



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of 6/22/16

DATE: 6/9/16

FROM: Peter Gutowsky CDD Phone 541-385-1709

TITLE OF AGENDA ITEM:

Consideration and Signature of Document No. 2016-289, an Amendment to a 2012 Amendment to Improvement Agreement (Document No. 2012-671) between Deschutes County and Pronghorn Intangibles LLC, relating to construction and installation of required improvements to be constructed at Pronghorn Destination Resort, pending approval of land use file 247-16-000164-MC.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The Improvement Agreement Amendment relates to the construction and security of the required improvements which are comprised of 104 overnight lodging units. Pursuant to the 2012 Improvement Agreement (Document No. 2012-671), the required improvements were to be constructed in two phases. Pursuant to County File No. 247-16-000164-MC (a Site Plan Modification), Pronghorn Intangibles has sought site plan approval to construct the Required Improvements in one phase.

The construction timeline will commence within 30 days of receipt of building permit. Certificate of occupancy deadline is November 30, 2017. In addition, Pronghorn Intangibles LLC is providing the County with a \$2.5 million dollar bond to offer additional protections for the County, given the difference between the funds held by the County and the total cost of construction, including soft costs.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Motion: Approve signature of Document 2016-289.

ATTENDANCE: Nick Lelack, Legal

DISTRIBUTION OF DOCUMENTS:

CDD Staff.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

Date: 6/9/16

Department: CDD

Contractor/Supplier/Consultant Name: Pronghorn Intangibles LLC

Contractor Contact: Laura Craska Cooper
541-693-0061

Contractor Phone #:

Type of Document: Improvement Agreement Amendment

Goods and/or Services: Document No. 2016-289 is an Amendment to a 2012 Amendment to Improvement Agreement (Document No. 2012-671) between Deschutes County and Pronghorn Intangibles LLC, relating to construction and installation of required improvements to be constructed at Pronghorn Destination Resort, pending approval under 247-16-000164-MC.

Background & History: The Improvement Agreement Amendment relates to the construction and security for the construction of the required improvements which are comprised of 104 overnight lodging units. Pursuant to the 2012 Improvement Agreement (Document No. 2012-671), the required improvements were to be constructed in two phases. Pursuant to County File No. 247-16-000164-MC (a Site Plan Modification), Pronghorn Intangibles has sought site plan approval to construct the Required Improvements in one phase.

Construction timelines commences within 30 days of receipt of building permit. Certificate of occupancy deadline is November 30, 2017. In addition, Pronghorn Intangibles is providing the County with a \$2.5 million dollar bond to offer additional protections for the County, given the difference between the funds held by the County and the total cost of construction, including soft costs.

Agreement Starting Date: 6/22/16

Ending Date: 11/30/17

Annual Value or Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

Check all that apply:

- RFP, Solicitation or Bid Process
 - Informal quotes (<\$150K)
 - Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)
-

Funding Source: (Included in current budget? Yes No

If **No**, has budget amendment been submitted? Yes No

6/13/2016

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title: Peter Gutowsky, Planning Manager
Phone #: 541-385-1709

Department Director Approval: _____
Signature Date

Distribution of Document: Peter Gutowsky

Official Review:

County Signature Required (check one):

- BOCC (if \$150,000 or more)
- County Administrator (if \$25,000 but under \$150,000)
- Department Director (if under \$25,000)

Legal Review  Date 6/13/16

Document Number 2016-289

REVIEWED

LEGAL COUNSEL

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

For Recording Stamp Only

DOCUMENT NO. 2016-289

**2016 AMENDMENT TO IMPROVEMENT AGREEMENT, DOCUMENT NO. 2002-451,
AS AMENDED BY 2012 AMENDMENT TO IMPROVEMENT AGREEMENT,
DOCUMENT NO. 2012-671.
(Overnight Lodging)**

This Amendment to 2012 Amendment to Improvement Agreement ("Agreement"), relating 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:

- SP-02-49, Site Plan for visitor-oriented lodging, eating and meeting facilities;
- SP-08-2, Site Plan for hotel, extended by E-10-15; and
- SP-08-4, Site Plan for hotel, extended by E-10-14;

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 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 (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 (as defined in the Improvement Agreement), which are comprised of 104 overnight lodging units. Pursuant to the Improvement Agreement, the Required Improvements were to be constructed in two phases, known as Phase 1 and Phase 2.

- C. Pursuant to County File No. 247-16-000164-MC (the "Site Plan Modification"), Owner has sought site plan approval to construct the Required Improvements in one Phase.
- D. Owner has requested that the Improvement Agreement be amended to reflect the change in phasing and other matters, 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. **Amendment Conditioned Upon Site Plan Modification.** The parties agree that despite the execution of this Agreement, it shall not become effective unless and until such time as the Site Plan Modification has received final local land use approval.
- 2. **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.
- 3. **Real Property Description.** The real property subject to this Agreement is described in the Improvement Agreement.
- 4. **Exhibits.** The exhibits listed below and attached to this Agreement are hereby incorporated herein by reference:
 - 4.1 Exhibit A – Depiction and Plans for Required Improvements, including cost estimate.
 - 4.2 Exhibit B – 2012 Amendment to Improvement Agreement, Document No. 2012-671.
- 5. **Phase Consolidation/Timeline for Construction of Required Improvements.**
 - 5.1 The Improvement Agreement is hereby modified to provide that Phases 1 and 2 are hereby consolidated. All references to Phase 1 are hereby amended to include Phase 2, and all references to Phase 2 are hereby deleted.
 - 5.2 Section 5.4 of the Improvement Agreement is hereby amended and restated in its entirety as follows, and the balance of the Improvement Agreement is hereby amended to the extent necessary to conform to the following:

Construction Phase	Deadline
Commencement	Within 30 days of receipt of Building permit
Completion of Foundation, installation of electrical/plumbing chases/utilities within in building	September 30, 2016
Completion of framing for building	December 31, 2016

Completion of installation of mechanical, electrical and plumbing infrastructure throughout building	April 17, 2017
Certificate of Occupancy Granted	November 30, 2017

As the timeline depicted above (the "Timeline") demonstrates, Owner shall cause the Required Improvements to be designed, constructed, inspected and receive occupancy approval from the County and/or the State of Oregon not later than November 30, 2017 ("Completion Date"), unless extended by mutual agreement of the Parties.

6. Trust Account Releases.

- 6.1 Section 17 of the Improvement Agreement is hereby amended to provide that the Trust Account may be used for construction of all of the Required Improvements (i.e., not just the original Phase 1) in accordance with its terms.
- 6.2 Section 17.4 of the Improvement Agreement is hereby amended to provide that the "Proportional Contributions" for the Parties, as set forth in Section 17.4, shall be determined by reference to the sum of (a) the Guaranteed Maximum Price ("GMP") for all of the Required Improvements; (b) Soft Costs (as defined below) for the Required Improvements; and (c) hard costs for the Required Improvements already incurred, resulting in a calculation as follows:

$$(GMP + Soft Costs + expended hard costs) - Trust Account = Shortage$$

And resulting in Proportional percentage allocations as follows:

Proportional Contribution for County: $Trust\ Account / (GMP + Soft\ Costs + expended\ hard\ costs)$

Proportional Contribution for Owner: $Shortage / (GMP + Soft\ Costs + expended\ hard\ costs)$

- 6.3 Section 17.19 is hereby amended and restated in its entirety as follows:

Owner has already expended significant hard costs, which will be included in the denominator for calculation of the Proportional Contribution pursuant to Section 17.4, and Owner may apply for reimbursement from the Trust Account for the Proportional Contribution from the County for these expenses in the first draw request. The Parties acknowledge that there are significant non-construction costs involved in the completion of the Requirement Improvements, including, but not limited to land use planning, design and engineering, inspections, permits, fees and cost (collectively, the "Soft Costs"). The Soft Costs will be included in project costs to be reimbursed pursuant to this Section 17, subject to the Proportional Contribution calculation in Section 5.2. The first draw request will include a majority of the Soft Costs, which have already been incurred. Since a portion of the Soft Costs are in the form of building permit fees and transportation impact fees to be paid to Deschutes County, Owner shall have the option to have these fees offset against the next draw to be taken under this Section 17 rather than paying them and seeking reimbursement.

6.4 Section 17 of the Improvement Agreement is hereby amended to provide that, notwithstanding any other provision of the Improvement Agreement, at no time shall the County's Proportional Contribution from the Trust Account exceed 70%.

6.5 Section 17 of the Improvement Agreement is hereby amended to provide that, notwithstanding any other provision of the Improvement Agreement, Owner's initial draw request shall not obligate the County to disburse more than \$1,650,000.00 from the Trust Account."

7. Security. In addition to the deed of trust referenced in Section 14 of the Improvement Agreement recorded May 30, 2013 in the official records of Deschutes County, Oregon, as Document No. 2013-22114 (the "Trust Deed"), the Owner shall provide the County with a bond (the "Bond") issued by Anchor Insurance & Surety, Inc. (the "Surety") in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) further securing Owner's obligations under the Improvement Agreement as amended hereby. The Bond shall be in a form reasonably acceptable to County, and shall provide that the County may draw on the Bond upon the occurrence of an Event of Default under the Improvement Agreement. In the event that the Bond has an expiration date that is prior to the date of full satisfaction of Owner's obligations under the Improvement Agreement, the Bond shall require the Surety to provide the County with not less than thirty (30) days advance written notice of any decision not to renew the Bond. In the event that County receives such notice prior to satisfaction of all of Owner's obligations under the Improvement Agreement, the failure to renew the Bond shall be an Event of Default under the Improvement Agreement, allowing County to draw on the Bond, unless Owner timely provides alternative security reasonably acceptable to the County.

8. Default.

8.1 Event of Default. Section 35.1 of the Improvement Agreement is hereby amended and restated to read as follows:

Upon a failure of the Owner to comply with the requirements of this Agreement, such breach shall constitute an "Event of Default" unless within thirty (30) days of receipt of notice of the breach Owner promptly commences and thereafter diligently prosecutes a cure to completion; provided, however, if the breach is of such a nature that it cannot reasonably be cured within thirty days, the thirty (30) day cure period shall be extended for such additional time as County, in its reasonable discretion, deems necessary to allow Owner to complete the cure of the breach. Upon Owner's breach and failure to cure as provided herein, County shall be entitled to declare the Event of Default and take any one or more of the following actions: a claim against the Bond, retention of Trust Account funds, action under the Trust Deed or any other remedies available under applicable law or in equity. All remedies shall be cumulative and not exclusive, and the County's election of any remedy shall not waive its right to pursue other or additional remedies.

9. Effect of Amendment. Except to the extent amended pursuant to this Agreement, the Improvement Agreement remains in full force and effect, unmodified.

10. Effective Date. Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Dated this _____ of June 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, TAMMY BANEY, and ANTHONY DEBONE 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 June 2016

Notary Public, State of Oregon
My Commission Expires: _____

DATED this ___ day of June 2016

DEVELOPER:

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 June 2016

Notary Public, State of Oregon
My Commission Expires: _____

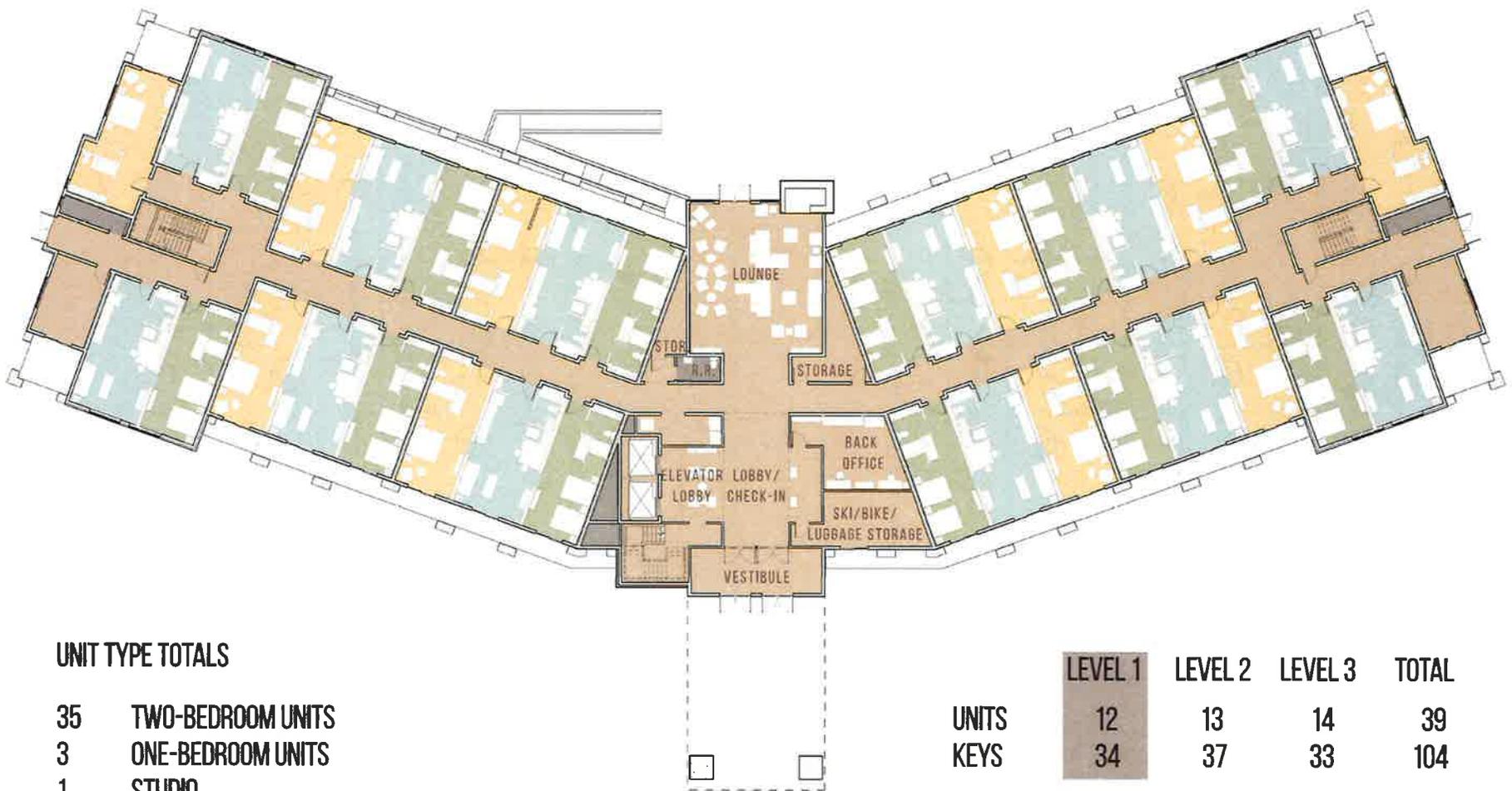
HUNTINGTON LODGE - FROM NE



HUNTINGTON LODGE - FROM SE



FLOOR PLAN - LEVEL 1

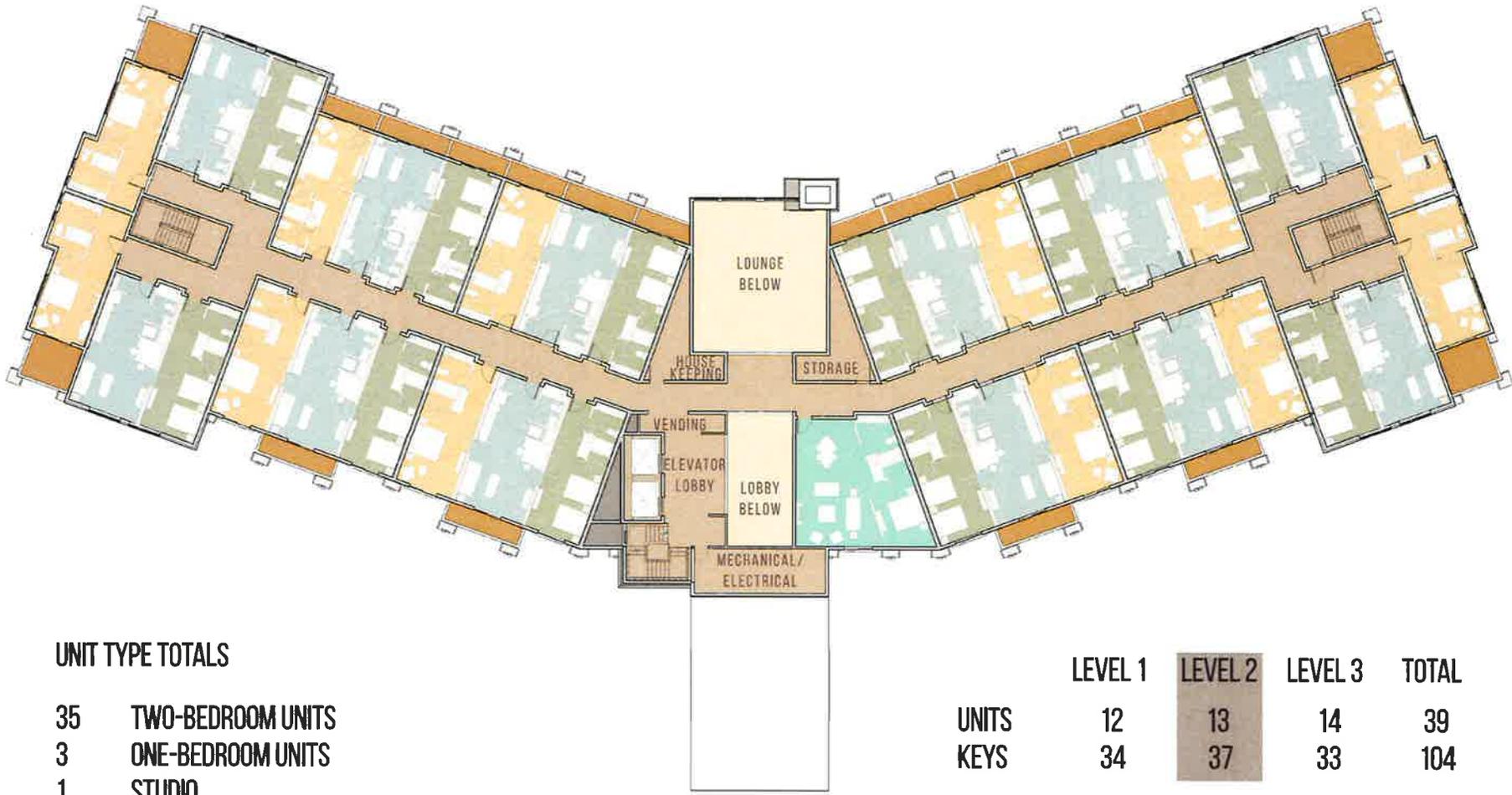


UNIT TYPE TOTALS

- 35 TWO-BEDROOM UNITS
- 3 ONE-BEDROOM UNITS
- 1 STUDIO
- 39 TOTAL UNITS

	LEVEL 1	LEVEL 2	LEVEL 3	TOTAL
UNITS	12	13	14	39
KEYS	34	37	33	104

FLOOR PLAN - LEVEL 2

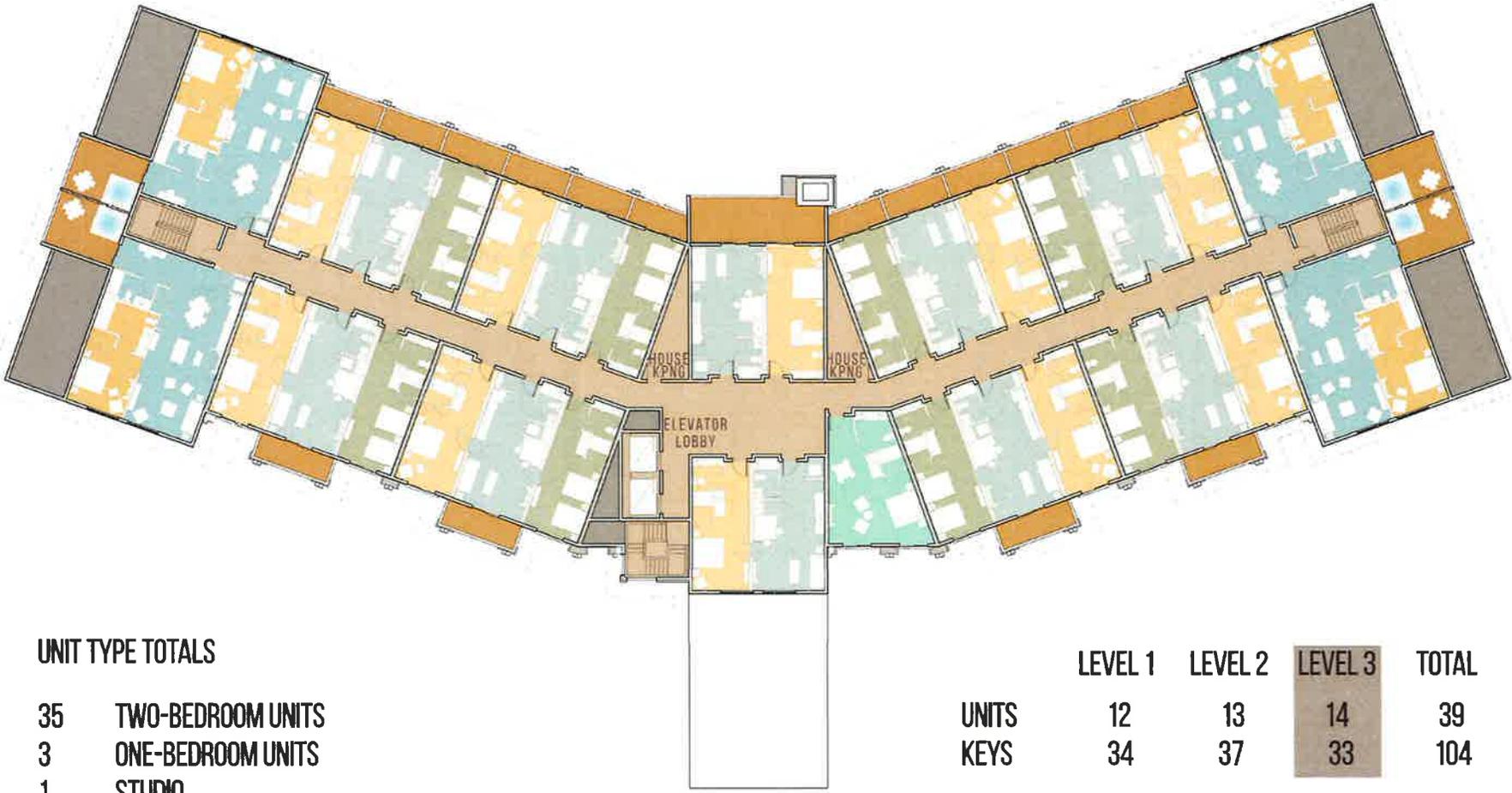


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UNITS	12	13	14	39
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FLOOR PLAN - LEVEL 3



UNIT TYPE TOTALS

35	TWO-BEDROOM UNITS
3	ONE-BEDROOM UNITS
1	STUDIO
39	TOTAL UNITS

	LEVEL 1	LEVEL 2	LEVEL 3	TOTAL
UNITS	12	13	14	39
KEYS	34	37	33	104

TYPICAL 3-KEY UNIT SUITE



1. CLOSET
2. 4-PIECE BATHROOM
3. STACK WASHER / DRYER
4. DINING TABLE FOR 6
5. DOOR TO DECK
6. FIREPLACE WITH TV ABOVE
7. SLIDING DOOR WITH JULIETTE RAILING
8. VERTICAL SHAFT
9. KITCHENETTE
10. LOCK-OFF DOORS

**Pronghorn Resort
Lodging Project Cost To Date
2012 Through 5/31/2016**

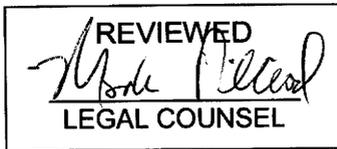
	All In Costs
Entitlement/Legal	\$ 76,389
Arch/Design/Planning	\$ 1,684,513
Engineering/Geotech/Utilities	\$ 125,825
Survey/Staking	\$ 9,019
Landscape	\$ 32,883
Permit/ Licensing	\$ 566,854
Plans/Misc Expenses	\$ 31,208
Meeting Expenses/Site Visits	\$ 76,558
GC Estimate/Contingency	\$ 11,927,101
Lava Tube Reinforcement	\$ 144,232
Total Projected Costs to Date	\$ 14,674,582
Bond @ 5/31/16	\$ 9,512,648
Draw %	65%

**Pronghorn Resort
Huntington Lodge Construction Reimbursement Timeline
June 2016 - August 2017**

Milestone Phases	# Construction Timeline	** Estimated Expense Based on Milestone	# 65% County Reimbursement	*** 35% HRG Expense	### Interest Earned on Bond Balance	*Running Balance of Bond \$ 9,512,647.99	TRG Completion Bond 2,500,000	Running Total HRG Expenditures	Total Expenditures By Milestone
Milestone I - Hard/Soft	** Incurred Costs Project to Date - Through 5/31/16	\$ 1,669,395	\$ (1,085,106)	\$ (584,289)	\$ 6,849	\$ 8,434,391	\$ 2,500,000	\$ 584,288	\$ 2,223,898
	Development Permits - June 16	\$ 554,603	\$ (500,000)	\$ (54,603)		\$ 7,934,391	\$ 2,500,000	\$ 638,691	
Milestone II - Foundation	Jun-16	\$ 379,030	\$ (246,370)	\$ (132,661)		\$ 7,688,021	\$ 2,500,000	\$ 771,552	\$ 2,320,193
	Jul-16	\$ 372,306	\$ (242,000)	\$ (130,308)	\$ 5,535	\$ 7,451,556	\$ 2,500,000	\$ 901,859	
	Aug-16	\$ 1,031,848	\$ (670,701)	\$ (361,147)	\$ 5,365	\$ 6,786,220	\$ 2,500,000	\$ 1,263,006	
	Sep-16	\$ 537,007	\$ (349,055)	\$ (187,952)	\$ 4,886	\$ 6,442,052	\$ 2,500,000	\$ 1,450,959	
Milestone III - Framing	Oct-16	\$ 633,067	\$ (411,494)	\$ (221,573)	\$ 4,638	\$ 6,055,196	\$ 2,500,000	\$ 1,672,532	\$ 1,665,504
	Nov-16	\$ 508,827	\$ (330,738)	\$ (178,089)	\$ 4,345	\$ 5,708,804	\$ 2,500,000	\$ 1,850,622	
	Dec-16	\$ 523,610	\$ (340,347)	\$ (183,264)	\$ 4,110	\$ 5,372,568	\$ 2,500,000	\$ 2,033,885	
Milestone IV - MEP	Jan-17	\$ 1,366,207	\$ (888,035)	\$ (478,172)	\$ 3,668	\$ 4,488,402	\$ 2,500,000	\$ 2,512,058	\$ 4,211,106
	Feb-17	\$ 901,061	\$ (585,690)	\$ (315,371)	\$ 3,232	\$ 3,905,944	\$ 2,500,000	\$ 2,827,429	
	Mar-17	\$ 659,405	\$ (454,613)	\$ (244,792)	\$ 2,812	\$ 3,454,143	\$ 2,500,000	\$ 3,072,221	
	Apr-17	\$ 1,244,433	\$ (808,881)	\$ (435,552)	\$ 2,487	\$ 2,647,748	\$ 2,500,000	\$ 3,507,722	
Milestone V - Certificate of Occupancy	May-17	\$ 1,650,026	\$ (1,072,517)	\$ (577,509)	\$ 1,906	\$ 1,577,138	\$ 2,500,000	\$ 4,085,281	\$ 4,253,791
	Jun-17	\$ 1,396,115	\$ (887,975)	\$ (478,140)	\$ 1,156	\$ 690,299	\$ 2,500,000	\$ 4,563,422	
	Jul-17	\$ 1,013,943	\$ (659,063)	\$ (354,880)	\$ 497	\$ 31,733	\$ 2,500,000	\$ 4,918,302	
	Aug-17	\$ 223,597	\$ (31,733)	\$ (19,964)	\$	\$ (0)	\$ 2,500,000	\$ 5,110,265	
		\$ 14,674,582	\$ (9,564,316)	\$ (5,110,266)	\$ 51,668				\$ 14,674,582

^^ - Expenses to date of \$1,669,395 include estimated \$144,232 for Lava Tube Reinforcement. Final invoice has not been received at this time, however work has been completed.
 * - Bond Balance @ 5/31/16 = \$9,512,647.99
 # - Construction timeline correlates to milestones in Column A
 ** - Estimated Expenses correlate with the General Contractors proposed Cash Flow
 ## - Based off of a 65/35 split, Deschutes County would draw down the Bond 65% of each months expenditure
 *** Based off a 65/35 split, HRG would pay out 35% of each months expenditure
 ### Estimated Calculation of Monthly Interest earned on the remaining bond balance

Please note that the Bond account balance does not hit 0 until the last draw which is covered by a 2.5M bond if needed, with only 200K left in outlays to complete the Lodge.



D-IPPS Cnt=1 Str=1 BN
This is a no fee document

After Recording Return to:
Deschutes County Community Development
117 NW Lafayette
Bend, OR 97701

**2012 AMENDMENT TO IMPROVEMENT AGREEMENT
Deschutes County Document No. 2012-671
(Overnight Lodging)**

25

This 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, hereafter referred to as "Resort," as required in the conditions of approval identified in:

Findings and Decisions for Deschutes County File Nos. M-02-1, Final Master Plan for a destination resort (the "Master Plan");

SP-02-49, Site Plan for visitor-oriented lodging, eating and meeting facilities;

SP-08-2, Site Plan for hotel, extended by E-10-15; and

SP-08-4, Site Plan for hotel, extended by E-10-14;

by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, herein after 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", defined herein) and signify agreement to this Agreement by signing below.

This Agreement is effective upon signature of all parties.

RECITALS

WHEREAS, Owner is the owner of a fee simple interest in the Future Development Sites and the successor to land use approvals and corresponding requirements; and

WHEREAS, Owner's predecessor in title ("Prior Owners") and County entered into an Improvement Agreement (Overnight Lodging) recorded in the Official Records of Deschutes County at 2002-68693 as amended and restated pursuant to that certain 2008 Amendment to Improvement Agreement (Overnight Lodging) recorded at 2008-22062 (collectively referred to as the "Original Improvement Agreement"); and

WHEREAS, Owner intends to comply with County conditions of development approval, including but not limited to the obligation to construct overnight lodging units (such "overnight lodging units" or "overnight units" are defined in Deschutes County Code ("DCC") 18.04.030) on Future Development Sites, hereinafter the "Required Improvements" as further defined in Section 4 of this Agreement; and

WHEREAS, pursuant to the Original Improvement Agreement, Prior Owners, in whole or in part, deposited funds to be held in a trust account (the "Trust Account") with the County in the amount of Seven Million Four Hundred Thousand Dollars (\$7,400,000), as financial assurance to guarantee that the obligation to build the overnight lodging units would be fulfilled on the designated sites in compliance with Deschutes County Code ("DCC") Section 18.124.050; and

WHEREAS, the current balance of the Trust Account funds (including accrued interest) is approximately \$9.3 million; and

WHEREAS, DCC Section 18.113.110, related code provisions, and prior agreements between County and Prior Owners provide that County may utilize the financial assurance provided to pursue completion of the Required Improvements (as defined herein); and

WHEREAS, the deadline under the Original Improvement Agreement to complete construction of the overnight lodging units on Hotel Site A (Tax Account 161316D000500) has expired, and Owner desires to enter into this Agreement with County such that the obligations running with the Future Development Sites are not in default, and Owner desires to bring the Resort into full compliance with all land use approvals and legal requirements; and

WHEREAS, the effectiveness of this Agreement is expressly conditioned on (i) the dismissal of the lawsuit identified as Case No 12CV0489, Casilli v. Deschutes County, et. al.; and (ii) the release by Gerald S. Casilli and Jeanne L. Casilli, Trustees of the Casilli Revocable Trust UTA dated October 15, 1996 and Gerald S. Casilli, individually, of any and all claims to the funds in the Trust Account; and

WHEREAS, County agrees to release all of the Trust Account funds toward construction on the Phase 1 Site, defined herein and pursuant to the terms of this Agreement, and including but not limited to land use permitting professional expenses and fees, professional architectural expenses, professional engineering expenses, (collectively "soft costs") and Owner will pay for the balance of the costs associated with completion of construction on the Future Development Sites; and

WHEREAS, Owner commits to providing financial assurance for timely completion of the Required Improvements in the form of conveyance to the County of a First Trust Deed over the land which constitutes the first of the two Future Development Sites (the "Phase 1 Site") and all fixtures and improvements constructed thereon, which First Trust Deed shall name County as beneficiary and shall be delivered to the County, free and clear of encumbrances not approved by the County as financial assurance for completion of all Required Improvements (as defined herein); and

WHEREAS, the Phase I Site, upon completion of construction of the overnight units thereon, shall contain at least sixty percent (60%) of the overnight units required of Owner under the Required Ratio (as defined herein), and

WHEREAS, it is the intention of the parties that upon an Event of Default (defined below), County, as beneficiary under the Trust Deed, shall after giving required notice to Owner be immediately entitled to exercise any and all of remedies under Oregon law including, without limitation, foreclosure of the Trust Deed with the power of sale, free from the claim or lien of any person or entity; and

WHEREAS, DCC 18.113.060(D)(2) and the Master Plan currently contain requirements that are more stringent than Oregon Revised Statutes, requiring that the Owner construct overnight units in numbers calculated by a ratio of at least two (2) permanent dwellings per each one (1) overnight lodging unit; and the Parties have contemplated amending DCC to allow a ratio of not less than two and one-half (2 ½) permanent dwellings per each one (1) overnight lodging unit and the County may or may not hereafter approve such amendment, the result of which will be referenced herein as the "Required Ratio" as applicable; and

WHEREAS, the Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc);

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.** 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.
2. **Real Property Description.** The real property subject to this Agreement, is described on attached Exhibit A, also known as Tax Lots 161316C000300, 161316D000500, and Tesana lots as described herein, all incorporated by this reference.
3. **Exhibits.** The exhibits set forth below and attached to the Agreement are hereby incorporated herein by reference:
 - 3.1. Exhibit A – Legal Description of Future Development Sites and Tesana;
 - 3.2. Exhibit B –Trust Deed.
 - 3.3 Exhibit C – Sample Draw Form
4. **Identification of Required Improvements.**
 - 4.1. Owner shall install and complete, or cause to be installed and completed the Required Improvements, as set forth in **SP-08-2 and SP-08-4**, and as they each may be amended in the future by Owner application and County approval, to the extent that the same remain to be completed.
 - 4.2. Provided that the Required Improvements satisfy the definition of an "overnight lodging unit" and comply with County site plan approval(s), Owner shall have the ability to design the type of product (e.g., conventional multi-story hotel, lodge,

villa, etc.) to be constructed on the Future Development Sites and submit applications to either amend the County site plan approvals listed in Section 4.1. or submit new site plan applications accordingly for County review and approval.

4.3 It is further acknowledged by the Parties that Owner may opt to construct a portion of the Required Improvements on other property within the Resort, but such construction shall not count toward Owner's obligation to build 60% of the Required Improvements in Phase 1. Further, Owner shall not be entitled to use the Trust Account proceeds for construction of these units built on other properties within the Resort. Owner shall still be required to pledge the title of Phase 1's site into trust by execution of a Trust Deed as described herein as financial assurance. If Owner constructs some or all such Required Improvements on other properties with the Resort, such units shall be deducted from the total number of Required Improvements which Owner is obligated to construct,

4.4 The provisions of Section 4.3 are subject to the following conditions:

4.4.1 Locating required overnight lodging on property other than the Future Development Sites may require land use application to and approval by the County.

4.4.2 Nothing contained in Section 4.3 shall be construed as requiring County approval of extensions to Construction Phases or Deadlines outlined in Section 5.4 of this Agreement.

4.4.3 Notwithstanding the exercise of rights contained in Section 4.3 and subject to Section 5.8 of this Agreement, all Required Improvements shall be completed no later than December 31, 2018.

5. Construction of Required Improvements; Status Reports.

5.1 The number of Required Improvements that Owner shall construct is 142 units if the Required Ratio remains at 2:1, or if Owner receives County land use approval for a Required Ratio of 2.5:1, Owner shall construct 104 units; in either event, said number may be subject to change due to matters changing the number of residential lots in the Resort, such as approved consolidation of residential lots.

5.2 The Required Improvements shall be constructed in accordance with applicable building and specialty codes and regulations, and the design and construction plans and specifications approved by the County.

5.3. Owner shall engage consultants and contractors who shall cause Phase 1 Site (which, upon completion of construction of the overnight lodging units thereon, shall contain not less than 60% of the total number of units comprising the Required Improvements), to be designed, constructed, inspected and receive occupancy approval from the County and/or the State of Oregon not later than June 30, 2017, ("Phase 1 Completion Date"), unless extended by mutual agreement of the Parties.

5.4. Timeline for Construction of Required Improvements

Construction Phase	Deadline
Phase 1 Conceptual Plans	December 31, 2013
Phase 1 Construction Drawings	December 31, 2014
Phase 1 Commencement	June 30, 2015
Phase 2 Conceptual Plans	June 30, 2015
Phase 2 Construction Drawings	June 30, 2016
Phase 1 Completion	June 30, 2017
Phase 2 Commencement	June 30, 2017
Phase 2 Completion	Dec. 31, 2018

As the Timeline depicted above demonstrates ("Timeline"), Owner shall cause Phase 2 to be designed, constructed, inspected and receive occupancy approval from the County and/or the State of Oregon not later than December 31, 2018 ("Phase 2 Completion Date"), unless extended by mutual agreement of the Parties.

- 5.5. Owner shall promptly and without delay and at no cost to the County repair all facilities and all real property wherever located, damaged during any construction-related activities.
- 5.6. As used herein, the term "Applicable Completion Date" shall mean and refer to the Phase 1 Completion Date when the context indicates that construction of Phase 1 is at issue and it shall mean and refer to the Phase 2 Completion Date when the context indicates that construction of Phase 2 is at issue.
- 5.7. Commencing in June, 2013, Owner shall provide County with quarterly updates (on June 30, September 30, December 31 and March 31 of each year), regarding its progress in completing the Required Improvements.
- 5.7.1. Such updates shall be submitted in writing and shall be submitted to the Deschutes County Community Development Department ("CDD") or such other contact as County designates in writing, and may be presented, to the Board of County Commissioners ("Board") by a representative of Owner at a regularly scheduled Board Business Meeting or Work Session.
- 5.7.2. In advance of such meeting or work session Owner shall permit CDD and CDD's consultant (at County's cost) to enter the Property for purposes of verifying information contained in each update.
- 5.7.3. Each update shall, at a minimum, include specific information regarding the following:
- 5.7.3.1. The percentage of the Required Improvements completed to date;

- 5.7.3.2. Any changes in the anticipated cost and an updated timeline to complete the Required Improvements;
 - 5.7.3.3. Details and explanation of any changes in the construction timeline from the date of this Agreement and/or the date of the last update provided to the Board; and
 - 5.7.3.4. Any other information County may reasonably request.
- 5.8. Parties acknowledge that the Timeline depicted in section 5.4 above assumes that third parties will not interfere in Owner's performance.
- 5.8.1. In the event Owner is delayed at any time in the progress of constructing the Required Improvements by the action of any fire, adverse weather conditions, unavoidable casualties, acts of God, any third party unrelated to Owner, or any other causes beyond Owner's control, then Owner may request extension of performance of specific tasks and for specific periods of time that directly relate to the nature and impact of the specific interference. Owner's inability to obtain financing is deemed to be within Owner's control.
 - 5.8.2. Unless the County, in its reasonable discretion, determines that the Owner's request is being made in bad faith, County shall approve said request and memorialize the modification in writing.
6. **Reserved**
7. **License to Enter and Remain on Property.**
- 7.1. Owner hereby grants County and County's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on such portions of the Future Development Sites as necessary to make inspections of the Required Improvements.
 - 7.2. In addition to any other remedies contemplated herein, from and after the occurrence of an Event of Default, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the applicable portions of the Future Development Sites and may cause the applicable portion of the Required Improvements to be installed and completed.
 - 7.3. Any funds held by the County in Trust may be applied toward completion costs.
8. **Ingress and Egress.** Prior to or contemporaneous with recording any instrument conveying any platted lot located on the Future Development Sites, Owner shall provide each purchaser with legal rights of ingress and egress to the platted lot.
9. **No County Guarantee.** County does not guarantee that any of the Required Improvements referred to in this Agreement will be constructed, maintained or operated.
10. **License to Use Permits, Specifications and Plans.**

- 10.1. Upon an Event of Default, Owner shall, upon request of the County, license or assign to County all applicable contracts, permits, plans, specifications, shop drawings, instruments, and approvals, and other documents necessary or useful in the completion of or related in any manner to the applicable portion of the Required Improvements (the "Documents").
 - 10.2. Owner shall be responsible for providing within any contracts for supply or labor and materials used in connection with constructing the Required Improvements that such contract rights are assignable by Owner, but Owner is not responsible for providing terms to assure compliance with public contracting rules.
 - 10.3. Upon County's request pursuant to Section 10.1, Owner shall cause delivery of physical possession of such Documents to the County.
 - 10.4. Owner's obligations shall extend only to those Documents that relate to the portion of the Required Improvements that have not been satisfactorily completed as specified by the Applicable Completion Date.
 - 10.5. County may assign the license referred to in this section for any purpose related to completion of the Required Improvements without further approval from Owner.
11. **No Third Party Beneficiaries.**
- 11.1. The Parties named herein are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as rights and responsibilities run with the land to successors in title or legal responsibility.
 - 11.2. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
12. **Restoration of Monuments.** Owner shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land which monument is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by Owners or Owner's agents, employees or independent contractors.
13. **Costs of Inspection.** Owner shall pay to County the usual and customary costs incurred by County in the inspection of the completed Required Improvements plus any fees, such as plan check fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the real property.
14. **Security for Required Improvements.**
- 14.1. As security for Owner's obligations to complete the Required Improvements, upon determination by the Owner as to which Future Development Site will be developed first, but in any event, not later than June 1, 2013, Owner shall

execute a First Trust Deed, in the form attached as Exhibit B, on the Phase 1 Site (whichever of the two hotel sites, previously referenced as A or B, is developed first, to include at least 60% of the Required Improvements), which shall be recorded in the official records of Deschutes County. In the event Owner needs to change said determination for unforeseen reasons (site limitations, etc.), Owner may replace the recorded Trust Deed with a replacement Trust Deed for the other site on or before December 31, 2013 (Deadline for Phase 1 Conceptual Plans), subject to County approval, and such approval shall not be unreasonably withheld.

- 14.2. The First Trust Deed shall name County as beneficiary, and shall convey the Phase I Site and all fixtures and improvements constructed or to be constructed thereon, and all rents accruing therefrom, to the trustee of County's choice in trust, free of any liens or encumbrances not approved by the County, with power of foreclosure, sale and any other remedies permitted by applicable law.
- 14.3. Owner estimates that the value of the Phase 1 Site, together with the completed improvements and fixtures, will exceed the current value of the Trust Account (i.e., \$9,300,000).
- 14.4. Owner expressly acknowledges the validity and enforceability of the First Trust Deed, and waives any right to challenge the First Trust Deed or any of the County's rights thereunder based upon the nature of the obligation secured.
- 14.5. Except as otherwise provided herein, from and after County's acceptance of First Trust Deed Owner shall have no right to require County to accept any other form of equivalent financial assurance to secure performance of Required Improvements.

15. Owner's Obligation for Costs.

- 15.1. Parties expressly acknowledge, understand, and agree that this Agreement shall not relieve parties from the obligation to complete and fully pay for the Required Improvements and other costs and fees set forth in this Agreement and in the Deschutes County Code. The parties acknowledge that County shall also receive the Trust Deed for Phase 1 real property as described herein. The value to be attributed to the land ("Land Value") for such property in 2012 shall be as set forth in the Stipulated General Judgment in Oregon Tax Court Cases, *Pronghorn Intangible, LLC. v. Deschutes County Assessor*, Case No. 120379N and *Pronghorn Development Company LLC v. Deschutes County Assessor*, Case No. 120319N. Thereafter, the Land Value in future years shall be established at the Real Market Value in effect at the time of the foreclosure of the First Trust Deed.
- 15.2. If there is an Event of Default prior to award of Phase 1 contract setting maximum price for Phase 1 construction, Owner shall pay to County the anticipated shortage to complete Required Improvements at a rate of \$140,000 per unit after crediting the value of the Trust Account and Land Value.

- 15.3 If there is an Event of Default after award of Phase 1 contract setting maximum price for Phase 1 construction, Guaranteed Maximum Price shall determine the per unit cost of construction, and Owner shall pay to County the anticipated shortage to complete Required Improvements after crediting the value of the Trust Account and Land Value.
 - 15.4 If there is an Event of Default before award of Phase 2 contract setting maximum price for the Phase 2 construction, Owner shall pay to County the anticipated shortage to complete Required Improvements at a rate of \$140,000 per unit, after crediting the value of the Trust Account remaining, if any and Land Value, .
 - 15.5 If there is an Event of Default after award of Phase 2 contract setting maximum price for Phase 2 construction, Guaranteed Maximum Price shall determine the per unit cost of construction, and Owner shall pay to County the anticipated shortage to complete Required Improvements after crediting the value of the Trust Account remaining, if any, and Land Value.
16. **Release of Security or Obligation.** After the Required Improvements have been inspected and approved by the County Community Development Department, County shall release the respective security within fifteen (15) days of Owner's written request..
17. **Trust Account Releases for Phase 1 Construction**
- 17.1. The Trust Account fund amounts to approximately \$9.3 million and will continue to accrue interest until such time as all of the funds in the Trust Account have been expended in accordance with this Agreement.
 - 17.2. Owner shall submit conceptual plans and construction drawings for each phase in accordance with the timeline set forth in Section 5, above.
 - 17.3. Construction drawings shall include a construction budget, including a Guaranteed Maximum Price ("GMP") which shall be approved in advance by Parties in writing for the total project budget.
 - 17.4 "Proportional Contributions" for the Parties shall be calculated as follows:

$$\text{GMP} - \text{Trust Account} = \text{Shortage}$$

County shall be responsible for contributing the Trust Account sum and Owner shall be responsible for contributing the Shortage sum. Proportional percentage allocations for Parties shall be determined as follows:

$$\text{Proportional Contribution for County: } \text{Trust Account} / \text{GMP}$$

$$\text{Proportional Contribution for Owner: } \text{Shortage} / \text{GMP}$$

Each Party shall be required to pay its respective Proportional Contribution Percentage for each draw request paid.

For example, if

GMP =	\$10,000,000
County =	\$ 8,800,000* (88% of total GMP)
Owner =	\$ 1,200,000 (12% of total GMP)

*This reflects \$500,000 reduction in Trust Account per Sec. 17.19 below.

- 17.5. GMP phases shall be divided into commonly used phases of construction.
- 17.6. The phases of construction shall be divided pursuant to the Sample Draw Form attached as Exhibit C to this Agreement. (This form is provided as a general example with values provided for illustrative purposes only.)
- 17.7. Separate budget amounts shall be specified and agreed upon by the Parties in writing prior to commencement of each phase of work.
- 17.8. Owner will submit draw requests to County for payment of the construction costs from Trust Account. Provided however, nothing contained herein shall be construed as obligating the County for any costs, other than the funds contained in the Trust Account.
- 17.9. Owner shall submit a draw requests, from time to time, but in no event more than once during any calendar month, to the County.
- 17.10. The draw requests shall provide a detailed explanation of the work for which the funds are being requested.
- 17.11. At no time shall County remit funds for work not yet completed.
- 17.12. Owner shall provide to County all invoices from contractors, sub-contractors, and suppliers with each draw request to allow verification of costs and work performed.
- 17.13. Owner shall provide to County all lien releases, whether conditional or unconditional, to verify payment status of invoices received.
- 17.14. The project architect shall independently review all draw requests and shall physically inspect work completed to verify work is completed prior as set forth in the draw request.
- 17.15. Architect's certification of same shall be provided to County by Owner with each draw request.
- 17.16. Within fifteen (15) days after receipt, the County shall examine each draw request to insure compliance with the requirements set forth herein.
- 17.17. Provided that the requirements set forth herein have been satisfied and Owner is not in default under this Agreement, County and Owner shall remit their Proportional Contributions as defined above, on a percentage basis for each draw request from Contractor. Draw request shall be based on all work completed to date. Owner shall submit request for draw, which shall include a deduction for retainage to be held until completion of construction. Retainage

held back by the County shall be five percent (5%) of County's Proportional Share of total work completed to date. .

- 17.18. Upon County issuance of a final certificate of occupancy and Owner's submission to County of all certificates of payment and lien releases for Phase 1, County shall release the County Retention, together with the balance of funds in the Trust Account, including accrued interest thereon, to Owner.
- 17.19 Parties acknowledge that there will be significant non-construction costs involved in the completion of the Required Improvement including but not limited to land use planning, design and engineering, inspections, permits, fees and costs, customarily referenced as "soft costs", and these will be paid by Owner with reimbursement from the Trust Account in an amount of \$500,000 to be paid upon issuance of building permits for Phase 1.

18. **Reserved**

19. **Successors in Interest.**

- 19.1. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Future Development Sites, binding heirs, successors, and assigns.
- 19.2. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Future Development Sites, including any mortgagee or other secured party in actual possession of said Future Development Sites by foreclosure or otherwise or any person taking title from such security holder.
- 19.3. Upon completion of all of the Required Improvements, , County shall release the Future Development Sites from the development conditions and covenants subsisting under this Agreement.

20. **Binding Authorization.** By signature on this Agreement, each signatory, signing in a representative, capacity certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.

21. **Expiration.**

- 21.1 Unless otherwise extended, this Agreement shall expire twelve (12) months after the completion of all Required Improvements or December 31, 2019, whichever is earlier, or by County's express written release of Owner from this Agreement.
- 21.2. Notwithstanding the foregoing, this Agreement shall survive until the conclusion of any claim or dispute arising from or under this Agreement.
- 21.3 Upon expiration, the parties agree to execute a document in recordable form, formally evidencing such expiration.

22. **Survival.** Parties' rights under this Agreement, including County's right to pay the full costs and expenses of completing the Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement to the extent the Owner's obligations hereunder have not been satisfied in full before such expiration.
23. **No Agency.**
- 23.1. It is agreed by and between the Parties that Owner is expressly not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Owner complete performance under this Agreement nor does County have a right to exercise any control over the activities of the Owner beyond those allowed under building and land use codes.
- 23.2. Neither Owner nor its members is an officer, employee or agent of County as those terms are used in ORS 30.265.
24. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Owner in connection with the Future Development Sites, and shall have no obligation with respect to Owner debts or other liabilities of each and every nature.
25. **Liens.**
- 25.1 Owner shall pay as due all claims for work done on and for services rendered or material furnished to the Future Development Sites and shall keep the Future Development Sites free from liens.
- 25.2. If Owner fails to pay any such claims or to discharge any lien, County may do so and collect the cost from Owner.
- 25.3. County's payment of claims and discharge of liens shall not constitute a waiver of any right or remedy that County may have on account of Owner's failure to complete the Required Improvements or failure to observe the terms of this Agreement.
26. **Indemnification.** Owner shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Owner under this Agreement and on the Future Development Sites; and further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner, and by whomever brought resulting from, arising out of, or connected with any such injury.
27. **Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought for failure to complete the Required Improvements or to observe any of the terms of this Agreement, parties shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

28. **Waiver.**

- 28.1. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.
- 28.2. No waiver may be enforced against the County unless such waiver is in writing and signed by the County.

29. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**

- 29.1. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.
- 29.2. Any provisions herein, which would conflict with the law, are deemed inoperative to that extent.
- 29.3. Additionally, Parties shall comply with any requirements, conditions or limitations arising under the any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Required Improvements.
- 29.4. If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void. The parties agree and covenant not to assert otherwise, that this Agreement does not constitute the lending of the County's credit nor constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution

30. **No Inducement.** No representations, statements, warranties have induced the making and execution of this Agreement, or Agreements other than those herein expressed.

31. **Governing Law.**

- 31.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 31.2. Any claim, action, suit or proceeding (collectively, "Claim") between County and Owner that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 31.3. PARTIES, BY SIGNING BELOW, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

32. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties

shall be construed and enforced as if this Agreement did not contain the particular term or provision held void, invalid unenforceable.

33. Counterparts.

33.1. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

33.2. Each copy of this Agreement so executed shall constitute an original.

33.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement and each counterpart shall be noted on the recorded plat map.

34. Notice.

34.1. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing to Owners or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

34.2. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

34.3. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission.

34.4. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services.

34.5. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

To Owner:

Pronghorn Intangibles LLC
c/o The Resort Group LLC
1100 Alakea Street, 25th Floor
Honolulu, Hawaii 96813
Fax No. 808-531-1144

With a Copy to:

Pronghorn Golf Club & Resort
c/o Randy Koss, President
65600 Pronghorn Club Dr.
Bend, OR 97701
Fax No. 541-531-3199

To County:

Deschutes County Administrator
Tom Anderson, Interim Deschutes County
Administrator
Deschutes County Administration
1300 NW Wall St., Ste. 200
Bend, OR 97701
Fax No. 541-388-4752

35. **Default.**

- 35.1 Upon failure of the Owner to comply with the requirements of this Agreement, County shall notify Owner of said default and provide Owner with one hundred twenty (120) days to either cure such default or procure a completion [surety] bond for the completion of construction of the Required Improvements (the "Completion Bond"). If Owner fails to obtain the Completion Bond, in the time period set forth above, it shall be deemed an "Event of Default" which shall permit the County to pursue any and all available legal remedies including, without limitation, withholding of permits, injunctive relief, specific performance, damages, and/or any remedies under the First Trust Deed. If Owner does obtain the Completion Bond in a timely manner, the County shall release the respective security within fifteen (15) days of Owner's written request.
- 35.2 Should the County, upon an Event of Default, choose to exercise its rights under the First Trust Deed, the unsatisfied obligation owed to County and secured by the First Trust Deed (hereinafter, the "Unsatisfied Obligation") shall be established as set forth in Section 15 above.
- 35.3 Upon foreclosure of the First Trust Deed County shall be entitled to participate in the sale of the Phase 1 Site and to credit bid at that sale any amount up to the combined total of (a) the Unsatisfied Obligation, (b) the County's fees and expenses incurred in exercising its rights under the First Trust Deed, and (c) any other amount to which County is entitled under this Agreement or the First Trust Deed.
- 35.4 As an example, if Phase 2 consists of forty units, the Unsatisfied Obligation of construction would be \$5,600,000. The parties agree and acknowledge that, until a GMP is prepared, calculation of the dollar amount of Owner's obligations by this method is reasonable in light of the anticipated or actual harm caused by Owner's default under this Agreement, the difficulties of proof of loss, and the inconvenience or nonfeasability of obtaining an adequate remedy. The parties further acknowledge and agree that any amounts calculated by use of this method (including, without limitation, costs of construction, damages and/or the Unsatisfied Obligation) are not unreasonably large and do not constitute a penalty.
- 35.5 The Parties acknowledge that the remedies contained herein do not change the schedule in Section 5.

36. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.

37. **Captions.**

- 37.1. The captions contained in this Agreement were inserted for the convenience of reference only.

37.2. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

38. Merger Clause.

38.1. This Agreement and the attached exhibits constitute the entire agreement between the parties with respect to the subject matter hereof and, where it conflicts, supersedes any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein.

38.2. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.

38.3. This Agreement shall bind all parties and its terms may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.

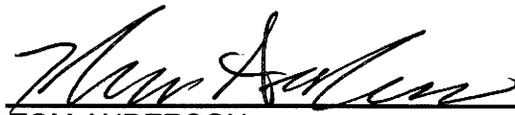
38.4. Except as otherwise expressly provided herein, any written waiver, consent, modification or change shall be effective only when in writing and signed by the parties in the specific instance and for the specific purpose given.

///

39. **Effect of Agreement.** This Agreement shall amend and has restated in their entirety the terms and requirements of the Original Improvement Agreement with respect to overnight lodging, and, accordingly, upon full execution of this Agreement, the terms of the Original Improvement Agreement that related to overnight lodging shall be deemed to have been superseded hereby.
40. The Deschutes County Board of Commissioners by appropriate and sufficient action has officially authorized the Interim County Administrator to execute this Agreement on behalf of Deschutes County.

COUNTY:

Dated this 4th of January, 2013

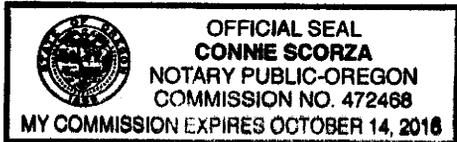


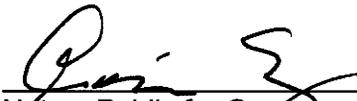
 TOM ANDERSON
 Interim County Administrator

STATE OF OREGON)
) ss.
 County of Deschutes)

Before me, a Notary Public, personally appeared TOM ANDERSON, Interim County Administrator of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 4th day of January, 2013.





 Notary Public for Oregon
 My Commission Expires: 10/14/16

ADDITIONAL SIGNATURES TO FOLLOW ON NEXT PAGE

Pronghorn Intangibles LLC,

a Hawaii limited liability company

By: [Signature]
Randy Koss, in his capacity as President
For Pronghorn Intangibles LLC

STATE OF ~~OREGON~~)
California) ss
County of ~~Deschutes~~)
Riverside

Before me, a Notary Public, personally appeared Randy Koss and acknowledged the foregoing instrument on behalf of Pronghorn Intangibles LLC as its President.

DATED this 3rd day of January, 2013.



[Signature]
Notary Public for ~~Oregon~~ California
My Commission Expires: 05/29/2015

Exhibit A – List of Affected Properties

Hotel Site A

Lot 11, CORE AREA AT PRONGHORN, Recorded December 15, 2005 as document No. 2005-86135, Deschutes County, Oregon,

EXCEPTING THEREFROM that portion platted as The Residence Club at Pronghorn Villas Condominiums Supplemental Plat No.1: Annexation of Stage 2 Recorded August 21, 2006 as Document No. 2006-57317, and

ALSO EXCEPTING THEREFROM that portion platted as RESIDENCES CONDOMINIUM, recorded February 5, 2009 as Document 2009-05027 Deschutes County, Oregon.

Hotel Site B

Developer Area 7 of Estates at Pronghorn, Phase 6, Deschutes County, Oregon.

Tesana (Section 4.3 only Subject Property)

All Property in Estates at Pronghorn Phase 6, Recorded June 24, 2008 as Document 2008-26996 Deschutes County Official Records, Together with any portion of the property described in the Warranty Deed recorded November 19 2008 as Document No. 2008-46148 that is outside the boundaries of said Estates at Pronghorn Phase 6

Excepting therefrom Lots 294, 310, 311, 312, 332, 335, 337, 338, 341, 350, 352, 354 and 355 and Developer Area 7 of Estates at Pronghorn Phase 6, Recorded June 24, 2008 as Document 2008-26996 Deschutes County Official Records

Also Excepting therefrom that property included in Warranty Deed recorded November 19, 2008 as Document No. 2008-46153 Deschutes County Official Records.

EXHIBIT B

WHEN RECORDED RETURN TO:

*
*
*

**TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

The Tax Account No(s). for the real property covered by this Trust Deed are:

This Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (hereinafter called "Trust Deed") is made as of the date last indicated on the signature pages, by and among Pronghorn Intangibles, LLC, a Hawaii limited liability company with a principal business address of 1100 Alakea St., 25th Floor, Honolulu, Hawaii 96813, hereinafter called "Trustor," Deschutes County Legal Counsel, hereinafter called "Trustee," and Deschutes County, a political subdivision of the State of Oregon with a primary business address of 1300 NW Wall St., Suite 205, Bend, OR 97701, hereinafter called "Beneficiary." This Trust Deed is made to secure performance of Owner's obligations under that 2012 Amendment to Improvement Agreement recorded at Instrument No. _____ in the official records of Deschutes County, Oregon (the "Improvement Agreement").

WITNESSETH:

SECTION 1. GRANTING CLAUSE; WARRANTY OF TITLE

1.1 Trustor hereby irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all of Trustor's present and future estate, right, title and interest in and to that real property and all fixtures, buildings, and other improvements now thereon or hereafter constructed thereon (the "Premises"), in the County of Deschutes, State of Oregon, described on Exhibit "A" attached hereto and by this reference made a part hereof, together with all of the following which, with the Premises (except where the context otherwise requires), are hereinafter collectively called the "Trust Property":

- (a) All appurtenances in and to the Premises;
- (b) All water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil and gas rights, royalties, lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All right, title and interest of Trustor now owned or hereafter acquired in and to all streets, roads, alleys and public places, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;

(d) All machinery, equipment, fixtures and materials now or at any time attached to the Premises together with all other personal property as identified in Section 3.1, below;;

(e) To the extent assignable by law, any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Premises, and, to the extent assignable by law, the right to the use of any trade name, trademark, or service mark now or hereafter associated with the operation of any business conducted on the Premises; and

(f) To the extent payable after a foreclosure sale of the Trust Property, any and all insurance proceeds, and any and all awards, including interest, previously and hereafter made to Trustor for taking by eminent domain of the whole or any part of the Premises or any easements therein. 1.2 Trustor warrants that, except for those matters specifically described on Schedule B to the title insurance policy issued by insuring this Trust Deed, which exceptions are subject to the rights of the County to approve exceptions under Section 14.2 of the Improvement Agreement (hereinafter called the "Permitted Exceptions"), it is well and truly seized of a good and marketable title in fee simple to the Premises, it is the lawful owner of the rest of the Trust Property, and the title to all the Trust Property is clear, free and unencumbered; Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever.

TRUSTOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

SECTION 2. OBLIGATION SECURED

This Trust Deed is given for the purpose of securing, in such order of priority as Beneficiary may elect, the following obligations (collectively, the "Obligation"):

2.1 The performance of Owner's obligations under the Improvement Agreement; and

2.2 Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof.

SECTION 3. SECURITY AGREEMENT

3.1 This Trust Deed shall cover, and the Trust Property shall include, all property now or hereafter affixed or attached to or incorporated upon the Premises, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Premises. To the extent any of the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Trust Deed shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property for the purpose of securing the Obligation. In addition, for the purpose of securing the Obligation, Trustor hereby

grants to Beneficiary, as secured party, a security interest in all of the property described below in, to, or under which Trustor now has or hereafter acquires any right, title or interest, to the extent assignable by law, whether present, future, or contingent; all equipment, inventory, accounts, general intangibles, instruments, documents, and chattel paper, as those terms are defined in the Uniform Commercial Code and to the extent assignable by law, and all other personal property related to or used on the Premises and not related to or used on any real property other than the Premises of any kind, whether now existing or hereafter created, that are now or at any time hereafter: (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to, or appurtenant to, the Premises; (iii) located or used on the Premises or identified for use on the Premises (whether stored on the Premises or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Premises or any of the personal property described herein, the construction of any improvements on the Premises, the ownership, development, maintenance, leasing, management, or operation of the Premises, the use or enjoyment of the Premises, or the operation of any business conducted on the Premises; including without limitation all such property more particularly described as follows:

- (a) Buildings, structures and improvements, and building materials, fixtures and equipment to be incorporated into any buildings, structures or improvements located on the Premises;
- (b) Goods, materials, supplies, fixtures, equipment, machinery (excluding rolling stock), furniture and furnishings, including without limitation, all such items used for: (i) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (ii) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (iii) removal of dust, refuse, garbage or snow; (iv) transmission, storage, processing or retrieval of information; and (v) floor, wall, ceiling and window coverings and decorations;
- (c) All leases, subleases, licenses and other agreements for the use and occupancy of all or any part of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (hereafter called the "Leases");
- (d) Water and water rights, ditches and ditch rights, reservoirs and reservoir rights, stock or interest in irrigation or ditch companies, minerals, oil and gas rights, royalties, and lease or leasehold interests;
- (e) Plans and specifications prepared for the construction of any improvements, including without limitation, all studies, estimates, data, and drawings;
- (f) Documents, instruments and agreements relating to, or in any way connected with, the operation, control or development of the Premises, including without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners

association or similar group;

(g) Claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including without limitation those arising on account of any loss of, damage to, taking of, or diminution in value of, all or any part of the Premises or any personal property described herein;

(h) Policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety;

(i) Contracts, agreements, permits, licenses, authorizations and certificates, including without limitation all architectural contracts, construction contracts, management contracts, service contracts, maintenance contracts, franchise agreements, license agreements, building permits and operating licenses;

(j) Trade names, trademarks, and service marks (subject to any franchise or license agreements relating thereto);

(k) Refunds and deposits to become due from any utility companies or governmental agencies payable after a foreclosure sale of the Trust Property;

(l) Replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, all of the Personal Property described herein;

(m) Books, records, correspondence, files and electronic media, and all information stored therein;

(n) Income, receipts, revenues, rents, issues and profits, including without limitation, room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, and claims for damages arising from the breach of any leases;

(o) Together with all products and proceeds of all of the foregoing, in any form, including all proceeds received, due or to become due from any sale, exchange or other disposition thereof, whether such proceeds are cash or non-cash in nature, and whether represented by checks, drafts, notes, or other instruments for the payment of money; provided that, without limiting the rights of any purchaser of such property at a foreclosure sale, a security interest is not granted in any proceeds of the Leases (defined in sub-paragraph 3.1(c), above) or of the items set forth in sub-paragraph 3.1(h) or (n) to the extent payable prior to a foreclosure sale of the Trust Property, except as otherwise provided in Section 6.2(e), below.

The personal property described or referred to in this Paragraph 3.1 is hereinafter called the "Personal Property." The security interests granted in this Paragraph 3.1 are hereinafter

severally and collectively called the "Security Interest."

3.2 The Security Interest shall be self-operative with respect to the Personal Property, but Trustor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested in order to impose the Security Interest more specifically upon the Personal Property. The Security Interest, at all times, shall be prior to any other interests in the Personal Property except any lien or Security Interest granted in connection with any Permitted Exception. Trustor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all costs and expenses of filing and recording, including the costs of any reasonable searches, deemed necessary by Beneficiary from time to time to establish and determine the validity and the continuing priority of the Security Interest.

3.3 Trustor shall keep and maintain the Personal Property in good condition and repair, and shall promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance securing the payment of debt incurred by Trustor, except as consented to by Beneficiary, which consent shall not be unreasonably withheld.

3.4 Except for purposes of replacement and repair and except for the Personal Property described in sub-paragraphs 3.1(e), (h), (i), (m), Trustor, without the prior written consent of Beneficiary, shall not remove, or permit the removal of, any of the Personal Property from the Premises.

3.5 Trustor hereby warrants, covenants and agrees that: (i) the Personal Property is or will be used primarily for business (other than farm) purposes; (ii) except for the Personal Property described in sub-paragraphs 3.1(e), (h), (i), (m) or (n), the Personal Property will be kept at the Premises; (iii) Trustor's records concerning the Personal Property will be kept at Trustor's address as set forth in the beginning of this Trust Deed.

3.6 Trustor represents and warrants that (i) the name specified above for Trustor is the true and correct legal name of Trustor, and (ii) the address specified above is the address of Trustor's chief executive office (or residence if Trustor is an individual without an office). Trustor shall give Beneficiary immediate written notice of any change in the location of: (i) Trustor's chief executive office (or residence if Trustor is an individual without an office), as set forth in the beginning of this Trust Deed; (ii) the Personal Property or any part thereof; or (iii) Trustor's records concerning the Personal Property. Trustor shall give Beneficiary immediate written notice of any change in the name, identity or structure of Trustor.

3.7 All covenants and warranties of Trustor contained in this Trust Deed shall apply to the Personal Property whether or not expressly referred to in this Section 3. The covenants and warranties of Trustor contained in this Section 3 are in addition to, and not in limitation of, those contained in the other provisions of this Trust Deed.

3.8 Upon its recording in the real property records, this Trust Deed shall be effective

as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Trust Deed and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financial statement. The filing of any other financing statement relating to any Personal Property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

SECTION 4. PROTECTION AND PRESERVATION OF BENEFICIARY'S INTEREST

4.1 Trustor, by the payment of any such tax or taxes, shall protect Beneficiary against any and all loss from any taxation of indebtedness or deeds of trust, direct or indirect, that may be imposed upon this Trust Deed, the lien of this Trust Deed on the Trust Property, or upon the Obligation, by any law, rule, regulation or levy of the federal government, any state government, or any political subdivision thereof. In the event the burden of such taxation cannot lawfully be shifted from Beneficiary to Trustor, Beneficiary may declare the entire Obligation due and payable sixty (60) days after notice to Trustor.

4.2 If Trustor shall fail to pay any taxes, assessments, expenses or charges, to keep all of the Trust Property free from liens and claims of liens, to maintain and repair the Trust Property, or to procure and maintain insurance thereon of such types and in such amounts as will reasonably protect Beneficiary's interest in the Trust Property, or otherwise fail to perform as required herein, Beneficiary may advance the monies necessary to pay the same, to accomplish such maintenance and repairs, to procure and maintain such insurance or to so perform; Beneficiary is hereby authorized to enter upon the Trust Property for such purposes.

WARNING TO TRUSTOR

Unless you provide Beneficiary with evidence of the insurance coverage required herein, Beneficiary may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to the amount of the Unsatisfied Obligation (as defined in section 35 of the Improvement Agreement) The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law

4.3 Upon written request by Beneficiary, Trustor shall appear in and prosecute or defend any action or proceeding that may affect the lien or the priority of the lien of this Trust Deed or the rights of Beneficiary hereunder and shall pay all costs, expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may

appear in and defend any action or proceeding purporting to affect the lien or the priority of the lien of this Trust Deed or the rights of Beneficiary. Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien that in the judgment of Beneficiary appears to be prior or superior to the lien of this Trust Deed, other than any Permitted Exceptions.

4.4 Except to the extent prohibited by Paragraph 3.4, Trustor may sell, transfer, convey, assign or otherwise dispose of all or any part of the Trust Property or any interest therein; provided that any such sale, transfer, conveyance, assignment or other disposition shall not have priority to or eliminate the obligations in this Trust Deed with respect to the Trust Property.

4.5 Without obtaining the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, Trustor shall not encumber all or any part of the Trust Property or any interest therein, voluntarily or involuntarily, by operation of law or otherwise; provided that Beneficiary may withhold consent in its sole and absolute discretion to any mortgage, security interest or lien securing the payment of a debt incurred by Trustor.

4.6 All rights, powers and remedies granted Beneficiary herein, or otherwise available to Beneficiary, are for the sole benefit and protection of Beneficiary, and Beneficiary may exercise any such right, power or remedy at its option and in its sole and absolute discretion without any obligation to do so. In addition, if, under the terms hereof, Beneficiary is given two or more alternative courses of action, Beneficiary may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. All monies advanced by Beneficiary under the terms hereof and all amounts paid, suffered or incurred by Beneficiary in exercising any authority granted herein, including reasonable attorneys' fees, shall be added to the Unsatisfied Obligation as that term is defined in section 35 of the Improvement Agreement (the "Unsatisfied Obligation"), shall be secured by this Trust Deed, shall bear interest at the highest rate payable on any of the Unsatisfied Obligation until paid, and shall be due and payable by Trustor to Beneficiary immediately without demand.

4.7 Trustor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered in the content of this Trust Deed or in the execution or acknowledgment hereof. In addition, Trustor shall do such further acts as may be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Trust Deed, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the lien and security interest hereof.

SECTION 5. REPRESENTATIONS AND WARRANTIES

5.1 If Trustor is a corporation, limited liability company, partnership or trust, it (i) is duly organized, validly existing and in good standing under the laws of the state in which it is organized; (ii) is qualified to do business and is in good standing under the laws of the state in which the Trust Property is located and in each state in which it is doing business; (iii) has full power and authority to own its properties and assets and to carry on its business as now conducted; and (iv) is fully authorized and permitted to execute and deliver this Trust Deed. The

execution, delivery and performance by Trustor of this Trust Deed and all other documents and instruments relating to the Obligation will not result in any breach of the terms or conditions or constitute a default under any agreement or instrument under which Trustor is a party or is obligated. Trustor is not in default in the performance or observance of any covenants, conditions or provisions of any such agreement or instrument.

5.2 The liens and security interests created hereby are valid, effective, and enforceable liens and security interests.

5.3 All financial statements, profit and loss statements, statements as to ownership and other statements or reports previously or hereafter given to Beneficiary by or on behalf of Trustor are and shall be true, complete and correct as of the date thereof.

5.4 Trustor has filed all federal, state and local tax returns and has paid, to the best of its actual knowledge, all of its current obligations before delinquent, including all federal, state and local taxes and all other payments required under federal, state or local law.

5.5 All representations and warranties made herein shall survive the execution hereof, the execution and delivery of all other documents and instruments in connection with the Obligation, and until the Obligation has been fully paid and performed.

SECTION 6. DEFAULTS; REMEDIES

6.1 The occurrence of any of the following events or conditions shall constitute an "Event of Default" (after expiration of applicable cure periods, if any) under this Trust Deed:

(a) The occurrence of any "Event of Default" as that term is defined in the Improvement Agreement.

(b) As long as such event is not governed instead by Paragraph 6.1(a), above, any of the following which is not cured within one hundred twenty (120) days after notice to the Trustor, provided that if such breach is of a kind that cannot reasonably be cured within such one hundred twenty (120) day period, then such longer amount of time as is commercially necessary to cure such breach:

(1) A material breach of the terms of this Trust Deed;

(2) Either (i) the appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (ii) adjudication as a bankrupt or insolvent; (iii) the filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium, or insolvency law; (iv) the institution of any proceeding for dissolution or liquidation; (v) the inability to pay debts when due; or (vi) any general assignment for the benefit of creditors; or

(3) If the Beneficiary consents to a mortgage, lien, or security interest under this Trust Deed, Trustor's default beyond the applicable grace periods in the

satisfaction of any such obligation owed by Trustor to any person, if the obligation is secured by all or any portion of the Trust Property.

6.2 Upon the occurrence of any Event of Default (after expiration of applicable cure periods, if any), and at any time while such Event of Default is continuing, Beneficiary may do one or more of the following:

(a) Declare full satisfaction of all or any portion of the Unsatisfied Obligation (as that term is defined in the Improvement Agreement) immediately due.

(b) Give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein. Trustee shall then record and give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Trustor to the extent required by law, at public auction to the highest bidder for cash in then lawful money of the United States payable at time of sale (or, with regard to Beneficiary, a credit bid up to the combined total of the Unsatisfied Obligation, the Beneficiary's fees and expenses incurred in exercising its rights under this Trust Deed, and any other amounts Beneficiary is entitled to recover under this Trust Deed) all in accordance with applicable law.

Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

(c) Judicially foreclose this Trust Deed and obtain a judgment foreclosing Trustor's interest in all or any part of the Property and giving Beneficiary the right to collect any deficiency remaining due after disposition of the Trust Property.

(d) Exercise any or all of the remedies of a secured party under the Uniform Commercial Code with respect to the Personal Property. If Beneficiary should proceed to dispose of any of the Personal Property in accordance with the provisions of the Uniform Commercial Code, ten (10) days' notice by Beneficiary to Trustor shall be deemed to be commercially reasonable notice under any provision of the Uniform Commercial Code requiring notice. Trustor, however, agrees that all property of every nature and description, whether real or personal, covered by this Trust Deed is encumbered as one unit, that this Trust Deed and such security interests, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and that all property encumbered (both realty and personalty), at Beneficiary's option, may be sold as such in one unit as a going business, subject to the provisions of applicable law.

(e) Apply for and obtain, without regard to the adequacy of any security for the

Obligation or the solvency of the Trustor or any other person or entity, a receiver by any court of competent jurisdiction to take charge of all the Trust Property, to manage, operate and carry on any business then being conducted or that could be conducted on the Premises, to carry on, protect, preserve, replace and repair the Trust Property, and receive and collect all rents and to apply the same to pay the receiver's expenses for the maintenance, repair, expense, and operation of the Trust Property and for the satisfaction of the Unsatisfied Obligation. Upon appointment of said receiver, Trustor shall immediately deliver possession of all of the Trust Property to such receiver. Neither the appointment of a receiver for the Trust Property by any court at the request of Beneficiary or by agreement with Trustor nor the entering into possession of all or any part of the Trust Property by such receiver shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Trust Property or the occupancy, operation or use thereof. Trustor agrees that Beneficiary shall have the absolute and unconditional right to the appointment of receiver in any independent and/or separate action brought by Beneficiary regardless of whether Beneficiary seeks any relief in such action other than the appointment of a receiver.

(f) Without regard to the adequacy of any security for the Obligation or the solvency of Trustor or any other person or entity, enter upon and take possession of all or any part of the Trust Property, either in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction; Trustor shall on demand peaceably surrender possession of the Trust Property to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all rents, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall not be subject to any liability, charge, or obligation therefor to Trustor, other than for willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Trustor (and all net losses, costs and expenses thereby incurred shall be advances governed by Paragraph 4.7 hereof), to the same extent as the owner thereof could do, and to apply the Rents to pay the receiver's expenses, if any, for the operation of the Trust Property and then to the Obligation.

6.3 All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy will not preclude the exercise of any other remedy. An election by Beneficiary to cure Trustor's default will not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy will impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

SECTION 7 GENERAL PROVISIONS

7.1 The acceptance of this Trust Deed by Beneficiary shall not be considered a waiver

of or in any way to affect or impair any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the payment or performance of the Obligation, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of or in any way to affect or impair the security of this Trust Deed; Beneficiary may resort, for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

7.2 Without notice or demand, without affecting the obligations of Trustor hereunder or the personal liability of any person for payment or performance of the Obligation, and without affecting the lien or the priority of the lien of this Trust Deed, Beneficiary, from time to time, may: (i) extend the time for satisfaction of all or any part of the Obligation, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the Obligation; (ii) take and hold other security for the payment or performance of the Obligation and enforce, exchange, substitute, subordinate, waive or release any such security; (iii) consent to the making of any map or plat of the Trust Property; (iv) join in granting any easement on or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Trust Property; (v) join in any extension or subordination agreement; or (vi) release or direct Trustee to release any part of the Trust Property from this Trust Deed. Any such action by Beneficiary, or Trustee at Beneficiary's direction, may be taken without the consent of any junior lienholder and shall not affect the priority of this Trust Deed over any junior lien.

7.3 Upon Trustor's satisfaction of the Obligation and payment of Trustee's fees, this Trust Deed shall be reconveyed in accordance with Section 16 of the Improvement Agreement. Trustee shall reconvey the Trust Property without warranty, and the recitals in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy this Trust Deed (unless directed in such request to retain them), unless prior thereto Trustee has been directed to deliver them to the person or persons to whom the property was reconveyed. There is no promissory note or any requirement to submit any other original document to Trustee in order for Trustee to reconvey the Trust Property.

7.4 Time is of the essence hereof. This Trust Deed shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

7.5 The acceptance by Trustee of this trust shall be evidenced when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Nothing in this Trust Deed constitutes any conveyance or dedication for the public, and no person or entity is intended to be or shall constitute a third party beneficiary of any term or condition in this Trust Deed.

7.6 This Trust Deed cannot be changed except by agreement, in writing, signed by Trustor and Beneficiary.

7.7 No setoff or claim that Trustor now has or may in the future have against

Beneficiary shall relieve Trustor from paying or performing the Obligations.

7.8 Each term, condition and provision of this Trust Deed shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Trust Deed shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid term, condition or provision had not been contained herein. In addition, should this instrument be or become ineffective as a Trust Deed, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the Mortgagor and Beneficiary being the Mortgagee.

7.9 This Trust Deed, the Obligation and the agreements of any person or entity to pay or perform the Obligation shall be governed by and construed according to the laws of the State of Oregon, without giving effect to conflict of laws principles.

7.10 All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by delivery service or by electronic transmission. Any notice directed to a party to this Trust Deed shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, twenty-four (24) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Trust Deed or such other address as that party, from time to time, may specify by notice to the other parties.

7.11 Trustor covenants and warrants that the Property and Improvements are used by Trustor exclusively for business and commercial purposes. Trustor also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Trustor, Trustor's spouse, or Trustor's minor or dependent child.

7.12 JURY WAIVER

THE UNDERSIGNED AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT.

7.13 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

IN WITNESS WHEREOF, these presents are executed as of the date indicated above.

Pronghorn Intangibles LLC, a Hawaii limited liability company
("Trustor")

BY: _____
Randy Koss

In his capacity as _____ for Pronghorn
Intangible LLC

STATE OF OREGON)
) ss.:
County of Deschutes)

Before me a Notary Public, personally appeared Randy Koss and acknowledged the foregoing instrument on behalf of Pronghorn Intangibles LLC as its _____.

Notary Public, State of Oregon

(Seal)

COUNTY SIGNATURES ON FOLLOWING PAGE

EXHIBIT A

Trust Property Description

EXHIBIT C

Pronghorn - Sample County Draw Calculation

Phase 1: 12-14 month construction schedule

County Trust Account

County Trust Account	9,300,000
Soft Costs Share *	(500,000)
Remaining Trust Account	8,800,000

Construction Budget

	10,000,000
Owner Proportionate Share	12% 1,200,000
County Proportionate Share	88% 8,800,000

Draw Request

Contractor Draw - Work Completed	100,000
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Funding of Draw Request

Owner Proportion	12%	12,000
County Proportion	88%	88,000
County Retainage **	-5%	(4,400)
County's Total Net Proportion of Draw Request Funding	83%	83,600

Remaining to be Funded

Owner	12%	1,188,000
County	88%	8,716,400
Total		9,904,400

* County Share of Soft Costs Paid at issuance of permit

** At issuance of certificate of occupancy, County will owe \$440K (5% x \$8.8MM) to contractor from funds remaining in the trust account