



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR
97703

(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners Work Session of October 5, 2016

DATE:

FROM: Anthony Raguine, Community Development, 541-617-4739

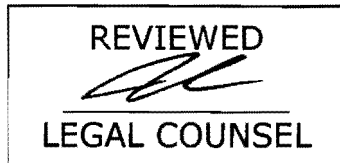
TITLE OF AGENDA ITEM:

Board Signature of Document No. 2016-662, Amendment No. 2 to Pronghorn Hotel Improvement Agreement No. 2016-289

PUBLIC HEARING ON THIS DATE?: No

ATTENDANCE: Anthony Raguine, Senior Planner

SUMMARY: Section 17.17 of the Pronghorn hotel improvement agreement (IA) includes retainage language intended to assure completion of final construction elements. The existing IA calls for a five (5) percent retainage of the total contract price. As part of the most recent 2016 amendment to the IA, the applicant included a \$2,500,000 performance bond to assure construction of the hotel. For this reason, the applicant requests an amendment to the IA to remove the retainage language in Section 17.17.



After Recording Return to:
Deschutes County
Community Development Department
117 NW Lafayette Street
Bend, OR 97703

For Recording Stamp Only

**AMENDMENT NO. 2 TO 2012 AMENDMENT TO IMPROVEMENT
AGREEMENT
Deschutes County Document No. 2016-662
(Overnight Lodging)**

This Amendment No. 2 to 2012 Amendment to Improvement Agreement ("Agreement"), relates to the construction and installation of Required Improvements (as defined herein) to be constructed in the Pronghorn Destination Resort, hereinafter referred to as "Resort," as required in the conditions of approval identified in:

Findings and Decisions for Deschutes County File No. M-02-1, Final Master Plan for a destination resort;

SP-14-4, Site Plan for two hotel buildings; and

247-16-000164-MC, Modification of SP-14-14 to consolidate the hotel into one building,

and that certain "2012 Amendment to Improvement Agreement, Deschutes County Document No. 2012-671 (Overnight Lodging)" recorded in the Official Records of Deschutes County, Oregon at 2013-00494, as amended pursuant to the "Amendment to 2012 Amendment to Improvement Agreement, Deschutes County Document No. 2016-289 (Overnight Lodging)" recorded in the Official Records of Deschutes County, Oregon at 2016-24922 (as amended, the "Improvement Agreement").

This Agreement is entered into by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter referred to as "County" and PRONGHORN INTANGIBLES LLC, a Hawaii limited liability company ("Owner"), as owner of Resort's Hotel Site A, and Hotel Site B (collectively "Future Development Sites", as defined in the Improvement Agreement). County and Owner signify agreement to this Agreement by signing below.

This Agreement is effective upon signature of all parties and satisfaction of the condition described in Section 1 below.

RECITALS:

- A. Whereas, Owner and County are parties to the Improvement Agreement.
- B. The Improvement Agreement relates to the construction and security for the construction of the Required Improvements, specifically, 104 overnight lodging units (as described in SP-14-4 and 247-16-000164-MC).
- C. Pursuant to County File No. 247-16-000164-MC (the "Site Plan Modification"), Owner has begun construction of the Required Improvements.
- D. Owner has requested that the Improvement Agreement be amended to remove the retainage hold back contained in Section 17.17 of the Improvement Agreement because of the Bond that Owner has provided to assure completion of the Requirement Improvements, and County has agreed.

NOW THEREFORE,

AGREEMENT

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promises hereinafter stated, as follows:

- 1. Recitals/Definitions.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals. Capitalized terms used without definition herein shall have the meaning given them in the Improvement Agreement.
- 2. Real Property Description.** The real property subject to this Agreement is described in the Improvement Agreement.
- 3. Amendment.** Section 17.17 of the Improvement Agreement is hereby amended to delete the last sentence. Accordingly, there shall be no retainage held back by the County when paying draw requests to Owner in accordance with the Improvement Agreement. This amendment shall date back to the date of the first draw from the Trust Account.
- 4. Effect of Amendment.** Except to the extent amended pursuant to this Agreement, the Improvement Agreement remains in full force and effect, unmodified.
- 5. Effective Date.** Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Dated this _____ of September
2016

BOARD OF COUNTY
COMMISSIONERS OF DESCHUTES
COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DEBONE, Commissioner

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared ALAN UNGER, ANTHONY DEBONE, TAMMY BANEY, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this ___ day of _____ 2016

Notary Public, State of Oregon
My Commission Expires:

DATED this ___ day of _____ 2016

OWNER:

By: _____
Its: _____

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared
_____, and acknowledged the foregoing instrument as
_____ of _____.

DATED this ___ day of _____ 2016

Notary Public, State of Oregon
My Commission Expires:
