

Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

DATE: June 3, 2016
TO: Board of County Commissioners
FROM: Nick Lelack, AICP, Director
Peter Gutowsky, AICP, Planning Manager
RE: Pronghorn Improvement Agreement Amendment

The draft Improvement Agreement Amendment (IAA) relates to the construction and security of the required improvements for Pronghorn Destination Resort 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. The certificate of occupancy deadline is November 30, 2017. In addition, Pronghorn Intangibles LCC will provide 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.

The Board of County Commissioners will formally consider the IAA at their regular meeting on Monday, June 20, 2016.

Attachments:

1. Draft IAA
2. Huntington Lodge Drawings
3. Financial Security Summary

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

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

AMENDMENT TO 2012 AMENDMENT TO IMPROVEMENT AGREEMENT
Deschutes County Document No. 2016-___
(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;

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", defined herein) and signify agreement to this Agreement by signing below.

This Agreement is effective upon signature of all parties.

RECITALS:

- A. Whereas, Owner and County are parties to 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").
- 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 an amendment to the Improvement Agreement to reflect the change in phasing, 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 County Planning Department has issued the Site Plan Modification.
- 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 - Deschutes County Site Plan approval, File No. _____
- 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 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 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 Fund 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.

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 Owner shall provide the County with a bond (the "Bond") issued by _____ (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 legal counsel, 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. 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, such thirty (30) day period shall be extended for such additional time as is reasonably necessary to allow Owner to complete the cure of the breach. A breach that results from actions or events beyond the reasonable control of Owner shall not constitute an Event of Default unless Owner fails to take all reasonable steps with reasonable diligence to cure such breach.

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 ANTHONY DEBONE, ALAN UNGER, TAMMY BANEY, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this ___ day of June 2016

Notary Public, State of Oregon
My Commission Expires: _____

DATED this ___ day of June 2016

DEVELOPER:

By: _____

Its: _____

DRAFT

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: _____

DRAFT

Huntington Lodge

LANDSCAPE PLAN



ESTATES AT PRONGHORN PHASE 6

EXISTING TREE
CLUBHOUSE

EVERGREEN TREE

PRONGHORN CLUB DRIVE
TRAILHEAD

PRONGHORN RESORT & ANKROM MOISAN ARCHITECTS
HUNTINGTON LODGE - DESIGN SERVICES / 04.13.2016

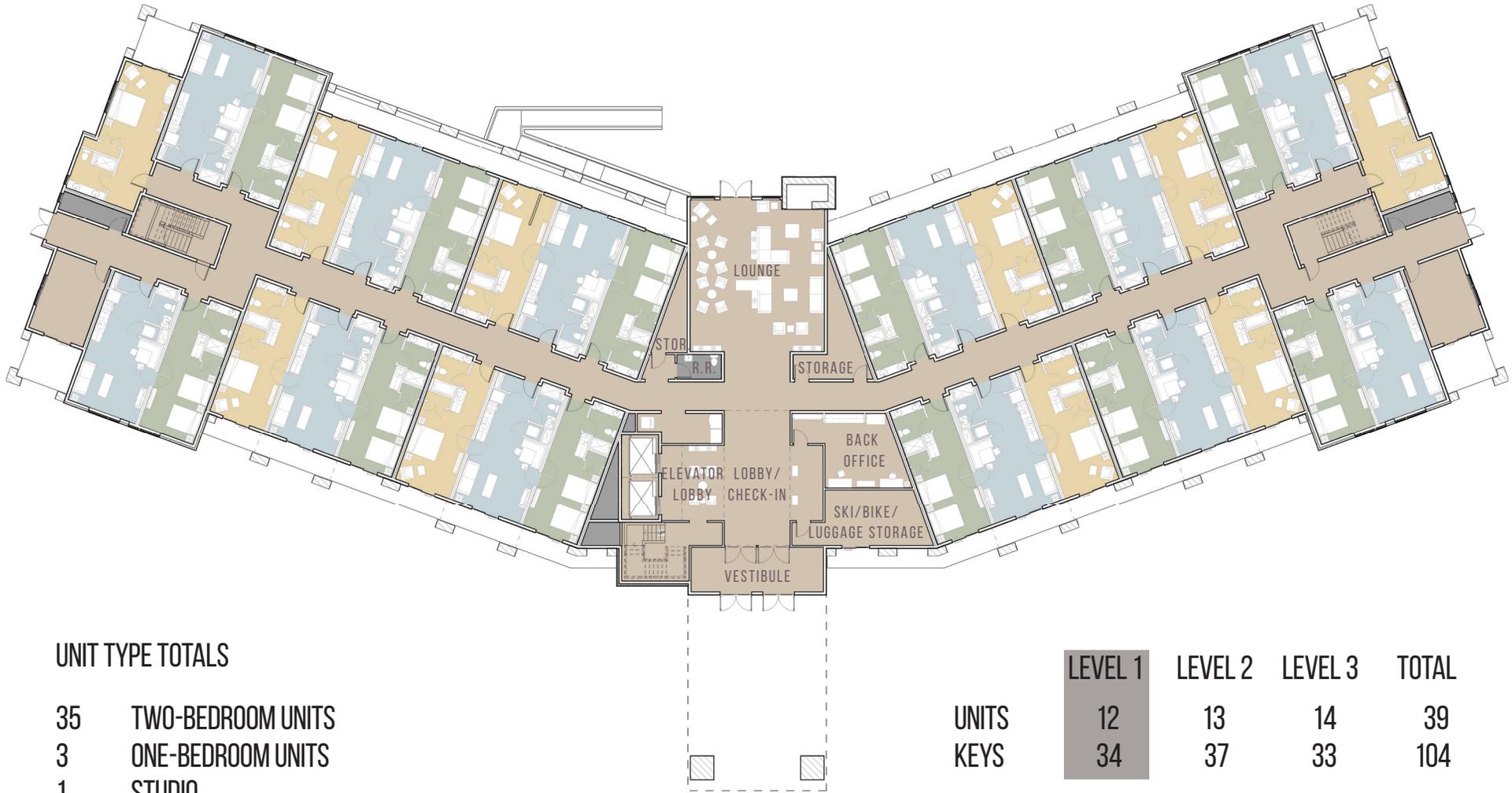
HUNTINGTON LODGE - FROM NE



HUNTINGTON LODGE - FROM SE



FLOOR PLAN - LEVEL 1



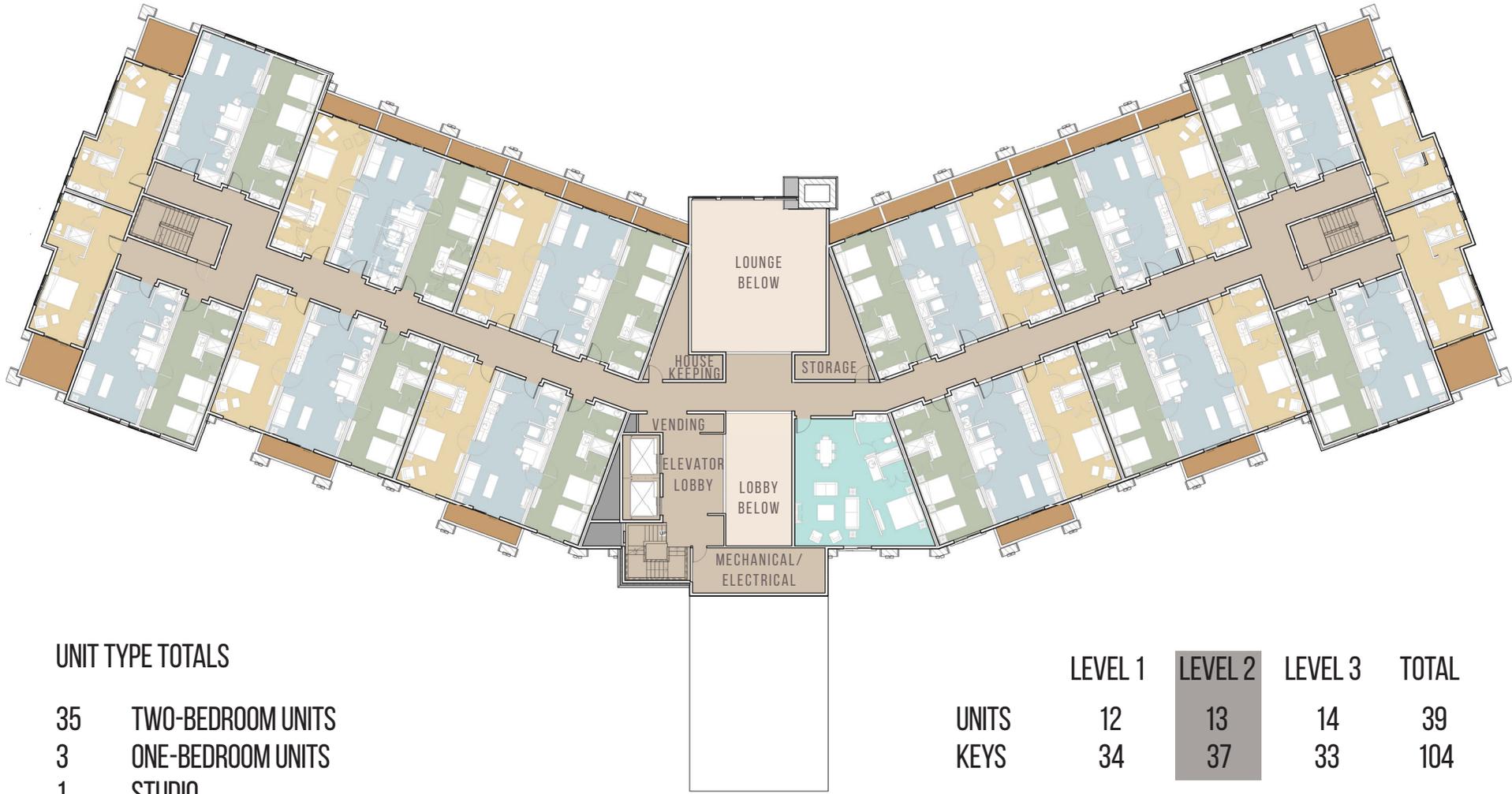
UNIT TYPE TOTALS

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

UNITS
 KEYS

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

FLOOR PLAN - LEVEL 2

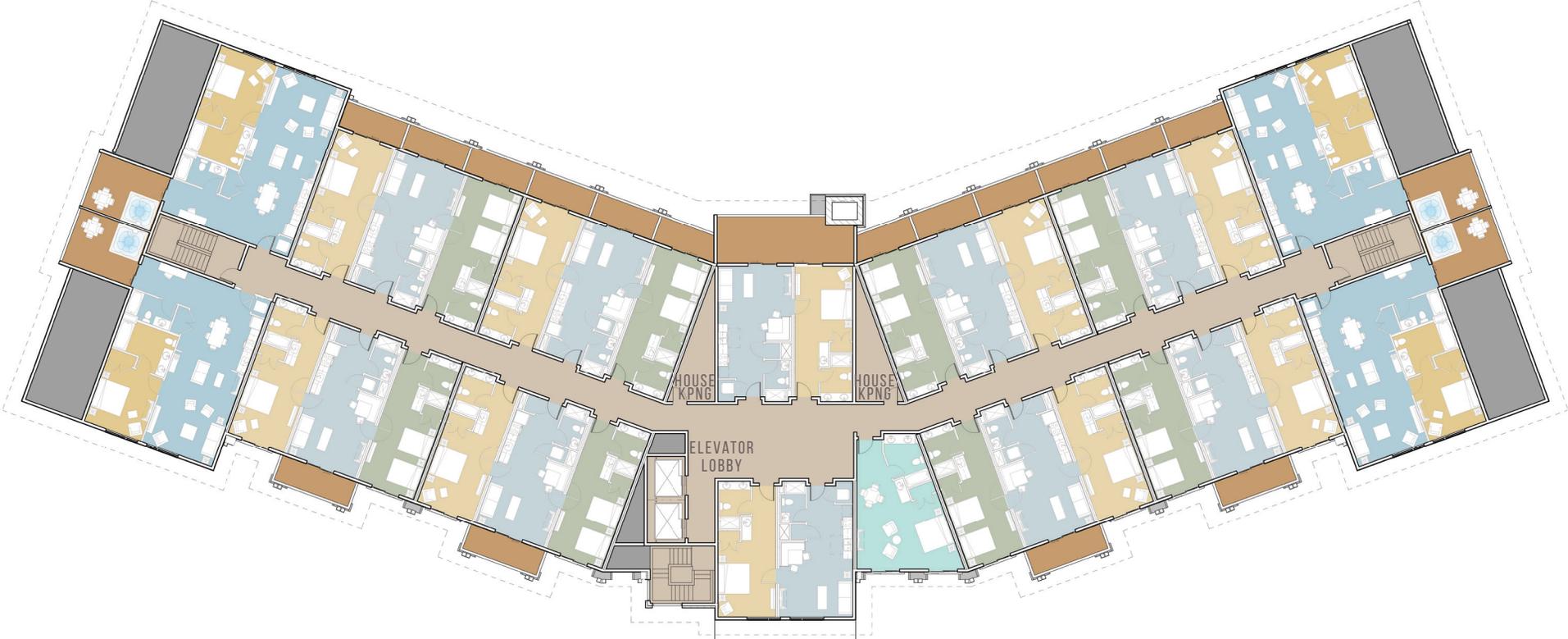


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35 TWO-BEDROOM UNITS
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 39 TOTAL UNITS

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

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

	<u>Original IA</u>	<u>Proposed Amendment</u>
Pronghorn Fund	\$9,512,648	\$ 9,512,648
New Bond	+ \$0	+ \$ 2,500,000
<hr/>		
Security	\$9,512,648	\$12,012,648
Pre-Vertical Draw	<u>- \$ 500,000*</u>	<u>- \$ 1,445,598.70**</u>
Remaining Security	\$9,012,648	\$10,567,049.30

* Fully reimbursable; Not subject to sharing ratio

** 65% of \$2,223,998