal or if any judgment, injunction, order or decree enjoining the Purchaser, the Sellers or the Sellers from consummating the Purchase is entered and such judgment, injunction, order or decree shall become final and non-appealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 9.1(c) shall have used all commercially reasonable efforts to remove such judgment, injunction, order or decree;

(d) by the Sellers, in the event of a material breach by the Purchaser of any representation or warranty when made or of any covenant or agreement contained herein that has not been cured or is not curable within 30 days after the Sellers give written notice to the Purchaser of the material breach; or

(e) by the Purchaser, in the event of a material breach by the Sellers of any representation or warranty when made or of any covenant or agreement contained herein that has not been cured or is not curable within 30 days after the Purchaser gives written notice to the Sellers of the material breach.

9.2 Effect of Termination.

If this Agreement is terminated as provided in Section 9.1, all rights and liabilities of the Parties hereunder shall terminate without liability of any Party to another Party (except for any liability of any Party then in breach and any liability described in the Escrow Agreement); provided, however, that the Confidentiality Agreement and the provisions contained in this Section 9.2 and Article X (Miscellaneous) shall survive termination. Each Party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies.

ARTICLE X – MISCELLANEOUS

10.1 Expenses.

Regardless of whether the transactions contemplated by this Agreement are consummated and unless otherwise expressly set forth in this Agreement, each party to this Agreement shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby. For clarity and without limitation, the Purchaser will bear all of its expenses in connection with its inspection of the Businesses. The Sellers shall be responsible for paying the cost of standard (ALTA) title insurance coverage to be delivered to the Purchaser with respect to the Owned Real Property at Closing. The Purchaser will pay one-half and the Sellers will pay one-half of the fees and expenses of the Escrow Agent under the Escrow Agreement.

10.2 Notices.

Any notice, request or demand desired or required to be given hereunder shall be in writing given by personal delivery, confirmed e-mail or overnight courier service, in each case addressed as respectively set forth below or to such other address as any Party shall have previously designated by such a notice. The effective date of any notice, request or demand shall be the date of personal delivery, the date on which successful e-mail transmission is confirmed, or the date actually delivered by a reputable overnight courier service, as the case may be, in each case properly addressed as provided herein and with all charges prepaid.

To the Purchaser or, after the Closing, the Sellers:

SouthWest Water Company
1325 N. Grand Avenue, Suite 100
Covina, CA 91724
E-mail: kdix@swwc.com
Attention: General Counsel

with a copy (which shall not constitute notice) to:

Zuber Lawler & Del Duca LLP
777 S. Figueroa Street, 37th Floor
Los Angeles, CA 90017
E-mail: jlawler@zuberlaw.com
Attention: Josh Lawler

To the Sellers or Parent:

Northview Hotel Group
36 Narrow Rocks Road
Westport, CT 06880
E-mail: mtrevenen@nvhg.com
Attention: Matt Trevenen

and

Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071
E-mail: ckleinman@oaktreecapital.com
Attention: Cary Kleinman

with a copy (which shall not constitute notice) to:

Perkins Coie LLP
1120 NW Couch Street
Portland, OR 97209
E-mail: lreichman@perkinscoie.com and
chall@perkinscoie.com
Attention: Lawrence Reichman and
Chris Hall

10.3 Headings.

The headings contained in this Agreement are intended solely for convenience and shall not in any way affect the meaning or interpretation of this Agreement.

10.4 Entire Agreement; Amendments.

This Agreement, including any exhibits hereto, the Disclosure Schedule, the Transaction Documents and the Confidentiality Agreement constitute the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersede any and all prior understandings, written or oral, among the Parties, or any of them, with regard to the subject matter hereof and thereof. This Agreement may not be amended, modified or waived orally, but only by an instrument in writing signed by an authorized representative of each of the Parties hereto.

10.5 Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, such term or provision shall remain in full force and effect to the extent not held invalid or unenforceable, and all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

10.6 Waiver.

Waiver of any term or condition of this Agreement by any Party hereto shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or any other terms or conditions of this Agreement or the Transaction Documents. No waiver shall be effective unless it is in writing signed by an authorized representative of the waiving party. Neither any failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or any Transaction Document will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

10.7 Binding Effect; Assignment.

This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any rights or obligations of a Party hereunder may be assigned or transferred by operation of law or otherwise by such Party without the prior written consent of the other Parties, and any purported assignment of this Agreement or any of such rights or obligations without such consent shall be void and of no effect, provided, further, however, that the Purchaser may assign any of its rights and delegate any of its obligations under this Agreement to any Affiliate or Affiliates of the Purchaser and may collaterally assign its rights under this Agreement to any financial institution providing financing in connection with the transactions contemplated hereby, so long as the Purchaser remains obligated under this Agreement as if such assignment did not occur.

10.8 No Third Party Beneficiaries.

Other than with respect to an Indemnified Party and the Parties, nothing in this Agreement shall confer any rights or liabilities upon any Person that is not a party to this Agreement. This Agreement may be amended or terminated, and any provision of this Agreement may be waived, without the consent of any Person who is not a party to the Agreement.

10.9 Specific Performance.

The Parties to this Agreement agree that irreparable damage would occur with respect to a non-breaching Party in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement would not be adequately compensated for in all cases by monetary damages alone. It is accordingly agreed that the Parties to this Agreement shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to seek temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or giving any other undertaking, this being in addition to any other remedy to which they are entitled at law or in equity.

10.10 Counterparts.

This Agreement may be executed and delivered (including by facsimile transmission, PDF or other electronic delivery) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

10.11 Governing Law.

All matters relating to or arising out of this Agreement or any transaction contemplated hereby and the rights of the parties (whether sounding in contract, tort, or otherwise) will be governed by and construed and interpreted under the laws of the State of Delaware without regard to conflicts of laws principles that would require the application of any other law.

10.12 Jurisdiction; Service of Process.

Except as otherwise provided in this Agreement, any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought in the state and federal courts located in the State of New York, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of such Proceeding shall be heard and determined only in any such court, and agrees not to bring any Proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. Each Party acknowledges and agrees that this Section 10.12 constitutes a voluntary and bargained-for agreement among the Parties. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world, including by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 10.2. Nothing in this Section 10.12 will affect the right of any party to serve legal process in any other manner permitted by law or at equity.

10.13 Waiver of Jury Trial.

Each of the Purchaser, Parent and the Sellers hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the Purchaser, Parent or the Sellers in the negotiation, administration, performance and enforcement thereof.

10.14 Nature of the Sellers' Obligations

The liabilities of the Sellers and Parent under this Agreement are joint and several. The Sellers and Parent, jointly and severally, shall take, or cause to be taken, or refrain from taking, all actions as may be necessary or appropriate to implement this Agreement.

10.15 Remedies Cumulative.

The rights and remedies of the Parties to this Agreement are cumulative and not alternative.

10.16 Delivery of Documents.

Wherever this Agreement provides that a document has been delivered, provided or made available to the Purchaser, such obligation will have been satisfied if such document was available to the Purchaser or its Representatives in the Northview Hotel Group Citrix Sharefile dataroom located at <http://nvhg.sharefile.com/> within five (5) Business Days prior to the date of this Agreement.

10.17 Consent and Waivers

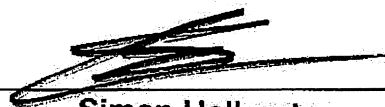
(a) As the Sellers and Parent are the ultimate beneficiary of the Purchase and all other transactions contemplated by this Agreement and the Transaction Documents, the Purchaser acknowledges and agrees that, effective upon the Closing Date, all communications and files of counsel to the Sellers regarding the transactions contemplated by this Agreement (including all preparations in contemplation of such transactions) shall be the property of the Sellers and Parent and will not be Assets. The Parent and the Sellers on behalf of themselves and their Affiliates (i) agree that Perkins Coie LLP (or any successor) ("*Perkins Coie*") may serve as counsel to the Sellers, and their respective heirs, successors and assigns, after Closing with respect to the transactions contemplated by this Agreement; (ii) hereby waive any conflicts of interest associated with such representation; and (iii) agree that none of them will seek to disqualify Perkins Coie as a result of its representation of the Sellers before or after Closing (including with respect to the transactions contemplated by this Agreement).

(b) The Purchaser acknowledges and agrees that an individual executing this Agreement, listed under "Sellers' knowledge" or otherwise involved as an officer, director or manager of the Sellers or Parent is not acting in any individual capacity and, other than with respect to the commission of intentional fraud, will have no liability to **any** party under any circumstance in connection with this Agreement or the transactions contemplated by this Agreement.


[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have entered into and signed this Asset Purchase Agreement as of the date and year first above written.


CLINE BUTTE WATER, LLC

By: 
Name: Simon Hallgarten
Title: Authorized Signatory


RUNNING Y UTILITIES, LLC

By: 
Name: Simon Hallgarten
Title: Authorized Signatory


CLINE BUTTE ENVIRONMENTAL, LLC

By: 
Name: Simon Hallgarten
Title: Authorized Signatory

RUNNING Y ENVIRONMENTAL, LLC

By: 
Name: Simon Hallgarten
Title: Authorized Signatory

OREGON RESORTS, LLC

By: 
Name: Simon Hallgarten
Title: Authorized Signatory

SOUTHWEST WATER COMPANY

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have entered into and signed this Asset Purchase Agreement as of the date and year first above written.

CLINE BUTTE WATER, LLC

By: _____
Name: _____
Title: _____

RUNNING Y UTILITIES, LLC

By: _____
Name: _____
Title: _____

CLINE BUTTE ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

RUNNING Y ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

OREGON RESORTS, LLC

By: _____
Name: _____
Title: _____

SOUTHWEST WATER COMPANY

By: Michael O. Quinn
Name: **Michael O. Quinn**
Title: **President/CEO**

EXHIBIT A
FORM OF DEED

After recording return to:

This space reserved for recorder's use.

GRANTOR:

Until a change is requested, all tax statements shall be sent to Grantee at the following address:

GRANTEE:

SouthWest Water Company,
a Delaware corporation

STATUTORY SPECIAL WARRANTY DEED

_____ ("Grantor") conveys and specially warrants to SouthWest Water Company, a Delaware corporation ("Grantee") the real property in _____ County, Oregon, more particularly described on Exhibit A attached hereto and by this reference incorporated herein, free of encumbrances created or suffered by the Grantor, except for those encumbrances set forth on Exhibit B, attached hereto and by this reference incorporated herein.

The true consideration for this conveyance in terms of dollars is \$ _____.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: _____, 2016
[Insert Grantor Name]

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by
_____, as _____ of _____.

Notary Public for _____
My commission expires: _____

EXHIBIT A
Legal Description

EXHIBIT B

Permitted Encumbrances

EXHIBIT B

FORM OF NON-UTILITY SIDE LETTER

SIDE LETTER

_____, 2016

Oregon Resorts Acquisition Partners, LP
dba Eagle Crest Inc.
7555 Falcon Crest Drive
Redmond, OR 97756
Attention:

Ladies and Gentlemen:

Reference is hereby made to that certain Asset Purchase Agreement (“Agreement”), dated as of September 27, 2016, by and among Cline Butte Water, LLC, a Delaware limited liability company, Cline Butte Environmental, LLC, a Delaware limited liability company (“CBE”), Running Y Water, LLC, a Delaware limited liability company, and Running Y Environmental, LLC, a Delaware limited liability company, and Oregon Resorts, LLC, a Delaware limited liability company, on the one hand, and SouthWest Water Company, a Delaware corporation (“Purchaser”), on the other hand. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Agreement.

This letter (this “Side Letter”) serves to confirm our agreement with respect to the continued provision of sanitary wastewater collection and treatment services (“Services”) by [an affiliate of Purchaser who succeeds in interest to the operations of CBE from and after the Closing of the transactions contemplated by the Agreement] (“New CBE”) to the Eagle Crest Resort located at 1522 Cline Falls Road, Redmond, Oregon 97756 (the “Property”) from and after the Closing Date.

1. As of the date of this Side Letter, [Oregon Resorts Acquisition Partners, LP, dba Eagle Crest Inc.] (“Eagle Crest”), is the owner and operator of the Property. Each of the parties to this Side Letter acknowledges and agrees that, immediately prior to the Closing, CBE is the sole and exclusive provider of the Services to the Property, and for the duration of the Term (as hereinafter defined), each of the parties to this Side Letter desire that New CBE be the sole and exclusive provider of the Services to the Property, on the terms and subject to the conditions set forth herein.
2. From and after the Closing Date, New CBE agrees to provide the Services to the Property in accordance with industry standards and in substantially the same or better manner as such Services were provided to the Property by CBE at March 31, 2016, and Eagle Crest agrees to cause the Property to accept and pay for such Services. From and after the Closing Date and for the duration of the Term, Eagle Crest agrees to purchase all of the Services for the Property exclusively from New CBE.
3. The agreements contained in this Side Letter shall commence from and after the Closing Date and shall continue in effect for an initial term of ten (10) years after the Closing Date (“Initial Term”), with one automatic ten-year renewal term (“Renewal Term”) if Eagle Crest continues to own any portion of the Property requiring Services at the end of the Initial Term (the Initial Term together with such Renewal Term, if any, the “Term”); provided; however, that this Side Letter and the agreements contained herein may be terminated by either party upon the occurrence of a default by the other party in the performance of a material obligation under this Side Letter which is not cured within thirty (30) days after written notice of default to such defaulting party; provided further that this Side Letter and the agreements contained herein may be terminated by Eagle Crest upon the sale of the Property.
4. The parties to this Side Letter acknowledge and agree that as of March 31, 2016, CBE charged the rates and fees set forth on Schedule I to this Side Letter for the provision of the Services to the Property (the “Current Rates”). From and after the Closing Date, New CBE shall continue to charge the Current Rates for the provision of Services to the Property through and until March 31, 2017. From and after March 31, 2017, if and to the extent

there is proposed any increase to the then-current rates and fees being charged for the Services, New CBE shall provide the Property and Eagle Crest with no less than sixty (60) days' written notice prior to the implementation of such increase setting forth in reasonable detail the contemplated changes to the fee and rate structure, including the fee and rate structure of the commercial and residential customers of New CBE. The parties to this Side Letter agree that, during the Term, the percentage increase in rates and fees charged to the Property for the Services during any 12-month period shall not exceed the percentage increase in rates and fees charged to residential customers during the same 12-month period, unless ordered by the Oregon Public Utilities Commission or required by applicable Law.

5. The parties to this Side Letter acknowledge and agree that any failure or refusal of either party hereto, its successors or assigns, to strictly comply with the terms of this Side Letter could have serious and irreparable consequences to the non-defaulting party. As a result, in addition to any other right or remedy to which a party hereunder may be entitled, at law or in equity, each party shall be entitled to seek to enforce any provision of this Side Letter by a decree of specific performance and to seek temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Side Letter, without posting any bond or giving any other undertaking. EACH PARTY, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS SIDE LETTER, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

6. Any notice, request or demand desired or required to be given hereunder shall be in writing given by personal delivery, confirmed e-mail or overnight courier service, in each case addressed as respectively set forth below such party's signature block or to such other address as any party shall have previously designated by such a notice. The effective date of any notice, request or demand shall be the date of personal delivery, the date on which successful e-mail transmission is confirmed, or the date actually delivered by a reputable overnight courier service, as the case may be, in each case properly addressed as provided herein and with all charges prepaid.

7. All rights and remedies of the parties hereunder shall be cumulative, and none shall be exclusive of any other, or of any rights and remedies allowed by law, and pursuit of any one of said rights or remedies does not preclude pursuit of any one or more of such other rights or remedies.

8. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, such term or provision shall remain in full force and effect to the extent not held invalid or unenforceable, and all other conditions and provisions of this Side Letter shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Side Letter so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

9. No covenant, term or condition hereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition of this Side Letter. Acceptance of any performance by a party after the time the same shall have become due shall not constitute a waiver by the non-defaulting party of the breach or default of any covenant, term or condition of this Side Letter unless otherwise expressly agreed to by the non-defaulting party in writing.

10. In the event either party to this Side Letter, despite diligent efforts by such party to avoid delays in the performance of its obligations hereunder, is delayed in the performance of the terms of this Side Letter by causes or circumstances (other than financial inability) beyond its reasonable control, including, but not limited to, acts of God (e.g., fires, explosions, earthquakes, drought, tidal waves, exceptional weather conditions, and floods), war (whether or not declared), civil disturbance, terrorism or threats of terrorism, national disaster, strikes or shortages of labor, shortages or unavailability of materials, and so forth, the period for performance by such party will be extended by a period equal to the aggregate period(s) of such delay.

11. This Side Letter will be binding on each of the parties' successors and assigns and may not be amended or waived unless in writing and signed by each of the parties hereto or its successors and permitted assigns. Each of the parties to this Side Letter shall have the right to assign its rights and obligations under this Side Letter to its successors-in-interest or successors-in-title only with the prior written consent of the other party, provided that Eagle Crest and its permitted successors and assigns may assign, without New CBE's consent, this Side Letter upon written notice to New CBE in connection with the sale of the Property or an assignment to an affiliate, and New CBE may assign, without Eagle Crest consent, this Side Letter upon written notice to Eagle Crest to an affiliate of New CBE who succeeds in interest to all or substantially all of the operations of New CBE.

12. This Side Letter may be executed in multiple counterparts which, taken together, will constitute one and the same agreement. Signatures to this Side Letter delivered by facsimile or as a portable document format (.pdf) attachment shall have the same effect as the delivery of an original signature thereto.

13. This Side Letter shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the State of Oregon without regard to conflicts of laws principles that would require the application of any other law.

IN WITNESS WHEREOF, the undersigned have executed this Side Letter, or separate counterparts hereof, as of the date first set forth above.

Very truly yours,
[NEW CBE]

By: _____
Name:
Title:

Address:

Acknowledged, Accepted and Agreed:

OREGON RESORTS ACQUISITION PARTNERS, LP
(dba EAGLE CREST INC.)

By: _____
Name:
Title:

Address:

Schedule I

Current Rates

Use	Usage Rate Per HCF*
Commercial Sewer	\$106.54
Food Service Sewer	\$156.41

*HCF = 748 gallons

EXHIBIT C

FORM OF OPINION OF SELLERS' COUNSEL

FORM OF SELLERS COUNSEL OPINION

[●], 2016

SouthWest Water Company
1325 North Grand Avenue, Suite 100
Covina, CA 91724

Re: Sale of Assets of Cline Butte Water, LLC; Cline Butte Environmental, LLC; Running Y Water, LLC; and Running Y Environmental, LLC

Ladies and Gentlemen:

We have acted as special counsel to Cline Butte Water, LLC, a Delaware limited liability company (“*CBW*”), Cline Butte Environmental, LLC, a Delaware limited liability company (“*CBE*”), and together with CBW, “*Cline Butte*”), Running Y Water, LLC, a Delaware limited liability company (“*RYW*”), and Running Y Environmental, LLC, a Delaware limited liability company (“*RYE*”, and together with RYW, the “*RY Utilities*”, and the RY Utilities collectively with Cline Butte, the “*Sellers*”), in connection with the Asset Purchase Agreement, dated September 27, 2016, among the Sellers, Oregon Resorts, LLC, a Delaware limited liability company and you (the “*Agreement*”). This opinion letter is being furnished to you at the request of Sellers pursuant to Section 2.8.1(c) of the Agreement. Except as otherwise indicated herein, capitalized terms defined in the Agreement are used herein as defined in the Agreement.

A. Documents and Matters Examined

In connection with this opinion letter, we have examined originals or copies of such documents, records, certificates of public officials, and certificates of officers and representatives of the Sellers, as we have considered necessary to provide a basis for the opinions expressed herein, including the following:

- A-1 the Agreement;
- A-2 the Escrow Agreement; and

- A-3 the Bill of Sale, the Assignment and Assumption Agreement and the Assignment of Intellectual Property.

The documents listed in A-1 through A-3 are collectively referred to herein as the “**Transaction Documents**.”

As to matters of fact material to the opinions expressed herein, we have relied on (a) information in public authority documents (and all opinions based on public authority documents are as of the date of such public authority documents and not as of the date of this opinion letter), (b) information provided in certificates of officers/representatives of the Sellers, and (c) the representations and warranties of the Sellers in the Transaction Documents. We have not independently verified the facts so relied on.

B. Assumptions

We have relied, without investigation, on the following assumptions:

- B-1 Original documents reviewed by us are authentic, copies of original documents reviewed by us conform to the originals and all signatures on executed documents are genuine.
- B-2 All individuals have sufficient legal capacity to enter into the Transaction Documents and to perform their functions with respect to the Transaction Documents and the transactions contemplated by the Transaction Documents (the “**Transaction**”).
- B-3 The Transaction Documents and the other documents reviewed by us are valid and binding obligations of each party thereto, other than the Sellers, enforceable against it in accordance with their terms. Each such party has complied with all legal requirements pertaining to its status relevant to its right to enforce the Transaction Documents against the Sellers.

C. Opinions

Based on the foregoing and subject to the qualifications and exclusions stated below, we express the following opinions:

- C-1 Each of the Sellers is a limited liability company validly existing and in good standing under Delaware law. Based solely on the certificates attached as Exhibit A, each of the Sellers is qualified to transact business as a foreign limited liability company in the State of Oregon.

- C-2 Each of the Sellers has the necessary entity power to execute, deliver and perform its obligations in the Transaction Documents. The execution and delivery by the Sellers of the Transaction Documents and the performance by each of the Sellers of its respective agreements and obligations under the Transaction Documents have been duly authorized by all necessary entity action on the part of each of the Sellers, and the Transaction Documents have been duly executed and delivered by each of the Sellers.
- C-3 The Transaction Documents are valid and binding obligations of each of the Sellers enforceable against each of the Sellers in accordance with their terms.
- C-4 The execution and delivery by the Sellers of the Transaction Documents and consummation of the Transaction and the performance by each of the Sellers of its respective agreements and obligations under the Transaction Documents (including the requirement to obtain public utility commission approval) do not:
 - (a) violate statutory laws that counsel exercising customary professional judgment would in our experience reasonably recognize as typically applicable to agreements similar to the Transaction Documents and transactions similar to the Transaction; or
 - (b) violate such Seller's certificate of formation or limited liability company operating agreement.

D. Qualifications; Exclusions

- D-1 The opinions expressed herein are subject to bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and general principles of equity.
- D-2 We express no opinion as to the following matters, or the effect, if any, that they may have on the opinions expressed herein:
 - (a) federal securities laws and regulations, state "blue sky" laws and regulations, the Investment Company Act, the Trust Indenture Act, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments;
 - (b) federal and state laws and regulations dealing with (i) antitrust and unfair competition; (ii) filing and notice requirements (e.g., Hart-Scott-Rodino);

(iii) environmental matters; (iv) land use and subdivisions; (v) tax; (vi) patents, copyrights, trademarks and intellectual property; (vii) governmental procurement; (viii) racketeering; (ix) health and safety; (x) labor and employment; (xi) national and local emergencies; (xii) requirements and provisions of the USA Patriot Act or Foreign Corrupt Practices Act, terrorism, foreign assets control, and foreign investment review or approval; (xiii) possible judicial deference to acts of sovereign states; (xiv) criminal and civil forfeiture; (xv) statutes of general application to the extent they provide for criminal prosecution (e.g., mail fraud, wire fraud and money laundering statutes); (xvi) privacy; and (xvii) regulation of lenders or opinion recipients, or the conduct of their business, and that may relate to the Transaction Documents or the Transaction;

(c) compliance with fiduciary duty requirements;

(d) the statutes and ordinances, the administrative decisions, and the rules and regulations of counties, cities, towns, municipalities and special political subdivisions (whether created or enabled through legislative action at the federal, state or regional level), and judicial decisions to the extent that they deal with any such statutes, ordinances, administrative decisions, rules or regulations;

(e) fraudulent transfer and fraudulent conveyance laws;

(f) pension and employee benefit laws and regulations;

(g) each Seller's title to or the condition of title of any property;

(h) the creation, attachment, perfection, priority or enforcement of liens or encumbrances, except to the extent expressly noted to the contrary in this opinion letter; and

(i) laws, regulations, policies and proceedings regarding or affecting public or private utilities or the protection of the environment or health and welfare of any person.

D-3 We express no opinion as to the enforceability of:

(a) provisions related to the waiver of rights, remedies, defenses and obligations or waivers of good faith and reasonableness, including, without limitation, attempts to waive applicable statutes of limitations (including by shortening or extending) or rights to a jury trial, or attempts to change or waive rules of evidence or to fix the method or quantum of proof;

- (b) provisions permitting the pursuit of inconsistent or cumulative remedies;
- (c) provisions purporting to indemnify, release, exculpate, hold harmless or exempt any party from liability for its own gross negligence, recklessness, willful misconduct, intentional harm, criminal violations, unlawful conduct, strict product liability, other wrongdoing, or for securities law liabilities;
- (d) provisions establishing or waiving evidentiary standards;
- (e) provisions providing for payment of attorneys' fees incurred in a dispute or enforcement action (i) to a party other than the prevailing party, (ii) at a procedural level beyond the trial or initial dispute resolution level, or (iii) purporting to limit judicial discretion regarding determination of the amount of such fees and related costs;
- (f) choice of law, choice of forum, consent to jurisdictions (both as to personal jurisdiction and subject matter jurisdiction) and service of process provisions;
- (g) arbitration provisions;
- (h) provisions that are unconscionable as a matter of law; and
- (i) provisions that would permit the exercise of remedies without consideration of the materiality of (i) the breach, and (ii) the consequence of the breach to the party seeking enforcement.

For purposes of expressing the opinions herein, (a) we have examined the statutory laws and regulations of the States of Oregon and Delaware, and the statutory laws and regulations of the United States of America which, in our experience, are normally applicable to the purchase and sale of personal and intangible property, without our having made any special investigation as to the applicability of any specific law, including without limitation any law specific to the ownership or operation of the Assets, (b) we have assumed that those laws govern the construction, interpretation and enforcement of the Transaction Documents, whether or not any of the Transaction Documents includes a choice-of-law provision stipulating the application of the laws of some other jurisdiction and (c) our opinions are limited to such laws. We have not reviewed, nor are our opinions in any way predicated on an examination of, the laws of any other jurisdiction, and we expressly disclaim responsibility for advising you as to the effect, if any, that the laws of any other jurisdiction may have on the opinions set forth herein.

The opinions expressed herein (a) are limited to matters expressly stated herein, and no other opinions may be implied or inferred, including that we have performed any actions

SouthWest Water Company

[●], 2016

Page 6

in order to provide the legal opinions and statements contained herein other than as expressly set forth, and (b) are as of the date hereof (except as otherwise noted above). We disclaim any undertaking or obligation to update these opinions for events and circumstances occurring after the date hereof (including changes in law or facts, or as to facts relating to prior events that are subsequently brought to our attention), or to consider their applicability or correctness as to persons or entities other than the addressees.

This opinion letter is being rendered only to you and is solely for your benefit in connection with the Transaction Documents and the Transaction. This opinion letter may not be used or relied on for any other purpose or by any other person or entity without our prior written consent.

Very truly yours,

PERKINS COIE LLP

EXHIBIT A
FOREIGN QUALIFICATION CERTIFICATES

SEE ATTACHED

EXHIBIT D
FORM OF BILL OF SALE

BILL OF SALE

This Bill of Sale (this "**Bill of Sale**") dated as of the ___ day of _____, 2016, is made by Cline Butte Water, LLC, a Delaware limited liability company ("**CBW**"), Cline Butte Environmental, LLC, a Delaware limited liability company ("**CBE**", and together with CBW, "**Cline Butte**"), Running Y Water, LLC, a Delaware limited liability company ("**RYW**"), and Running Y Environmental, LLC, a Delaware limited liability company ("**RYE**", and together with RYW, the "**RY Utilities**", and the RY Utilities collectively with Cline Butte, the "**Sellers**"), for the benefit of SouthWest Water Company, a Delaware corporation (the "**Purchaser**"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Asset Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Sellers, the Purchaser and Oregon Resorts, LLC, a Delaware limited liability company, have executed and delivered an Asset Purchase Agreement (the "**Asset Purchase Agreement**"), dated as of September 27, 2016, pursuant to which each of the Sellers has agreed to sell to the Purchaser all of such Seller's respective right, title and interest in and to the Assets, in exchange for the consideration set forth therein; and

WHEREAS, pursuant to the terms of the Asset Purchase Agreement, each of the Sellers desires to transfer and assign to the Purchaser all of such Seller's respective right, title and interest in and to the Assets, and the Purchaser desires to acquire all of such Seller's right, title and interest in and to the Assets.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and effective as of the Closing, each of the Sellers does hereby sell, transfer, convey, assign and deliver unto the Purchaser, its successors and assigns forever, all of such Seller's right, title and interest in and to the Assets, free and clear of all Liens, except Permitted Liens. Notwithstanding anything expressed herein to the contrary, the Excluded Assets are specifically excluded from the Assets and shall be retained by the applicable Seller following the Closing.

This Bill of Sale and all of the provisions hereof shall be binding upon the Sellers and their respective successors and permitted assigns and shall inure to the benefit of the Purchaser and its successors and permitted assigns. Nothing in this Bill of Sale is intended to confer upon any other person except the Purchaser and the Sellers any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

This Bill of Sale is being delivered pursuant to the Asset Purchase Agreement and shall be construed consistently therewith. In the event of any conflict or ambiguity between the terms of the Asset Purchase Agreement and the terms of this Bill of Sale, the terms of the Asset Purchase Agreement shall control. This Bill of Sale is not intended to, and does not in any manner, enlarge, diminish or modify the rights and obligations of the parties to the Asset Purchase Agreement, including without limitation any representations, warranties or indemnification obligations contained therein. The Purchaser acknowledges that the Sellers make no representation or warranty with respect to the Assets except as specifically set forth in the Asset Purchase Agreement.

The parties hereto agree to execute such documents and other papers and perform such further acts as may be reasonably required to carry out the provisions hereof and the transactions contemplated hereby.

[Remainder of Page Intentionally Blank.]

This Bill of Sale may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Bill of Sale is to be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflicts of law principles.

IN WITNESS WHEREOF, each of the Sellers and the Purchaser have caused this Bill of Sale to be signed on the date first above written.

CLINE BUTTE WATER, LLC

By: _____
Name: _____
Title: _____

RUNNING Y UTILITIES, LLC

By: _____
Name: _____
Title: _____

CLINE BUTTE ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

RUNNING Y ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

**ACCEPTED AND ACKNOWLEDGED:
SOUTHWEST WATER COMPANY**

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Agreement**”) is made and entered into effective as of [_____], 2016 by and among Cline Butte Water, LLC, a Delaware limited liability company (“**CBW**”), Cline Butte Environmental, LLC, a Delaware limited liability company (“**CBE**”, and together with CBW, “**Cline Butte**”), Running Y Water, LLC, a Delaware limited liability company (“**RYW**”), and Running Y Environmental, LLC, a Delaware limited liability company (“**RYE**”, and together with RYW, the “**RY Utilities**”, and the RY Utilities collectively with Cline Butte, the “**Sellers**”), on the one hand, and SouthWest Water Company, a Delaware corporation (the “**Purchaser**”), on the other hand. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Asset Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Sellers, the Purchaser and Oregon Resorts, LLC, a Delaware limited liability company, have executed and delivered an Asset Purchase Agreement, dated as of September 27, 2016 (the “**Asset Purchase Agreement**”), pursuant to which, among other things, each of the Sellers has agreed to sell, transfer, convey, assign and deliver to the Purchaser certain of the assets and property of such Seller related to the Businesses, and the Purchaser has agreed to assume certain liabilities and obligations of the Sellers, as more fully set forth in the Asset Purchase Agreement; and

WHEREAS, pursuant to the terms of the Asset Purchase Agreement, each of the Sellers has agreed to assign, and the Purchaser has agreed to assume certain contracts of such Seller, including the Assumed Contracts and excluding those contracts identified as Excluded Assets under Section 2.2 of the Asset Purchase Agreement (the “**Assigned Contracts**”);

WHEREAS, pursuant to the terms of the Asset Purchase Agreement, each of the Sellers has agreed to assign, and the Purchaser has agreed to assume all Permits of such Seller relating to the Businesses, to the extent legally assignable or transferable (the “**Assigned Permits**”); and

WHEREAS, pursuant to the terms of the Asset Purchase Agreement, the Purchaser has agreed to assume certain liabilities and obligations of the Sellers as more fully described in the Asset Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, as of the Closing and in accordance with the terms of the Asset Purchase Agreement, the parties hereto agree as follows:

The Sellers hereby sell, transfer, convey, assign and deliver to the Purchaser, and the Purchaser hereby agrees to accept such sale, transfer, conveyance, assignment and delivery of, the Assigned Contracts and the Assigned Permits, free and clear of all Liens (other than Permitted Liens).

Each of the Sellers hereby sells, transfers, conveys, assigns and delivers to the Purchaser all of such Seller’s right, title and interest in all of the Assets that are intangible personal property and the Assumed Liabilities. The Purchaser undertakes and assumes the Assumed Liabilities

effective at the time of the Closing, and does not assume any of the Excluded Liabilities, and the parties hereto agree that the Excluded Liabilities shall remain the sole responsibility of the Sellers as more fully described in the Asset Purchase Agreement.

Nothing in this Agreement or in the Asset Purchase Agreement shall be construed as an agreement to assign any Assigned Contract, Assigned Permit or other Asset that by its terms or pursuant to applicable Law is not capable of being sold, assigned, transferred or delivered without the consent or waiver of a third party or Governmental Authority unless and until such consent or waiver shall be given.

This Agreement is being delivered pursuant to the Asset Purchase Agreement and shall be construed consistently therewith. In the event of any conflict or ambiguity between the terms of the Asset Purchase Agreement and the terms of this Agreement, the terms of the Asset Purchase Agreement shall control. This Agreement is not intended to, and does not in any manner, enlarge, diminish or modify the rights and obligations of the parties to the Asset Purchase Agreement, including, without limitation, any representations, warranties or indemnification obligations contained therein.

This Agreement and all of the provisions hereof shall be binding upon the Sellers and their successors and permitted assigns and shall inure to the benefit of the Purchaser and its successors and permitted assigns.

The parties hereto agree to execute such documents and other papers and perform such further acts as may be reasonably required to carry out the provisions hereof and the transactions contemplated hereby.

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

This Agreement is to be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflicts of law principles.

[Signature page follows.]

IN WITNESS WHEREOF, each of the Sellers and the Purchaser have caused this Agreement to be signed on the date first above written.

CLINE BUTTE WATER, LLC

By: _____
Name:
Title:

CLINE BUTTE ENVIRONMENTAL, LLC

By: _____
Name:
Title:

RUNNING Y WATER, LLC

By: _____
Name:
Title:

RUNNING Y ENVIRONMENTAL, LLC

By: _____
Name:
Title:

SOUTHWEST WATER COMPANY

By: _____
Name:
Title:

EXHIBIT F

FORM OF ASSIGNMENT OF INTELLECTUAL PROPERTY

ASSIGNMENT OF INTELLECTUAL PROPERTY

This Assignment of Intellectual Property (this "*Assignment*"), dated as of the ___ day of _____, 2016, is made by and among Cline Butte Water, LLC, a Delaware limited liability company ("*CBW*"), Cline Butte Environmental, LLC, a Delaware limited liability company ("*CBE*", and together with CBW, "*Cline Butte*"), Running Y Water, LLC, a Delaware limited liability company ("*RYW*"), and Running Y Environmental, LLC, a Delaware limited liability company ("*RYE*", and together with RYW, the "*RY Utilities*", and the RY Utilities collectively with Cline Butte, the "*Sellers*"), on the one hand, and SouthWest Water Company, a Delaware corporation (the "*Purchaser*"), on the other hand. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Asset Purchase Agreement (as defined below).

WHEREAS, the Sellers, the Purchaser and Oregon Resorts, LLC, a Delaware limited liability company, have executed and delivered an Asset Purchase Agreement (the "*Asset Purchase Agreement*"), dated as of September 27, 2016, pursuant to which each of the Sellers has agreed to sell to the Purchaser all of such Seller's respective right, title and interest in and to the Assets, including, but not limited to, the Seller Intellectual Property;

WHEREAS, the Sellers own unregistered trade names, trademarks and service marks, domain names and other Internet addresses or identifiers, trade dress and similar rights and applications (the "*Trademarks*") and trade secrets, know-how, inventions, methods, processes and processing instructions, technical data, specifications, research and development information, technology including rights and licenses, product roadmaps, customer lists and other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other Persons who can obtain economic value from its disclosure or use (collectively, the "*Trade Secrets*"), in each case, as set forth on Annex A hereto;

WHEREAS, the Purchaser desires to acquire all of such Seller's respective rights in and to the Trademarks and the Trade Secrets, and such Seller is willing to assign to the Purchaser its right, title and interest in and to the Trademarks and Trade Secrets, in accordance with the terms and conditions of the Asset Purchase Agreement; and

WHEREAS, in order to effectuate such Seller's assignment of its entire right, title and interest in and to the Trademarks and Trade Secrets in accordance with the terms and conditions of the Asset Purchase Agreement, such Seller is executing this instrument of assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, each of the Sellers agrees as follows:

1. Such Seller does hereby sell, assign, convey and transfer to the Purchaser, its successors, assigns and legal representatives, and the Purchaser does hereby accept, in accordance with the terms and conditions of the Asset Purchase Agreement, such Seller's right, title and interest in and to the following property:

- a) the Trademarks and the Trade Secrets set forth on Annex A, in each case, together with the goodwill of the Businesses symbolized by said Trademarks and Trade Secrets; and
- b) all causes of action for, and claims for damages by reason of any infringement of the Trademarks or the Trade Secrets set forth on Annex A, which causes of action and claims arose prior to the date of execution hereof.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the date first indicated above.

CLINE BUTTE WATER, LLC

By: _____
Name: _____
Title: _____

RUNNING Y UTILITIES, LLC

By: _____
Name: _____
Title: _____

CLINE BUTTE ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

RUNNING Y ENVIRONMENTAL, LLC

By: _____
Name: _____
Title: _____

Acknowledged as of the date first written above:

SOUTHWEST WATER COMPANY

By: _____
Name: _____
Title: _____

Annex A

EXHIBIT G

FORM OF OPERATIONS AND MAINTENANCE AGREEMENT

A PROFESSIONAL SERVICE CONTRACT

This Professional Service Contract ("Contract") is entered into as of this ____ day of _____, 2016 (the "Effective Date") by and between **FNF NV Brasada, LLC**, a Delaware limited liability company ("OWNER") and **SWWC Services, Inc.**, a Delaware corporation ("SWWC").

RECITALS

WHEREAS, the OWNER owns and operates, a wastewater collection system consisting of three lift stations and a 0.21 MGD wastewater treatment plant described in **Exhibit 'A'** (the "FACILITIES"), which are operated for the purpose of providing wastewater collection and treatment for the Brasada Ranch Resort; and

WHEREAS, this Contract provides for SWWC to furnish to the OWNER certain services for the proper maintenance and operation of the FACILITIES, as is currently provided by OWNER'S staff, and to receive compensation from the OWNER for those services rendered, all in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, OWNER and SWWC agree as follows:

I.

BASIC SERVICES TO BE PERFORMED BY SWWC

Section 1.00. Basic Services. The cost for the basic services to be performed by SWWC for the OWNER is included in the base operations fee, which will be paid by the OWNER to SWWC in accordance with **Exhibit 'B'**.

Section 1.01. Certified Personnel. SWWC affirms that the Facilities will be operated by SWWC personnel who possess valid Operational Licenses as required by the State of Oregon.

Section 1.02. Facilities Inspections. SWWC shall provide for daily inspection of the FACILITIES, and shall maintain a written log of the date, time, and operator's name performing each inspection as a part of the OWNER'S permanent records. SWWC shall have full and complete access to and right to monitor OWNER's SCADA system. SWWC shall follow the minimum monitoring and reporting requirements as outlined in the Water Pollution Control Facilities Permit Number 102716. All monitoring and reporting records will become a part of the Owner's permanent records.

Section 1.03. Routine Preventive Maintenance. SWWC's staff will perform, as required, routine preventive maintenance on equipment (exclusive of IT maintenance which will be conducted by OWNER) at the FACILITIES as specified by the respective equipment manufacturers to extend the useful life of the equipment.

Section 1.04. Department of Environmental Quality ("DEQ") Liaison. SWWC will be available for meetings with DEQ representatives for regulatory Compliance Sampling Inspections (CSI). This includes making all records available for DEQ inspection and review.

Section 1.05. Chemical Inventories. SWWC's staff will manage and maintain an inventory of chemicals routinely used in the operation of the FACILITIES. Chemical inventories will be stored at the FACILITIES in quantities sufficient to enable continuous operation of the FACILITIES. All chemicals shall be appropriately stored and maintained.

Section 1.06. Compliance Reports. As requested by the OWNER, SWWC will promptly prepare and submit operational and compliance reports required by the Oregon DEQ, the United States EPA, and any other local, state or federal agency in accordance with the filing deadlines of any such agencies. SWWC will report test results in accordance with all applicable agency rules and will communicate immediately with the OWNER when any remedial actions are necessary

Section 1.8. Correspondence and Inquiries. SWWC will respond to all correspondence and/or inquiries from the OWNER in a prompt and professional manner.

Section 1.09. Customer Relations. SWWC will render to the OWNER any reasonable assistance in the promotion of good relations with the OWNER's customers.

Section 1.11. Meetings. If requested, SWWC representatives shall attend regularly scheduled OWNER meetings or any other meeting, which have an agenda item pertaining to the operating the FACILITIES.

II.

OTHER OPERATIONAL SERVICES TO BE PERFORMED BY SWWC

Section 2.00. Other Operational Services. SWWC will provide the additional operational services set forth in this Article II. The OWNER will pay SWWC for such services based on the current rates for personnel and equipment and the materials and subcontract provisions reflected in **Exhibit 'B'**, as applicable, unless otherwise noted in this Article II.

Section 2.01. Emergency Repairs. SWWC will respond to any emergency (as hereinafter defined) throughout the year regardless of the day or the time of day. The OWNER will be responsible for all additional expenses associated with an Emergency Repair. If not paid directly by OWNER, the OWNER will reimburse SWWC for all expenses, with any such expenses marked up 10%.

Section 2.02. [Reserved]

Section 2.03. Grounds Keeping and Mowing. OWNER will be responsible for grounds keeping and mowing of the FACILITIES and Drain Fields.

Section 2.04. Other Laboratory Testing. SWWC will perform, or have performed, all sampling and laboratory analysis necessary to meet all state and federal water quality regulations and to meet all permit requirements for the OWNER's FACILITIES. SWWC will perform, or have performed, other tests, including but not limited to, those requested by the OWNER, DEQ, the EPA, or any other governmental agency with jurisdiction over the OWNER's FACILITIES. If not paid directly by Owner, the OWNER will reimburse SWWC for the sampling and laboratory analysis, with any such expenses marked up 10%.

Section 2.05. Energy Expenses. All electricity and natural gas expenses will be directly paid by the OWNER. If not paid directly by OWNER, the OWNER will reimburse SWWC for energy expenses, with any such expenses marked up 10%.

Section 2.06. Miscellaneous Expenses and Reimbursements for all other Costs. All miscellaneous expenses and reimbursements for all other costs including, but not limited to, property tax, DEQ fees and any other expenses necessary to operate the FACILITIES will be directly paid by the OWNER. If not paid directly by OWNER, the OWNER will reimburse SWWC for miscellaneous expenses, with any such expenses marked up 10%.

Section 2.07. Chemical Expenses. SWWC will assist OWNER to maintain a minimum inventory of chemicals, supplies, and other spare parts required for on-going operation of the FACILITIES. If not paid directly by OWNER, the OWNER will reimburse SWWC for these costs, with any such expenses marked up 10%.

Section 2.08. Consent to Incur Expense. SWWC will obtain the written consent of the OWNER prior to incurring expenses reimbursable or payable by OWNER (a) if the expense is not included the OWNER's repair and maintenance expense budget, as it may be amended ("R&M EXPENSE BUDGET") as delivered to SWWC, or (b) if the expense is greater than \$1,000, regardless if it is on the R&M Budget. OWNER shall provide a written copy of the R&M Budget to SWWC for each fiscal year within 60 days following the end of the most recently completed fiscal year.

III.

FACILITIES

Section 3.00. FACILITIES. OWNER shall: be responsible for all non-capital maintenance and any additional design, finance and construction of the FACILITIES to meet customer growth and regulatory requirements and mitigate nuisance conditions; provide SWWC use of the land, equipment, buildings, structures and facilities under ownership of OWNER that are integral to the routine Operation, Maintenance and Management of the FACILITIES; and make all capital expenditures at the FACILITIES as necessary to maintain the safe and efficient operation of the wastewater treatment plant.

IV.

INSURANCE

SWWC shall procure and maintain throughout the term of this Contract, at its sole cost and expense, insurance of the types and in the minimum amounts set forth below. Upon request, SWWC shall furnish certificates of insurance to the OWNER evidencing compliance with the insurance requirements hereof. Any such Certificates provided shall list SWWC, the name of the insurance company, the policy number, the term of coverage, and the limits of coverage required by this Contract. SWWC shall cause its insurance companies to endeavor to provide the OWNER with at least thirty (30) days prior written notice of any cancellation, of the insurance coverage required under this Contract. Worker's Compensation insurance will be maintained in accordance with the laws of the State of Oregon, and

Employer's Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease; \$500,000 policy limit for Occupational Disease, and Employer's Liability of \$500,000 each accident.

- Commercial General Liability insurance, including coverage for Products/Completed Operations, Contractual Liability, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than \$2,000,000..... general aggregate limit \$1,000,000..... each occurrence, combined single limit
- Business Automobile Liability coverage applying to owned and hired automobiles, with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- Umbrella Liability coverage with limit not less than \$1,000,000 each occurrence, combined single limit.
- Contractors Pollution Coverage with limits not less than \$2,000,000 each claim/annual aggregate.

The OWNER and the OWNER's agents and employees shall be added as additional insured to all coverage's required under this Contract, except for worker's compensation insurance. SWWC, and not the OWNER, shall be responsible for paying the premiums and deductibles, if any, that may from time to time be due under all of the insurance policies required of SWWC.

V.

GUARANTIES, INDEMNITY AND LIMITATIONS

Section 5.00. [Reserved]

Section 5.01. Condition of FACILITIES. The OWNER affirms to SWWC that, to the best of its knowledge and belief and except as disclosed on **Exhibit ‘C’** to this Agreement (“DISCLOSED CONDITIONS”), the FACILITIES have been or will be built in accordance with all applicable local, state and federal regulations, are or will be in good working order, do not contain any known defective equipment, and are suitable and adequate for the reasonable need of the OWNER’s present and/or expected future customers. The OWNER will be responsible for all costs, expenses, fees, fines and penalties associated with the Disclosed Conditions.

Section 5.02. Damage to FACILITIES. SWWC will not be required to repair or replace any of the FACILITIES or system damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, and acts of God or due to the acts or omissions of any entity or person other than SWWC, its employees, agents, representatives or subcontractors or anything beyond SWWC’s control. SWWC will notify the OWNER of such damage, both orally and in writing, as soon as possible after the damage occurs.

Section 5.03. Indemnity. AS PART OF THE CONSIDERATION FOR THIS CONTRACT, SWWC AND THE OWNER, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS EACH OTHER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, REPRESENTATIVES, AND AGENTS, FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT, OR LIABILITY OF EVERY KIND OR CHARACTER, WHETHER IN CONTRACT, TORT, OR

OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM SWWC OR THE OWNER'S WILLFUL, INTENTIONAL, RECKLESS, OR NEGLIGENT (WHETHER ACTIVE, PASSIVE, OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS CONTRACT. THIS INDEMNITY AND HOLD HARMLESS PROVISION WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE CONDUCTED BY SWWC, THE OWNER OR ANY SUBCONTRACTOR OR AGENT OF SWWC OR THE OWNER.

Section 5.04. Reasonable Diligence. All services shall be of good quality and shall be performed in a professional manner. The standard of care for all professional and related services performed or furnished by SWWC under this Contract will be the care and skill ordinarily used by members of SWWC's profession, practicing under similar conditions at the same time and in the same general locality. Notwithstanding any other provision of this Agreement, SWWC will be liable for any direct or indirect loss, injury or damages resulting from the diminution or interruption of service within the OWNER's wastewater treatment plant that is caused by the willful misconduct or negligence (whether active, passive or gross) of SWWC, its employees, representatives, agents or subcontractors. SWWC shall provide OWNER with a Certificate of Insurance evidencing its various coverages and limits.

Section 5.05. Force Majeure. In addition to the parties' rights and obligations set forth in Section 5.04 above, SWWC will not be in default if performance of SWWC's obligations under this Contract is delayed, disrupted or

becomes impossible because of any act of God, war, flood, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, or any other cause beyond the control of the parties (collectively, "Force Majeure"). Upon occurrence of any such event, SWWC will carry out its responsibilities under this Contract to the best of its ability under the circumstances, and SWWC will not be responsible for any damages, fines, penalties or claims resulting therefrom. If any additional expense is incurred by SWWC in such operation, that expense will be deemed to be an extraordinary expense, all of which will be paid by the OWNER to SWWC in accordance with Paragraph II of Exhibit B.

Section 5.06. Compliance with Applicable Laws. SWWC will sample and analyze the effluent from the FACILITIES in compliance with all applicable local, state, and federal laws, and rules.

VI.

PAYMENTS

The OWNER will pay SWWC for services to be rendered under this Contract in accordance with the fee schedules contained in **Exhibit 'B'**. SWWC shall provide its invoices to the OWNER on a monthly basis. The designated SWWC Contract Representative shall approve and initial SWWC's invoices before they are submitted to the OWNER'S bookkeeper. Any and all payments set forth in Article II above, shall be governed by the terms and conditions of this Article VI herein. If said invoices are provided as set forth above and if the OWNER fails to issue a check to SWWC to pay the undisputed invoiced amount within thirty (30) days of the invoice date, the OWNER will pay to SWWC, in addition to the amount owed, interest at a

rate of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is greater, until payment is received by SWWC.

VII.

TERM, TERMINATION, AND RECORDS

Section 7.00. Term. This Contract commences on the Effective Date and will remain in effect thereafter, subject to the right of either party to terminate this Contract in accordance with Section 7.01 below.

Section 7.01. Termination. Except as otherwise provided in Article VI, this Contract may be terminated by either party, without cause, by the giving of a one hundred twenty-day (120) written notice of such termination to the other party at its address of record (Section 8.05). The OWNER agrees to pay SWWC all fees and charges for services provided up to the date of termination.

Section 7.02. OWNER Records. SWWC will maintain records that SWWC initiates or receives on behalf of the OWNER. The OWNER will reimburse SWWC for the costs incurred by SWWC in archiving these records. If this Contract is terminated, SWWC will promptly deliver to the OWNER or the OWNER's designated agent all of said records. SWWC will make copies, at SWWC's expense, of any of those records.

VIII.

MISCELLANEOUS

Section 8.00. [Reserved]

Section 8.01. [Reserved]

Section 8.02. Modification. Modification of this Contract may be made only by a written document signed by representatives of both SWWC and the OWNER.

Section 8.03. Assignability. Except in the case of a sale of all or substantially all of the assets of either party, a merger, consolidation, or transfer of 50% or more of the stock of either party, neither SWWC nor the OWNER may assign its interest in this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, OWNER shall be entitled to assign its interest in this Contract to any successor owner of the FACILITIES or to any affiliate of OWNER, in each case without the prior written consent of SWWC.

Section 8.04. [Reserved]

Section 8.05 Notice. Any notice required under this Contract will be in writing and sent by nationally recognized overnight courier, hand delivery, or certified or registered mail, return receipt requested, to the intended party's address of record. Notice will be deemed given upon receipt. The parties' addresses of record are as follows:

SWWC

SouthWest Water Company
Attn: General Manager, or his or her successor
1325 N. Grand Avenue, Suite 100
Covina, CA 91724-4044
Tel. no. 626-543-2500

OWNER

Northview Hotel Group
Attn: Matt Trevenen
36 Narrow Rocks Road
Westport, CT 06880
Tel. no. 973-919-1737

The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify any other address by giving at least fifteen (15) days' written notice to the other party.

Section 8.06 **Governing Law; Venue.** The applicable laws of the State of Oregon shall govern this Contract and venue shall be in a court of appropriate jurisdiction in Multnomah County, Oregon.

Section 8.07 **Increase/Decrease in Service.** In the event either SWWC or the OWNER determines that any scope of services contemplated in this Contract should be modified as a result of governmental regulations, technological advances or the addition or subtraction of OWNER facilities, SWWC and the OWNER agree to negotiate, in good faith, an appropriate change in the fees to be charged by SWWC to the OWNER with respect to the proposed modification in services. In the event the parties are unable to reach a mutual agreement, then the parties may retain a mediator to assist with the parties coming to a an appropriate change in the fees to be charged by SWWC to the OWNER regarding any proposed modification in services.

Section 8.08 **Attorneys' Fees.** In the event of any dispute and/or legal action arising from an interpretation and/or performance of any of the provisions of this Contract, the parties hereby agree that the prevailing party shall be awarded reasonable attorneys' fees and costs.

Section 8.09 **Limitation of Liability.** Neither SWWC
nor OWNER shall be liable for indirect, incidental, special, exemplary, consequential,
incidental or punitive damages.

Section 8.10 **Integration Clause.** This Contract
contains the entire understanding, agreement of compromise and settlement between
the parties with the respect to its subject matter, and supersedes all previous
agreements concerning the subject matter.

IN WITNESS WHEREOF, the parties to have executed this Contract as of the
Effective Date.

SWWC Services, Inc.

By: _____
Name:
Title:

Northview Hotel Group

By:

By: _____
Name:
Title:

EXHIBIT 'A'
FACILITIES

The OWNER's wastewater system consists of the following facilities:

Pressurized Wastewater Collection System and Wastewater Treatment Plant

One (1) Pressurized Wastewater Collection System and Wastewater Treatment Plant located on or adjacent to Brasada Ranch Resort in Powell Butte, Crook County, Oregon, and including one (1) 0.21MGD Membrane Bioreactor Wastewater treatment plant, (3) lift stations with (3) pumps each, (1) flow equalization tank and (1) drain field and a pressurized wastewater collection system with appenditures that meets all applicable Federal, State and local laws and regulations. Grinder Pumps and Grease Traps are the responsibility of the OWNER's customers and not covered under this contract.

EXHIBIT 'B'
COMPENSATION FOR SERVICES

I. BASE OPERATIONS FEE: For and in consideration of the services outlined in Article I of the Contract and rendered to and on behalf of the OWNER by SWWC, the OWNER agrees to pay to SWWC a monthly base labor and equipment operations fee of [REDACTED]. The base operations fee includes [REDACTED].

[REDACTED] The base fee will increase annually by [REDACTED] on March 1 of each year.

II. ADDITIONAL TIME: The Hourly Rate will be charged for service time performed during normal work hours in excess of (i) [REDACTED] hours per month for Senior Utility Workers and (ii) [REDACTED] hours per month for Utility Workers. The Overtime Rate will be charged for all service time performed outside of normal work hours when SWWC is required to pay overtime to applicable personnel under applicable law or labor agreement. Both the Hourly Rate and the Overtime Rate will be billed at the respective current rate. The initial rates are listed below and will increase annually by the average percentage rate increases for all of SWWC's Senior Utility Workers and Utility Workers, respectively, who work in the geographic region of the Facilities, up to [REDACTED] on March 1 of each year.

	Hourly Rate	Overtime Rate
Senior Utility Worker	[REDACTED]	[REDACTED]
Utility Worker	[REDACTED]	[REDACTED]

Additional time not included in the base operations fee will only be incurred and paid only if approved in writing in advance by OWNER, unless the additional time was incurred as reasonably necessary to address an emergency without time to receive an approval from OWNER. SWWC will immediately provide notice to OWNER of any emergency expense.

The base operation fee and any charges for additional time include all costs and expenses associated with the personnel performing services to OWNER, including for employee benefits, workers' compensation, travel time and costs, and worker tools.

III. EXTRAORDINARY SERVICES: SWWC may render additional services not specified in this Contract. The OWNER may also request extraordinary services not anticipated and not specified in this Contract of SWWC. The OWNER and SWWC will, in good faith, negotiate the amount to be paid by the OWNER to SWWC for such extraordinary services.

Exhibit 'C'
Disclosed Conditions

1. Retrofit of both Anoxic tank mixer blades and motors at the Facilities.
2. Engineering of a more permanent odor remediation solution at the Facilities for sewage storage tanks (current solution is venting tanks through carbon filters, which need to be occasionally replaced; more permanent solution is to install system to disperse gasses underground).

EXHIBIT H

FORM OF TRANSITION SERVICES AGREEMENT

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2016 (the "Effective Date"), by and between Eagle Crest Management, LLC, a Delaware limited liability company ("Provider"), and SouthWest Water Company, a Delaware corporation (together with its affiliates and assigns, "Purchaser" and, together with Provider, the "Parties"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as hereinafter defined).

WHEREAS, Cline Butte Water, LLC, a Delaware limited liability company ("CBW"), Cline Butte Environmental, LLC, a Delaware limited liability company ("CBE", and together with CBW, "Cline Butte"), Running Y Water, LLC, a Delaware limited liability company ("RYW"), and Running Y Environmental, LLC, a Delaware limited liability company ("RYE", and together with RYW, the "RY Utilities", and the RY Utilities collectively with Cline Butte, the "Sellers") and Oregon Resorts, LLC, a Delaware limited liability company, on the one hand, and Purchaser, on the other hand, have entered into that certain Asset Purchase Agreement, dated as of September 27, 2016 (the "Purchase Agreement"), pursuant to which, among other things, the Sellers are selling, and Purchaser is acquiring, certain assets of Sellers used or held for use in the conduct the Businesses;

WHEREAS, prior to the Closing, Provider provided certain infrastructure, telecommunications, customer information processing, accounting and other services to the Sellers in the conduct of the each of the Businesses in the ordinary course;

WHEREAS, Purchaser will require Transition Services (as hereinafter defined) with respect to the Businesses during the periods specified herein following the Closing Date; and

WHEREAS, in connection with and as a condition precedent to the Closing of the transactions contemplated by the Purchase Agreement, Provider has agreed to provide, and Purchaser desires to contract for, the Transition Services.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

Section 1. Engagement; Services.

(a) Engagement of Provider. On the terms and subject to the conditions of this Agreement, Purchaser hereby engages Provider, and Provider hereby agrees to be engaged, to provide or cause to be provided from Provider or its Affiliates certain transition services, as described in Schedule A, for the time periods and to the extent specified herein, in connection with Purchaser's and its Affiliates' post-closing operation of the Businesses (such services, collectively, the "Transition Services").

(b) Purchaser may request and, if mutually and reasonably agreed, Provider will provide additional Transition Services during the Term for a reasonable fee to be mutually determined by Purchaser and Provider, provided that such additional service was provided to any of the Businesses prior to Closing. Such additional services will be added to Schedule A and deemed part of the Transition Services hereunder.

(c) Disclaimer of Warranties. EXCEPT AS OTHERWISE SET FORTH HEREIN, PROVIDER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE OR KIND (WHETHER EXPRESS OR IMPLIED), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER

MATTER WHATSOEVER. PURCHASER ACKNOWLEDGES AND AGREES THAT PROVIDER HAS NOT ASSUMED AN ADVISORY OR FIDUCIARY RESPONSIBILITY IN FAVOR OF PURCHASER OR ITS AFFILIATES WITH RESPECT TO OFFERING THE TRANSITION SERVICES HEREUNDER OR ANY OTHER OBLIGATION TO PURCHASER OR ITS AFFILIATES EXCEPT THE OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT. PURCHASER AGREES THAT IT WILL NOT CLAIM THAT PROVIDER HAS RENDERED ADVISORY, CONSULTING OR LEGAL SERVICES OR HAS PROVIDED BUSINESS ADVICE OF ANY NATURE OR RESPECT, OR OWES A FIDUCIARY OR SIMILAR DUTY TO PURCHASER IN CONNECTION HEREWITH.

(d) Level of Service. Provider shall provide the Transition Services hereunder in accordance with industry standards and with at least the same or better degree of care, skill and diligence with which such services were historically provided by Provider (either directly or indirectly through Affiliates or unaffiliated third parties) in connection with any of the Businesses, including with respect to the quality and timeliness of such services.

(e) Management Resolution of Issues. Each Party agrees to (i) promptly assign an authorized representative to resolve issues that may arise under this Agreement, (ii) have such authorized representatives meet (in person or by phone, as requested by a Party) on an expedited basis to negotiate in good faith and decide on an appropriate resolution or plan of resolution of any issue and (iii) implement on a timely basis such mutually agreed resolution or plan.

Section 2. Fees, Billing and Payment.

(a) Fees. In consideration for the Transition Services, Purchaser shall pay to Provider the fees set forth on Schedule A (collectively, the “Fees”):

(b) Billing and Payment. Provider or its applicable Affiliate shall invoice Purchaser monthly for the Transition Services provided during the prior month (prorated with respect to partial months, as applicable), and Purchaser shall remit payment to Provider or its applicable Affiliate within thirty (30) days after the end of the month with respect to each such invoice. In the event such payments are not received by Provider or its applicable Affiliate within such period, Provider shall have the right to suspend the Transition Services until such payment is received by Provider or its applicable Affiliate.

Section 3. Term and Termination.

(a) Term and Extension Periods.

Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement shall commence on the date hereof and shall, subject to Section 3(a)(ii), terminate with respect to the Transition Services on the date that is one (1) year after the Closing Date (the “Initial Transition Period”), unless otherwise extended by the Parties in writing (any extended period an “Extension Period” and together with the Initial Transition Period, the “Term”).

(b) Termination for Cause. Provider or Purchaser shall have the right to immediately terminate this Agreement, upon delivery of notice to the other Party, if the other Party:

(i) fails to cure a breach of any material obligation under this Agreement within ten (10) days after receipt of written notice describing such breach;

(ii) ceases to conduct business in the normal course, becomes insolvent, files a petition for reorganization or bankruptcy, or avails itself of any other judicial or administrative proceeding relating to insolvency or the protection of creditors' rights; or

(iii) fails in any material respect to comply with applicable Laws.

(c) Termination by Mutual Consent. This Agreement may be terminated by the mutual written agreement or consent of the Parties.

(d) Termination of Certain Transition Services. Any or all of the categories of Transition Services may be terminated at Purchaser's option by giving no less than: (i) during the Initial Transition Period, seven (7) days'; or (ii) during any Extension Period, two (2) days', advance written notice to Provider of such termination, which notice will specify the date as of which such Transition Services are to be permanently discontinued. If any category of Transition Services as provided above is permanently discontinued in accordance with the foregoing terms, this Agreement will terminate as to such Transition Services as of the termination date thereof and if all categories of Transition Services have been so discontinued, this Agreement will terminate as of the termination date of the last category of Transition Services, in each case without further action. To the extent certain but not all of the Transition Services are terminated during any Extension Period in accordance with this Section 3(d), the Fees shall be reduced by an amount mutually agreed upon by Purchaser and Provider.

(e) Consequences of Expiration or Termination. If this Agreement expires or is terminated for any reason, each Party's obligation hereunder shall terminate immediately other than Purchaser's obligation to pay Provider for all unpaid obligations incurred prior to the effective date of such termination or expiration. The Fees will be prorated based upon the day of the month that the termination is effective. No termination of this Agreement shall extinguish, modify or otherwise affect any change in the rights or obligations of either Party relating to transactions occurring prior to the effective date of such termination.

(f) Survival. The Parties acknowledge and agree that Sections 1(c), 2, 3(e), 4, 5 and 6 shall survive the expiration or termination of this Agreement.

(g) Mutual Cooperation and Additional Assumptions. Prior to the termination of this Agreement, the Parties shall reasonably cooperate in good faith to facilitate an orderly transition of responsibility for the Transition Services, and each Party shall deliver to the other Party copies of such documents, records and information as are reasonably necessary to achieve such transition. Upon the termination of this Agreement, Provider shall deliver promptly to Purchaser copies of all remaining documents, records and information in Provider's possession and owned by Purchaser.

Section 4. Liability; Indemnification.

(a) Provider's Indemnification. Subject to the limitations otherwise set forth in this Agreement, Provider shall indemnify, hold harmless and defend Purchaser and its employees, officers, directors and Affiliates (the "Purchaser Indemnitees") from and against losses, claims, damages, liabilities, expenses (including reasonable attorneys' fees), judgments and fines actually incurred or suffered by the Purchaser Indemnitees as a result of (i) any breach by Provider of its representations, warranties or obligations under this Agreement or (ii) the gross negligence or intentional misconduct of Provider. Provider, at its sole cost, shall indemnify and defend Purchaser and hold Purchaser harmless from and against any and all claims, proceedings or

litigation of any kind (threatened or actual) of infringement or misappropriation (including claims by Provider's licensors and service providers) related to or in connection with software or other materials used by Provider in providing the Transition Services hereunder, perform any negotiations for settlement or compromise of the foregoing, and pay any and all settlements reached and/or costs and damages awarded in the action, together with reasonable attorneys' fees.

(b) Purchaser's Indemnification. Purchaser shall indemnify, hold harmless and defend Provider and its employees, officers, directors and Affiliates (the "Provider Indemnitees") from and against any and all losses, claims, damages, liabilities, expenses (including reasonable attorneys' fees), judgments and fines incurred or suffered by the Provider Indemnitees arising out of or relating to (i) any breach by Purchaser of its representations, warranties or obligations under this Agreement, (ii) Provider's provisions of Transition Services in accordance with this Agreement and in compliance with Section 1(d), above, or (iii) the gross negligence or intentional misconduct of Purchaser.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PROVIDER NOR PURCHASER SHALL BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR OTHER SPECIAL DAMAGES EXCEPT WITH RESPECT TO THIRD PARTY CLAIMS, NOR SHALL ANY PARTY BE ENTITLED TO INDEMNIFICATION TO THE EXTENT THE LOSS, LIABILITY, DAMAGE OR EXPENSE IS CAUSED BY A PARTY'S OWN GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. IN NO EVENT WILL PROVIDER BE RESPONSIBLE TO PURCHASER FOR MORE THAN THE AMOUNT OF FEES RECEIVED BY PROVIDER UNDER THIS AGREEMENT.

Section 5. Confidential Information. All data or information provided by Provider or Purchaser related to the Transition Services that the disclosing Party identifies as confidential (the "Confidential Information") shall be used only in connection with the performance of obligations under this Agreement and shall not be provided to any third Person without the express written consent of the disclosing Party. The receiving Party shall protect such Confidential Information in accordance with the same safeguards it uses to protect its own Confidential Information. All copies of Confidential Information in written, graphic or other tangible form shall be upon request returned to the disclosing Party upon the expiration or termination of this Agreement.

Section 6. Miscellaneous.

(a) Independent Contractors; No Agency. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership, or create or be deemed to create an agency relationship, among the Parties other than that of independent contractors. No Party hereto is authorized or empowered to act as an agent for or otherwise bind or commit any other Party hereto, and each Party agrees not to enter into any contract or agreement or make any commitment, representation or warranty which purports to bind any other Party hereto or otherwise act in the name of or on behalf of any other Party hereto, without the written consent of such other Party. Any Party hereto acting in contravention of this Section 6(a) shall indemnify and hold harmless the other Party hereto from and against any and all damages, claims, costs, or expenses (including reasonable attorneys' fees) arising from or attributable to any such act.

(b) Notices. Any notice, request or demand desired or required to be given hereunder shall be in writing given by personal delivery, confirmed e-mail or overnight courier service, in each case addressed as respectively set forth below such Party's signature block or to

such other address as any Party shall have previously designated by such a notice. The effective date of any notice, request or demand shall be the date of personal delivery, the date on which successful e-mail transmission is confirmed, or the date actually delivered by a reputable overnight courier service, as the case may be, in each case properly addressed as provided herein and with all charges prepaid.

(c) Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall bind and inure to the benefit of the respective heirs, successors and assigns of the Parties, except that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated by either party without the prior written consent of the other party. Notwithstanding the foregoing, Provider may assign its rights and obligations hereunder, in whole or in part, without the consent of Purchaser, (i) to any of its Affiliates or (ii) in connection with the sale of all or a material portion of its assets; provided such assignee succeeds in interest to all assets used or held for use by Provider for the provision of the Transition Services hereunder. Purchaser may assign its rights and obligations hereunder, in whole or in part, to any of its Affiliates without the consent of Provider. Purchaser may assign all or any of its rights pursuant to this Agreement to any of its or its Affiliate's lenders as collateral security. In addition, if Provider's provision of any Transition Service hereunder would be adversely affected by its sale of any of its other businesses, Provider agrees to cause the buyer of any such other business or businesses to assume Provider's performance obligations hereunder with respect to such Transition Service.

(d) Waiver of Rights. The failure of Provider or Purchaser to assert any right or remedy upon the breach of any provision of this Agreement shall not be deemed to be a waiver of any present or future right hereunder, unless said waiver is made in writing and signed by the Party against whom enforcement is sought.

(e) Severability of Agreement. In the event any clause, provision or paragraph of this Agreement is held to be illegal, invalid or unenforceable by any court of competent jurisdiction, such clause, provision or paragraph shall be deemed severed from the Agreement and shall not affect the validity of the remaining provisions of this Agreement.

(f) Law To Govern. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Oregon without giving effect to the principles of conflicts of law thereof.

(g) Jurisdiction and Venue. Each Party irrevocably submits to the exclusive jurisdiction of the federal and state courts residing in Multnomah County, Oregon (the "Oregon Courts") for purposes of any suit, action or other proceeding arising out of this Agreement or the transactions contemplated by this Agreement or disputes relating hereto. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address provided in accordance with Section 6(b), above, shall be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction in this Section 6(g). Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated by this Agreement or disputes relating hereto in the Oregon Courts, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(h) EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT OR DISPUTES RELATING THERETO.

(i) Entire Agreement; Amendments. This Agreement, together with the Purchase Agreement, including the exhibits, schedules and written agreements ancillary hereto and thereto, contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all previous oral and written communications, agreements and understandings between the Parties with respect to the subject matter herein. No change, modification or amendment of this Agreement shall be binding unless made in writing and signed by authorized representatives of both Parties.

(j) Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic transmission, and a facsimile or electronic copy of this Agreement or of a signature of a Party will be effective as an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf by its duly authorized officer as of the date first written above.

PROVIDER:

[_____]

By: _____

Name:

Title:

Address:

PURCHASER:

SOUTHWEST WATER COMPANY

By: _____

Name:

Title:

Address:

SCHEDULE A

TRANSITION SERVICES; FEES

Provider will provide, or cause to be provided, the following:

1. Infrastructure and Telecommunications

- Provider will provide to Purchaser use of the existing telecommunications infrastructure that supports the utilities being purchased
- Provider will provide to Purchaser the use of existing customer support telephone numbers until they can be transferred into the Purchaser's system

2. Customer Information

- Provider will provide to Purchaser all Customer Information System processing (referred to as "Continental") and support to continue as performed prior to the sale including but not limited to management of customer information, rate structure management, meter management / meter read processing, bill printing and distribution, payment processing, collections (performed through accounting), service order management and customer service until customer service information converted to Purchaser's SAP customer billing module
- System support agreement with Continental Utility Billing System will remain current and paid up for duration of service by Provider.
- In order to support customer information conversion to SAP, Provider will provide to Purchaser a contact resource(s) that has the knowledge of the customer information system data. That resource will, on a reasonable timeframe, provide customer extract files to be used in the data migration process as requested

3. Banking Matters

- **Cash Concentration:** Prior to closing, Purchaser intends to open new accounts at Wells Fargo. Services to include ACH initiation via file upload and desktop deposit.
- **Cash Disbursements:** Two weeks prior to closing, a list of active vendors (including TIN's) should be provided by Provider to Purchaser for setup on SAP.
- **Cash Receipts:**
 - i. **Credit cards:** Prior to closing, Purchaser shall provide new banking instructions to Authorize.Net, the current merchant card services vendor, redirecting deposits and debits for the two existing merchant accounts to new bank accounts as designated in writing by Purchaser, with effect as of the Closing Date.
 - ii. **ACH:** Prior to closing, Purchaser will transmit the ACH file format requirements of its chosen bank to Provider. Provider will modify its ACH files for customer payments to conform, and post-closing will upload ACH files to the designated new bank account.
 - iii. **Checks:** Provider will manage local deposits via desktop deposit to Purchaser's designated accounts at Wells Fargo.
 - iv. **Cash:** Provider will post all cash payments to customer accounts and Purchaser's Wells Fargo bank account.
 - v. **Customer Payment Dropbox:** Provider will process and post all customer payments to Purchaser's Wells Fargo bank account.

4. Accounting

- Require interim support from Provider to Purchaser for accounting and billing from the accounting system referred to as "RealTime"
- Require Provider to provide interim support for Asset Management managed by accounting to Purchaser.

- In order to support financial and accounting conversion to SAP, we require a contact resource(s) that has the knowledge of the accounting system data. That resource will, on a reasonable timeframe, provide extract files to be used in the data migration process as requested

The transition services will be provided monthly based on a fixed monthly fee of [REDACTED]

Transition Services	<u>Annual</u>	<u>Monthly</u>	Assumptions
Administration	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]
Supplies	\$ [REDACTED]	\$ [REDACTED]	Includes statements, envelopes, printer
Mailing & Postage	\$ [REDACTED]	\$ [REDACTED]	via Bend Mailing
Software	\$ [REDACTED]	\$ [REDACTED]	Licensing and Maintenance Fees
Total Transition Services	\$ [REDACTED]	\$ [REDACTED]	

EXHIBIT I

OTHER ANCILLARY AGREEMENTS

Exhibit I
Other Ancillary Agreements

Agreement	Timing for Completion / Additional Details
See <u>Schedule I</u>	See <u>Schedule I</u>
Evidence of the termination of the Resort Management Agreement, dated November 19, 2010, between Oregon Resorts Acquisition Partners, LP and NVHG OR Hotel Operator, LLC for Jeld-Wen Portfolio as it applies to the Utility Companies (as defined therein).	Pre-closing
Evidence of the termination of the Services Agreement, dated August 1, 2012, by and between NVHG OR Hotel Operator, LLC and Cline Butte Water, LLC	Pre-closing
Evidence of the termination of the Services Agreement, dated July 1, 2012, by and between NVHG OR Hotel Operator, LLC and Running Y Water, LLC	Pre-closing
Lease between Running Y Development, LLC (Landlord) and Running Y Utilities, LLC (Tenant), dated January 3, 2011. This lease has expired and will be replaced by a new lease between CLV Properties, LLC (Landlord) and Running Y Water, LLC (Tenant).	Pre-closing
Systems Management Agreement, dated March 1, 1993, by and between ECMA and CBU LTD.	Correction of parties to agreement and assignment of agreement to Purchaser at closing
EC-X DRAIN FIELD 151223B001300-Service treatment agreement between CBE and ECMA. Draft a comprehensive agreement between ECMA and CBU (assigned at closing) or Purchaser or its designee(s) to address items attached in <u>Schedule II</u>	Post-closing
CBE REUSE PONDS-New Reuse Agreement with current property owner(s) (Weisz Family, LLC, its successors and assigns) , and CBE (assigned at closing) or Purchaser (or its designee(s)) to amend, restate, supercede and replace that certain Recycled Water Use Agreement by and between Cline Butte Environmental, LLC and Weisz Family, LLC, dated as of February 23, 2015	Pre-closing Agreement to address modifications to interested parties, set-backs and other matters that have developed since original agreement. If the DEQ fails to timely consent/waive, Sellers may satisfy the condition by replacing the 16 membranes to bring WWTP plant effluent from Class C to Class B

	<p>resulting in permit setbacks reduced from 70-feet to 10-feet or by otherwise improving quality of water in a manner that is sufficient to not require DEQ consent/waiver and is reasonably satisfactory to Purchaser.</p>
<p>Independent Contractor Agreement, between The Ridge at Eagle Crest Association (“RECOA”) and Cline Butte Utilities, dated April 27, 2015</p>	<p>Assignment of agreement to Purchaser at closing</p>
<p>CBW Well #9 151216AA00300-Well 9 overflow pond and pipe on RECOA common lot. Discharge agreement between RECOA and CBW (assigned at closing) or Purchaser (or its designee(s)) relating to discharge Well #9 overflow pond and pipe on RECOA common lot</p>	<p>Pre-closing</p> <p>If Sellers unable to timely establish an agreement, Sellers may satisfy condition by agreeing to expand overflow pool or similar capital project promptly following closing, such that discharge to common lot would not be required.</p>

SCHEDULE I TO EXHIBIT I

CLINE BUTTE WATER/ENVIRONMENTAL
 RUNNING Y WATER/ENVIRONMENTAL
 Real Estate Matters Task List

Status Report As Of: September 14, 2016 **(SEE LAST PAGE FOR COLOR CODING)**

CLINE BUTTE UTILITIES

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
CBW WELLS #6 & #7 151215006500 Lot 73, ECII, Phs 1	Road access over HOA roads	Record commercial lot annexation declaration; confirm w/attorney the voting/assessment units	KS	LCC-BRIX	Commercial annexation declaration granting road access prepared, signed; recording pending.	Will record when directed by CB [recording triggers dues assessment]	Pre-Closing
	Lot line adjustment w/adjacent golf Lot 15	File lot line adjustment application with Deschutes County. After approval, record deed from party one to party two (CBW to ECRD, LLC) for the golf pumping building carve-out..	KS	DOWL	Application filed 5-24. Survey work completed. County approval in hand. Deeds to separate the adjustment parcels prepared, legal descriptions received. Ready to send for signature	County approval complete. Records deeds by 9/30	Pre-Closing
	Shared access (or easement) agreement	Draft agreement to address access for ECRD, LLC (golf course) on the current loop driveway that will remain on the Well 6/7 lot (Lot 73).	KS	LCC-BRIX	Easement prepared, signed and recording pending.	Record after lot line adjustment complete and deeds recorded. Ready to record easement. 9/30	Pre-Closing

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

*Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
 Real Estate Matters Task List
 Updated: 9/15/2016
 120446-0001/132797123.5*

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
	Confirm the Ridge CCRs do not show up on a title report. If they do – address as needed.	Order PTR. If CCRs on title, either re-record deed or determine w/title company appropriate steps.	KS	TITLE - BRIX	Coordinated w/AmeriTitle and title underwriter to confirm re-recording procedure. Re-Record documents prepared, signed and pending recording.	COMPLETE – Recording date 8/23.	Done
CBW WELL #8 1151214CB10400 Lot 2, REC 60	Road access over HOA roads	Record commercial lot annexation declaration; confirm w/attorney the voting/assessment units	KS	LCC-BRIX	Commercial annexation declaration granting road access prepared, signed; recording pending.	Will record when directed by CB [recording triggers dues assessment]	Pre-Closing
Cont. WELL #8	Easement for a portion of the adjacent golf course pond on Lot 2. Easement for split usage of the building interior	Draft agreement to address encroachment and easement for access; Address maintenance, cost responsibilities, liability/ indemnification/	KS	LCC-BRIX	Pond and Pumphouse Easement Agreement prepared, signed and recording pending	Ready to record.	Pre-Closing
	Confirm the Ridge CCRs do not show up on a title report. If they do – address as needed.	Order PTR. If CCRs on title, either re-record deed or determine w/title company appropriate steps.	KS	TITLE	Coordinated w/AmeriTitle and title underwriter to confirm re-recording procedure. Re-Record documents prepared, signed and pending recording.	COMPLETE – Recording date 8/23.	Done
CBW WELL #9 151216AA00300	Shared access (or easement) agreement w/adjacent property owner, Central Electric Coop.	Draft agreement for CEC to grant access to CBW over a portion of the driveway off William Lyche Drive; include in the agreement CBW grant access to CEC for shared use of the portion of the driveway extending northerly and located on CBW property.	KS	LCC-BRIX	Easement prepared and delivered to CBW to deliver to CEC. CEC contact identified; meeting pending w/CBW.	Estimate mid-October	Post-Closing

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
120446-0001/132797123.5

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
	Grant easement to RECOA for the paved bike path located on "Developer Lot J".	Draft easement agreement from CBW to RECOA, RECOA responsible for maintenance of the pathway (current practice).	KS	LCC-BRIX	Easement prepared and delivered to CBW to present to RECOA Board President.	Expect RECOA Board action mid-September.	Pre-Closing
	Well 9 overflow pond and pipe on RECOA common lot	Draft agreement from RECOA to CBW to allow discharge on RECOA common lot. If not approved by RECOA, CBW to address different discharge plan.	KS/CB	LCC-BRIX	Agreement terms summary to LCC. Discussion outline to RECOA Board 9-15	Expect RECOA Board decision by mid-October	See Exhibit I
	Confirm the Ridge CCRs do not show up on a title report. If they do – address as needed.	Order PTR. If CCRs on title, either re-record deed or determine w/title company appropriate steps.	KS	TITLE - BRIX	Coordinated w/AmeriTitle and title underwriter to confirm re-recording procedure. Re-Record documents prepared, signed and pending recording.	COMPLETE – Recording date 8/23.	Done.
CBW BOOSTER STATION 151216AC02500 "Utility Lot"	Convey title from ECRD, LLC to CBW, LLC	Prepare deed and record	KS		Deed prepared; ready to send for signature	Expect by 9/30	Pre-Closing
CBW BOOSTER STATION, cont.	Locate corner pins to confirm no driveway encroachment on HOA common lot.	Locate corner pins; if driveway on HOA common, determine if driveway relocate or draft encroachment agreement with RECOA (address / trade with bike path easement).	KS	DOWL BRIX	Driveway located and encroaches on RECOA common area. Easement prepared and delivered to CBW to present to RECOA Board President.	Expect RECOA Board action mid-September.	Pre-Closing
CBW RESERVOIR	Road access over HOA roads to reservoir road.	Determine w/attorney how to address road access when not annexing the right of way; suggest include w/Well 6/7 annexation;	KS	LCC-BRIX	LCC advised not appropriate for commercial declaration. CBW will have private road access through other commercial lot annexations.	No action needed.	Done / No action.

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
120446-0001/132797123.5

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
	BLM right of way grant – original (to Cline Butte Utilities) and amendments (to Eagle Crest, Inc.) in two entity names.	Discuss w/CBW attorney if any action appropriate regarding the separate entity grantees.	KS	LCC-BRIX	LCC coordinating assignment with BLM – Idaho office (Prineville not staffed). Request to assign roadway ROW grants to RECOA; separate from CBW reservoir/water line grants – submitted to BLM, May 24.	As of 5/25: BLM – Idaho office represented “easy” process. No time estimate yet. Update 8/16: BLM non-responsive to multiple contact attempts. Update 9/1: New contact identified at BLM (other was transferred); no progress to report. Bi-weekly contacts. Update 9/14:	Post-Closing
	Thornburg easement to Cline Butte Utility Company; related water service agreement between the parties.	Water Service Agreement under review by LCC-BRIX to advise CBW on termination status.	CBW	LCC-BRIX	LCC reviewed and advised if either of the termination triggers occurred, the agreement is terminated and with no effect on the Water Easement Deed (perpetual). Sending agreement with this update – attorneys should verify	Review of agreement complete.	Done / No action.

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
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Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
					transfer of title took place from "User".		
CBE WWTP 151214B001703	Road access over HOA roads	Record commercial lot annexation declaration; confirm w/attorney the voting/assessment units	KS	LCC-BRIX	Commercial annexation declaration granting road access prepared, signed; recording pending.	Will record when directed by CB [recording triggers dues]	Pre-Closing
	Convey title from ECRD, LLC to CBW, LLC	Prepare deed and record	KS		Deed prepared; ready to send for signature	By 9/30	Pre-Closing
	Address the "blanket access easement" to clarify users and uses.	Review use with CBE. Draft a supplemental document, as needed, between CBE, RECOA and ECRD to address uses and area.	KS	CBE BRIX	LCC drafted an easement amendment agreement to address the "blanket easement". Prepared, signed and recording pendings. Easements from ECRD and RECOA for driveway encroachments are prepared. ECRD easement signed, recording pending. RECOA easement prepared and delivered to CBE for delivery to RECOA.	ECRD Easement Amendment Agreement and Driveway Easement ready to record. Expect RECOA Board action mid-September on that driveway easement.	Pre-Closing
CBE REUSE PONDS	New Reuse Agreement with current property owner(s).	Identify property owners, parcels and existing easement(s); draft new Reuse Agreement w/longer term and ROFR.	CBW – Curt	KS	Curt H identified parcels, owners and had initial meeting. Agreement drafting pending add'n owner meetings. • Had onsite meeting with the DEQ	Property owner meeting being coordinated by CBE.	See Exhibit I

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
120446-0001/132797123.5

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
					<ul style="list-style-type: none"> Discussed setback requirements and options for CBE. Asked for a variance in setbacks for adjoining irrigated property. Waiting for DEQ response. Draft an agreement and meet with the homeowners again. 		
REUSE PONDS - 1512110000900	Convey title from CBW, LLC (successor to CBU, Ltd.) to CBE, LLC	Prepare deed and record	KS		Deed prepared; waiting for legal description confirmation for legal lots of record	Estimate deed record by 9/30	Pre-Closing
REUSE POND ADDN LAND 151211D001101 151214A000902 151214B001501	Convey title from ECRD, LLC to CBE, LLC	Prepare deed and record	KS		Deed prepared; waiting for legal description confirmation for legal lots of record	Estimate deed record by 9/30	Pre-closing
REUSE POND ADDN LAND Lot 6, REC 61 151214B001705	Convey title from ECRD, LLC to CBE, LLC	Prepare deed and record	KS		Not started.	Estimate deed record by 9/30	Pre-closing
CBE BACKUP DRAIN FIELD 151214B001700	Road access over HOA roads	Record commercial lot annexation declaration (work on combining this parcel w/WTPP parcel); confirm w/attorney the voting/assessment units	KS	LCC-BRIX	Commercial annexation declaration granting road access prepared, signed; recording pending.	Will record when directed by CB [recording triggers dues	Pre-Closing

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
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Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
						assessment]	
	Convey title from ECRD, LLC to CBW, LLC	Prepare deed and record	KS		Deed prepared; ready to send for signature	Estimate deed record by 9/30	Pre-Closing
UTILITY LINES	Grant easement over Golf Lot 2 (Challenge Course fairway 8) for sewer collection line.	Surveyor to draft legal description for the line location; draft easement agreement w/appropriate access and repair requirements.	KS	LCC-BRIX	Utility easements benefitting CBW and CBE are prepared and exhibits received. Sending docs for signature by ECRD, then record.	Expect recording by 9/30	Pre-Closing
	Grant easements to CBW/CBE for all utility line crossings on golf fairways and common lots not otherwise covered in a plat or other recorded document; address if/as needed.	Additional utility lines are crossing other fairways, and RECOA common lot.	KS	CBE/W LCC-BRIX	See above for easement document status. Easements, with exhibits, to be delivered to CBW/CBE for signature; to RECOA w/other easements.	Expect RECOA Board action mid-September	Pre-Closing
EC-X DRAIN FIELD 151223B001300	Lot line adjustment w/adjacent front pasture on Cline Falls Road to locate drain field dosing and control station w/drain fields.	File lot line adjustment application with Deschutes County. After approval, record deed from party one to party two (ECRD, LLC owns both). The convey the drain field/control station lot to CBE, LLC	KS	DOWL	Application filed 5-24. Survey work completed. County identified issue of separate legal parcel. DOWL addressed; decision pending.	County decision still pending. New estimate on decision by [INFO REQUESTED FROM COUNTY PLANNER].	Post-Closing
	Deeds to record the lot adjustments	Prepare deeds for lot line adjustment.	KS		On hold pending County decision	Two weeks after	Post-Closing

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
Real Estate Matters Task List
Updated: 9/15/2016
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Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
	[ECRD to ECRD] Then convey title from ECRD, LLC to CBE, LLC	Prepared deed to convey new adjusted lot from ECRD, LLC to CBE, LLC			on lot line adjustment	final County decision	
	Service treatment agreement between CBE and ECMA	Draft a comprehensive agreement to confirm CBE provides treatment for hotel/conference center by this drain field; CBE reporting requirements (WPCF) to ECMA; address commercial village effluent delivery, any locates/easements for water sewer lines to EC-X,	CBE – Curt And KS	ECMA LCC-BRIX	ECMA Board advised of need for new service agreement (5/6). Service/Effluent/Easement agreement discussion outline delivered to ECMA Board 9-12.	Possible action 9/16 but possible contract committee delays. Estimate mid-October.	See Exhibit I
OFFICE BUILDING 151214CB09900 Lot 5, REC 60	Lot line adjustment(s) to carve office building and access road from current larger Lot 5 parcel	File two lot line adjustment applications (Lot 5/Lot 3 and Lot 5/Lot 6)	KS	DOWL	Preparation of applications (2) and required exhibits in process. Submit to County week of 9/19. Then survey work to follow.	Expect 8 – 10 week County processing time once filed. Estimate 10 weeks from 9/15.	Post-Closing
	Lease portion of building to ECRD, LLC or its affiliate (pool/spa operation)	Prepare lease agreement	KS	LCC-BRIX	Not started.	Estimate mid-October	Post-Closing
	Identify operational (eg. parking, utility lines, etc.) matters to address as result of Lot 5 lot line adjustment.	Draft easements and/or access agreements, as applicable	KS	LCC-BRIX	Utility line to be located by 9/30. Researching parking needs w/CB and ECRD.	Estimate 10/30 to complete research and documents. Record after lot line adjust complete.	Post-Closing

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
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Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
<i>RUNNING Y UTILITIES</i>							
WELL #2 Parcel 1, Partition Plat 47-01	Document the current driveway use over Parcel 1 to access adjacent Parcel 3	Prepare easement agreement to allow use of driveway on Parcel 1 to access community recycling station on Parcel 3; not perpetual, only to exist while community recycling station is located on Parcel 3.	KS	LCC-BRIX	Easement drafted and ready for initial KS/RYW review. Following review and exhibit preparation, send for signature to RYW; present to Parcel 3 owner.	Parcel 3 owner is not affiliated with RYW. Schedule for review and approval unknown but expected - October.	Post-Closing
WELL #3 Lot 816, Running Y Resort Phase 10	Confirm if Running Y CCRs do not show up on a title report. If they do – address as needed.	COMPLETE	KS		Coordinated w/AmeriTitle and title underwriter to confirm re-recording procedure. Deed Re-Recorded	COMPLETE – Recording date 8/23.	Done
LAKESIDE LIFT STATION, Lot 850 Running Y Resort Phase 11	Convey title from RidgeWater Development, LLC to RYE, LLC	Prepare deed and record	KS		Deed prepared; ready to send for signature	By 9/30	Pre-Closing
LIFT/BOOSTER STATIONS AT RUNNING Y	Determine plat(s) and CCRs grant access to these assets connected to all infrastructure assets in roadways.	Provide CCRs and plats for review	KS		Discussed w/SWWC 9/13. CCRs already delivered. Plat declaration excerpts delivered 9/14.	TBD. If easements are requested, would be requested from HOA. HOA Declarant is not affiliated with	No Action

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
						RYW/RYE. Schedule for review and approval unknown.	
RIDGEWATER LIFT STATION	Determine location of lift station within road ROW.	Survey location of lift station. Determine if any need for easement	KS		Survey complete. Lift station located outside of ROW but within Common Area. Easement drafted and ready for initial KS/RYE review. Following review and exhibit preparation, send for RYE signature; present to Ridgewater HOA.	HOA Declarant is not affiliated with RYE. Schedule for review and approval unknown but expected – October.	Pre-closing
UTILITY LINES OUTSIDE EASEMENT AREAS RYR and RW	Locate and document utility lines located outside platted easements or road ROW's	Locate “cross-country” (outside ROW) lines onsite; have locations surveyed for legal descriptions and easement exhibits. Draft easement for approval by land owner and get signed/recorded.	KS	LCC	Ordering locates week of 9/26	Estimated November	Post-closing
COLOR CODING KEY						MAY EXCEED 60-90 DAYS	
COLOR CODING KEY						EXPECT RESOLUTION W/IN 60-90	

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
 Real Estate Matters Task List
 Updated: 9/15/2016
 120446-0001/132797123.5

Property	Action Item	Action Plan	Primary Contact		Status	Estimated Completion	Timing for Closing
			CB	3 rd party			
						DAYS, BUT 3RD PARTIES INVOLVED	
COLOR CODING KEY						TASK COMPLETE	

KS (Karen Smith); CBW (Cline Butte Water.); CBE (Environmental); DOWL (Ron Hand); LCC-BRIX (Laura Craska Cooper, Brix Law LLP); ECMA (Eagle Crest Master Assoc); RYW (Running Y Water); RYE (Environmental)

*Cline Butte Water, LLC / Cline Butte Environmental, LLC / Running Y Water, LLC / Running Y Environmental, LLC
 Real Estate Matters Task List
 Updated: 9/15/2016
 120446-0001/132797123.5*

**SCHEDULE II TO EXHIBIT I
PROPOSAL FOR SEWER SYSTEM AGREEMENT
FINAL VERSION**

PARTIES:

- EAGLE CREST MASTER ASSOCIATION (ECMA) – Owner/operator of sewage collection system
- CLINE BUTTE ENVIRONMENTAL, LLC (CBE) – Owner/operator of EC-X sewage treatment system

PURPOSE:

- Document the new DEQ WPCF permits issued to ECMA for its treatment system and to CBE covering the EC-X system (removed from ECMA permit).
- Document the combined reporting requirement in the ECMA WPCF permit for the EC-X treatment data along with the ECMA treatment system data. This would be a requirement of CBE.
- Document the obligation of CBE to continue to accept effluent from ECMA for treatment at the EC-X system. Can be related to quantities and/or source location (eg. Lodge, conference center).
- Document the transmission of effluent using ECMA collection system infrastructure from CBE's customers located at the Commercial Village to EC-X.
- Document the location of a water line crossing ECMA common area to EC-X.

TERMS AND CONDITIONS FOR NEGOTIATION:

- Describe DEQ reporting requirements and frequency. Include references (or exhibits) to WPCF permits. Determine what action taken if failure to provide reports.
- Describe the EC-X capacity assumed to be available to ECMA (by DEQ). Analyze and determine terms/conditions appropriate in the event the EC-X capacity available to ECMA is limited by other CBE system demands.
- Review the current charge by CBE to ECMA for EC-X treatment services. Document the agreed upon charge and any method for change. Suggest this fee system incorporates or acknowledges an offset for sharing water with CBE/EC-X.
- Determine if/what is an appropriate charge to CBE for use of ECMA collection system to transport CBE customer effluent from its customer locations at the commercial village.
- Term of the agreement – consider tying to WPCF permit terms
- Compensation - \$8,000 annually, will adjust by CPI beginning 1/1/2018.
- Remedies upon default – obligations of CBE:
 - DEQ reporting requirements
 - EC-X capacity and operational requirements
 - Other??
- Remedies upon default – obligations of ECMA:
 - To make the water source available via the permitted water line
 - Repair/maintain the collection system for effluent delivery
 - Other??

EXHIBIT J

CLOSING PRORATIONS LIST

PRORATIONS

This Exhibit J sets forth certain assumptions, categories, classifications, judgments and allocation, valuation and estimation methodologies that the parties agree will be used in connection with allocations and prorations under Section 3.2 of the Agreement. In the event of any conflict between the terms and provisions of the Agreement and this Exhibit J, the Agreement shall control. Capitalized terms used by not defined herein shall have the meaning given such terms in the Agreement.

- 1. Ad Valorem and Other Property Taxes; Assessments.** Real estate and personal property taxes and other assessments (including, without limitation, special assessments and improvement assessments) levied against the Assets shall be prorated at the Closing. The Sellers shall be responsible for all real property taxes and personal property taxes and other assessments for the period ending on the Closing Date and shall indemnify and defend and hold the Purchaser harmless from and against such taxes, and the Purchaser shall be responsible for all real property taxes and personal property taxes for the period beginning the day after the Closing Date and shall indemnify and defend and hold the Sellers harmless from and against any such taxes.
- 2. Utility Expenses; Accounts Payable.** All utility expenses and accounts payable for the Businesses for merchandise, equipment, supplies and other materials and services (“trade payables”) incurred on or prior to the Closing Date will be identified by the Sellers to Purchaser to the extent practical no later than five (5) Business Days prior to the Closing, and the Sellers shall provide an updated list of such pre-Closing trade payables not later than 30 days following the Closing Date. To the extent not paid by the Sellers as of the Closing, the Sellers will retain the obligation for payment of all trade accounts that were incurred on or prior to the Closing Date for work performed or materials delivered for the benefit of the Businesses on or prior to the Closing Date. The Purchaser shall be responsible for all trade payables that arise or accrue for the benefit of the Businesses after the Closing Date. The Sellers shall provide, to the extent practical, the Purchaser with a schedule of any such accounts payable which are not paid by the Sellers at the Closing no later than five (5) Business Days prior to the Closing, and the Sellers shall provide an updated schedule of such accounts payable not later than 30 days following the Closing Date.
- 3. Unbilled Revenue.** Revenue earned by the Businesses during any period (or portion thereof) ending on the Closing Date shall be allocated to the Sellers and revenue earned by the Businesses after the Closing Date shall be allocated to the Purchaser. Following the Closing, the Purchaser will conduct physical meter reads in the normal course and prorate revenue earned during the applicable billing period based on the number of days before and after the Closing Date during each applicable billing period. Not later than 60 days following the Closing Date, the Purchaser shall notify the Sellers of any revenue earned by the Businesses during any period (or portion thereof) ending on the Closing Date that was not accrued as accounts receivable of the Closing Date.
- 4. Prepayments.** Vendor and customer prepayments shall be allocated between the Sellers and the Purchaser at Closing. The Sellers will identify and schedule such prepayments to the Purchaser no later than five (5) Business Days prior to the Closing, so that vendor

prepayments that benefit the Purchaser after Closing shall be allocated to the Sellers and customer prepayments that relate to periods after Closing shall be allocated to the Purchaser. At Closing, the Purchase Price shall be increased by the total amount of such vendor prepayments and reduced by the total amount of such customer prepayments.

5. **Accounts Receivable.** The Purchaser shall purchase all the accounts receivable of the Businesses accrued as of the Closing Date, whether or not billed. The Sellers shall provide the Purchaser, to the extent practical, with a schedule of such accounts receivable at the Closing no later than five (5) Business Days prior to the Closing, and the Sellers shall provide an updated schedule not later than 30 days following the Closing Date. The Purchaser agrees to collect such accounts receivable in the ordinary course of business.
6. **Employment Matters.** Accrued but unpaid vested and unvested salary, wages and bonuses, accrued but unpaid health and welfare benefits, accrued but unpaid vested and unvested vacation (other than Rollover PTO, which shall be assumed by the Purchaser pursuant to the Agreement), sick and personal days, accrued but unpaid vested and unvested fringe benefits, accrued but unpaid employee severance payments, and other accrued but unpaid vested and unvested compensation and fringe benefits shall be pro-rated as of the Closing Date.
7. **Customer Deposits; Advances in Aid of Construction.** Customer deposits and advances in aid of construction relating to periods before the Closing Date shall be credited to the Purchaser at the Closing.
8. **Other Expenses.** If any of the items described in Section 3.2 of the Agreement or this Exhibit J that cannot be apportioned at the Closing because of the unavailability of information as to the amounts which are to be apportioned or otherwise, or are incorrectly apportioned at the Closing or subsequent thereto, such items will be estimated as of the Closing and then adjusted, as necessary, pursuant to Section 3.2(c) of the Agreement.

Exhibit B

SouthWest Water Company Quarterly Financial Statements
as of June 30, 2016

This Exhibit is CONFIDENTIAL and will be provided under separate cover.

Exhibit C

Easements and Water Rights Transferred with Transaction

STATE OF OREGON

COUNTY OF KLAMATH

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

RUNNING Y, INC.
803 MAIN ST, 3RD FLOOR
KLAMATH FALLS, OREGON 97601

(503) 882-2224

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: G-13980

SOURCE OF WATER: THREE WELLS IN KLAMATH RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL

RATE OF USE: 3.0 CUBIC FEET PER SECOND

PERIOD OF ALLOWED USE: YEAR ROUND

DATE OF PRIORITY: FEBRUARY 9, 1995

POINT OF DIVERSION LOCATION: NE 1/4 SW 1/4, SE 1/4 SW 1/4, SECTION 9, NE 1/4 NE 1/4, SECTION 16, T38S, R8E, W.M.; 2050 FEET NORTH AND 1980 FEET EAST FROM THE SW CORNER OF SECTION 9; 790 FEET NORTH AND 2340 FEET EAST FROM THE SW CORNER OF SECTION 9; 130 FEET SOUTH AND 4490 FEET EAST FROM THE NW CORNER OF SECTION 16

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4
SE 1/4 SE 1/4
Section 29

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
Section 28

NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
SE 1/4 SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4

T-8907 Δ POD V.57p.109

SE 1/4 SE 1/4
Section 33
TOWNSHIP 37 SOUTH, RANGE 8 EAST, W.M.

SE 1/4 NE 1/4
SE 1/4
Section 5

NE 1/4
SW 1/4 NW 1/4
SW 1/4
SE 1/4
Section 4

SW 1/4 SW 1/4
SE 1/4 SW 1/4
Section 3

NE 1/4 NE 1/4
NE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
Section 8

NE 1/4
NW 1/4
SW 1/4
SE 1/4
Section 9

SW 1/4 NE 1/4
SE 1/4 NE 1/4
NW 1/4
SW 1/4
Section 10

NW 1/4
SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
Section 15

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
Section 16

NE 1/4
NE 1/4 NW 1/4
Section 22
TOWNSHIP 38 SOUTH, RANGE 8 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice. Use of water under authority of this (permit or certificate) may be regulated if analysis of data available after the (permit or certificate) is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

If the number, location, or construction of any well deviates from that proposed in the permit application or permit conditions, the conclusions of the Technical Review, Initial Review or Proposed Final Order under which this permit was granted may be revised, conditions may be appropriately revised, or this permit may not be valid.

All wells shall be cased and sealed to a depth of 50 feet or to elevation of 4150 feet above sea level, which ever is greater, if shallower water bearing zones are encountered during well construction.

Within TWO YEARS of permit issuance, the permittee shall submit a water management and conservation plan consistent with OAR Chapter 690, Division 86.

STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

BØ8
CØ9

SEE NEXT PAGE

Actual construction of the well shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Issued February 23, 1996



for Water Resources Department
Martha O. Pagel
Director

STATE OF OREGON

COUNTY OF KLAMATH

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

RUNNING Y RESORT, INC
5500 RUNNING Y RD
KLAMATH FALLS, OR 97601

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16471

SOURCE OF WATER: FOUR WELLS IN UPPER KLAMATH LAKE BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USES

MAXIMUM RATE: 4.46 CUBIC FEET PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: MAY 31, 2005

WELL LOCATION:

WELL 1 - SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 36, T38S, R8E, W.M.; 315 FEET NORTH & 1490 FEET EAST FROM SW CORNER, SECTION 36

WELL 2 - NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 36, T38S, R8E, W.M.; 1595 FEET NORTH & 1340 FEET EAST FROM SW CORNER, SECTION 36

WELL 3 - NE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 35, T38S, R8E, W.M.; 2095 FEET NORTH & 220 FEET WEST FROM SE CORNER, SECTION 35

WELL 4 - SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 36, T38S, R8E, W.M.; 2830 FEET NORTH & 925 FEET EAST FROM SW CORNER, SECTION 36

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$
SW $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 22

SW $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 23

Application G-16471 Water Resources Department

PERMIT G-16117

THE PLACE OF USE IS LOCATED AS FOLLOWS (CONTINUED):

SW ¼ NW ¼
SE ¼ NW ¼
NE ¼ SW ¼
NW ¼ SW ¼
SW ¼ SW ¼
SE ¼ SW ¼
SECTION 25

NW ¼ NE ¼
SW ¼ NE ¼
SE ¼ NE ¼
NE ¼ NW ¼
NW ¼ NW ¼
SW ¼ NW ¼
SE ¼ NW ¼
NE ¼ SW ¼
NW ¼ SW ¼
SE ¼ SW ¼
NE ¼ SE ¼
NW ¼ SE ¼
SW ¼ SE ¼
SE ¼ SE ¼
SECTION 26

NE ¼ NE ¼
SE ¼ NE ¼
SECTION 27

NE ¼ NE ¼
NW ¼ NE ¼
SW ¼ NE ¼
SE ¼ NE ¼
NE ¼ NW ¼
NE ¼ SE ¼
SE ¼ SE ¼
SECTION 35

NE ¼ NW ¼
NW ¼ NW ¼
SW ¼ NW ¼
SE ¼ NW ¼
NE ¼ SW ¼
NW ¼ SW ¼
SW ¼ SW ¼
SE ¼ SW ¼
SECTION 36

TOWNSHIP 38 SOUTH, RANGE 8 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device on each well as approved by the Director. The permittee shall maintain the meters or measuring devices in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meters or measuring device; provided however, where the meter or measuring devices are located within a private structure, the watermaster shall request access upon reasonable notice.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted wells. The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted wells or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the wells. Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

Within three years of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this time line to complete the required Water Management and Conservation Plan. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department.

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

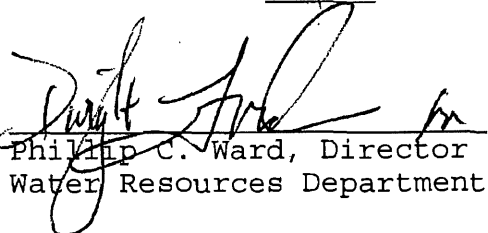
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

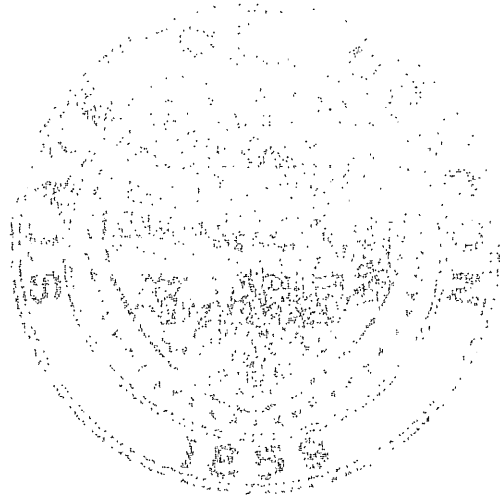
The use of water shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2011. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued October 24, 2006


Phillip C. Ward, Director
Water Resources Department




AFTER RECORDING, RETURN TO:
Resort Resources, Inc.
PO Box 1466
Bend, OR 97709
Attn: Ms. Karen Smith

(RE-RECORDED) STATUTORY WARRANTY DEED

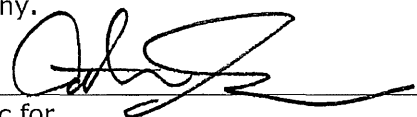
The attached Statutory Warranty Deed recorded May 21, 2002 in Volume M02, Page 30124 in the Official Records of Klamath County, Oregon is being re-recorded to remove the erroneous reference to the Declaration of Protective Covenants, Conditions, Restrictions, and Easements for Running Y Ranch Resort (the "Declaration"). The property conveyed pursuant to this deed was never annexed into the Declaration and was never intended to be subject to the Declaration. As noted on this deed, the only items intended to encumber the property were those "of record, on the date" of the deed. The Declaration was not of record, on that date encumbering the property.

GRANTOR: RidgeWater Development, LLC,
a Delaware limited liability company,
successor by conversion to Running Y Resort, Inc.
By: NV Oregon Resorts Investors, LLC, a
Delaware limited liability company
Its: Authorized Agent

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

STATE OF Connecticut)
County of Saintfield)ss.

The foregoing instrument was acknowledged before me this 4th day of August 2016, by **Simon Hallgarten** Authorized Signatory of NV Oregon Resorts Investors, LLC, a Delaware limited liability company, as authorized agent for RIDGEWATER DEVELOPMENT, LLC, a Delaware limited liability company.


Notary Public for _____
My commission expires: _____

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

GRANTEE:

Running Y Water, LLC, a Delaware limited liability company, successor by conversion to Running Y Utility Company

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

Its: Authorized Agent

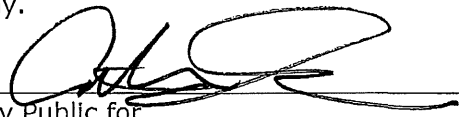
By: 

Name: **Simon Hallgarten**

Title: **Authorized Signatory**

STATE OF Connecticut)
County of Saunders)ss.

The foregoing instrument was acknowledged before me this 4th day of August 2016, by **Simon Hallgarten** the **Authorized Signatory** of NV Oregon Resorts Investors, LLC, a Delaware limited liability company, as authorized agent for RUNNING Y WATER, LLC, a Delaware limited liability company.


Notary Public for _____
My commission expires: _____

Catherine Smeriglo
Notary Public - Connecticut
My commission expires 11/30, 20 20



After Recording
Return To:
Resort Resources
P.O. Box 2277
Bend OR, 97709

2016-003730
Klamath County, Oregon
04/12/2016 02:50:40 PM
Fee: \$77.00

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is dated for reference purposes 08 APRIL, 2016 and is made by and among RUNNING Y RANCH RESORT OWNERS ASSOCIATION, an Oregon nonprofit corporation ("Grantor"), and RUNNING Y WATER, LLC, a Delaware limited liability company ("Water") and RUNNING Y ENVIRONMENTAL, LLC, a Delaware limited liability company ("Environmental"). Collectively, Water and Environmental are hereinafter referred to as "Grantee".

RECITALS

- A. Grantor is the owners' association for a planned community development in Klamath County, Oregon, known as the "Running Y Ranch Resort."
- B. The Running Y Ranch Resort includes a number of private roads that are designated as "Common Areas" pursuant to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort recorded August 2, 1996 in Volume M96, Page 23548, Klamath County, Oregon (as amended and supplemented from time to time, the "Declaration"). These private roads are described in the Declaration and/or in each of the recorded plats for the Running Y Ranch Resort, which plats are more particularly described on the attached **Exhibit A** (collectively, the "Common Area Roads"). Grantor owns, operates and maintains the Common Area Roads, pursuant to the Declaration.
- C. Each of Water and Environmental owns and operates certain equipment and facilities within Running Y Ranch Resort for the purpose of providing water and sewer services, respectively, to property owners in Klamath County, Oregon, including property owners within Running Y Ranch Resort (the "Utility Facilities").
- D. Each of Water and Environmental has requested an access easement over the Common Area Roads for purposes of accessing, using, maintaining, repairing and replacing its respective Utility Facilities, and Grantor has agreed, all on the terms and conditions contained herein.

AGREEMENTS

In consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

- 1. Grant of Roadway Access Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive access easement over, under and across the Common Area Roads, including, without limitation, those Common Area Roads described on the attached **Exhibit B**. Such easement shall allow vehicular and pedestrian ingress and egress to Grantee's property within the Running Y Ranch Resort for purposes of using, operating, maintaining, constructing, installing, repairing and replacing any existing or future Utility Facilities. Such easement shall permit access by Grantee and Grantee's employees, members, officers, directors, contractors, invitees and guests.

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. Restrictions and Reservations. Grantor expressly reserves the right to enter upon and make use of the Common Area Roads for any uses not inconsistent with this Easement. Grantor further reserves the right to grant any other easement, license or right-of-way over, under or across the Common Area Roads so long as such uses are not inconsistent with the Easement granted herein. The Common Area Roads, or portions thereof, may at times, and at the sole election of Grantor, be temporarily closed for construction, maintenance or other matters as deemed necessary by Grantor in carrying out its responsibilities pursuant to the Declaration and/or applicable law.

3. Maintenance. Grantor shall be solely responsible for the maintenance and repair of the Common Area Roads in accordance with the Declaration and applicable law. Grantee will not be required to share in the costs of maintaining the Common Area Roads for purposes of this access Easement.

4. Covenants Running with the Land. This Agreement and the terms contained herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective grantees, heirs, successors and assigns.

EXECUTED as of the day and year first above written.

GRANTOR:

RUNNING Y RANCH RESORT OWNERS ASSOCIATION,

an Oregon nonprofit corporation

By: _____

Name: DON DASARO

Title: PRESIDENT

GRANTEE:

RUNNING Y WATER, LLC,

a Delaware limited liability company

By: _____

Name: _____

Title: _____

RUNNING Y ENVIRONMENTAL, LLC,

a Delaware limited liability company

By: _____

Name: _____

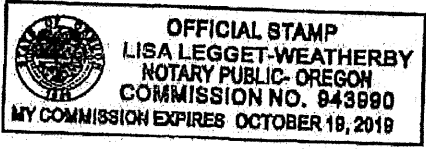
Title: _____

STATE OF Oregon }

COUNTY OF Washoula SS.

On this day personally appeared before me Don Dasaro ^{ju} ~~Lisa Legget Weatherby~~ to me known to be the president of **RUNNING Y RANCH RESORT OWNERS ASSOCIATION**, the Oregon nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such nonprofit corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 7 day of April, 2016.



Lisa Legget-Weatherby
Printed Name
Lisa Legget Weatherby
NOTARY PUBLIC in and for the State of
Oregon
My Commission Expires 10/18/18

STATE OF _____ }

COUNTY OF _____ SS.

On this day personally appeared before me _____, to me known to be the _____ of **RUNNING Y WATER, LLC**, the Delaware limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2016.

Printed Name

NOTARY PUBLIC in and for the State of

My Commission Expires

2. Restrictions and Reservations. Grantor expressly reserves the right to enter upon and make use of the Common Area Roads for any uses not inconsistent with this Easement. Grantor further reserves the right to grant any other easement, license or right-of-way over, under or across the Common Area Roads so long as such uses are not inconsistent with the Easement granted herein. The Common Area Roads, or portions thereof, may at times, and at the sole election of Grantor, be temporarily closed for construction, maintenance or other matters as deemed necessary by Grantor in carrying out its responsibilities pursuant to the Declaration and/or applicable law.

3. Maintenance. Grantor shall be solely responsible for the maintenance and repair of the Common Area Roads in accordance with the Declaration and applicable law. Grantee will not be required to share in the costs of maintaining the Common Area Roads for purposes of this access Easement.

4. Covenants Running with the Land. This Agreement and the terms contained herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective grantees, heirs, successors and assigns.

EXECUTED as of the day and year first above written.

GRANTOR:

RUNNING Y RANCH RESORT OWNERS ASSOCIATION,
an Oregon nonprofit corporation

By: _____
Name: _____
Title: _____

GRANTEE:

RUNNING Y WATER, LLC,
a Delaware limited liability company

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

RUNNING Y ENVIRONMENTAL, LLC,
a Delaware limited liability company

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

STATE OF Connecticut }

COUNTY OF Fairfield SS.

On this day personally appeared before me Simon Hallgate, to me known to be the Authorized Signatory of **RUNNING Y ENVIRONMENTAL, LLC**, the Delaware limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 8 day of April, 2016.

Catherine Smeraglio
Printed Name Notary Public - Connecticut
My commission expires 11/30/2020
NOTARY PUBLIC in and for the State of _____
My Commission Expires _____



EXHIBIT A

LEGAL DESCRIPTION OF EASEMENT AREA

The following real property located in Klamath County, Oregon:

All private roads shown on the following plats recorded in Klamath County, Oregon:

Running Y Resort, Phase 1

Running Y Resort, Phase 2

Running Y Resort, Phase 3

Running Y Resort, Phase 4

Replat Running Y Resort, Phase 4, 1st Addition

Tract 1427, A Replat of Lots 318, 319, 320, 321, 322, 323 and Common Area "A" of Tract 1363, Replat of Running Y Resort, Phase 4, 1st Addition

Running Y Resort, Phase 4, 2nd Addition

Running Y Resort - Phase 4, Third Addition

Tract No. 1444, Running Y Resort, Phase 4, 4th Addition

Running Y Resort, Phase 5

Running Y Resort, Phase 6

Running Y Resort, Phase 6 1st Addition

Running Y Resort, Phase 6 2nd Addition

Tract 1446, Running Y Resort, Phase 6, 3rd Addition

Tract 1466, Running Y Resort, Phase 6, 4th Addition

Running Y Resort, Phase 7

Tract 1443 A Replat of Lots 595-602, 604-605, Falcon Drive and Red Tail Drive of Tract 1340, Running Y Resort Phase 7

Running Y Resort, Phase 8

Tract 1422, Ranchview Estates

Tract 1440, Ranchview Estates, 1st Addition

Running Y Resort, Phase 9

Running Y Resort, Phase 10

Tract 1404 - Replat of Lots 792-795 and 818-820 of Running Y Resort, Phase 10 - Tract 1394

Tract 1409, Running Y Resort, Phase 11

Running Y Resort, Phase 11, 1st Addition

Running Y Resort, Phase 12, Tract 1423

Tract 1425, A Replat of Lots 779, 780 and Common Area "C"

Running Y Resort, Phase 12, 1st Addition, Tract 1426

Running Y Resort, Phase 13, Tract 1429

Tract 1468, Aspen Run, Phase 1

Amerititle
MTC 1396-11676

After Recording
Return To:
Resort Resources
P.O. Box 2277
Bend OR, 97709

2016-003730
Klamath County, Oregon
04/12/2016 02:50:40 PM
Fee: \$77.00

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is dated for reference purposes 08 APRIL, 2016 and is made by and among RUNNING Y RANCH RESORT OWNERS ASSOCIATION, an Oregon nonprofit corporation ("Grantor"), and RUNNING Y WATER, LLC, a Delaware limited liability company ("Water") and RUNNING Y ENVIRONMENTAL, LLC, a Delaware limited liability company ("Environmental"). Collectively, Water and Environmental are hereinafter referred to as "Grantee".

RECITALS

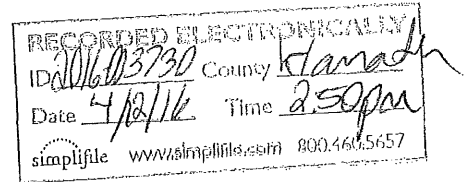
- A. Grantor is the owners' association for a planned community development in Klamath County, Oregon, known as the "Running Y Ranch Resort."
- B. The Running Y Ranch Resort includes a number of private roads that are designated as "Common Areas" pursuant to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort recorded August 2, 1996 in Volume M96, Page 23548, Klamath County, Oregon (as amended and supplemented from time to time, the "Declaration"). These private roads are described in the Declaration and/or in each of the recorded plats for the Running Y Ranch Resort, which plats are more particularly described on the attached **Exhibit A** (collectively, the "Common Area Roads"). Grantor owns, operates and maintains the Common Area Roads, pursuant to the Declaration.
- C. Each of Water and Environmental owns and operates certain equipment and facilities within Running Y Ranch Resort for the purpose of providing water and sewer services, respectively, to property owners in Klamath County, Oregon, including property owners within Running Y Ranch Resort (the "Utility Facilities").
- D. Each of Water and Environmental has requested an access easement over the Common Area Roads for purposes of accessing, using, maintaining, repairing and replacing its respective Utility Facilities, and Grantor has agreed, all on the terms and conditions contained herein.

AGREEMENTS

In consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

- 1. Grant of Roadway Access Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive access easement over, under and across the Common Area Roads, including, without limitation, those Common Area Roads described on the attached **Exhibit B**. Such easement shall allow vehicular and pedestrian ingress and egress to Grantee's property within the Running Y Ranch Resort for purposes of using, operating, maintaining, constructing, installing, repairing and replacing any existing or future Utility Facilities. Such easement shall permit access by Grantee and Grantee's employees, members, officers, directors, contractors, invitees and guests.

After Recording
Return To:
Resort Resources
P.O. Box 2277
Bend OR, 97709



ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is dated for reference purposes 08 APRIL, 2016 and is made by and among RUNNING Y RANCH RESORT OWNERS ASSOCIATION, an Oregon nonprofit corporation ("Grantor"), and RUNNING Y WATER, LLC, a Delaware limited liability company ("Water") and RUNNING Y ENVIRONMENTAL, LLC, a Delaware limited liability company ("Environmental"). Collectively, Water and Environmental are hereinafter referred to as "Grantee".

RECITALS

A. Grantor is the owners' association for a planned community development in Klamath County, Oregon, known as the "Running Y Ranch Resort."

B. The Running Y Ranch Resort includes a number of private roads that are designated as "Common Areas" pursuant to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Running Y Ranch Resort recorded August 2, 1996 in Volume M96, Page 23548, Klamath County, Oregon (as amended and supplemented from time to time, the "Declaration"). These private roads are described in the Declaration and/or in each of the recorded plats for the Running Y Ranch Resort, which plats are more particularly described on the attached **Exhibit A** (collectively, the "Common Area Roads"). Grantor owns, operates and maintains the Common Area Roads, pursuant to the Declaration.

C. Each of Water and Environmental owns and operates certain equipment and facilities within Running Y Ranch Resort for the purpose of providing water and sewer services, respectively, to property owners in Klamath County, Oregon, including property owners within Running Y Ranch Resort (the "Utility Facilities").

D. Each of Water and Environmental has requested an access easement over the Common Area Roads for purposes of accessing, using, maintaining, repairing and replacing its respective Utility Facilities, and Grantor has agreed, all on the terms and conditions contained herein.

AGREEMENTS

In consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

1. Grant of Roadway Access Easement. Grantor hereby grants to Grantee a perpetual, non-exclusive access easement over, under and across the Common Area Roads, including, without limitation, those Common Area Roads described on the attached **Exhibit B**. Such easement shall allow vehicular and pedestrian ingress and egress to Grantee's property within the Running Y Ranch Resort for purposes of using, operating, maintaining, constructing, installing, repairing and replacing any existing or future Utility Facilities. Such easement shall permit access by Grantee and Grantee's employees, members, officers, directors, contractors, invitees and guests.

2. Restrictions and Reservations. Grantor expressly reserves the right to enter upon and make use of the Common Area Roads for any uses not inconsistent with this Easement. Grantor further reserves the right to grant any other easement, license or right-of-way over, under or across the Common Area Roads so long as such uses are not inconsistent with the Easement granted herein. The Common Area Roads, or portions thereof, may at times, and at the sole election of Grantor, be temporarily closed for construction, maintenance or other matters as deemed necessary by Grantor in carrying out its responsibilities pursuant to the Declaration and/or applicable law.

3. Maintenance. Grantor shall be solely responsible for the maintenance and repair of the Common Area Roads in accordance with the Declaration and applicable law. Grantee will not be required to share in the costs of maintaining the Common Area Roads for purposes of this access Easement.

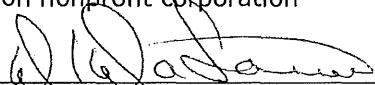
4. Covenants Running with the Land. This Agreement and the terms contained herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective grantees, heirs, successors and assigns.

EXECUTED as of the day and year first above written.

GRANTOR:

RUNNING Y RANCH RESORT OWNERS ASSOCIATION,

an Oregon nonprofit corporation

By: 
Name: DON DASARO
Title: PRESIDENT

GRANTEE:

RUNNING Y WATER, LLC,

a Delaware limited liability company

By: _____
Name: _____
Title: _____

RUNNING Y ENVIRONMENTAL, LLC,

a Delaware limited liability company

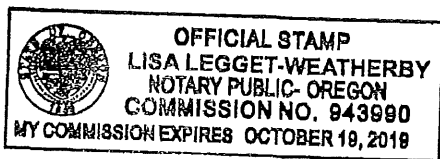
By: _____
Name: _____
Title: _____

STATE OF Oregon }
COUNTY OF Klamath

SS.

On this day personally appeared before me Don Dasaro ^{Jw} ~~Lisa Legget Weatherby~~ to me known to be the President of **RUNNING Y RANCH RESORT OWNERS ASSOCIATION**, the Oregon nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such nonprofit corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 7 day of April, 2016.



Lisa Legget-Weatherby
Printed Name
Lisa Legget Weatherby
NOTARY PUBLIC in and for the State of
Oregon
My Commission Expires 10/19/18

STATE OF _____ }
COUNTY OF _____

SS.

On this day personally appeared before me _____, to me known to be the _____ of **RUNNING Y WATER, LLC**, the Delaware limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2016.

Printed Name

NOTARY PUBLIC in and for the State of

My Commission Expires

2. Restrictions and Reservations. Grantor expressly reserves the right to enter upon and make use of the Common Area Roads for any uses not inconsistent with this Easement. Grantor further reserves the right to grant any other easement, license or right-of-way over, under or across the Common Area Roads so long as such uses are not inconsistent with the Easement granted herein. The Common Area Roads, or portions thereof, may at times, and at the sole election of Grantor, be temporarily closed for construction, maintenance or other matters as deemed necessary by Grantor in carrying out its responsibilities pursuant to the Declaration and/or applicable law.

3. Maintenance. Grantor shall be solely responsible for the maintenance and repair of the Common Area Roads in accordance with the Declaration and applicable law. Grantee will not be required to share in the costs of maintaining the Common Area Roads for purposes of this access Easement.

4. Covenants Running with the Land. This Agreement and the terms contained herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective grantees, heirs, successors and assigns.

EXECUTED as of the day and year first above written.

GRANTOR:

**RUNNING Y RANCH RESORT OWNERS
ASSOCIATION,**
an Oregon nonprofit corporation

By: _____
Name: _____
Title: _____

GRANTEE:

RUNNING Y WATER, LLC,
a Delaware limited liability company

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

RUNNING Y ENVIRONMENTAL, LLC,
a Delaware limited liability company

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

STATE OF _____ }
COUNTY OF _____

SS.

On this day personally appeared before me _____, to me known to be the _____ of **RUNNING Y RANCH RESORT OWNERS ASSOCIATION**, the Oregon nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such nonprofit corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2016.

Printed Name

NOTARY PUBLIC in and for the State of _____

My Commission Expires _____

STATE OF Connecticut }

COUNTY OF Fairfield

SS.

On this day personally appeared before me Simon Hallgarten, to me known to be the Authorized Signatory of **RUNNING Y WATER, LLC**, the Delaware limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 8 day of April, 2016.

Printed Name

Catherine Smerigilo

NOTARY PUBLIC in and for the State of _____

Notary Public - Connecticut

My Commission Expires 11/30, 2020

[Signature]
My Commission Expires _____

STATE OF Connecticut }

COUNTY OF Fairfield

SS.

On this day personally appeared before me Simon Hallgarten, to me known to be the Authorized Signatory of **RUNNING Y ENVIRONMENTAL, LLC**, the Delaware limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 9 day of April, 2016.

Catherine Smerigilo
Printed Name Notary Public - Connecticut
NOTARY PUBLIC in and for the State of My commission expires 11/30/20
My Commission Expires _____



EXHIBIT A

LEGAL DESCRIPTION OF EASEMENT AREA

The following real property located in Klamath County, Oregon:

All private roads shown on the following plats recorded in Klamath County, Oregon:

Running Y Resort, Phase 1

Running Y Resort, Phase 2

Running Y Resort, Phase 3

Running Y Resort, Phase 4

Replat Running Y Resort, Phase 4, 1st Addition

Tract 1427, A Replat of Lots 318, 319, 320, 321, 322, 323 and Common Area "A" of Tract 1363, Replat of Running Y Resort, Phase 4, 1st Addition

Running Y Resort, Phase 4, 2nd Addition

Running Y Resort - Phase 4, Third Addition

Tract No. 1444, Running Y Resort, Phase 4, 4th Addition

Running Y Resort, Phase 5

Running Y Resort, Phase 6

Running Y Resort, Phase 6 1st Addition

Running Y Resort, Phase 6 2nd Addition

Tract 1446, Running Y Resort, Phase 6, 3rd Addition

Tract 1466, Running Y Resort, Phase 6, 4th Addition

Running Y Resort, Phase 7

Tract 1443 A Replat of Lots 595-602, 604-605, Falcon Drive and Red Tail Drive of Tract 1340, Running Y Resort Phase 7

Running Y Resort, Phase 8

Tract 1422, Ranchview Estates

Tract 1440, Ranchview Estates, 1st Addition

Running Y Resort, Phase 9

Running Y Resort, Phase 10

Tract 1404 - Replat of Lots 792-795 and 818-820 of Running Y Resort, Phase 10 - Tract 1394

Tract 1409, Running Y Resort, Phase 11

Running Y Resort, Phase 11, 1st Addition

Running Y Resort, Phase 12, Tract 1423

Tract 1425, A Replat of Lots 779, 780 and Common Area "C"

Running Y Resort, Phase 12, 1st Addition, Tract 1426

Running Y Resort, Phase 13, Tract 1429

Tract 1468, Aspen Run, Phase 1



2014-009116
 Klamath County, Oregon
 09/03/2014 09:08:05 AM
 Fee: \$72.00

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of this 29th day of August 2014, by and between Running Y Development, LLC, a Delaware limited liability company with a mailing address of PO Box 1215, Redmond, OR 97756, hereinafter referred to as "Grantor", and Running Y Environmental, LLC, a Delaware limited liability company with a mailing address of 5115 Running Y Road, Klamath Falls, OR 97601, hereinafter referred to as "Grantee".

RECITALS:

Grantor is the owner of that certain real property located in Klamath County, Oregon, commonly described as a Running Y Ranch golf course parcel and legally described on **Exhibit A** attached hereto ("**Golf Course Parcel**").

Grantee has certain equipment and facilities located on a portion of the Golf Course Parcel, generally as shown on the map attached as **Exhibit B** for the purpose of providing sewer collection services to various property owners in Running Y Ranch, Klamath County, Oregon.

Grantee desires to exercise certain rights and privileges across, under and upon the Golf Course Parcel and has requested from Grantor an easement to secure such rights and privileges, and Grantor is willing to grant such easement upon the terms and conditions contained in this Easement Agreement.

NOW, THEREFORE, Grantor hereby grants unto the Grantee, an easement over, under, and across an approximate 20' x 20' area, plus an 8' wide strip of land improved with a paved path, both of which are located on the Golf Course Parcel and are referred to herein as the "**Easement Area**", which area is generally as shown on the attached "**Exhibit B**", to provide ingress and egress to, as well as to inspect, repair, maintain, renew, and alter, the sewage lift station and related facilities necessary to provide sewer collection service to its utility company customers.

Subject to obtaining prior written approval of Grantor, which approval may not be unreasonably withheld, conditioned or delayed, Grantee, at its sole cost and expense, may trim or remove brush, trees, shrubs, or objects within the Easement Area that interfere with the construction, maintenance and operation of said utility services. A failure of Grantor to respond within three (3) business days of Grantee's request to conduct such trimming or removal shall be deemed approval.

Further, Grantee agrees that any disturbance to the Easement Area or adjacent landscaping, bike paths, golf course improvements, ingress and egress routes and any other areas caused by Grantee, its subcontractors, representatives or assigns shall be promptly and completely repaired, re-vegetated, and/or reconstructed by Grantee to the pre-existing condition of said disturbance areas at Grantee's sole cost and expense.

Grantee agrees to perform all work in a good and workmanlike manner and shall use reasonable efforts to try to minimize excess noise or other interference with Grantor's use of the Golf Course Parcel.

Grantee agrees to indemnify and hold Grantor harmless from any liability, suit, settlement or judgment and related attorneys' fees and expenses to the extent arising out of the negligence of Grantee, its employees, agents and contractors' in using the Easement Area.

\$72.00

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.

EXHIBIT A
GOLF COURSE PARCEL

Real property in the County of Klamath, State of Oregon, described as follows:

PARCEL 1: (FUTURE DEVELOPMENT AND GOLF COURSE)

PARCEL 1 AND 2, LAND PARTITION 60-94, LOCATED IN SECTIONS 4, 5, 9 AND 10,
TOWNSHIP 38 SOUTH RANGE 8 EAST, WILLAMETTE MERIDIAN, KLAMATH
COUNTY, OREGON.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF
RUNNING Y RESORT, PHASE 1.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 2.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 3.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4, 1ST ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4, 1ST ADDITION REPLAT.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4, 2ND ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4, 3RD ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 4, 4TH ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 5.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 6.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES
OF RUNNING Y RESORT, PHASE 6, 1ST ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 6, 2ND ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 6, 3RD ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 6, 4TH ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 7.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 8.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 9.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 10.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 11.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 11, 1ST ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 12.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 12, 1ST ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RUNNING Y RESORT, PHASE 13.

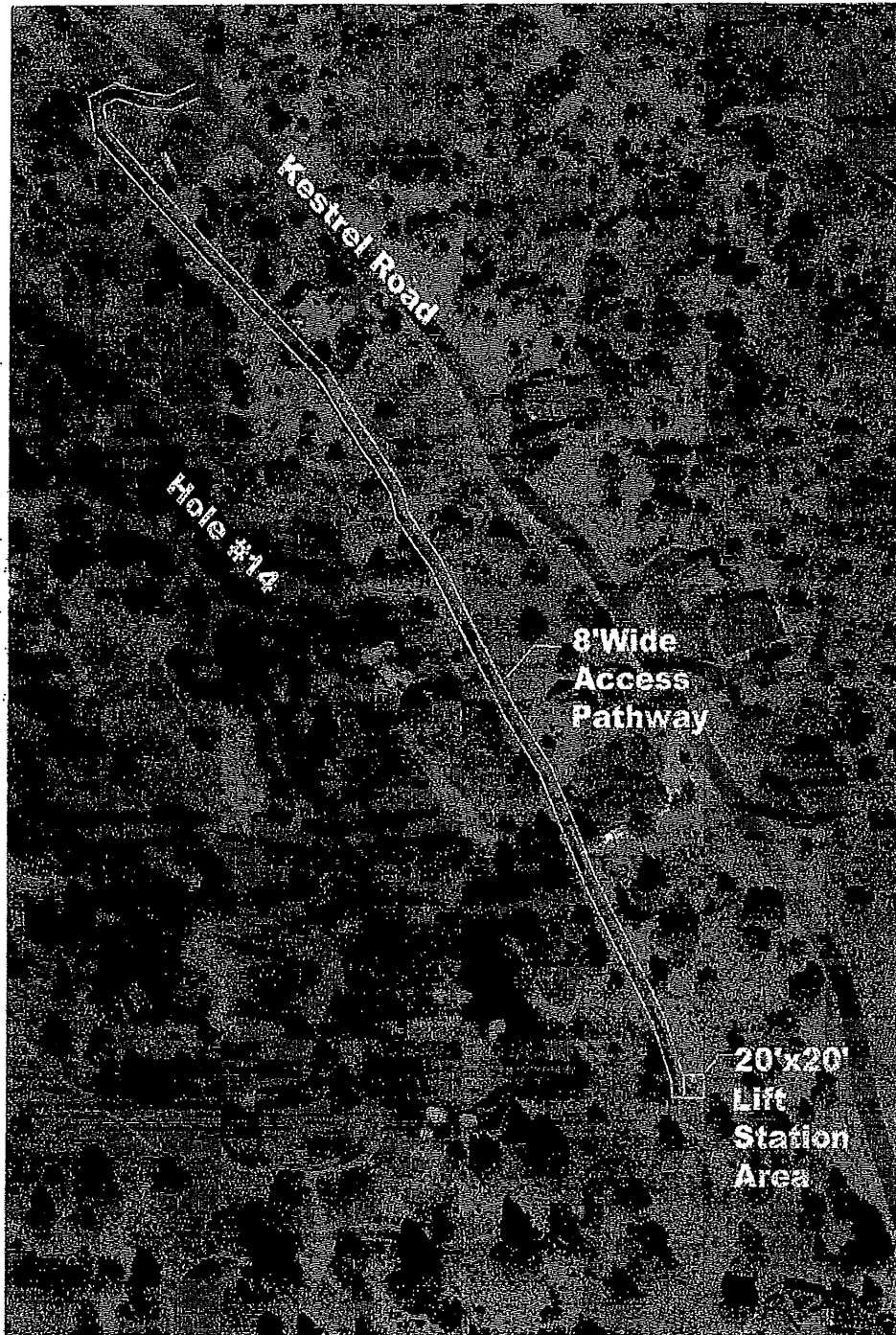
ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF RANCHVIEW ESTATES AND RANCHVIEW ESTATES 1ST ADDITION.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF ASPEN RUN, PHASE 1.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF LAND PARTITION 47-01, LOCATED IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 38 SOUTH, RANGE 8 EAST WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN LAND PORTION
04-11 BEING A PORTION OF PARCEL 1, LAND PARTITION 69-06, LOCATED IN THE
SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 38 SOUTH RANGE 8 RANGE 8
EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

EXHIBIT B
Easement Area *



* The Easement Area consists of a 20' x 20' area on which the sewage lift station and related facilities are located, which is situated westerly of the rear property lines of Lots 745 and 746, plat of Running Y Resort, Phase 9, Klamath County, Oregon. The Easement Area also includes an 8' wide pathway extending northwesterly from the lift station area to Kestrel Road.

2006-018271
Klamath County, Oregon



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09/11/2006 03:20:33 PM

Fee: \$276.00

After Recording Return To:
RidgeWater Properties
5115 Running Y Road
Klamath Falls, OR 97601
Attn: Leah Chenault

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
RIDGEWATER**

RIDGEWATER PROPERTIES

Declarant

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
RIDGEWATER**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is dated for reference purposes September 8, 2006, by RUNNING Y RESORT, INC., an Oregon corporation, doing business as RIDGEWATER PROPERTIES, as the owner of all of the property currently being subjected to this Declaration ("Declarant").

RECITALS

A. Declarant owns certain real property in the City of Klamath Falls, Oregon which Declarant proposes to develop as a planned community development to be known as "RidgeWater" pursuant to a development plan approved by the City of Klamath Falls, Oregon ("Development Plan"). Declarant reserves the right to amend the Development Plan, subject to any approvals required by the City of Klamath Falls, Klamath County or any other applicable governmental authority. RidgeWater will be a Class I planned community under the Oregon Planned Community Act, ORS 94.550 to 94.783, and applicable successor provisions.

B. All owners, tenants, licensees, invitees and mortgagees of property within RidgeWater shall acquire their respective interests in such property subject to this Declaration, as the same may hereafter be amended. By adoption of this Declaration, Declarant is not committing itself to take any action for which it is not specifically obligated under the express terms of the Development Plan or this Declaration. Any Person who acquires a property interest in RidgeWater consents to the Development Plan, as the same may hereafter be amended, and shall have no legal right to insist that there be any particular development of RidgeWater except as required by this Declaration, the Development Plan or any recorded instruments annexing areas to RidgeWater.

C. Declarant anticipates that RidgeWater may include a variety of uses. Such uses may include, without limitation, commercial, retail, residential, recreational, and other uses as Declarant may determine to be appropriate. Residential parcels within the Property may include single-family lots, zero lot line or other common wall type structures, or condominiums. Recreational facilities may include facilities for swimming, hiking, bicycling, and other uses that are commonly associated with a multi-purpose development such as RidgeWater, but Declarant makes no assurances as to the construction or availability of any specific recreational facility. Some facilities may be privately owned by Declarant or third parties and may be available for use by members only, by the public or both.

D. Declarant reserves the right with respect to all or any portion of the Property then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of the County of Klamath or the City of Klamath Falls; inclusions within any urban growth area; amendments to the Development Plan; and such licenses, permits and governmental approvals as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

E. This Declaration establishes covenants, conditions, restrictions and easements for the benefit of RidgeWater. The first such area to be subject to this Declaration is described in the attached Exhibit A (the "Property"). Additional Property may be annexed to the Property in accordance with the provisions of this Declaration. Portions of the Property, but only if and when they are described herein or in a Supplemental Declaration, may be within "Neighborhoods" which will either be discreet neighborhoods or share a common type of development.

NOW, THEREFORE, Declarant hereby declares that the Property described in Exhibit A attached hereto shall be owned, sold, conveyed, leased, encumbered, occupied, improved and used subject to this Declaration, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof and their respective successors and assigns.

Article 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 “Additional Property” means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2.

1.2 “Affiliate” means any entity which controls, is under the common control with or is controlled by Declarant.

1.3 “Articles” means the Articles of Incorporation of the Association.

1.4 “Assessments” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 11.

1.5 “Association” means the RidgeWater Community Association, an Oregon nonprofit corporation to be formed to serve as the owners’ association as provided in Article 9, and its successors and assigns.

1.6 “Board” or “Board of Directors” means the Board of Directors of the Association.

1.7 “RidgeWater” means all property now or hereafter made subject to this Declaration.

1.8 “Bylaws” means the bylaws of the Association as adopted and amended by the Board from time to time.

1.9 “Common Areas” means all real and personal property, including easements, that the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, subject to use restrictions that may be described herein or in any Supplemental Declaration. Common Areas shall be designated as such in this Declaration, any Supplemental Declaration, any plat of the Property, or any conveyance from Declarant to the Association. Common Areas shall include any Improvements thereon, and may be further designated as Public Areas, Restricted Areas, Limited Common Areas, or Neighborhood Common Areas. Common Areas shall also include any Units converted to Common Areas as provided in Section 3.5.

1.10 “Common Expenses” shall mean all of the expenses incurred by or on behalf of the Association from time to time including such reserves as the Board may deem appropriate from time to time.

1.11 “Community-Wide Standard” means the standard of conduct, quality, maintenance and design generally prevalent in RidgeWater. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and demands of RidgeWater change.

1.12 “Condominium” means any property submitted to the Oregon Condominium Act in the manner provided by ORS Chapter 100, as amended.

1.13 “Declarant” means Running Y Resort, Inc., an Oregon corporation doing business as RidgeWater Properties, and its successors and assigns, if a recorded instrument executed by Declarant assigns to the transferee all of the rights reserved to Declarant under this Declaration with respect to all or any portion of the Property.

1.14 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements for RidgeWater as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.15 “**Design Guidelines**” shall have the meaning given that term in Section 8.3.

1.16 “**Design Review Committee**” means the committee appointed pursuant to Article 8.

1.17 “**Development Period**” means the period of time between the date this Declaration is Recorded and the earliest of (a) when all of the property within the Development Plan has been developed and seventy-five percent (75%) of the Units in the last area to be annexed to this Declaration have been conveyed to Persons other than Declarant or an Affiliate; (b) when, in its discretion, Declarant so determines, as evidenced by a Recorded document executed by Declarant to that effect; or (c) December 31, 2020.

1.18 “**Development Plan**” means the Development Plan approved by the City of Klamath Falls and Klamath County, if applicable, as the same may hereafter be amended.

1.19 “**Emergency Assessments**” shall have the meaning given that term in Section 11.3(d) below.

1.20 “**General Assessments**” shall have the meaning given that term in Section 11.3(a).

1.21 “**Governing Documents**” means the Development Plan, this Declaration, the Articles of Incorporation, the Bylaws, any Supplemental Declaration and any Policies and Procedures adopted by the Board.

1.22 “**Governmental Authority**” means the City of Klamath Falls, County of Klamath, the State of Oregon, the United States of America or other governmental entity or agency that has or acquires jurisdiction over the Property or any portion thereof, or over sales of the Property, from time to time.

1.23 “**Improvement**” means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, swimming pool, storage shelter, signage, monumentation or other product of construction efforts on the Property.

1.24 “**Individual Assessments**” shall have the meaning given that term in Section 11.3.5.

1.25 “**Initial Development**” means the real property identified in Section 2.1.

1.26 “**Limited Common Area Assessments**” shall have the meaning given that term in Section 11.3(e).

1.27 “**Limited Common Areas**” means those Common Areas that are restricted to the exclusive use of the owners or occupants of certain Units as designated in this Declaration or a Supplemental Declaration.

1.28 “**Mortgage**” means a mortgage, deed of trust or real estate installment sale contract.

1.29 “**Mortgagee**” means a mortgagee under a mortgage, a beneficiary under a deed of trust, or a seller under a real estate installment sale contract.

1.30 “**Neighborhood**” means any area or areas designated by Declarant and comprised of discrete types of development, use or ownership within a portion of the Property, as established and restricted in this Declaration or a Supplemental Declaration.

1.31 “Neighborhood Assessments” means Assessments levied against Units in a specific Neighborhood to fund Neighborhood Expenses pursuant to Section 11.3(b).

1.32 “Neighborhood Association” means any association established for a specific Neighborhood pursuant to a Neighborhood Declaration.

1.33 “Neighborhood Committee” means a committee appointed or elected for a Neighborhood pursuant to Section 3.4.

1.34 “Neighborhood Common Area” means a portion of the Common Areas within a Neighborhood restricted in whole or in part to common use primarily by or for the benefit of the Owners owning Units within the Neighborhood and their families, tenants, employees, guests and invitees.

1.35 “Neighborhood Declaration” means a declaration of easements, covenants, conditions and restrictions and all amendments thereto Recorded by an Owner establishing a plan of Condominium ownership, townhome or zero lot line ownership, planned unit development, or otherwise imposing use restrictions on Units within a particular Neighborhood.

1.36 “Neighborhood Expenses” shall mean the portion of the costs and expenses incurred by the Association in connection with the ownership, administration, management, maintenance, repair, insurance and other activities for Neighborhood Common Areas.

1.37 “Operations Fund” shall have the meaning given that term in Section 11.6.

1.38 “Owner” means the Person, including Declarant, owning any Unit within the Property, but, except as otherwise provided below, does not include a tenant or holder of a leasehold interest or a Mortgagee or other Person holding only a security interest in a Unit. If a Unit is sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provides to the contrary. If a Unit is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Unit under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

1.39 “Person” means a human being, a corporation, partnership, limited liability company, trustee or other legal entity.

1.40 “Policies and Procedures” means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.41 “Privately Owned Amenity” shall mean certain real property and any improvements and facilities thereon located within RidgeWater, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. The Privately Owned Amenities may include, but need not be limited to, recreational or social facilities.

1.42 “Property” means that real property described on the attached Exhibit A and any Additional Property annexed to this Declaration, and all existing and future Improvements located thereon, but excluding any property withdrawn from the provisions of this Declaration.

1.43 “Public Areas” means any portion of the Common Areas made available for use on a general or conditional basis by members of the public in any conveyance thereof executed by Declarant, in any plat of the Property, in this Declaration or in any Supplemental Declaration.

1.44 “Recorded” means filed in the official records of Klamath County, Oregon.

1.45 “Reserve Fund” shall have the meaning given that term in Section 11.7.

1.46 “Restricted Areas” means portions of the Common Areas to which the Owners have limited or no access and which are so designated in any conveyance thereof executed by Declarant, in any plat of the Property, in this Declaration or any Supplemental Declaration, or by the Declarant or Board.

1.47 “Special Assessments” shall have the meaning given that term in Section 11.3(c).

1.48 “Supplemental Declaration” means an instrument recorded pursuant to Section 2.2 which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. The term shall also refer to an instrument recorded by Declarant to establish Voting Groups.

1.49 “Turnover Meeting” means the meeting called by Declarant pursuant to Section 9.6(d) below, at which Declarant will turn over administration responsibility for RidgeWater to the Association.

1.50 “Unit” means a portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as an attached or detached residence. A Privately Owned Amenity is not a Unit for purposes of this Declaration. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. Prior to the recording of a subdivision plan, a parcel of vacant land, or land on which improvements are under construction, shall be deemed to contain the number of Units designated for residential use for such parcel by Declarant in a written notice to the Board and in conformance with the Development Plan.

1.51 “Voting Group” means a group of Owners who vote on a common slate for election of directors of the Board, as more particularly described in Section 9.7.

1.52 “Work” shall have the meaning given that term in Section 8.4(a).

Article 2

AREAS SUBJECT TO THIS DECLARATION

2.1 Initial Development. The portion of the Property initially made subject to this Declaration is described in the attached Exhibit A and may, but need not, include Neighborhoods, Common Areas, Limited Common Areas, Neighborhood Common Areas, Public Areas, or Restricted Areas.

2.2 Annexation of Additional Property. Declarant may from time to time and in its sole discretion annex Additional Property to the Property. The annexation of such Additional Property shall be accomplished as follows:

(a) Declarant and, if applicable, the owner or owners of such real property, shall execute and Record a Supplemental Declaration that shall, among other things, describe the real property to be annexed, designate the Neighborhood that such addition creates or of which it is a part, if any, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such real property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to this Declaration.

(b) The Additional Property described in any such Supplemental Declaration shall thereby become a part of the Property, shall be subject to this Declaration, and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:

(i) modify or exclude any then existing restrictions and establish such new limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property; and

(ii) with respect to existing land classifications, modify or exclude any then existing restrictions and establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Units which Declarant may create or annex to RidgeWater, except as may be established by a Governmental Authority or by any applicable agreement. Similarly, there is no limitation on the right of Declarant to annex Common Areas, except as may be established by a Governmental Authority.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Nothing in this Declaration shall establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or RidgeWater.

(g) Upon annexation, the Owners of such additional Units shall be entitled to Association voting rights that are consistent with the voting rights of Owners of other portions of the Property.

(h) The formula to be used for reallocating the Common Expenses, shall be as set forth in Section 11.4.

2.3 **Withdrawal of Property.** Declarant may withdraw real property from the Property by an amendment to this Declaration executed by Declarant and Recorded. All voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Common Expenses shall be reallocated to the remaining Units as provided in Section 11.4. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a Supplemental Declaration at any time prior to the first sale of a Unit in the property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Unit in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Units. In addition, Declarant may withdraw any real property then owned by Declarant or any Common Areas if such withdrawal is a result of any changes in Declarant's plans for RidgeWater, provided that such withdrawal is approved by a majority of the voting rights in the Association. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 11.4 below.

2.4 **Annexations into Municipalities and Other Governmental Actions.** Declarant reserves the right with respect to all or any portion of the Property then owned by Declarant, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of a Governmental Authority; inclusions within any urban growth area; amendments to the Development Plan; and such licenses, permits and approvals from any Governmental Authority as Declarant may

deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

2.5 **Dedications.** Declarant reserves the right to dedicate any portions of the Property then owned by Declarant to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space for habitat, wildlife, waterfowl, fish, vegetation, wetlands or other preservation purposes; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as Declarant and such Governmental Authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Declarant as a result of such dedication, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to Declarant.

Article 3

NEIGHBORHOOD DESIGNATION AND LAND CLASSIFICATIONS

3.1 **Creation of Neighborhoods.** The Property may contain one or more Neighborhoods, each of which may contain areas that have common uses, have access to certain Neighborhood Common Areas, are treated similarly for assessment or voting purposes, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Property shall constitute a Neighborhood. Neighborhoods need not comprise the entirety of the Property, nor must all Units be part of a Neighborhood. A Neighborhood may be comprised of more than one housing type. Neighborhoods may include noncontiguous parcels of the Property.

3.2 **Supplemental Declarations** Declarant reserves the right to record against each of the Neighborhoods, as the same may be from time to time delineated in this Declaration or a Supplemental Declaration, or amendments thereto, additional covenants, conditions, restrictions, and reservations governing, expanding or confining the use of any such Neighborhood, reserving additional easements therein, and imposing Neighborhood Assessments upon the Owners of Units in such Neighborhood for the ongoing operation, maintenance, and repair of Neighborhood Common Areas.

3.3 **Neighborhood Associations** The establishment of a Neighborhood may be accompanied by the formation of a Neighborhood Association. Neighborhood Associations shall be nonprofit corporations with memberships comprised of the Owners of the Units within such Neighborhoods. Declarant or, subject to Declarant's approval pursuant to Section 14.2, any other Owner of all of the property comprising a Neighborhood may elect to cause any such Neighborhood Association to be formed for such purposes at any time after the Neighborhood Declaration is recorded and before any Units therein are conveyed to Owners. Following the Development Period, the Owners of Units within a Neighborhood, by majority vote and with the written consent of the Board, may elect to establish a Neighborhood Association. At the time a Neighborhood Association is formed, or at any time thereafter, Declarant or the Board may delegate to the Neighborhood Association certain of their respective rights and obligations with respect to the portion of the Property located within the Neighborhood and other Common Areas to which members of such Neighborhood have access. Such rights and duties may include, without limitation, the obligation to maintain Neighborhood Common Areas within the Neighborhood; establish and enforce policies and procedures; and hold title to and administer, manage, operate, and insure property and/or easements located within such Neighborhood. Certain obligations and rights with respect to matters affecting more than one Neighborhood may be delegated by Declarant or the Board to two or more of such Neighborhoods.

3.4 **Neighborhood Committees.** With respect to any Neighborhood within RidgeWater that does not have a Neighborhood Association, the Board may appoint a Neighborhood Committee composed of three (3) to five (5) Owners of Units within such Neighborhood, which committee shall be responsible for recommending to the Board any Policies and Procedures pertaining to Neighborhood Common Areas, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Neighborhood Common Areas, and for such other matters pertaining to the Neighborhood as the Board may elect to delegate to the Neighborhood Committee.

3.5 **Conversion of Units into Common Areas** Declarant may elect to build common facilities on one or more Units and designate such Unit or Units as Common Areas by recording an amendment to this Declaration or by conveying such Units to the Association.

3.6 **Conversion to Different Uses**. Declarant reserves the right to withdraw portions of the Property from any Neighborhood and its related Supplemental Declaration and may also include the portion so withdrawn in a different Neighborhood pursuant to the provisions of a different Supplemental Declaration. Such withdrawal shall be accomplished by and effective upon recording an amendment to the applicable Supplemental Declaration(s).

3.7 **Subdivisions**. Declarant reserves the right to subdivide any Units then owned by Declarant from time to time upon receiving all required approvals from any Governmental Authority. In the event any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration. No other Owner of any Unit in the Property may subdivide any Unit without the prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which consent may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable.

3.8 **Consolidations** Declarant reserves the right to consolidate any two or more Units then owned by Declarant upon receipt of any required approvals from any applicable Governmental Authority and recording any necessary amendment to this Declaration or the applicable Supplemental Declaration. No other Owner may consolidate any Units without the prior written approval of the Declarant during the Development Period and thereafter by the Design Review Committee, which may be granted or denied at the sole discretion of the Declarant or Design Review Committee, as applicable. An approved consolidation shall be effected by the Recording of a declaration stating that the affected Units are consolidated, which declaration shall be executed by the Owner(s) of the affected Units and by the president of the Association. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked except as provided in Section 3.7 above. Any Units consolidated pursuant to this section shall be considered one Unit thereafter for the purposes of this Declaration, including voting rights and allocation of assessments.

3.9 **Condominium Conversions**. Declarant reserves the right to convert any Units then owned by Declarant into a condominium or other form of ownership in any manner permitted by Oregon law and to otherwise create and terminate any condominium containing Units owned solely by Declarant and other Owners who consent thereto.

3.10 **Land Classifications within Initial Development**. The Initial Development contains those land classifications and Neighborhoods as set forth in the attached Exhibit B.

Article 4

UNITS AND FEES

4.1 **Use and Occupancy**. The Owner of a Unit in the Property shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions made applicable to such Unit by this Declaration, any Supplemental Declaration or any applicable Neighborhood Declaration.

4.2 **Easements Reserved by Declarant**. In addition to any easements shown on recorded plats, Declarant hereby reserves or grants, as applicable, the following perpetual easements:

(a) **Adjacent Common Areas**. The Owner of any Unit which adjoins any Common Areas shall, if the Association elects from time to time to so require, permit the Association to enter upon the Unit to perform the maintenance of such Common Areas. The Owner and occupant of each Unit shall be responsible for controlling such Owner's or occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

(b) **Utility Easements.** Easements for the benefit of Declarant and/or the Association for installation and maintenance of utilities and drainage facilities are reserved over portions of certain Units and Common Areas as shown on the Recorded plat or as otherwise reserved in any Recorded document. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage systems, or in drainage infiltration facilities.

(c) **Utility Inspection and Repairs.** Each utility service provider and its agents or employees shall have authority to access all Units, but not Improvements constructed thereon, and the Common Areas, on which communication, power, gas, drainage, sewage or water facilities may be located for the purpose of installing, operating, maintaining, improving or constructing such facilities, reading meters, inspecting the condition of pipes and facilities, and completing repairs. The Owner of any such Unit 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.

(d) **Easements for Encroachments.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Areas and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration and the Design Guidelines) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) **Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Unit (including any dwelling thereon) for emergency, security, and safety reasons, to perform maintenance and to enter any portion of the Unit other than the dwelling located thereon to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, any duly authorized agents and assignees of the Association, or any member or duly authorized representative of the Design Review Committee and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

(f) **Rights to Storm Water Runoff and Water Reclamation.** Declarant reserves for itself, and its designees, all rights to ground water, surface water, and storm water runoff within the Property, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall have all such rights. Such rights shall include an easement over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

(g) **Future Easements.** Declarant reserves the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Property. The location of any such easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

4.3 **Transfer Fee.** At the time of closing the sale of each Unit within the Property, each seller of a Unit (excluding Declarant) shall be subject to a transfer fee (the "Transfer Fee") in the amount of one-half percent (0.50%) of the gross sales price of such Unit which shall be payable to the RidgeWater Community Enhancement Fund (the "Fund") or such other non-profit corporation as may be designated by Declarant prior to the Turnover Meeting for the purpose of creating and providing activities, services and programs for the common good of RidgeWater and surrounding areas. The Transfer Fee shall be paid out of escrow at closing. The Transfer Fee shall not apply to the initial sale by Declarant, but shall apply to all subsequent re-sales or transfers of each Unit within the Property except: (a) sales by a commercial builder following development of a Unit, (b) sales or transfers to a co-owner of the Unit, (c) sales or transfers to a family trust or partnership controlled by the transferring Owner, (d)

transfer by gift, devise or inheritance, (e) transfers to an entity owned or controlled by the transferring Owner, (f) transfers to Declarant pursuant to an exchange agreement for a Unit, and (g) transfers to a institutional lender acquiring the Unit pursuant to foreclosure or deed in lieu of foreclosure; provided, however, that in each such case any non-exempt subsequent transfer shall be subject to the Transfer Fee. In the event that the RidgeWater Community Enhancement Fund shall ever cease to exist, the Transfer Fee shall be paid to a non-profit corporation designated by Declarant before the Turnover Meeting or by the Board after the Turnover Meeting. The Fund is not a third-party beneficiary hereof and shall have no rights of enforcement for payment of the Transfer Fee in any case.

Article 5 COMMON AREAS

5.1 **Title to Common Areas.** Except for the portions thereof dedicated to the public or any Governmental Authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association by Declarant AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting.

5.2 **Use of Common Areas.** The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type (except utility or similar facilities permitted by Declarant or the Association) shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. No Owner shall place or cause to be placed on the Common Areas any trash, structure, equipment, furniture, package or object of any kind. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas by Declarant or the Association identifying the Property or any Neighborhood or identifying trails or identifying items of interest, including traffic and directional signs, provided such signs are approved by the Design Review Committee and comply with any applicable sign ordinances. The Board shall have authority to abate or enjoin any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A Supplemental Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event the same shall automatically become Limited Common Areas assigned to the Units having access thereto as described in such Supplemental Declaration.

5.3 **Easements Retained by Declarant.** So long as Declarant owns any Unit, Declarant shall retain an easement over, under and across the Common Areas to carry out management, sales and rental activities necessary or convenient for the sale or rental of Units, including, without limitation, advertising and "For Sale" signs. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant or an Affiliate thereof; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to a Unit by the Owner thereof or such Owner's family, tenants, employees, guests or invitees.

5.4 **Easement to Serve Other Property.** Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, and the developers of Improvements in all future phases of RidgeWater, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access, and development of the property subject to the Development Plan, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems, signs and ingress and egress for the benefit of other portions of RidgeWater and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Property or additional property that is then owned by Declarant or an Affiliate thereof. Declarant agrees that such users shall be responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable

agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement shall be based on the relative extent of use of such facilities.

5.5 **Owners' Easements.** Subject to provisions of this Article, and except for the Restricted Areas, every Owner and the Owner's tenants and guests shall have a right and easement in and to the Common Areas for the uses for which they are established, which easement shall be appurtenant to and shall pass with the title to every Unit. The use of Limited Common Areas, however, shall be limited to the Owners of the Units to which the Limited Common Areas are assigned in this Declaration or any applicable Supplemental Declaration and their respective tenants, invitees and licensees.

5.6 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) The Governing Documents;

(b) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(c) Easements reserved to Declarant for itself and the Association for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board and any such easement shown on any plat of the Property and for construction, maintenance, repair and use of Common Areas and any Improvements thereon;

(d) Easements granted by Declarant or the Association to Governmental Authorities or companies providing utility and communications services and to police, fire and other public officials and to employees of utility companies and communications companies serving the Property;

(e) The Board's right to:

(i) adopt Policies and Procedures regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

(ii) suspend the right of an Owner to use recreational facilities within the Common Areas as provided in this Declaration;

(iii) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational or social facility situated upon the Common Areas;

(v) permit use of any recreational or social facilities situated on the Common Areas by persons other than Owners, their families, lessees, and guests with or without payment of use fees established by the Board;

(vi) designate areas and facilities of Common Areas as Public Areas or Restricted Areas; and

(vii) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated Limited Common Areas or Neighborhood Common Areas.

5.7 Enjoyment of Owners' Rights. Any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

5.8 Alienation of the Common Areas. The Association may not encumber, sell or transfer title to the Common Areas owned directly or indirectly by the Association for the benefit of the Owners unless such encumbrance, sale or transfer has been approved by at least eighty percent (80%) of the Class A voting rights and the Class B Member. Such approvals shall not be required for the granting of easements as otherwise permitted in this Declaration.

5.9 Public, Recreational or Service Areas. Declarant, at the time Declarant designates Common Areas or conveys Common Areas to the Association, or thereafter the Association, may designate certain portions of such Common Areas as Public Areas which may be used by members of the public on a free or on a fee-paying basis as set forth in such designation or conveyance or as determined by the Board. Such Public Areas may include, by way of example, trails and paths, recreational or certain entertainment areas. Owners shall be permitted to use such Public Areas either on a free basis or for fees that are no higher than those charged to members of the public for an equivalent use or service, as determined solely by the Association. Any proceeds from such Public Areas shall be paid to the Association.

5.10 Open Space Areas. Any portion of the Property designated as open space on any plat or in this Declaration is reserved as open space which, except as otherwise shown on the Development Plan, shall be free of Improvements.

5.11 Restricted Areas. Declarant or the Association shall have the right from time to time to designate portions of the Common Areas that may not be entered or used by any of the Owners other than Declarant and the Association or such of their respective agents or representatives as may be reasonably required for their preservation, care, maintenance or renewal, to enforce these restrictions, or for such other limited purposes that are permitted by Declarant or the Board. Restricted Areas may include environmentally or historically sensitive areas, riparian corridors, wetlands, and other areas Declarant or Board desire to preserve in their natural state or otherwise preserve for the protection of wildlife, cultural sites, personal safety, security or other mutually beneficial purposes. The Restricted Areas may be removed, enlarged or reduced or other portions of the Property may be added to the Restricted Areas by Declarant or the Board from time to time to the extent reasonably necessary to achieve such purposes.

5.12 Easements. Easements may be reserved as part of the Common Areas for signage and visual landscape features, or as otherwise provided in the Supplemental Declaration or other instrument establishing the easement. Such easements are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Design Review Committee. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon easements included in the Common Areas.

5.13 Limited Common Areas.

(a) Purpose Certain portions of the Common Areas may be designated by Declarant or the Association as Limited Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Limited Common Areas may include private access roads serving certain Units. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be allocated among the Owners of the Units to which the Limited Common Areas are assigned.

(b) Initial Designation. Limited Common Areas may be designated as such in the instrument by which they are conveyed to the Association or in any Supplemental Declaration annexing Additional

Property to this Declaration, but any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Areas to additional Units.

(c) **Subsequent Assignments.** Limited Common Areas may be converted to Common Areas and Limited Common Areas may be reassigned upon (i) approval by the Board and (ii) the vote of two-thirds of the voting rights of Units to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.

5.14 **Neighborhood Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant or the Association as Neighborhood Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Neighborhood Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, community gardens or open space. All costs associated with maintenance, repair, replacement, and insurance of Neighborhood Common Areas shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Neighborhood Common Areas are assigned.

(b) **Initial Designation.** Any Neighborhood Common Areas shall be designated as such in the instrument by which they are conveyed to the Association or in any applicable Supplemental Declaration but any such assignment shall not preclude Declarant from later assigning use of the same Neighborhood Common Areas to additional Neighborhoods.

(c) **Subsequent Assignments.** A portion of the Common Areas may be assigned as Neighborhood Common Areas and Neighborhood Common Areas may be reassigned upon (i) approval by the Board, (ii) the vote of a majority of the votes in the Neighborhood or Neighborhoods in which such Common Areas are and will be located, if any, and (iii) for reassignments of Neighborhood Common Areas or conversion of Neighborhood Common Areas to Common Areas, the vote of two-thirds of the voting rights of Units to whom any of such Neighborhood Common Areas are then assigned. Any such assignment or reassignment shall also require Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Units within the Neighborhood to which any Neighborhood Common Areas is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Neighborhood Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Neighborhood Common Areas.

5.15 **Easement for Lot 106.** Lot 106 shall be entitled to an easement over all Common Area roadways (including gate access) for ingress and egress access to and from such lot for purposes of operating, maintaining, repairing and replacing a water reservoir and utility and telecommunications center on such lot.

Article 6

PRIVATELY OWNED AMENITIES

6.1 **General.** Portions of RidgeWater may be a Privately Owned Amenity that is privately owned and used by their respective owners for commercial or other purposes, such as, without limitation, restaurants, sports or recreational facilities, and private clubs. Neither membership in the Association nor any Neighborhood Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Privately Owned

Amenity. Rights to use the Privately Owned Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Privately Owned Amenities. The owners of the Privately Owned Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Privately Owned Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

6.2 **Rights of Access and Parking.** There is hereby granted for the benefit of each Privately Owned Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Property reasonably necessary to travel between the entrance to the Property and the Privately Owned Amenity and over those portions of the Property (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Privately Owned Amenity. The Association may not impose any restrictions, limitations or requirements for entry into the Privately Owned Amenity which are not imposed and enforced against all Owners and invitees. If vehicle passes are issued to Association's Members, they must be available to the Owner of the Privately Owned Amenity and its invitees on the same terms as they are made available to Association's Members.

6.3 **Design Control.** Declarant, the Association, any Neighborhood Association, or any Design Review Committee, shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight of, any Privately Owned Amenity without (i) giving the Owner of the Privately Owned Amenity at least fifteen (15) days prior written notice of its intent to approve the same, together with copies of the request and all other documents and information finally submitted in such regard and (ii) receiving approval from the Owner of the Privately Owned Amenity. The Owner of the Privately Owned Amenity shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Owner of the Privately Owned Amenity to respond to the notice within the fifteen (15) day period shall constitute a waiver of such Owner's right to object to the matter. This section shall also apply to any work on the Common Area or any Neighborhood Common Area, but shall not apply to any construction, addition, alteration, change or installation by Declarant. This section may not be amended in a manner which would adversely affect the rights of the Owner of any Privately Owned Amenity without such Owner's written consent.

6.4 **Limitation on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Privately Owned Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Privately Owned Amenity, may be made without the written approval of the affected Privately Owned Amenity. The foregoing shall not apply, however, to amendments made by Declarant in exercising any rights reserved under this Declaration.

6.5 **Ownership and Operation of Privately Owned Amenities.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing existence, ownership or operation of any Privately Owned Amenity, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or operation of any Privately Owned Amenity, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Privately Owned Amenity by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Privately Owned Amenity to an "equity" club or similar arrangement whereby the Privately Owned Amenity or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Privately Owned Amenity to one or more affiliates, shareholders, employees, or independent contractors of Declarant. Declarant may cause any Privately Owned Amenity to initially be public or private, to convert any public Privately Owned Amenity to a private Privately Owned Amenity available to specified members only, and to convert any private Privately Owned Amenity to a public Privately Owned Amenity with the approval of the requisite number of the Privately Owned Amenity members pursuant to the Governing Documents for the Privately Owned Amenity. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

6.6 **Additional Restrictions.** Declarant hereby reserves for itself and grants for the benefit of any Owner of any Privately Owned Amenity the easements set forth in this Article. Declarant reserves the right to impose such additional restrictions relating to such easements as may from time to time reasonably be required to effectuate the purposes of such easements.

6.7 **Liquor Sales.** A Privately Owned Amenity may be used for the sale of liquor to be consumed on-site and/or off-site. In addition, special event liquor licenses and other permits may be obtained for activities within the Property from time to time. Special event liquor licenses for events held within Common Area or for events which utilize Common Area are subject to the approval of the Board; the Board shall have sole and absolute discretion to determine whether to grant approval of any request. By acceptance of a deed to a Unit, each Owner agrees not to contest any application for a liquor license to be used for the sale of liquor within a Privately Owned Amenity and not to object to any special event liquor licenses applied for or issued from time to time.

6.8 **Jurisdiction and Cooperation.** It is Declarant's intention that the Association and any owner of a Privately Owned Amenity shall cooperate to the maximum extent possible in the operation of the Property. The Association shall have no power to promulgate rules and regulations that would materially and adversely affect the typical social or other activities on or use of any Privately Owned Amenity.

6.9 **Appearance of Privately Owned Amenities.** Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel any Privately Owned Amenity owner to maintain the Privately Owned Amenity or any improvements thereon to any particular standard of care and that the appearance of the Privately Owned Amenity and improvements thereon shall be determined in the sole discretion of the respective owner of the Privately Owned Amenity.

Article 7

USE RESTRICTIONS

7.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Unit except structures containing residential dwellings and structures normally accessory thereto as approved by the Design Review Committee. Each dwelling shall contain a minimum square footage as set forth in this Declaration or in the Supplemental Declaration subjecting the Unit to this Declaration. Each dwelling within the Initial Development shall contain not less than 1,800 square feet, excluding any garage, pursuant to standards adopted by the Design Review Committee.

7.2 **Residential Use.** Units shall only be used for residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Unit, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Unit. The mere parking on a Unit of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Units, (b) the right of Declarant or any contractor or home builder to construct Improvements on any Unit, to store construction materials and equipment on such Units in the normal course of construction, and to use Units as sales or rental offices or model homes or apartments for purposes of sales or rental in RidgeWater, and (c) the right of the Owner of a Unit to maintain his or her professional personal library, keep his personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Unit by appointment only. The Board shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the Unit (which activities may be specified in Policies and Procedures adopted by the Board) and that the activities would not be in violation of applicable governmental ordinances.

7.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Unit, nor shall anything be done or placed on any Unit that interferes with or jeopardizes the enjoyment of other Units or the Common Areas, or that is a source of annoyance to residents. Occupants shall use extreme care about

creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers and audio equipment that may disturb other occupants of Units. No unlawful use shall be made of a Unit nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

7.4 **Animals.** Except as provided in any Supplemental Declaration, no animals of any kind shall be raised, bred or kept in or upon any Unit, except dogs, cats and such other household pets as may be approved by the Board, and then only provided they are not kept, bred or maintained for any commercial purposes or in unreasonable numbers and provided they are not prohibited by any Neighborhood Declaration or Supplemental Declaration annexing Additional Property to the Property. The Association may adopt reasonable Policies and Procedures designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Areas. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

7.5 **Rental of Units.** Unless an Owner is prohibited from leasing or renting his or her Unit by the terms of another document, an Owner shall be entitled to rent or lease his or her unit if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Governing Documents and a failure to comply with any provision of the Governing Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than one-hundred eighty (180) days; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Governing Documents; (iv) the Owner gives each tenant a copy of the Governing Documents; and (v) the Unit is rented to not more than one (1) family at any time. Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Unit; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration. No Owner may lease or rent an unimproved Unit.

7.6 **Maintenance of Structures.** Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting or staining, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights, privacy screening, and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Design Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time. Any change in appearance must first be approved by the Design Review Committee.

7.7 **Maintenance of Landscape.** Each Owner shall keep all sidewalks, shrubs, trees, grass and plantings of every kind on the Owner's Unit neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

7.8 **Prohibited Vehicles.** No mobile home, recreational vehicle (including campers), snowmobiles, all terrain vehicles, dirt bikes and other vehicles designed primarily for off-road use, commercial vehicles, any vehicles exceeding 9,000 pounds in gross vehicle weight, any trailer of any kind, any truck with a rated load capacity greater than one ton, or any boat, shall be kept, placed, maintained or parked for more than 24 hours or such other period as may be permitted pursuant to the Association Policies and Procedures on any Unit or Common Area except in enclosed garages approved by the Design Review Committee, areas designated by the Board, or screened from view in a manner approved by the Design Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property, nor may any such vehicle be occupied for residential purposes while located within RidgeWater. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Unit or Common Area. Except to the extent specifically authorized in the Policies and Procedures, off-road vehicles may

not be operated within the Property. The Association Policies and Procedures may restrict the amount of noise vehicles may generate.

7.9 **Parking and Street Obstructions.** Parking of vehicles of any type whatsoever on any portion of the streets or trails within the Property shall not be permitted. No Owner shall do anything which will in any manner prevent the streets within the Property from at all times being free and clear of all obstructions and in a safe condition for vehicular use. As long as applicable ordinances and laws are observed, any vehicle which is in violation of this Declaration may be removed.

7.10 **Grades, Slopes and Drainage.** Each Owner shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Unit or Common Area without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. Except with the express written permission of the Design Review Committee, no structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of or obstruct or retard the flow of water through drainage and infiltration systems.

7.11 **Subsurface Sewage Disposal Systems and Wells.** Owners are required to hook into community water and sewer systems. No septic tanks or private wells shall be installed on any Unit, except for temporary systems utilized by Declarant or a builder, with Declarant's approval, during the Development Period.

7.12 **Signage.**

(a) **General Prohibition; Exceptions.** No sign or billboard of any kind (including, but not limited to, commercial or political signs to the extent such prohibition is permitted by law) shall be displayed on any Unit to public view, except for:

(i) traffic and directional signs established by Declarant or the Board;

(ii) signs that are required for legal proceedings;

(iii) a Unit identification marker displaying the street address and inserts for a "for sale" sign and, during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall be determined by the Design Review Committee; and

(iv) signs, billboards or other advertising devices or structures used by Declarant or any builder authorized by Declarant in connection with the development, marketing, advertising, sale or rental of any interest in a Unit or other portion of the Property.

(b) **Design Review Committee Regulation.** The size, design and placement of the Unit identification marker shall be in accordance with the Design Guidelines established by the Design Review Committee. Except as provided in Section 7.12(a)(iv), signs shall be prohibited anywhere within the Unit that would be visible from outside the Unit.

7.13 **Outside Storage.** Storage areas, materials, machinery and equipment shall be prohibited upon any Unit, unless obscured from view of neighboring property and streets by an appropriate screen or enclosure approved by the Design Review Committee. Tarps and covers shall be prohibited except as otherwise provided in the Policies and Procedures and the Design Guidelines. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Unit within the Property only during the days on which rubbish is collected and after 8 p.m. of the preceding evening.

7.14 **Completion of Construction.** The construction of any building on any Unit, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the Unit shall not be occupied until so completed. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Design Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Units shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard and to be in compliance with forest fuels management and fire prevention practices required by the Association or the applicable Governmental Authority.

7.15 **Fences and Walls.** All walls and screens within the Property must conform to the requirements contained in the Design Guidelines. No perimeter fencing of a Unit will be permitted.

7.16 **Landscape.** Landscaping plans for each Unit shall be submitted to the Design Review Committee and shall be in compliance with sod and planting limitations and tree preservation guidelines as may be established by such Committee or the Association from time to time. Such landscaping must be completed within nine (9) months from the date occupancy of the Unit constructed thereon is approved by the applicable Governmental Authority. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Design Review Committee.

7.17 **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings nor any uncompleted building shall be used on any Unit at any time as a residence either temporarily or permanently.

7.18 **Antennas and Satellite Dishes** Over-the-air reception devices are not permitted within the Property except standard TV antennas and satellite dishes are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by Declarant, the Design Review Committee, the Board, or the Association, pertaining to the size, means, method and location of their installation.

7.19 **Limitations on Open Fires.** No incinerators or other open fires shall be kept or maintained on any Unit; provided, however, that the foregoing restrictions shall not apply to outdoor facilities such as propane or natural gas grills, portable barbeque units, gas-burning fire pits or to burning in connection with certain construction and other activities as permitted by the Design Guidelines or the Association Policies and Procedures.

7.20 **Recreational Equipment.** Playground, athletic or recreational equipment or structures, including without limitation, basketball backboards, hoops and related supporting structures, are permitted so long as they comply with the Design Guidelines and any other applicable restrictions adopted by the Design Review Committee or the Association. No such equipment shall be placed, installed or utilized on any Unit within RidgeWater except as permitted in accordance with this Section 7.20.

7.21 **Pest and Weed Control.** No Owner shall permit any thing or condition to exist upon any Unit which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin. Each owner shall control noxious weeds on the Owner's unit and shall comply with the noxious weed plan for RidgeWater as submitted to the Klamath County Weed Master and as required by the Klamath County Weed Control Enforcement Ordinance.

7.22 **Exterior Lighting.** All exterior lighting shall be subject to approval of the Design Review Committee. Seasonal holiday lighting and decorations are permissible if consistent with any applicable Policies and Procedures and if removed within thirty (30) days after the celebrated holiday. The Design Review Committee may regulate the shielding or hours of use of lighting in order to reduce annoyance to neighboring properties.

7.23 **Fire Sprinklers.** Any structure exceeding 6,200 square feet within Units intended for use and occupancy as an attached or detached residence must have automatic fire sprinkler systems installed, tested and maintained in accordance with codes and standards of the applicable Governmental Authority.

7.24 **Paths and Trails.** No Owner, other than Declarant or the Association, may create any paths or trails within the Property without the prior written approval of the Design Review Committee.

7.25 **Drainage.** Design and construction of drainage facilities for each Unit shall conform to the requirements of the Design Guidelines. The Design Guidelines generally require disposal of stormwater by infiltration and/or dispersion on each Unit.

7.26 **Landscape Irrigation.** Design, construction and operation of landscape irrigation systems shall conform to the requirements of the Design Guidelines and the water utility serving the Property. The irrigation system and controls installed on each Unit shall be capable of meeting, and be operated to meet, the irrigation efficiency and water conservation goals of the water utility.

7.27 **Solid Waste.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind, and no rubbish, refuse or garbage shall be allowed to accumulate. Disposal of solid waste, including normal household waste, yard waste and household hazardous waste from each Unit, shall conform to the requirements and procedures set forth by the Association. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such Person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

7.28 **Association Policies and Procedures.** In addition to the restrictions in this Declaration, the Association from time to time may adopt, modify or revoke such Policies and Procedures governing the conduct of Persons and the operation and use of Units and the Common Areas as it may deem necessary or appropriate to insure the peaceful and orderly use and enjoyment of the Property. A copy of the Policies and Procedures, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be furnished by the Board to each Owner and shall be binding upon all Owners and occupants of all Units. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws.

7.29 **Application to Additional Property.** The Supplemental Declaration subjecting Additional Property to this Declaration may establish additional or different restrictions governing the use of such Additional Property.

7.30 **Right to Approve Changes in the Standards Within the Community.** No amendment to or modification of any use restrictions contained in this Declaration or any Supplemental Declaration shall be effective without the prior notice to and the written consent of Declarant so long as Declarant owns property subject to this Declaration or prior to the expiration of the Development Period.

Article 8

DESIGN REVIEW COMMITTEE

8.1 **Design Review Requirements.** Except for Units owned by Declarant, no Improvement shall be commenced, erected, placed or altered on any Unit until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Design Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the then existing Improvements and as to location with respect to topography and finished grade elevations. The procedure and specific requirements for review and approval of construction shall be set forth in Design Guidelines adopted from time to time by the Design Review Committee.

8.2 **Membership: Appointment and Removal.** The Design Review Committee shall consist of as many persons, but not less than three, as Declarant may from time to time appoint. Declarant may remove any member of the Design Review Committee at its discretion at any time and may appoint new or additional members

at any time. The members of the Design Review Committee need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Design Review Committee may be broken into or may form subcommittees to preside over particular areas of review (e.g., a new construction subcommittee and a modifications subcommittee). Any reference in this Declaration to the Design Review Committee should be deemed to include a reference to any such subcommittee. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Design Review Committee. Declarant may at any time, and shall when Declarant no longer owns any property within the Property or which may be annexed to the Property, delegate to the Board the right to appoint or remove members of the Design Review Committee. In such event, or in the event Declarant fails to appoint a Design Review Committee, the Board shall assume responsibility for appointment and removal of members of the Design Review Committee, or if it fails to do so, the Board shall serve as the Design Review Committee.

8.3 Design Guidelines.

(a) Adoption of Design Guidelines. Declarant or the Design Review Committee shall prepare Design Guidelines, which may contain general provisions applicable to all of the Property as well as specific provisions which vary from Neighborhood to Neighborhood or any portions of a Neighborhood or Neighborhoods or types of use or Improvements. The Design Guidelines may establish building envelopes for each Unit and will require compliance with forest fuels management and fire prevention practices required by the applicable Governmental Authority. The Design Guidelines are not the exclusive basis for decisions of the Design Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) Publication of Design Guidelines. The Design Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(c) Amendment of Design Guidelines. Declarant shall have sole and full authority to amend the Design Guidelines during the Development Period notwithstanding a delegation of reviewing authority to the Design Review Committee unless Declarant also delegates the power to amend to the Design Review Committee. Upon termination or delegation of Declarant's right to amend, the Design Review Committee shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

8.4 Approval Procedures.

(a) Applications. Except as otherwise stated in this Article, Owners desiring to construct, alter, repair or replace any Improvements shall apply for an approval therefor from the Design Review Committee. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction (the "Work"), as applicable. The Design Guidelines or the Design Review Committee may require the submission of such additional information as may be reasonably necessary to consider any application.

(b) Committee Discretion. The Design Review Committee may, at its sole discretion, withhold consent to any proposed Work if the Design Review Committee finds the proposed Work would be inappropriate for the particular Unit or incompatible with the Design Guidelines. In reviewing each submission, the Design Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions

may vary as to the desirability and/or attractiveness of particular improvements. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Units within Property or other effect on the enjoyment of other Common Areas, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Design Review Committee reasonably believes to be relevant, may be taken into account by the Design Review Committee in determining whether or not to consent to any proposed Work. In the case of any Unit adjoining, adjacent to or otherwise in a direct line of sight of any Privately Owned Amenity, the Design Review Committee shall forward the plans and specifications for the proposed Work to the Owner of the Privately Owned Amenity for review and approval in accordance with Section 6.3 of this Declaration.

(c) **Committee Decision.** The Design Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Design Review Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. In the event the Design Review Committee fails to render its approval or disapproval within forty-five (45) working days after the Design Review Committee has received all materials required by it with respect to the proposal, or if no written notice of noncompliance has been given to the Owner within two (2) years after the completion thereof is readily apparent, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with; provided that the Owner must first issue a written notice to the Design Review Committee of the Owner's intent to proceed without such approval and no response from the Design Review Committee is forthcoming within ten (10) days after such notice is given.

(d) **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Design Review Committee shall have the power to act on behalf of the Design Review Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Design Review Committee. The Design Review Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

(e) **Design Review Committee Fees; Assistance.** The Design Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Compliance fees and deposits may also be required. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(f) **Appeal.** At any time after Declarant has delegated appointment of the members of the Design Review Committee to the Board pursuant to Section 8.2, any Owner adversely affected by action of the Design Review Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Design Review Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. If the Board of Directors is already acting as the Design Review Committee, the appeal shall be treated as a request for a rehearing, in which case the Board shall meet and receive evidence and argument on the matter. A final, conclusive decision shall be made by the Board within thirty (30) working days after receipt of such notification.

(g) **Effective Period of Consent.** The Design Review Committee's consent to any proposed Work shall automatically be revoked one year after issuance unless construction of the Work has been commenced or the Owner has applied for and received an extension of time from the Design Review Committee.

(h) **Notice to Declarant.** In the event Declarant delegates the right to appoint or remove members of the Design Review Committee to the Board prior to expiration of the Development Period, then until expiration of the Development Period, the Design Review Committee shall notify Declarant in writing within three

(3) business days after the Design Review Committee has approved any application relating to proposed Work within the scope of matters delegated to the Design Review Committee by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have five (5) business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Design Review Committee and the applicant.

8.5 **Variances.** The Design Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Design Review Committee from denying a variance in other circumstances.

8.6 **Approval Exceptions.** No approval shall be required to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of the Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure and modifications to enclose garages as living space shall be subject to approval. Any request to enclose a garage as living space must include plans for a replacement garage on the Unit. If approval of a garage enclosure is granted by the Design Review Committee such approval may be conditional on the construction of a replacement garage.

8.7 **Approval Exemptions.** This Article shall not apply to Declarant's activities during the Development Period. Municipal, state, federal and other governmental or quasi-governmental buildings and facilities, including post offices, are subject to architectural review under this Article. However, such review shall be binding upon any Governmental Authority only to the extent permitted by law.

8.8 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Design Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans and specifications for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans and specifications, or other matters subsequently or additionally submitted for approval.

8.9 **Estoppel Certificate.** Within fifteen (15) business days after written request is delivered to the Design Review Committee by any Owner, and upon payment to the Design Review Committee of a reasonable fee fixed by the Design Review Committee to cover costs, the Design Review Committee shall provide such Owner with an estoppel certificate executed by a member of the Design Review Committee and acknowledged, certifying with respect to any Unit owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Unit by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being conclusive as between Declarant, the Design Review Committee, the Association and all Owners, and such purchaser or mortgagee.

8.10 **Enforcement.** If during or after the construction the Design Review Committee finds that the Work was not performed in substantial conformance with the approval granted, or that the required approval was not obtained, the Committee shall notify the Owner in writing of the noncompliance, specifying the particulars of the noncompliance. The Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an owner fails

to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 8.4(f), either the Design Review Committee or the Board may enforce compliance in accordance with the procedures set forth in Section 12.1 below.

8.11 **Limitation of Liability.** Neither the Design Review Committee nor any member of the Design Review Committee shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Design Review Committee or a member of the Design Review Committee, provided only that the Design Review Committee or the member has, in accordance with the actual knowledge possessed by the Committee or Member, acted in good faith. Any such damages or expenses for which the Committee or any Member is liable and to which any Owner becomes entitled shall be a Common Expense. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of RidgeWater; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Design Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, or of similar design. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

Article 9

OWNERS ASSOCIATION

Declarant shall organize the Association as the association of all of the Owners within the Property. Such Association, and its successors and assigns, shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein.

9.1 **Organization.** Declarant shall, before the first Unit is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated Association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated Association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated Association.

9.2 **Membership.** Every Owner of one or more Units within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Units within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

9.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Allocation.** Subject to Declarant's right to designate the number of Units attributable to any vacant land prior to its development in accordance with the Development Plan, each Unit shall be allocated one vote.

(b) **Classes of Voting Membership.** The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Class B Member and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Property, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above.

Class B. The Class B Member shall be the Declarant and shall be entitled to ten times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) Expiration of the Development Period; or
- (ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

9.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

- (a) The powers, duties and obligations granted to the Association by this Declaration.
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.
- (c) The powers, duties and obligations of a homeowners' association pursuant to the Oregon Planned Community Act.
- (d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions in this Declaration, accompanied by any required changes in the Articles of Incorporation or Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

9.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- (a) **Maintenance.** The Association shall provide maintenance for portions of the Property as provided in Article 10 and other provisions of this Declaration.
- (b) **Insurance.** The Association shall obtain and maintain in force certain policies of insurance as determined by the Board.
- (c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Areas or other property which the Association insures, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. If insurance proceeds are insufficient to cover the costs of

reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of all or some of the Owners, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(d) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Policies and Procedures as provided in Section 7.28.

(e) **Assessments.** The Association shall adopt budgets and impose and collect certain Assessments as provided in Article 11.

(f) **Community-Wide Standards.** The Association shall have the authority to establish a minimum Community-Wide Standard of maintenance and aesthetic appearance for the Property, including, without limitation, Units, Common Areas and Neighborhood Common Areas. The Association shall have the authority to enforce such standards including, without limitation, the right to levy fines which if unpaid shall constitute an Individual Assessment and a lien on the violator's property as set forth in this Declaration. The Association also shall have the right of self-help to abate any violations or nonconforming use or activity, which shall not be deemed a trespass, and the costs of which shall be recovered by Individual Assessments. The Association shall have the right, but not the obligation, to enforce any provision of this Declaration or the governing documents of a Neighborhood Association if it fails or refuses to do so, provided that the Neighborhood Association shall be the primary entity responsible for enforcing its own Neighborhood Declaration and rules and regulations.

(g) **Enforcement.** The Association may perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Policies and Procedures adopted by the Association, including, without limitation, enforcement of the decisions of the Design Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(h) **Employment of Agents, Advisers and Contractors.** The Association may employ the services of any Person as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the Unit Owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by ten percent on each fifth anniversary of the Recording of this Declaration.

(i) **Borrow Money.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and, subject to Section 5.8, encumber the Common Areas as security for the repayment of such borrowed money.

(j) **Hold Title and Make Conveyances.** The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant.

(k) **Transfer, Dedication and Encumbrance of Common Areas.** Except as otherwise provided in Section 5.8, the Association may sell, transfer or encumber all or any portion of the Common Areas to

which it then holds title of record to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

(l) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those who do not assent to such charges and to such other Policies and Procedures as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(m) **Joint Use Agreements.** The Association may enter into joint use agreements with other associations, entities or persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas. The Association may enter into agreements with one or more Neighborhood Associations or other Persons within RidgeWater to provide joint use, management, and administrative services, and to perform such other community related activities as may be agreed upon by the Association and such Neighborhood Association(s) or Persons. The expense of providing such services by the Association shall be allocated by agreement between the parties.

(n) **Administration of Particular Areas Within RidgeWater.** In addition to its other powers and obligations, the Association may be obligated by Declarant or agreement to provide maintenance, architectural review, assessment collection, rules enforcement, or other services to, and levy assessments against, Owners within particular areas of the Property (e.g., one or more Neighborhoods). In such event, the Association shall provide such services in the manner prescribed, and the expenses of such services shall be allocated and assessed as provided in the covenants, easements, or agreement obligating the Association. In the event of a conflict between such other covenants, easements, or agreements and this Declaration, this Declaration shall control.

(o) **Additional Services.** Any Neighborhood, acting either through a Neighborhood Committee or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the voting rights within the Neighborhood, the Association may provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

(p) **Assumption of Other's Maintenance Responsibility.** The Association may, but shall not be obligated to, assume maintenance responsibility for property which is the responsibility of another Person (e.g., a Neighborhood Association or any local or state governmental authority) if, in the discretion of the Board, the maintenance of such property provides a benefit to the Property and/or such property is not otherwise being maintained in accordance with the Community-Wide Standard. The cost of maintenance assumed in accordance with this section may be a Common Expense to be allocated among all Owners or may be assessed to a Neighborhood Association or as Individual Assessments levied only against the benefited parties.

(q) **Wildland Fire Protection.** The Association shall adopt and enforce forest fuels management and fire prevention practices applicable to Units and Common Areas within the Property.

(r) **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within RidgeWater designed to make the Property more enjoyable or safer than it otherwise might be. Neither the Association, Declarant nor any managing agent shall be considered insurers or guarantors of security or safety within the Property nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any system or measure, including any mechanism or system for

limiting access to the Property, cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which it is designed or intended. Each Owner acknowledges and agrees that the Association, the Board and any managing agent are not insurers and that each person using the Property assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.

(s) **Municipal Services.** In addition to any obligations it may have under this Declaration to share costs, the Association may, but is not obligated by this Declaration to, contribute funds to any Governmental Authority for the purpose of increasing its capacity to provide services, such as, but not limited to, maintenance of roads, storm drainage facilities, sidewalks, lighting, trails and roadside landscaping, and police and fire protection services within the Property.

(t) **Other Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, garbage and trash removal.

(u) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

(v) **Contracts Entered into by Declarant or Before Turnover Meeting** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

9.6 **Board of Directors.** The powers and duties of the Association and the affairs of the Association shall be conducted by its Board of Directors duly appointed or elected as provided in this section, except to the extent that a vote of the members is required by this Declaration or the Bylaws.

(a) **Initial Board** Upon incorporation of the Association and until the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to individual residential purchasers (as opposed to builders), the Board shall be composed of three directors, all of whom shall be appointed by Declarant.

(b) **When Fifty Percent (50%) of the Units Have Been Sold.** Commencing on the first annual meeting after fifty percent (50%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of such Units have been conveyed, the Board shall be composed of three members, two of whom shall be appointed by Declarant and one of whom shall be elected by the Class A Members.

(c) **When Ninety Percent (90%) of the Units Have Been Sold.** Commencing on the first annual meeting after ninety percent (90%) of the Units authorized by the Development Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, two of whom shall be appointed by Declarant and three of whom shall be elected by the Class A Members.

(d) **Turnover Meeting After Termination of Class B Membership.** The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Declarant will turn over administrative control to the Owners. Commencing with the Turnover meeting, the Board shall be composed of five directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

9.7 **Voting Groups.** In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Neighborhoods (or the Units outside any Neighborhood) for the purpose of electing directors to the Board, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding the representation of others. The number of Voting Groups within the Property shall not exceed the total number of directors to be elected by the Class A Members. The Owners in Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Declarant shall establish Voting Groups, if at all, not later than the termination of Class B membership by filing with the Association and Recording a supplemental declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B membership. After termination of the Class B membership, the Board shall have the right to Record a supplemental declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such supplemental declaration by Declarant shall constitute an amendment to this Declaration and no consent or approval of the Owners shall be required, except as stated in this section. Until such time as Voting Groups are established, all of the members shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Property which are not assigned to a specific Voting Group shall constitute a single Voting Group.

9.8 **Liability.** Neither a member of the Board of Directors nor an officer of the Association or member of the Design Review Committee or any other committee established by the Board of Directors, shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer or committee member of the Association is threatened with or made a party to any proceeding because the individual was or is a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

9.9 **Neighborhood Associations.** The Board may assist the Neighborhood Associations in the performance of their duties and obligations under their respective Neighborhood Declarations, and the Association shall cooperate with each Neighborhood Association so that each of those entities can most efficiently and economically provide their respective services to Owners. The Association or a Neighborhood Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for Owners within the particular Neighborhood or by an item in the Neighborhood Association's budget which shall be collected through Neighborhood Assessments and remitted to the Association. If a Neighborhood Association fails or is unable to perform a duty or obligation required by its Neighborhood Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Neighborhood Association, perform such duties or obligations until such time as the Neighborhood Association is able to resume such functions, and the Association may charge the Neighborhood Association a reasonable fee for the performance of such functions.

9.10 **Powers of the Association Relating to Neighborhoods.** Each Neighborhood Committee shall be a committee of the Association. The Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee or Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or the Owners

or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Neighborhood or Individual Assessments to cover the costs, as well as an administrative charge and sanctions.

9.11 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be Recorded.

Article 10

MAINTENANCE

10.1 **Maintenance of Units.** Each Owner shall maintain the Owner's Unit and Improvements thereon in a clean and attractive condition, in good repair, in such fashion as not to create a fire or other hazard and in accordance with the Community-Wide Standard. Such maintenance shall include, without limitation, painting or staining, repair, replacement and care for roofs, gutters, downpours, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Unit neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within such period of time as may be specified in the Design Guidelines, or if no such period is specified, within a reasonable period of time.

10.2 **Maintenance of Common Areas** The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas and Limited Common Areas within or immediately adjoining rights of way, including but not limited to grass, trees, walks, private roads, entrance gates, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to render them fit for the purposes for which they are intended.

10.3 **Maintenance of Unit Identification Marker.** The Association shall perform or contract to perform maintenance of the identification marker described in Section 7.12(a)(iii). All costs of such maintenance shall be assessed as General Assessments, Individual Assessments or Neighborhood Assessments as determined by the Board. The Owner of any Unit upon which such identification marker is installed shall permit the Association to enter upon the Unit, but not Improvements constructed thereon, to perform the maintenance of such identification marker. The Owner and occupant of each Unit shall be responsible for controlling such Owner's or occupant's pets so as to not harm or otherwise disturb persons performing such maintenance on behalf of the Association.

10.4 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for the cost of maintaining utility lines within his or her Unit.

10.5 **Corrective Maintenance.** The Association may assume the maintenance responsibilities set out in this Declaration or any Neighborhood Declaration for any Neighborhood or Owner, after giving the responsible Neighborhood Association or Owner reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners to which the services are provided and shall be Neighborhood Assessments or Individual Assessments as determined by the Board. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard.

10.6 **Damage Liability.** Any damage to any Common Area caused by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 11

ASSESSMENTS

11.1 **Power to Assess.** The Association may levy Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Areas.

11.2 **Apportionment of Assessments.** All Units, other than Units exempted from assessment pursuant to Section 11.5, shall pay a pro rata share of the General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Units are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to such Assessment. Notwithstanding the provisions of this section, however, an amendment to this Declaration may specify a special allocation of assessing the costs of operating and maintaining the facility on a Common Area in order to more fairly allocate such cost, taking into the account the extent of use or other factors.

11.3 **Types of Assessments.**

(a) **General Assessments.** The Association is hereby authorized to levy General Assessments against all Units subject to Assessments to fund the Common Expenses. The amount of the General Assessment allocated to each Unit shall be determined in the manner described in Section 11.2. In determining the General Assessments, the Board may consider any Assessment income expected to be generated from any additional Units or changes in the status of the then-existing Units anticipated during the fiscal year. The Board shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over Assessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 11.7. The Board may revise the budget and adjust the General Assessment from time to time during the year. Within 30 days after the adoption of a final budget by the Board, the Board shall send to each Owner a copy of the final budget. If the Board fails to adopt a budget, the last adopted budget shall continue in effect.

(b) **Neighborhood Assessments.** The Association or, after Declarant or the Board delegate the same thereto, a Neighborhood Association, is authorized to levy Neighborhood Assessments against all of the Units within such Neighborhood to fund Neighborhood Common Expenses. The determination of the allocation of Neighborhood Common Expenses may be undertaken in the same manner applicable to the Association with respect to allocating General Assessments, Special Assessments or Emergency Assessments, as applicable, unless otherwise provided in the Neighborhood Declaration.

(c) **Special Assessments.** The Board may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to twenty percent (20%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting

rights, together with the written consent of the Class B Member. Special Assessments shall be apportioned as provided in Section 11.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

(d) **Emergency Assessments.** If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as set forth in Section 11.2 above and payable as determined by the Board of Directors.

(e) **Limited Common Area Assessments.** General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively to the Units having the right to use such Limited Common Areas.

(f) **Individual Assessments.** Any Common Expense or any part of a Common Expense benefiting fewer than all of the Units may be assessed exclusively against the Units benefited as an Individual Assessment. Individual Assessments shall also include default Assessments levied against any Unit to reimburse the Association or Neighborhood Association for costs incurred in bringing such Unit or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, Individual Assessments shall be due thirty (30) days after the Board has given written notice thereof to the Owners subject to Individual Assessments.

11.4 **Assessment of Additional Property.** When Additional Property is annexed to the Property, the Units included therein shall become subject to Assessments from the date of such annexation, except for those Units exempt from assessment pursuant to Section 11.5. All other Units shall pay such Assessments in the amount then being paid by other Units. The Board, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Common Areas and recompute Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a Supplemental Declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

11.5 **Exempt Property.** The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments:

(a) All Common Areas, Neighborhood Common Areas, Limited Common Areas and Community Improvements;

(b) Any property dedicated to and accepted by any Governmental Authority or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of the Owners or the members of a Neighborhood Association or owned by the Association or the members of a Neighborhood Association as tenants-in-common;

(d) Units owned by Declarant until such time as a dwelling has been constructed on the Unit and the Unit is occupied for residential use, except that Units owned by Declarant shall be subject to assessments for reserves under Section 11.7; and

(e) Declarant reserves the right to extend the rights contained in paragraph 11.5(d) to other developers and builders in its sole discretion. The exemption contained in this paragraph 11.5(e) shall not be extended to assessments for reserves as required by Section 11.7.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

11.6 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.7, separate and apart from its other funds, in an Operations Fund held in a bank account in the State of Oregon in the name of the Association. The Association shall use such fund for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Units, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services, repairs, replacements of that portion of the Property for which the Association is responsible.
- (b) Payment of the cost of insurance maintained by the Association.
- (c) Payment of taxes assessed against the Common Areas and any Improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.7 **Reserve Fund.**

(a) **Establishment of Account.** Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a Reserve Fund in a bank account in the State of Oregon in the name of the Association for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Unit assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular General Assessment for the Unit. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall include:

- (i) Identification of all items for which reserves are to be established;
- (ii) The estimated remaining useful life of each item as of the date of the reserve study;

(iii) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

(iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund.** The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Units. Sellers of the Units, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

11.8 **Declarant's Subsidy.** Declarant may, but shall not be obligated to, reduce the General Assessments for any fiscal year by payment of a subsidy (in addition to any other amounts then owed by Declarant), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the Association's budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant.

11.9 **Commencement of Assessment Obligation; Time of Payment.** The obligation to pay Assessments under this Declaration shall commence as to each Unit, on the first day of the month after such Unit becomes subject to this Declaration, or the Unit ceases to be exempt from Assessments, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence for such Unit.

11.10 **Payment of Assessments.** Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately. Until termination of the Development Period, any obligation of Declarant to pay Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

11.11 **Advance Payments Upon Sale.** The Association or any Neighborhood Association may require any Owner to obtain, in conjunction with the closing of any sale of such Owner's Unit, a deposit from the purchaser equal to the then estimated amount of assessments for three (3) months due to such Association. Any Owner entering into such a contract shall be obligated to collect or otherwise deposit such Assessments with the appropriate Association upon the closing of such conveyance and shall be liable therefor after such conveyance if those Assessments are ultimately not received by the Association. No failure to require or collect such estimated Assessments shall impair any contract of sale or provide any grounds for a rescission of such sale.

11.12 **Transfer Assessment.** In addition to all other assessments provided for herein, each Person acquiring fee title to a Unit shall pay an assessment or fee in the amount of Three Hundred Dollars (\$300) to the Association, except that in the case of simultaneous transfers of multiple Units to a single developer for development and resale, only one such fee shall be assessed. Such assessment shall be paid at closing of the

purchase of the Unit and shall apply each time the Unit is re-sold. The assessment may be used by the Association to defray the costs of reflecting the Unit ownership change on its books and records or such other expenses as it deems appropriate in its sole and absolute discretion.

11.13 **Personal Obligations for Assessments.** Declarant, for each Unit owned by it within the Property, hereby covenants, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Sections 12.3 and 12.4, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12.

11.14 **Voluntary Conveyance.** In a voluntary conveyance of a Unit the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Unit effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

11.15 **Neighborhood Association's Obligation to Pay Assessments.** A Neighborhood Association shall be jointly and severally obligated with the Owners of Units subject to its jurisdiction for all General, Special and Emergency Assessments levied against such Units. Each such Neighborhood Association shall include as a line item in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all General, Special, Emergency and Limited Common Area Assessments levied by the Association against the Units within its jurisdiction and such amount shall have first priority for payment out of the income of the Neighborhood Association. The obligation of each Neighborhood Association for collection and payment of Assessments to the Association shall be enforceable by the Association, and the Association may bring suit against any Neighborhood Association to collect delinquent Assessments, in addition to any other rights or remedies it may have hereunder or at law or in equity. The foregoing collection remedies shall not, however, constitute a lien upon all property subject to the jurisdiction of a particular Neighborhood Association. The obligation of each Neighborhood Association to collect and pay such Assessments to the Association pursuant to this section shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Neighborhood Association.

11.16 **No Waiver.** Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

11.17 **No Option to Exempt.** No Owner may exempt himself from liability for Assessments by non-use of Common Areas, abandonment of his Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

11.18 **Certificate.** Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Article 12

ENFORCEMENT

12.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Unit an Improvement contrary to the provisions of this Declaration, or violates any provisions of the Governing Documents, then the Association acting through the Board shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days after issuing written notice to the Owner, then the Association acting through the Board, shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner based upon a resolution adopted by the Board of Directors that is delivered to each Unit, mailed to the mailing address of each Unit or mailed to the mailing address designated by the owner of each Unit in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or the Policies and Procedures to be towed and impounded at the Owners' expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Unit in the absence of a foreclosure thereof or court order to such effect; and

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

12.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility service paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any General Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Unit in the absence of a foreclosure thereof or court order to such effect.

(b) The Association shall have a lien in accordance with ORS 94.709 against each Unit for any Assessment levied against the Unit, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Unit and may foreclose such lien in the manner provided in ORS 94.709.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

- (d) The Association shall have any other remedy available to it by law or in equity.

12.3 **Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing Portland, Oregon prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Unit, mailed to the mailing address of each Unit or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

12.4 **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.5 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 12, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second Mortgage on any Unit, or any part thereof, to do the same or similar acts.

12.6 **Nonexclusiveness and Cumulation of Remedies** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

12.7 **Dispute Resolution**

(a) **Mediation.**

(i) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Klamath County,

Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(ii) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(iii) If a qualified dispute resolution program exists within Klamath County, Oregon and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(iv) Unless a stay has been granted under paragraph (a)(iii) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(v) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(vi) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

(b) **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration or the Bylaws, to obtain a judicial construction of any provision of the Declaration or the Bylaws, to rescind this Declaration or the Bylaws or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided.

(c) **Survival.** The mediation agreement set forth in this Section 12.7 shall survive the transfer by any party of its interest or involvement in the Property and any Unit therein and the termination of this Declaration.

Article 13

MORTGAGEES

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any Mortgage on such Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Unit shall not affect the Assessment lien, but the sale or transfer of any Unit which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Unit from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

13.2 **Reimbursement of First Mortgagees.** First mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

13.3 **Notification of First Mortgagee.** If a first Mortgagee has requested such notice in writing from the Association, the Board shall notify such Mortgagee of any individual Unit of any default in performance of this Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

13.4 **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article 14

AMENDMENT AND REPEAL

14.1 **How Proposed.** Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Units, based upon one vote for each such Unit, together with the written consent of the Class B Member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Unit or any uses to which any Unit is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Unit unless the Owners of the affected Units unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Unit unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment.

14.3 **Recordation.** Any such amendment or repeal shall become effective only upon Recordation in the Deed Records of Klamath County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or

repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon; or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 15

MISCELLANEOUS PROVISIONS

15.1 **No Implied Obligations** Nothing in this Declaration shall be construed to require Declarant or any successor to subject Additional Property to this Declaration or to improve or develop any of the Property or to do so for any particular uses.

15.2 **Right to Approve Additional Covenants.** No Person shall record any declaration of covenants, conditions, and restrictions, declaration of condominium or similar instrument affecting any portion of the Property without Declarant's prior written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force or effect unless subsequently approved in writing by Declarant.

15.3 **Right to Transfer or Assign Declarant's Rights.** Any or all of Declarant's rights and related obligations under this Declaration may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant then has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and Recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.

15.4 **Joint Owners.** Unless otherwise provided in a Neighborhood Declaration, in any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.

15.5 **Lessees and Other Invitees.** Lessees, licensees, invitees, contractors, family members, guests, and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his or her Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such Persons in the same manner and to the same extent as if the failure had been committed by such Owner.

15.6 **Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Unit shall give the Association written notice within seven (7) days after such transfer of the name and address

of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.7 **Exclusive Rights to Use Name of Development.** No Person shall use the name "RidgeWater" or any derivative of such name in any printed, digital (i.e. internet) or other promotional or commercial material without Declarant's prior written consent. However, an Owner may use the name "RidgeWater" where such term is used solely to specify that the Owner's property is located within the Property and Neighborhood Associations shall be entitled to use the words "RidgeWater" in their names. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Unit which agreement purports to grant any right to such third party to use the name "RidgeWater" or any derivative of such name in violation of this provision.

15.8 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

15.9 **Construction; Severability; Number; Captions.** This Declaration shall be governed and construed under the laws of the State of Oregon. It shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory sections of this Declaration. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

15.10 **Terminology and Captions.** As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.11 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: (a) If to Declarant or the Association, 5115 Running Y Road, Klamath Falls, Oregon 97601; (b) if to a Neighborhood Association, to the address designated by such Neighborhood Association in writing with the Association, or at the principal office of such Neighborhood Association; or (c) if to an Owner, to such Owner at the address of such Owner's property within the jurisdiction of the Association or such other address as it has registered with the Association. If to an Owner, at the address given by the Owner at the time of purchase of a Unit, or at the Unit. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

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EXHIBIT A

All of the real property shown on the plat of Tract 1472, RidgeWater Subdivision, Phase 1 recorded September 6, 2006, in the Records of Klamath County, Oregon as Document No. 2006-17961, except Lot 105, Lot 106 and Lot 108.

EXHIBIT B

Neighborhoods and Land Classifications Within Initial Development

All of the following described property as shown on Tract 1472, RidgeWater Subdivision, Phase 1 plat recorded September 6, 2006 in the Records of Klamath County, Oregon as Document No. 2006-17961:

Neighborhoods - There are no Neighborhoods in the Initial Development at this time.

Units - Lots 1 through 104 and Lot 107

Common Areas - All roadways as shown on the above-referenced plat; and
Common Area lots "A" through "T"

Excluded Areas - Lots 105, 106 and 108

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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
RUNNING Y RANCH RESORT

DECLARANT: RUNNING Y RESORT, INC.
an Oregon corporation

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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
RUNNING Y RANCH RESORT

THIS DECLARATION is made this 2nd day of August, 1996,
by RUNNING Y RESORT, INC., an Oregon corporation ("Declarant").

R E C I T A L S:

A. Declarant owns approximately 3,540 acres within Klamath County, Oregon, adjacent to Klamath Lake. Declarant proposes to develop portions of such property, together with other property that may subsequently be acquired by Declarant, as a planned development to be known as "Running Y Ranch Resort" pursuant to a Master Plan approved by Klamath County, Oregon. Declarant reserves the right to amend such Master Plan, subject to any approvals required by Klamath County, Oregon.

B. Purchasers of property within Running Y Ranch Resort hereby consent to the Master Plan for Running Y Ranch Resort, as the same may hereafter be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in Running Y Ranch Resort will have the advantage of any further development of Running Y Ranch Resort, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to Running Y Ranch Resort and subjecting areas to this Declaration.

C. Declarant anticipates that Running Y Ranch Resort may include a variety of different types of development parcels. For example, residential parcels within Running Y Ranch Resort may include single-family lots, townhouses, zero lot line or other common wall type structures, condominiums, fractional ownership dwellings, or timeshare interests. Recreation facilities may include facilities that are common areas for Running Y Ranch Resort and available only for use by Running Y Ranch Resort owners. Other recreation facilities, including one or more golf courses, may be privately owned by Declarant or third parties and available for use by the public. Finally, Running Y Ranch Resort may include one or more commercial developments; all in accordance with the Master Plan, as the same may hereafter be amended.

D. Declarant has recorded the plat of Running Y Resort, Phase 1 in the Plat Records of Klamath County, Oregon. Declarant proposes to subject the property described in such plat, except Lots 83 through 95 thereof, Running Y Road, Coopers Hawk Road and Osprey Lane, as shown thereon, to the conditions, restrictions, charges and easements set forth in this Declaration for the benefit of such property and its present and subsequent owners, and to establish such property as the first phase of Running Y Ranch Resort and as a separate Project within Running Y

Ranch Resort to be known as "Ridge View Homesites." Additional areas and Projects may be annexed to Running Y Ranch Resort in accordance with the provisions set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in the Plat of Running Y Resort, Phase 1, except Lots 83 through 95 thereof, Running Y Road and Coopers Hawk Road and Osprey Lane as shown thereon, shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1.

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Additional Property" means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2 below.

1.2 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 11.3 below.

1.3 "Assessment Unit" means a factor assigned to each Lot in accordance with Section 11.3 below for purposes of determining such Lot's pro rata share of Annual Assessments, Special Assessments, Limited Common Area Assessments and Emergency Assessments.

1.4 "Association" means the nonprofit corporation to be formed to serve as the owners association as provided in Article 9 below, and its successors and assigns.

1.5 "Architectural Review Committee" or the "Committee" means the committee appointed pursuant to Article 8 hereof.

1.6 "Commercial Lot" and "Commercial Living Unit" mean, respectively, any Lot or Living Unit used for nonresidential, commercial purposes, including, without limitation, rental apartment and hotel, motel or lodge-type projects and retail, restaurant, lounge or recreational uses, and designated as such in the Declaration annexing such Lot to Running Y Ranch Resort.

1.7 "Commercial Project" means any Project consisting of one or more Commercial Lots or Commercial Living Units.

1.8 "Common Areas" means those private ways, lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Running Y Ranch Resort, including any Improvements thereon, and shall also include Common Easement Areas; Limited Common Areas and any Lots converted to Common Areas as provided in Section 3.3 below.

1.9 "Common Easement Areas" means those easements established for the benefit of all property within Running Y Ranch Resort pursuant to any plat or declaration annexing additional property to Running Y Ranch Resort.

1.10 "Condominium" means any property submitted to the Oregon Condominium Act in the manner provided by ORS Chapter 100 or its successors.

1.11 "Declarant" means Running Y Resort, Inc., an Oregon corporation, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed development, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.12 "Golf Course" means any golf course or courses within or adjacent to the Resort.

1.13 "Golf Course Owner" means the person or entity operating or owning any Golf Course. In the event there is more than one operator or owner, the term shall mean all such operators and owners.

1.14 "Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to the Property.

1.15 "Initial Development" means the real property referred to in Section 2.1 below.

1.16 "Limited Common Areas" means those Common Areas for the exclusive use of certain Lots as designated in this Declaration or the declaration annexing property to Running Y Ranch Resort, and shall include Project Common Areas in Projects that do not have an Association.

1.17 "Living Unit" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, including a house, apartment or dwelling unit within a multiple occupancy building and a Condominium unit.

1.18 "Lot" means a platted or partitioned lot, tract or Condominium unit within the Property, with the exception of any tract or lot marked on a plat of the Property as being common or open space or so designated in this Declaration or the declaration annexing such property to

Running Y Ranch Resort. Lot does not include Common Areas, Project Common Areas or Public Areas.

1.19 "Master Plan" means the Master Plan of Running Y Ranch Resort approved by Klamath County, Oregon, as the same may hereafter be amended.

1.20 "Mortgage" means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.21 "Owner" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.22 "Policies and Procedures" means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.23 "Project" means any separately designated and developed area constructed upon a portion of the Property and comprised of discrete types of development or use, including, without limitation, the following types of uses:

- (a) A Condominium project;
- (b) A timeshare or fractional interest project;
- (c) A hotel, motel, lodge or similar building or group of buildings;
- (d) An apartment or residential rental building or group of buildings;
- (e) A residential development of single-family detached houses;
- (f) Residential development of multi-plex, townhomes or zero lot line homes;
- (g) A commercial development of any kind, including retail, restaurant, lounge or recreational uses; or
- (h) Any other separately designated area within Running Y Ranch Resort devoted to a discrete purpose.

Any such Project shall be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to Running Y Ranch Resort.

1.24 "Project Assessments" means assessments levied pursuant to a specific Project Declaration.

1.25 "Project Association" means any association established for a specific Project pursuant to a Project Declaration.

1.26 "Project Committee" means a committee appointed or elected for a Project pursuant to Section 9.13 below.

1.27 "Project Common Area" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their families, tenants, employees, guests and invitees.

1.28 "Project Declaration" means a declaration of easements, covenants, conditions and restrictions establishing a plan of Condominium ownership or townhouse ownership, fractional ownership, timeshare ownership or otherwise imposing a unified development scheme on a particular Project.

1.29 "Project Parcel" means the portion of the Resort upon which a Project is located, as indicated, if appropriate, on the plat relating to the Project and as designated in the Project Declaration.

1.30 "Public Areas" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the Declaration annexing such property to Running Y Ranch Resort.

1.31 "Recreational Facilities" means recreational facilities or amenities owned by Declarant or any third party and located on the Property from time to time, including, but not limited to one or more Golf Courses and clubhouse, and parking for any such facilities.

1.32 "Residential Lots" and "Residential Living Units" mean, respectively, those Lots or Living Units to be used for residential purposes, exclusive of rental apartment and hotel, motel and lodge-type projects, and designated as such in this Declaration or in the declaration annexing such Lots to Running Y Ranch Resort.

1.33 "Resort" means Running Y Ranch Resort.

1.34 "Running Y Ranch Resort" means the Initial Development and any Additional Property annexed to this Declaration.

1.35 "**Sold**" means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.36 "**This Declaration**" means all of the easements, covenants, restrictions and charges set forth in this Declaration, together with any Policies and Procedures promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Running Y Ranch Resort.

1.37 "**Voting Unit**" means any one or more of the interests in the Resort designated in Section 9.3 below, to which a right to vote in Association matters is allocated.

ARTICLE 2.

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Initial Development.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All that certain real property located in Klamath County, Oregon, in that certain plat entitled "Running Y Resort, Phase 1" filed in the plat records of Klamath County, Oregon, on the 7th day of August, 1976 in Book 227, page 63-67, except Lots 83 through 95 thereof, Running Y Road, Coopers Hawk Road and Osprey Lane, as shown on such plat.

The Initial Development contains 82 single-family Lots and will contain not more than 82 Living Units.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Running Y Ranch Resort as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Running Y Ranch Resort. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The property included in any such annexation shall thereby become a part of Running Y Ranch Resort and this Declaration, and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units which Declarant may create or annex to Running Y Ranch Resort, except as may be established by applicable ordinances of the Klamath County, Oregon. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Klamath County, Oregon.

(e) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 9.3 below.

(f) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 11.9 below.

2.3 **Improvements.** Declarant does not agree to build any Improvements other than as specified in any Property Report issued pursuant to the Interstate Land Sales Full Disclosure Act, but may elect, at its option, to build additional Improvements.

2.4 **Withdrawal of Property.** Declarant may withdraw property from Running Y Ranch Resort by an amendment to this Declaration executed by Declarant and recorded in the Deed Records of Klamath County, Oregon. All voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated to the remaining Lots as provided in Section 11.9 below. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Initial Development or Additional Property annexed pursuant to a declaration described in Section 2.2 at any time prior to the sale of the first Lot in the plat of the Initial Development, or in the case of Additional Property, prior to the sale of the first Lot in the property annexed by a

supplemental declaration, or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not reduce the total number of Living Units. In addition, Declarant may withdraw any property then owned by Declarant or the Association if such withdrawal is a result of any changes in Declarant's plans for the Resort, provided that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Resort and is approved by a majority of the voting rights of the Association.

ARTICLE 3.

PROJECT DESIGNATION AND LAND CLASSIFICATIONS

3.1 Project Designation. Ridge View Homesites, consisting of Lots 1 through 82 of the Initial Development, together with such Additional Property declared to be part of such Project in any supplemental declaration annexing Additional Property to Running Y Ranch Resort, is hereby designated as a Project within Running Y Ranch Resort.

3.2 Land Classifications Within Initial Development. All land within the Initial Development is included in one or another of the following classifications:

(a) Residential Lots, which shall consist of all Lots included within the Initial Development.

(b) Common Areas, which shall be the private ways shown as Thrush Lane, Sisken Lane, Kestrel Road, Merganser Road and Towhee Lane on the plat of the Initial Development.

(c) There are no Common Easement Areas, Limited Common Areas, Project Common Areas or Public Areas in the Initial Development.

3.3 Conversion of Residential or Commercial Lots to Common Areas. Declarant may elect to build common facilities on one or more Residential or Commercial Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Klamath County. Such declaration shall be executed by Declarant, as owner of the Lots.

3.4 Consolidation of Lots. The Owner of two adjoining Lots, with the approval of Declarant and the Architectural Review Committee, may elect to consolidate such Lots into one Lot. The consolidation shall be effected by the Owner's recording in the deed records of Klamath County a declaration stating that the two Lots are consolidated, which declaration shall include a written consent executed on behalf of the Architectural Review Committee by at least one member the Committee. Thereafter, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of the Architectural Review Committee.

ARTICLE 4.

PROPERTY RIGHTS IN COMMON AREAS

4.1 **Owners' Easements of Enjoyment.** Subject to provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. The use of Limited Common Areas, however, shall be limited to the Owners and invitees of the Lots designated in the supplemental declaration establishing the Limited Common Area.

4.2 **Title to Common Areas.** Title to the Common Areas, except Common Easement Areas, shall be conveyed to the Association by Declarant free and clear of monetary liens prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 9.3(b). Title to Common Easement Areas, subject to the easements set forth in this Declaration, shall pass to the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street right-of-ways.

4.3 **Common Easement Areas.** Common Easement Areas shall be reserved as signage and visual landscape features, or as otherwise provided in the supplemental declaration establishing the Common Easement Area. Such areas are to be maintained by the Association and no changes in landscaping will be permitted without written authorization by the Architectural Review Committee. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas. In the event any Common Easement Area is conveyed to the Association, such Common Easement Area shall then become a Common Area.

4.4 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Resort the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by or with the consent of Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Resort.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any Improvements on Common Areas.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to governmental entities or other utilities performing utility services (including without limitation Running Y Utility Company) and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Resort.

(b) Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing in this Declaration shall prevent the placing of a sign or signs upon the Common Areas identifying the Resort or any Project or identifying trails or identifying items of interest, including directional signs, provided such signs are approved by the Architectural Review Committee and comply with any applicable sign ordinances. The Board of Directors of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 11.9.

(c) Semi-Public Recreational or Service Areas. The Board of Directors of the Association may elect to designate certain portions of the Common Areas as semi-public recreational or service areas which may be used by members of the public on a fee-paying basis. In such event, Owners shall be permitted to use such facilities or services either on a free basis or for fees that are no higher than those charged to members of the public for an equivalent use or service. Any net proceeds from such facilities or services shall be paid to the Operations Fund.

(d) Alienation of the Common Areas. The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer has been approved by a majority of the voting rights in the Association. This requirement shall not apply to the easements described in Section 4.4(a) above.

(e) Limitations on Use. Use of the Common Areas by the Owners, their family members, guests, tenants and contract purchasers, shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner and the Owner's members, guests, tenants and contract purchasers to the extent provided in Article 12 below.

(ii) The right of the Association to adopt, amend and repeal Policies and Procedures in accordance with this Declaration.

4.5 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of Running Y Ranch Resort a perpetual easement and right-of-way for access over, upon, and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant, the Recreational Facilities and future phases of the Resort. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Resort or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or the Owner's family, tenants, employees, guests or invitees.

4.6 **Running Y Road and Coopers Hawk Road.** Declarant hereby grants to the Association and to each Owner a nonexclusive easement to use Running Y Road and Coopers Hawk Road, as shown on the plat of the Initial Development, for ingress and egress and utility purposes. Declarant shall have the right to relocate the road as necessary for street alignments or to serve newly developed properties. Declarant will maintain Running Y Road and Coopers Hawk Road and the Owners, through the Association, shall reimburse Declarant for 20 percent of the cost of such maintenance. Such cost of maintenance shall include, without limitation, striping, snow removal, sweeping, repairs (including crack filling, patching and resurfacing), sign repair and replacement, and maintenance and power costs of street lighting. Declarant may, at any time, designate all or a portion of Running Y Road or Coopers Hawk Road as a Common Area, after which the Association shall be responsible for its maintenance. Declarant may reserve a nonexclusive easement for use of Running Y Road and Coopers Hawk Road for ingress and egress and utility purposes for other properties. The Declaration designating all or a portion of Running Y Road or Coopers Hawk Road as a Common Area shall set forth the share of the maintenance costs of Running Y Road or Coopers Hawk Road to be borne by any such areas.

4.7 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, the Owner's right of enjoyment of the Common Areas to the members of the Owner's family and tenants or contract purchasers who reside on the Resort, whose use of the Common Areas shall be subject to this Declaration and the Policies and Procedures adopted under this Declaration.

ARTICLE 5.

PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. The Owner of a Lot in the Resort shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions made applicable to such Lot by this Declaration or by any supplement to this Declaration or any applicable Project Declaration.

5.2 Easements Reserved. In addition to any easements shown on the recorded plats and as set forth in Section 4.5, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) Right of Entry. Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in compliance with this Declaration. In addition, the utility service provider and its agents or employees shall have authority to access all parts of the Owner's Lot and the Common Areas on which sewerage or water facilities 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.

(c) Utility Easements. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on or described in the recorded plat. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Notwithstanding the provisions of this paragraph, no such easements shall exist along adjoining side lot lines on which a party wall exists.

ARTICLE 6.

GOLF COURSE

6.1 Golf Course Easements and Indemnity. Declarant hereby reserves for itself and for the benefit of any Golf Course Owner the easements set forth in this Section 6.1. Declarant reserves the right to grant or deed such easement rights to the person or entity operating or owning any Golf Course which is part of or adjacent to the Resort and to impose such additional restrictions relating to such easements at that time and from time to time as may reasonably be required to effectuate the purposes of such easements. The reservation of such easements is made for the benefit of Declarant, the Golf Course Owner, the users of the Golf Courses and for associated management, maintenance and service personnel, for Golf Course and related recreational purposes.

(a) Private Ways. All Common Area private ways shall be subject to an easement for Golf Course purposes, including signs, cart paths, irrigation systems and the right of ingress and egress for construction and maintenance and for players during the regular course of play on the Golf Course.

(b) Golf Cart Path Easement. Any easements for golf cart paths or trails designated as such on any plat of the Resort or any declaration annexing Additional Property shall be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between such paths and any Golf Course. Nothing shall be placed in or maintained on any golf cart path easement which shall interfere with utilization thereof as a playable part of the Golf Course, and all landscaping and other Improvements within a golf cart path easement shall require the approval of the Architectural Review Committee. The Golf Course Owner shall be responsible for maintaining such paths or trails.

(c) Golf Course Easements over Adjoining Lots. Any Golf Course easements over adjoining Lots designated as such on any plat or declaration annexing Additional Property will be developed as part of the Golf Course for purposes of landscaping or the placement of golf course facilities and may be used as part of the Golf Course. No Owner may landscape or place any Improvement within a Golf Course easement without the prior written consent of the Golf Course Owner and the approval of the Architectural Review Committee. Nothing in this provision shall be construed as requiring the Golf Course Owner to irrigate or landscape such easement areas.

(d) Golf Balls. Each Lot, Common Area and Project Common Area adjoining or adjacent to any Golf Course shall be subject to an easement permitting (i) golf balls to come upon such property, and (ii) for golfers at reasonable times and in a reasonable manner to come upon such property to retrieve golf balls.

6.2 Design Review. With respect to any Improvement constructed on any Lot adjoining a Golf Course, in addition to design review by the Architectural Control Committee pursuant to Article 8, such Improvement shall be subject to architectural review by the Golf Course Owner.

6.3 Waiver and Indemnity. In some cases, golf balls may have sufficient force and velocity to do serious harm to persons, pets, Improvements or personal property. Each Owner, for such Owner's family members, visitors, invitees and guests, assumes such risk and waives each right such person otherwise would have against Declarant, the Association, the Architectural Review Committee and the Golf Course Owner, operator and designer, to the fullest extent permissible by law, for each injury resulting from the design of any such Golf Course, or the location of a Lot, Common Area or Project Common Area in relation to the Golf Course, and agrees to indemnify and hold declarant, the association, the architectural review committee and the Golf Course Owner, operator and designer harmless from and against all claims and liability, including without limitation, legal fees and costs, in the event any person while on a Lot, Common Area or Project Common Area, receives any injury, or suffers property damage and thereafter seeks to recover against such persons or entities for compensation for such injury or damage, whether directly or indirectly, or as a result of a third-party claim or cross claim. Each Owner and such Owner's family members, invitees, guests and visitors, waives each and every claim or right they may have to claim that the normal and customary operation of any such Golf Course constitutes a nuisance, or that any aspect of any such Golf Course operation should be limited to any specific hours of the day or to any specific days of the week. Each such person assumes the risks which are associated with the game of golf and the flight of golf balls over and upon their Lot, the Common Areas and Project Common Areas, including, without limitation, the possibility of damage to their property, real or personal, and injury to themselves, their family, pets, friends, invited guests, visitors or any other person.

6.4 Ownership and Operation of Golf Course. All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other person with regard to the continuing existence, ownership or operation of the Golf Course, if any, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or operation of the Golf Course, if any, may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course to an "equity" club or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of Declarant. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

6.5 **Right to Use.** Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the Golf Course Owner. The Golf Course Owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

6.6 **View Impairment.** Neither Declarant, the Association nor the Golf Course Owner guarantees or represents that any view over and across the Golf Course from adjacent Lots will be preserved without impairment. The Golf Course Owner, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the Golf Course Owner may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.7 **Limitations on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Golf Course Owner, no amendment to this Article and no amendment in derogation of any rights reserved or granted to the Golf Course Owner by other provisions of this Declaration may be made without the written approval of the Golf Course Owner. The foregoing shall not apply, however, to amendments made by Declarant.

6.8 **Jurisdiction and Cooperation.** It is Declarant's intention that the Association and the Golf Course Owner shall cooperate to the maximum extent possible in the operation of the Resort. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

ARTICLE 7.

RESTRICTIONS ON USE OF RESIDENTIAL LOTS

7.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Residential Lot except structures containing Living Units and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable governmental regulations, is compatible in design and decoration with the dwelling structure

constructed on such Residential Lot, and has been approved by the Architectural Review Committee. Private wells may not be installed on any Lot.

7.2 **Residential Use.** Residential Lots shall only be used for residential purposes. Except with the consent of the Board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Residential Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Residential Lot, to store construction materials and equipment on such Residential Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in Running Y Ranch Resort, and (c) the right of the Owner of a Residential Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

7.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Residential Lot, nor shall anything be done or placed on any Residential Lot which interferes with or jeopardizes the enjoyment of other Residential Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Residential Lot nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

7.4 **Animals.** No animals of any kind shall be raised, bred or kept in or upon any Residential Lot, except dogs, cats and such other household pets as may be approved by the Association, and then only provided they are not kept, bred or maintained for any commercial purposes or in unreasonable numbers and provided they are not prohibited by any Project Declaration or supplemental declaration annexing Additional Property to the Resort. The Association may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the unit and fair share use of the Common Areas. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

7.5 **Maintenance of Structures and Grounds.** Each Owner shall maintain the Owner's Residential Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include,

without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Residential Lot neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.6 Prohibited Vehicles. No mobile home, recreational vehicle (including campers) exceeding 1,500 pounds in gross weight, trailer of any kind, truck with a rated load capacity greater than 3/4 ton, or boat, shall be kept, placed, maintained or parked for more than six hours or such other period as may be permitted pursuant to the Association Policies and Procedures on any Residential Lot or Common Area except in enclosed garages, areas designated by the Board of Directors of the Association, or screened from view in a manner approved by the Architectural Review Committee. No motor vehicle of any type may be constructed, reconstructed or repaired in such a manner as will be visible from neighboring property. No stripped down, partially wrecked, inoperative or junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Residential Lot or Common Area.

7.7 Parking and Street Obstructions. Parking of vehicles of any type whatsoever on any portion of the streets within the Resort shall be permitted only as set forth in the Association Policies and Procedures. No Owner shall do anything which will in any manner prevent the streets within the Resort from at all times being free and clear of all obstructions and in a safe condition for vehicular use.

7.8 Signs.

(a) General Prohibition; Exceptions. No sign or billboard of any kind (including but not limited to, commercial or political signs) shall be displayed to the public view on any Residential Lot, except for:

- (i) directional signs established by Declarant or the Association;
- (ii) such signs as may be required for legal proceedings;
- (iii) during the time of construction of any Improvement, one job identification sign, the size, color and design of which shall have been approved by the Architectural Review Committee; and
- (iv) signs, billboards and other advertising devices or structures used by Declarant in connection with the development, subdivision, advertising and sale of any interest in a Lot.

The size and design of such signs shall be in accordance with the Design Guidelines established by the Architectural Review Committee.

(b) **Architectural Review Committee Regulation.** Signs advertising any interest in a Lot "for sale" or "for rent" shall be prohibited unless, in the sole discretion of the Architectural Review Committee such prohibition as applied to a specific Lot would work an unusual hardship, in which case a waiver may be granted. If such a waiver is approved, such signs shall be customary and reasonable dimensions and of a professional type and dignified appearance, and placed only in such location(s) as specified by the Architectural Review Committee. If at the time of such waiver the Association has specified the size, design and content of such "for sale" or "for rent" signs, only such approved size, design and content shall be used.

7.9 **Outside Storage.** Woodpiles, storage areas, machinery and equipment shall be prohibited upon any Residential Lot, unless obscured from view of neighboring property and streets by a fence or appropriate screen approved by the Architectural Review Committee. Colored tops and covers shall be of a color approved by the Architectural Review Committee. Trash cans and other moveable rubbish containers shall be allowed to be visible from the street or adjacent Residential Lot within the Resort only during the days on which rubbish is collected and after 9 p.m. of the preceding evening.

7.10 **Completion of Construction.** The construction of any building on any Residential Lot, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle and the Living Unit shall not be occupied until so completed. In the event of undue hardship due to weather conditions or other causes beyond the reasonable control of the Owner, this time period may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Residential Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

7.11 **Landscape Completion.** Landscaping plans for each Residential Lot shall be submitted to the Architectural Review Committee and shall be in compliance with sod and planting limitations and tree preservation guidelines as may be established by such Committee or the Association from time to time. Such landscaping must be completed within one year from the date of issuance of the certificate of occupancy for the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee.

7.12 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings nor any uncompleted building shall be used on any Residential Lot at any time as a residence either temporarily or permanently.

7.13 **Antennas and Satellite Dishes.** Exterior antennas and satellite receiver and transmission dishes shall not be permitted to be placed upon any Residential Lot except as approved by the Architectural Review Committee.

7.14 **Limitations on Open Fires.** No incinerators or other open fires (except outdoor cooking facilities such as propane grills or portable barbecue units) shall be kept or maintained on any Residential Lot.

7.15 **Pest Control.** No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

7.16 **Minimum Dwelling Size.** No dwelling intended or used as the primary dwelling on a Residential Lot may be constructed or maintained unless the interior floor area of such dwelling (excluding garage) contains at least 1,800 square feet. The maximum permissible interior floor area shall be limited only by constraints of the building site area and other reasonable limitations as may be established by the Architectural Review Committee.

7.17 **Grades, Slopes and Drainage.** Each Owner of a Residential Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Residential Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

7.18 **Exterior Lighting.** All exterior lighting of a Residential Lot shall be subject to approval of the Architectural Review Committee.

7.19 **Paths and Trails.** No Owner, other than Declarant or the Association, may create any paths or trails within the Resort without the prior written approval of the Architectural Review Committee.

7.20 **Time-sharing or Fractional Interest Ownership Prohibited.** No purchaser of a Residential Lot, or interest therein, or use thereof, shall receive a right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of such property annually or on some other periodic basis if four or more such use or occupancy periods over a period of three years or more have been created with respect to such Lot, and any such attempted conveyance shall be void; provided, however, this restriction shall not be interpreted to prevent joint ownership of Lots not including such exclusive use periods.

7.21 Association 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 and the operation and use of Residential Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Resort. 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 and shall be binding upon all Owners and occupants of all Residential Lots upon the date of delivery. The method of adoption of such Policies and Procedures shall be as provided in the Bylaws of the Association.

7.22 Application to Additional Property. The provisions of Sections 7.1 through 7.21 shall not apply to Commercial Lots nor to Residential Lots if the declaration annexing the Residential Lots so specifies. The declaration annexing such Additional Property to this Declaration may establish additional or different restrictions governing the use of such Lots.

ARTICLE 8.

ARCHITECTURAL REVIEW COMMITTEE

8.1 Architectural Review. No Improvement shall be commenced, erected, placed or altered on any Lot, except Lots owned by Declarant, until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations, and to avoid plan repetition. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases which the Architectural Review Committee consent is required by this Declaration, the provisions of this Article shall apply. This review is in addition to design review by the Golf Course Owner with respect to Lots adjoining the Golf Course as provided in Section 6.2 above.

8.2 Committee Decision. The Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

8.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Running Y Ranch Resort or any specific Project therein. Consideration such as siting, shape, size, color, design, height, solar access, impairment of the view from other Lots within Running Y Ranch Resort or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work. In the case of any Lot adjoining the Golf Course, the Committee shall forward the plans to the Golf Course Owner for review and approval. If rejected by the Golf Course Owner, the Committee shall similarly reject the plans.

8.4 **Variance.** The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

8.5 **Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

8.6 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

8.7 **Liability.** Neither the Architectural Review Committee nor any member of the Committee shall be liable to any Owner, occupant, builder or developer for any damage, loss or

prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

8.8 Nonwaiver. Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

8.9 Appeal. At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association pursuant to Section 8.5, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

8.10 Effective Period of Consent. The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

8.11 Estoppel Certificate. Within fifteen (15) business days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date of the certificate, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth in the certificate, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

ARTICLE 9.

ASSOCIATION

Declarant shall organize an association of all of the Owners within Running Y Ranch Resort. Such Association, its successors and assigns, shall be organized under the name "Running Y Ranch Resort Owners Association" or such similar name as Declarant shall

designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Resort and all Owners of property located therein.

9.1 **Organization.** Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Oregon. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

9.2 **Membership.** Every Owner of one or more Lots within the Resort shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Resort, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

9.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Residential Lots and Commercial Lots.** Residential Lots shall be allocated one Voting Unit per Living Unit located on such Lot. Condominium units shall be entitled to one Voting Unit for each Condominium unit. A single-family Residential Lot shall be allocated one vote regardless whether the Living Unit has been constructed on such Lot. Each Commercial Lot shall be entitled to the number of Voting Units set forth in the declaration annexing the Commercial Lot to Running Y Ranch Resort.

(b) **Classes of Voting Membership.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to Voting Units for each Lot owned computed in accordance with Section 9.3(a) above. When more than one person holds an interest in any Lot, all such persons shall be members. Except as may otherwise be specified in the declaration annexing such Lot to Running Y Ranch Resort or in the Project Declaration pertaining to such Lot, the vote for such Lot shall be exercised as they among themselves determine. In no event, however, shall more Voting Units be cast with respect to any Lot than as set forth in Section 9.3(a) above.

Class B. The Class B member shall be the Declarant and shall be entitled to three times the Voting Units computed under Section 9.3(a) for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Declarant has completed development of all Lots and Common Areas permitted under the Master Plan, and Lots representing seventy-five percent (75%) of the Voting Units computed in accordance with this section have been sold and conveyed to Owners other than Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

9.4 General Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act, whether or not such Act is applicable to the Association.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Resort.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

9.5 Specific Powers and Duties. The powers and duties of the Association shall include, without limitation, the following:

(a) Maintenance and Services. The Association shall provide maintenance and services for the Resort as provided in Article 10 and other provisions of this Declaration.

(b) Insurance. The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Policies and Procedures as provided in Section 7.21 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 11 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Policies and Procedures adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited, landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Resort.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.4(d) above, and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Running Y Ranch Resort conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Policies and Procedures as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain.

(j) Joint Use Agreements. The Board of Directors of the Association may enter into joint use agreements with other associations, entities or persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas.

(k) Implied Rights and Obligations. The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

9.6 Liability. A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member of the Association for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

9.7 Interim Board. Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the next annual meeting following termination of Class B membership. At such meeting the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association.

9.8 Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Resort to the Association not later than one hundred twenty (120) days after Lots representing seventy-five percent (75%) of the Voting Units computed in accordance with Section 9.3(a) above have been sold and conveyed to Owners other than Declarant. If the Declarant fails to call the turnover meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

9.9 Declarant Control After Turnover. After the turnover meeting described in Section 9.8 above, Declarant shall continue to have the voting rights described in Section 9.3(b) above and the right to appoint interim directors as provided in Section 9.7 until termination of the Class B membership.

9.10 Appointment of Directors. Effective as of the next annual meeting following termination of Class B membership, the Board of Directors of the Association will be composed and elected as follows:

(a) Four directors shall be elected by all Owners of single-family Residential Lots. Voting for such directors shall be based upon one vote for each such Residential Lot owned by such Owner.

(b) Three directors shall be elected by the owners of all Residential Lots and Living Units (other than single family Residential Lots and Living Units on single family Residential Lots) and all Condominium Living Units. Voting for such directors shall be based upon one vote for each such Living Unit. In the case of timeshare or fractional ownership of the Living Unit, the vote for such Living Unit shall be cast as provided in the applicable timeshare or co-ownership declaration.

(c) Two directors elected by all Owners of Commercial Lots and Commercial Living Units. Voting shall be based upon the then current assessed value of the Owners Commercial Lot or Living Unit compared to the total assessed value of all Commercial Lots and Living Units within the Resort.

In the event there is no property of a particular category in the Resort, then no directors shall be elected for such category and the number of directors shall be decreased accordingly. The terms of office of directors shall be as set forth in the Bylaws.

9.11 Contracts Entered into by Declarant or Prior to Turnover Meeting. Notwithstanding any other provision of this Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by the Declarant or the Board of Directors on behalf of the Association prior to the turnover meeting described in Section 9.8 above shall have a term of not in excess of three (3) years. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 9.8 above.

9.12 Project Associations. Nothing in this Declaration shall be construed as prohibiting the formation of Project Associations within Running Y Ranch Resort, including, without limitation, Condominium associations, neighborhood associations, fractional interest associations, timeshare associations and associations of commercial owners. By a majority vote, the Owners of Lots within a Project may elect to establish a Project Association for such Project. The Board of Directors of the Association shall assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations, and the Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments

and remitted to the Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association a reasonable fee for the performance of such functions.

9.13 Project Committees. With respect to any Project within Running Y Ranch Resort that does not have a Project Association, the Board of Directors of the Association may appoint a Project Committee composed of three (3) to five (5) Owners of Lots within such Project, which committee shall be responsible for establishing any Policies and Procedures pertaining to Limited Common Areas for such Project, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Limited Common Areas, and for such other matters pertaining to the Project as the Board of Directors may elect to delegate to the Project Committee. Following the termination of the Class B membership, the Board of Directors of the Association shall provide for election of such committee members by Owners of Lots within such Project.

ARTICLE 10.

MAINTENANCE, UTILITIES AND SERVICES

10.1 Maintenance and Lighting of Common Areas. The Association shall be responsible for exterior lighting for and perform all maintenance upon the Common Areas, Common Easement Areas, Limited Common Areas and landscaping within dedicated rights of way, including but not limited to grass, trees, walks, private roads, entrance gates, street lighting and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall pay its share of the cost of maintaining Running Y Road and Coopers Hawk Road as provided in Section 4.6.

10.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

10.3 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Resort, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken

will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its board of directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the Resort assumes all risks for loss or damage to persons, to units and to the contents of Lots and Living Units resulting from acts of third parties.

10.4 Services. The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Resort, including, without limitation, garbage and trash removal for Common Areas.

10.5 Project Maintenance. The Association may, in the discretion of the Board of Directors, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Resort, after giving the responsible Project Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners of Lots in the Project to which the services are provided and shall be Individual Assessments for purposes of this Declaration. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the community-wide standard of Running Y Ranch Resort.

10.6 Owner's Responsibility. Except as otherwise provided in this Declaration, applicable Project Declarations, or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the community-wide standard of Running Y Ranch Resort. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Lot is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association may proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 12.6 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 11.8 and 12.3 below.

ARTICLE 11.

ASSESSMENTS

11.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of Running Y Ranch Resort and for the improvement, operation and maintenance of the Common Areas.

11.2 Types of Assessments. The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

11.3 Apportionment of Assessments. Lots owned by Declarant or by any successor developer or builder who has purchased one or more parcels from Declarant for development and resale shall not be subject to Assessments until such time as the Lot is occupied for a residential or a commercial use, as applicable, subject to accrual of reserves as described in Section 11.11 below. The Lots of any such successor developer or builder shall not be exempt from Assessments unless Declarant shall have notified the Association in writing that the Lots are exempt. All other Lots shall pay a pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Assessment Units of Lots subject to Assessment, times the number of Assessment Units assigned to such Lots as follows:

(a) Residential Lots. Each Residential Lot (including Condominium Units) shall be assigned one Assessment Unit for each Living Unit located on the Lot. A single family Residential Lot shall be assigned one Assessment Unit, regardless whether the Living Unit has been constructed on the Lot.

(b) Commercial Lots. Each Commercial Lot shall be assigned Assessment Units for such Lot on such basis as may be determined in the declaration annexing the Commercial Lot to Running Y Ranch Resort.

Notwithstanding the provisions of this section, however, a supplemental declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area in order to more fairly allocate such cost, taking into the account the extent of use or other factors.

11.4 Annual Assessments. The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. In addition, the budget shall take into

account the number of Assessment Units as of the first day of the fiscal year for which the budget is prepared and the number of Assessment Units reasonably anticipated to become subject to assessment during the fiscal year. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 11.11 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 11.3 above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

11.5 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to five percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the Voting Units voting on such matter, together with the written consent of the Class B member, if any. Special Assessments shall be apportioned as provided in Section 11.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

11.6 **Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the Voting Units voting on such matter, together with the written consent of the Class B member, if any. Emergency Assessments shall be apportioned as set forth in Section 11.3 above and payable as determined by the Board of Directors.

11.7 **Limited Common Area Assessments.** Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas ("Limited Common Area Assessments") shall be assessed exclusively to the Lots having the right to use such Limited Common Areas.

11.8 **Individual Assessments.** Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted ("Individual Assessment"). Individual Assessments include, without limitation, charges for services provided under Sections 9.5(i), 9.12, 10.5 and 10.6. Individual Assessments shall also

include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Policies and Procedures of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to Individual Assessments.

11.9 **Annexation of Additional Property.** When Additional Properties are annexed to Running Y Ranch Resort, the Lots included therein shall become subject to Assessments from the date of such annexation, except for those Lots exempt from assessment pursuant to Section 11.3 above. All other Lots shall pay such Assessments in the amount then being paid by other Lots. The Board of Directors of the Association, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

11.10 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.11, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Resort and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Resort, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 10.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon.
- (d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.11 **Reserve Fund.** The Declarant shall establish a reserve fund for replacement of those items to be maintained by the Association all or a part of which will normally require

replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The Assessments under this section begin accruing against each Lot from the date the first Lot in the Resort is conveyed. The Declarant may defer payment of the accrued Assessments for a Lot until the Lot is conveyed. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. Any interest earned on funds deposited in the Reserve Fund, however, may either be accumulated in the Reserve Fund or deposited in the "Operations Fund." After termination of the Class B membership, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Limited Common Area Assessments. Nothing in this section shall prohibit prudent investment of the reserve account. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of all Voting Units in the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

11.12 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Resort, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.6, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12 below.

ARTICLE 12.

ENFORCEMENT

12.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or other Policies and Procedures adopted by the Association governing the use of Common Areas, then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and the Owner is

responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its Policies and Procedures, (b) impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Operations Fund as Individual Assessments, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from the Owner's Lot.

12.2 **Nonqualifying Improvements and Violation of General Protective Covenants.**

In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on the Owner's Lot, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and the use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings, or

(c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

12.3 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

12.4 **Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

12.5 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

12.6 **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing Portland, Oregon prime rate at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board

of Directors of the Association not to exceed thirty percent (30%) of such Assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.7 **Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 12, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. Such action shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot, or any part thereof, to do the same or similar acts.

12.8 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

ARTICLE 13.

MORTGAGEES

13.1 Reimbursement of First Mortgagees. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

13.2 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Resort for security purposes, then the record mortgagee, upon giving written notice as provided in this section, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 13.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

ARTICLE 14.

MISCELLANEOUS PROVISIONS

14.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Resort, may be amended or repealed by the vote or written consent of Owners holding not less than seventy-five percent (75%) of the Voting Units in the Association, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. Any such amendment or repeal 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 setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

14.2 Regulatory Amendments. Notwithstanding the provisions of Section 14.1 above, until termination of the Class B membership Declarant shall have the right to amend this Declaration and the Articles of Incorporation and Bylaws of the Association in order to comply

with the requirements of any applicable statute, ordinance or regulation of the Federal Housing Administration, the U.S. Department of Housing and Urban Development, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community or regulates the development or sale of real property.

14.3 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Resort and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Resort and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the Voting Units in the Association. Any such termination shall become effective only if a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required in this Declaration, is duly acknowledged and recorded in the Deed Records of Klamath County, Oregon, not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner access to the Owner's Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

14.4 **Joint Owners.** Unless otherwise provided in a Project Declaration, in any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

14.5 **Lessees and Other Invitees.** Lessees, invitees, contractors, family members and other persons entering the Resort under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Resort. The Owner shall be responsible for

obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.

14.6 **Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to his or her Lot shall give the Association written notice within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.7 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

14.8 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.9 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 10440 West Highway 140, Klamath Falls, Oregon 97601; if to an Owner, at the

address given by the Owner at the time of purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided in this section.

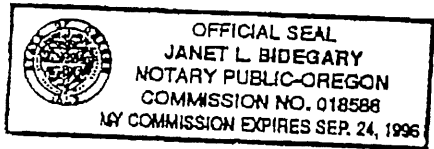
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first written above.

RUNNING Y RESORT, INC., an Oregon corporation

By *R Wendt*
Its President

STATE OF OREGON)
)ss.
County of)

The foregoing instrument was acknowledged before this 2nd day of AUGUST, 1996, by R.C. WENDT, PRESIDENT of RUNNING Y RESORT, INC., an Oregon corporation, on its behalf.



Janet L. Bidegary
Notary Public for Oregon
My commission expires: 9/24/96

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Running Y Resort, Inc. the 2nd day of August A.D., 19 96 at 11:04 o'clock A M., and duly recorded in Vol. M96 of Deeds on Page 23548.

FEE \$240.00

Bernetha G. Letsch County Clerk
By *Bernetha G. Letsch*

Exhibit D

Calculation of Net Book Value for Running Y
as of December 31, 2015

RUNNING Y UTILITY
for the period ending 12/31/15

DESCRIPTION	QTY	ACQUIRED	Original COST	PUC Acct#	PUC Asset Life	Annual Depreciatio	Final Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Accumulated Depredation	Remaining Plant 2015		
Additions Since Rate Case:																														
WELL#1 :NEW FREQUENCY DRIVE	1	2014	11,350	307	25	454	2039	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	454	454	908	10,442		
5 HP GRINDER PUMP	1	2015	6,100	311	20	305	2035	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	305	305	5,795		
Total Since Rate Case			17,450			759		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	454	759	1,213	16,237		
Other Assets Disallowed in Rate Case:																														
WATER INFRASTRUCTURE - LOTS	1	2001	28,594	333	30	953	2031	0	0	0	0	953	953	953	953	953	953	953	953	953	953	953	953	953	953	953	953	14,297	14,297	
WELL #2	1	1999	149,430	307	25	5,977	2024	0	0	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	5,977	101,612	47,818	
WELL #2	1	2000	16,520	307	25	661	2025	0	0	0	661	661	661	661	661	661	661	661	661	661	661	661	661	661	661	661	661	10,573	5,947	
Total Disallowed			194,544					0	0	5,977	6,638	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	7,591	126,482	68,062	
Meters Included in Rate Case:																														
Meters		1996	1,223	334	20	61	2016	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	61	1,162	61	
Meters		1997	7,032	334	20	352	2017	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	352	6,680	352
Meters		1998	14,676	334	20	734	2018	0	734	734	734	734	734	734	734	734	734	734	734	734	734	734	734	734	734	734	734	13,208	1,468	
Meters		1999	8,561	334	20	428	2019	0	0	428	428	428	428	428	428	428	428	428	428	428	428	428	428	428	428	428	428	428	7,277	1,284
Meters		2000	6,421	334	20	321	2020	0	0	0	321	321	321	321	321	321	321	321	321	321	321	321	321	321	321	321	321	321	5,137	1,284
Meters		2001	5,809	334	20	290	2021	0	0	0	0	290	290	290	290	290	290	290	290	290	290	290	290	290	290	290	290	290	4,357	1,452
Meters		2002	11,313	334	20	566	2022	0	0	0	0	0	566	566	566	566	566	566	566	566	566	566	566	566	566	566	566	566	9,719	3,394
Meters		2003	14,982	334	20	749	2023	0	0	0	0	0	0	749	749	749	749	749	749	749	749	749	749	749	749	749	749	749	9,738	5,244
Meters		2004	27,518	334	20	1,376	2024	0	0	0	0	0	0	0	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	1,376	16,511	11,007
Meters		2005	42,775	334	20	2,139	2025	0	0	0	0	0	0	0	0	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	2,139	23,526	19,249
Meters		2006	9,299	334	20	465	2026	0	0	0	0	0	0	0	0	0	465	465	465	465	465	465	465	465	465	465	465	465	4,650	4,650
Meters		2007	1,759	334	20	88	2027	0	0	0	0	0	0	0	0	0	88	88	88	88	88	88	88	88	88	88	88	88	792	967
Meters		2007	1,101	334	20	55	2027	0	0	0	0	0	0	0	0	0	55	55	55	55	55	55	55	55	55	55	55	55	495	606
Meters		2007	1,810	334	20	91	2027	0	0	0	0	0	0	0	0	0	91	91	91	91	91	91	91	91	91	91	91	91	815	996
Meters		2007	843	334	20	42	2027	0	0	0	0	0	0	0	0	0	42	42	42	42	42	42	42	42	42	42	42	42	379	464
Meters		2007	1,015	334	20	51	2027	0	0	0	0	0	0	0	0	0	51	51	51	51	51	51	51	51	51	51	51	51	457	558
Meters		2007	843	334	20	42	2027	0	0	0	0	0	0	0	0	0	42	42	42	42	42	42	42	42	42	42	42	42	379	464
Meters		2007	1,223	334	20	61	2027	0	0	0	0	0	0	0	0	0	61	61	61	61	61	61	61	61	61	61	61	61	550	673
Meters		2007	325	334	20	16	2027	0	0	0	0	0	0	0	0	0	16	16	16	16	16	16	16	16	16	16	16	16	146	179
Meters		2008	680	334	20	34	2028	0	0	0	0	0	0	0	0	0	34	34	34	34	34	34	34	34	34	34	34	34	272	408
Meters		2008	600	334	20	30	2028	0	0	0	0	0	0	0	0	0	30	30	30	30	30	30	30	30	30	30	30	30	240	360
Total			159,808			7,990		413	1,147	1,575	1,896	2,186	2,752	3,501	4,877	7,016	7,480	7,926	7,990	7,990	7,990	7,990	7,990	7,990	7,990	7,990	7,990	104,691	55,117	
Total			12,600,380																									3,889,561	8,705,818	