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## THE ESTATES AT PRONGHORN

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**Declaration of Covenants, Conditions and Restrictions  
of  
The Estates at Pronghorn**

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After Recording Return to:

Pronghorn Community Association, Inc.  
300 SW Columbia, Suite 201  
Bend, Oregon 97701  
Attn: \_\_\_\_\_

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE ESTATES AT PRONGHORN**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ESTATES AT PRONGHORN ("Declaration") is made by High Desert Development Company, LLC, an Oregon limited liability company ("Declarant").

By recordation of this Declaration in the real property records of Deschutes County, Oregon, Declarant is hereby creating a Class I planned community, pursuant to and subject to ORS 94.550 to 94783, and applicable successor provisions.

**ARTICLE I**

**INTENTION OF DECLARATION**

1.1 **FACTS:** This Declaration is made with reference to the following facts:

1.1.1 **Property Owned by Declarant:** Declarant is the owner of all the real property and improvements (collectively, the "Property") thereon located in the unincorporated area of the County of Deschutes, State of Oregon, described as follows:

See **Exhibit A-1** attached hereto and incorporated herein by this reference.

1.1.2 **Nature of Project:** Declarant intends to develop the Property, together with additional property owned by Declarant and adjacent to the Property described on attached **Exhibit A-2** (the "Development Property") as a planned community development to be known as "Pronghorn," pursuant to a Master Plan approved by Deschutes County, Oregon, (the "Project"). The Project encompasses the three components described in the Master Plan as: (i) The Estates at Pronghorn; (ii) The Resort and Spa at Pronghorn; and (iii) The Club at Pronghorn. The Declarant intends to develop the Project, including the Property and the Development Property in phases. Pursuant to the Master Plan, the Property is to be developed as the Estates at Pronghorn, Phase I. Declarant reserves the right to amend such Master Plan, subject to any approval required by Deschutes County, Oregon. Declarant desires to impose on the Property these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and

development for the benefit of all of the Owners, the Lots and Common Area within the Property and any property annexed into the Project.

**1.1.3 Phases of Project:** The Project is intended to be developed in three (3) or more Phases, and will include one Tom Fazio championship golf course (the "Fazio Course"); the Estates at Pronghorn (to be composed of approximately 330-single family residential lots, and 70 villas); and the Resort at Pronghorn (the "Resort"). The Resort will include approximately 200 rentable villa/condominium units, a full-service spa, one Jack Nicklaus Signature golf course (the "Nicklaus Course"), a conference center, a specialty retail center and related entities. Declarant intends, but shall not be obligated to, develop the single-family residential lots and the condominium units in several phases as part of the Estates at Pronghorn. The Property is to be developed as the first phase of the single-family residential lots in the Estates at Pronghorn, and the Declarant shall have the right to annex additional portions of the Development Property or other real property to this Declaration. In addition, Declarant may, but shall have no obligation to, annex all or any portion of any adjacent property owned by it now or in the future to this Declaration. Such annexation shall be accomplished by recording a Declaration of Annexation in compliance with the provisions of this Declaration. After recordation of a Declaration of Annexation, the property described therein shall be part of the Property, shall constitute a part of the Estates at Pronghorn and shall be subject to this Declaration.

**1.2 APPLICABILITY OF RESTRICTIONS:** Declarant hereby declares that the Property is subject to the provisions of this Declaration. The Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Estates at Pronghorn as a planned community. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Property and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Property. The rights and obligations of the Golf Club Property (as defined below) shall also run with the land.

**1.3 RELATIONSHIP TO GOLF CLUB:** Declarant or others intend to develop two golf clubs on a portion of the Development Property (each a "Golf Club" and collectively the "Golf Clubs") together with other facilities on the approximate locations identified on **Exhibit B** (the "Golf Club Property"). Once both golf clubs are constructed, Declarant shall record an amendment to this Declaration identifying the final location of the Golf Club Property. Such amendment shall not require the approval of the Association nor any Owners. Each Golf Club will include and be associated with one of the golf courses described above. Declarant presently anticipates the Golf Club affiliated with the Nicklaus Course (the "Resort Club") may include, but not be limited to, an eighteen-hole, Jack Nicklaus signature golf course; a driving range; putting green; tennis courts; full service spa; swimming pool; a hotel; clubhouse; golf pro shop; locker room facilities; food

and beverage facilities; and other related facilities. Declarant presently anticipates the Golf Club affiliated with the Fazio Course (the "Private Club") may include, but not be limited to, an eighteen-hole, Tom Fazio championship golf course; a driving range; putting green; swimming pool; clubhouse; golf pro shop; lock room facilities; food and beverage; and other related facilities. Unless and until the same is annexed to this Declaration, no part of the Development Property, including the Golf Clubs and the Golf Clubs as entities will be a part of the Estates at Pronghorn. Each Owner of a Lot shall be a member of the Private Club, and his or her rights to use the Fazio Course and/or the Resort Club's amenities shall depend upon the membership options that such Owner chooses and the related membership agreements and documents. Prior to any annexation into this Declaration, all portions of the Development Property shall be subject to this Declaration only to the extent of Article XV or as otherwise specifically provided herein. After annexation to this Declaration, any portion of the Development Property annexed shall cease to be Development Property and shall become a part of the Property.

The Golf Clubs and related facilities will be separate and distinct from the Association and the Estates at Pronghorn and the Golf Clubs and related facilities shall be governed by their own rules, regulations and requirements. The Golf Clubs and the other facilities developed on the Golf Club Property have rights to use portions of the Common Area pursuant to and in accordance with the terms and provisions contained in this Declaration and deeds by which easements may be granted for the purposes of ingress and egress. Neither the Association nor any Owner shall have any rights in or privileges to the Golf Clubs or any of said other facilities by virtue of this Declaration or the location of the Golf Clubs. Membership in the Golf Clubs and use of the other facilities may be made available to Owners.

**1.4 PROXIMITY TO AIRPORT:** Declarant hereby gives notice and discloses to each and every prospective owner of a Lot or Residence located in the Project that the Project is located near two airports. The Redmond/Bend Airport is approximately 4.5 miles north of the Project and the Bend Airport is approximately 6.0 miles south of the Project. Each Lot or Residence owner acknowledges and agrees that owning property in close proximity to an airport has benefits as well as detriments and that the detriments include the potential noise. Prospective residents shall make themselves fully aware of both airports' current and future noise contours and to their own sensitivity levels prior to making their commitments.

**1.5 CONSENT OF MASTER PLAN:** Purchasers of property within the Estates at Pronghorn hereby consent to the Master Plan for the Project, as the same may hereafter be amended. By adoption of such Master Plan and this Declaration, Declarant is not committing itself to take any action for which definite provision is not made below. One who acquires property in the Estates at Pronghorn will have the advantage of any further development of the Project, but shall not have any legal right to insist that there be development, except as provided in this instrument or in the instruments which hereafter

may be recorded annexing areas to the Estates at Pronghorn and subjecting areas to this Declaration.

**1.6 VARIETY OF DEVELOPMENT:** Declarant anticipates that the Project may include a variety of different types of development parcels. For example, residential parcels (including the Property) within the Project may include single-family lots, villas, zero lot line or other common wall type structures, or condominiums. Recreation facilities may include facilities that are Common Areas for the Estates at Pronghorn and available only for use by the Owners. Other recreation facilities, including one or both golf courses, may be privately owned by Declarant or third parties and available for use by the public. Finally, the Project may include one or more commercial developments, all in accordance with the Master Plan, as the same may hereafter be amended.

**1.7 IMPROVEMENTS CONSTRUCTED BY DECLARANT:** Notwithstanding any other provision contained herein, the Declarant does not choose to limit its right to add Improvements not described in this Declaration to the planned community of the Estates at Pronghorn.

NOW, THEREFORE, Declarant hereby declares that the Property and any property annexed into the Estates at Pronghorn and this Declaration shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which will run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof. The foregoing provisions are incorporated by reference as if fully set forth herein.

## ARTICLE II

### DEFINITIONS

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Plat and any grant deed to a Lot shall have the meanings specified in this Article.

**2.1 ADDITIONAL CHARGES:** The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

**2.2 ADDITIONAL PROPERTY:** The term "Additional Property" shall mean any additional property annexed to the Estates at Pronghorn by the Declarant or the Association, or their successors.

2.3 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of Pronghorn Community Association, Inc., which are or shall be filed in the Office of the Secretary of State of the State of Oregon.

2.4 ASSESSMENTS: Those assessments levied pursuant to Article IX.

2.5 ASSOCIATION: The term "Association" shall mean Pronghorn Community Association, Inc., its successors and assigns, a nonprofit corporation to be incorporated under the laws of the State of Oregon.

2.6 BOARD: The term "Board" shall mean the Board of Directors of the Association.

2.7 BUDGET: The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 9.12.1 of this Declaration.

2.8 BUILDER: The term "Builder" shall mean any entity which (i) is designated as such by Declarant in a writing delivered to the Association, and (ii) acquires from Declarant at least two (2) Lots prior to the completion of construction of Residences on those Lots. A Builder may also be Declarant if the provisions of Section 2.14 are satisfied. High Desert Development Company, LLC is hereby designated as a Builder.

2.9 BYLAWS: The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto. In accordance with ORS 94.580(d), the Bylaw shall be recorded in the real property records of Deschutes County, Oregon.

2.10 CLUB OWNER: The term "Club Owner" shall mean the holder or holders of record fee title to any portion of the Golf Club Property or their designees.

2.11 COMMON AREA: The term 'Common Areas' shall mean those parcels designated as Common Areas, if any, on the Plat. The term "Common Area" shall also mean any property described as Open Space or Common Area on any Plat of the Property or in a Declaration of Annexation. Common Area includes all Improvements situated thereon or therein.

2.12 CONVERSION DATE: The term "Conversion Date" shall mean the date upon which Class "B" membership shall cease and be converted to Class "A" membership. Such date shall be the date which is the earliest of (i) the date at which ninety percent (90%) of the total Lots anticipated to be created within the subdivision have been conveyed to Class "A" members; or (ii) fifteen (15) years after conveyance of the first Lot to a Class "A" member; or (iii) at such earlier time as Declarant may elect in writing to terminate Class "B" membership.

2.13 COUNTY: The term "County" shall mean the County of Deschutes, State of Oregon; provided, however, if at any time the Project is annexed into the limits of a city, such city shall succeed to the rights of the County hereunder.

2.14 DECLARANT: The term "Declarant" shall mean High Desert Development Company, LLC so long as it owns some portion of the Project. The term "Declarant" shall also mean successors-in-interest of Declarant, if: (i) such successor(s)-in-interest acquires all or any portion of Declarant's interest in the Project for the purposes of development, sale, operation and/or rental; and (ii) a certificate, signed by Declarant and the successor(s), has been recorded in the County in which the successor(s) in interest assumes the rights and duties of Declarant to the portion of the Project so acquired. There may be more than one Declarant.

2.15 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of the Estates at Pronghorn and includes any subsequently recorded amendments.

2.16 DECLARATION OF ANNEXATION: The term "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to any Additional Property.

2.17 DOCUMENTS: The term "Documents" or "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

2.18 ESTATES AT PRONGHORN: The term "the Estates at Pronghorn" or "Estates at Pronghorn" or the "Estates" shall mean the Property together with any Additional Property annexed hereto.

2.19 ELIGIBLE HOLDER: The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association which contains its name, address and the number or address of the Lot encumbered by the Mortgage and requests that the Association deliver written notice to it of any or all of the events specified in Section 12.5.

2.20 FIRST MORTGAGE: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of Oregon over all other Mortgages encumbering a specific Lot.

2.21 FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

2.22 GOLF CLUB: The term "Golf Club" shall mean either of the Golf Clubs to be developed on the Golf Club Property.

2.23 GOLF CLUB PROPERTY: The term "Golf Club Property" shall mean the real property described on **Exhibit B** attached hereto and all Improvements situated on such real property. The term "Golf Club Property" shall be deemed (i) to encompass any land added to the real property described on **Exhibit B** or (ii) to exclude any land removed from the real property described on **Exhibit B** by any alteration shown on any subsequently recorded amended final plat, certificate of correction, lot line adjustment and/or record of survey which affects the boundaries of the real property described on **Exhibit B** attached hereto.

2.24 HOMESITE: The term "Homesite" means a platted or partitioned lot, tract or villa unit within the Property. The term "Homesite" shall also mean any Lot described as such in a Declaration of Annexation. Homesite includes all Improvements situated thereon or therein. Homesite does not include any Common Areas. Homesite does not include any portion of the Development Property (including the Golf Club Property) unless and until such time as the same is annexed into this Declaration.

2.25 IMPROVEMENTS: The term "Improvements" shall mean everything constructed, installed or planted on property subject to this Declaration, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement, excluding only those Improvements or portions thereof which are (i) dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company, (ii) owned and maintained by either Golf Club or (iii) owned and maintained by Declarant or Declarant's successors-in-interest.

2.26 INSTITUTIONAL MORTGAGEE: The term "Institutional Mortgagee" shall mean (i) a First Mortgagee which is the State of Oregon, a bank, a savings and loan association, an insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law or (ii) an insurer or governmental guarantor of a First Mortgage including without limitation the Federal Housing Authority and the Veteran's Administration.

2.27 INVITEE: The term "Invitee" shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.28 LOT: The term "Lot" means a platted or partitioned lot, tract or villa unit within the Property. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated thereon or therein. Lot does not include any Common Areas, any areas deeded to a governmental authority or utility, or any portion of the Golf Club Property. No portion of the Development Property shall be a Lot unless and until such property is annexed to this Declaration as "Additional Property."

2.29 MEMBER: The term "Member" shall mean an Owner.

2.30 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.31 MORTGAGEE: The term "Mortgagee" shall mean a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.32 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board. The procedure shall be established by the Board and may be amended from time to time, provided the same are included in the rules and regulations for the Estates at Pronghorn.

2.33 OWNER: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Lot merely as security for performance of an obligation.

2.34 PHASE: The term "Phase" shall mean any Lots and/or Common Area which are simultaneously made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation.

2.35 PLAT: The term "Plat" shall mean the subdivision plat of the Estates at Pronghorn, Phase 1, recorded in the official records of the County of Deschutes, including any subsequently recorded amended final plat, certificates of correction, lot line adjustments and/or records of survey. The term "Plat" shall also mean any recorded subdivision or parcel, plat or map described in a Declaration of Annexation, including any subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey.

2.36 PROJECT: The term "Project" as used herein shall mean the Pronghorn destination resort development developed pursuant to the Pronghorn Master Plan approved by Deschutes County, as the same may be amended from time to time, which destination resort may include residential and commercial components, golf courses and other amenities, all to be developed upon the land identified in attached Exhibits A-1 and A-2 and any property subsequently annexed to this Declaration.

2.37 PROPERTY: The term "Property" shall mean the property described in attached Exhibit A-1 and any Additional Property annexed into the Project at any time.

2.38 PROPERTY OWNED BY DECLARANT: The term "Property Owned by Declarant" shall mean the Property, the Development Property and any other property adjacent to the Project now or subsequently owned by Declarant.

2.39 DEVELOPMENT PROPERTY: The term "Development Property" shall mean the real property described in attached **Exhibit A-2**; provided, however, to the extent any portion of such property becomes Additional Property in the future, that portion of property shall thereafter cease to be Development Property.

2.40 RESIDENCE: The term "Residence" shall mean a dwelling situated on a Lot, including any attached garage also situated on a Lot.

2.41 RULES: The term "Rules" shall mean the rules adopted by the Board and the Architectural and Landscape Design Guidelines adopted by the Architectural Design Committee.

2.42 SEWER SYSTEM: The term "Sewer System" shall mean all improvements constructed by Declarant or the Association within the Project, and between the Project and the City of Bend, for the collection and transport of sewage from the Project to the City of Bend treatment facility, including, without limitation, all lines, lift stations and pumps. The Association shall have sole responsibility for the maintenance of the Sewer System, unless and until any portion thereof is purchased by the City of Bend, pursuant to that certain Sewer and Effluent Agreement by and between the City of Bend and Declarant (the "Sewer Agreement"). Declarant shall have the right to assign the sewer portion of the Sewer Agreement to the Association at any time. In the event that the City of Bend does not permit the sewer and effluent provisions of the Sewer Agreement to be separated or separately assigned, Declarant may assign the entire Sewer Agreement to the Association. After such assignment, the Association shall enter into an agreement with any party designated by Declarant to grant the effluent rights under the Sewer Agreement to such designated party. Declarant covenants for itself and its successors that each owner of any portion of the Development Property shall pay to the Association its pro rata share of (i) all usage fees imposed by the City of Bend for sewer services to the Project; and (ii) all maintenance and reserve costs incurred by the Association in connection with the Sewer System. For purposes of this Section 2.42, pro rata shares shall be determined by reference to equivalent residential units.

2.43 SUB-ASSOCIATION: The term "Sub-Association" shall mean any sub-association created from time to time by Declarant to govern the administration of any subset of Lots that are subject to this Declaration. Each Sub-Association shall be subject to a separate declaration of covenants, conditions and restrictions and such other documents as may be established by Declarant in its sole discretion; provided, however, the terms of such document shall remain subordinate to and subject to the terms of this Declaration and the Articles of Incorporation and Bylaws of the Association. A Sub-Association shall

have the right to levy assessments separate from and in addition to the assessments levied hereunder by the Association.

2.44 TURNOVER MEETING: The term "Turnover Meeting" shall mean the meeting of the Owners called by the Declarant to turn over control of the Association to the Class A members pursuant to ORS 94.609 or applicable successor provisions.

### ARTICLE III

#### PROPERTY SUBJECT TO DECLARATION; ANNEXATION

3.1 INITIAL DEVELOPMENT: Declarant hereby declares that all of the real property described in attached Exhibit A-1 is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

3.2 RESTRICTION ON ANNEXATION: Property may be added to the Estates at Pronghorn by annexation only in accordance with the provisions of this Article.

3.3 PROPERTY WHICH MAY BE ANNEXED; APPROVAL OF MEMBERS: All or any portion of the Development Property and any property adjacent to the Property or the Project and owned by Declarant, now or in the future, may be added to the Estates at Pronghorn by Declarant as one or more subsequent Phases without the approval of the Association or any Owner other than the Declarant, if annexed prior to the tenth (10<sup>th</sup>) anniversary of the date on which Declarant first conveys Common Areas to the Association ("Annexation Period"). Any other property or any adjacent property owned by Declarant and not annexed within the Annexation Period may be annexed to the Project only with the approval of two-thirds (2/3) of each class of Members.

3.4 PROCEDURE FOR ANNEXATION: In addition to approval by Members, if required, a final subdivision plat(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall: (i) describe the portion of the Additional Property to be annexed; (ii) describe any Common Area within the Additional Property to be annexed; (iii) set forth the ownership of any such Common Area; (iv) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration; and (v) contain any other provisions required by applicable law. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Estates at Pronghorn and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which Assessments shall commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. No Declaration of Annexation shall diminish the covenants, conditions or restrictions established by this Declaration nor shall it discriminate between the Owners in the Estates at Pronghorn. No

Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration nor shall it affect the provisions hereof as covenants running with the land or as equitable servitudes. There shall be no limit on the number of Lots or units that Declarant may create or annex into the Estates at Pronghorn during the Annexation Period. Additionally, during such Annexation Period, there shall be no limitation on the right of Declarant to annex additional Common Area into the Estates at Pronghorn.

**3.5 EFFECT OF ANNEXATION:** After complying with the procedures for annexation and upon the commencement of Assessments for Lots in the annexed Phase, Owners of Lots in the annexed Phase shall be Members, shall be subject to this Declaration and shall be entitled to use all Common Area in the Estates at Pronghorn. The Association shall reallocate the Regular Assessments so as to assess each Owner of a Lot in the Estates at Pronghorn for a proportionate share of the total expenses of the Estates at Pronghorn. To the extent annexed Lots are villas, condominium or townhouse units, such Lots' proportionate share of expenses may be less than that allocated to single-family detached Lots and shall be determined by the Association in its reasonable discretion. Without limitation of the meaning of the foregoing provisions of this Section 3, in any Declaration of Annexation, Declarant may, but shall not be obligated to, establish easements particular to different Lots and/or to create any such Sub-Associations as it may elect.

**3.6 DEANNEXATION AND AMENDMENT:** During the Annexation Period, Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Estates at Pronghorn any property described in a recorded Declaration of Annexation for a Phase by executing and recording a rescission of the Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Lot in that Phase has been conveyed to an Owner; (b) no Common Area in that Phase has been conveyed to the Association; and (c) Assessments have not commenced for any Lot in the annexed property. All votes within the Association allocated to Lots within the deannexed property shall cease as of the date of deannexation.

**3.7 AMENDMENT:** During the Annexation Period, this Article may not be amended without the written consent of Declarant.

#### ARTICLE IV

##### OWNERSHIP/EASEMENTS/MEMBERSHIPS/FEES

**4.1 NON-SEVERABILITY:** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by an Owner separately from the appurtenant interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be

no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for the Owner's own benefit and for the benefit of all other Owners and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. The ownership interests in the Common Area and Lots described in this Article are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Estates at Pronghorn.

**4.2 OWNERSHIP OF LOTS:** Title to each Lot in the Estates at Pronghorn shall be conveyed in fee to an Owner. The Association, Declarant or a Club Owner who receives title to any portion of a Lot which is transferred by the Owner as a result of subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey shall take such property free and clear of any requirement that such land be devoted to use as a Lot. Upon conveyance, such land may be used for any purpose for which land adjacent to it may be used. Any land which is added to a Lot as a result of subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey shall be deemed, for all purposes of this Declaration, to be part of the Lot to which it is added.

**4.3 OWNERSHIP OF COMMON AREA:** Title to or a legal ownership interest in the Common Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner. Declarant shall comply with all applicable laws in turning over Common Area or administrative control to the Association. The Association may not encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless such encumbrance, sale or transfer (i) has been approved by a majority of the voting rights in the Association; and (ii) such transfer would not put the Project in violation of County open space ordinances or other similar applicable governmental restrictions. These requirements shall not apply to the easements described in Section 4.4 below.

**4.4 EASEMENTS:** The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Lots. All easements shall be binding upon the successors in interest and assigns of the owners of both the dominant and servient tenements.

**4.4.1 Easements on Plat:** The Common Area and Lots are subject to the easements and rights of way shown on the Plat.

4.4.2 Easements for Common Area: Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities;

(b) The right of the Association to dedicate and/or grant easements over all or any portion of the Common Area;

(c) The easements and rights reserved to Declarant or otherwise granted in this Declaration; and

(d) The easements and rights reserved and granted to the Golf Clubs (i) prior to the recordation of this Declaration, (ii) in this Declaration and (iii) in the deeds by which the Common Area or an interest in the Common Area was conveyed to the Association.

4.4.3 Utilities: Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of drainage facilities, master television antenna or cable systems, wireless communications systems, security and similar systems, and all utilities, including but not limited to sewers, drainage systems, storm drainage systems, retention ponds, electrical, gas, telephone, and water necessary or appropriate for the development of the Project.

4.4.4 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenements, and (ii) for the benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Lots and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Estates at Pronghorn is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for maintenance of the encroaching Improvement shall exist for as long as the encroachment exists; provided, however, that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the Improvement.

**4.4.5 Environmental Easement:** There is hereby reserved for the benefit of Declarant, the Association, and their respective Invitees, a non-exclusive easement on, over and across all portions of the Estates at Pronghorn, excluding structures, for the purposes of taking any action necessary to effect compliance with environmental rules, regulations, and procedures promulgated or instituted from time to time by the Board or by any governmental entity. This easement includes, without limitation, the right, but not the obligation, to implement erosion control procedures and practices, the right to maintain any and all wetland areas on the Estates at Pronghorn, the right to drain standing water and the right to do whatever is necessary to comply with federal, state or local laws governing toxic or hazardous wastes.

**4.4.6 Golf Club Easements:** The easements and rights specified in this subsection 4.4.6 are hereby created for the benefit of the Golf Club Property, the Club Owners and all Invitees of the Golf Club Owners whose presence at the Golf Club Property is at the request of or approved by any Club Owner and shall exist whether or not such easements are also set forth in individual grant deeds conveying Lots. All easements shall be appurtenant to the Golf Club Property and shall be binding upon the successors-in-interest and assigns of the owners of both the dominant and servient tenements. No easement set forth in this subsection shall be construed to act as a limitation upon the ability of either Golf Club or any Club Owner to hold tournaments from time to time and to provide whatever temporary services and facilities are deemed appropriate by such Club Owner in connection with such tournament, including but not limited to, parking and storage on Common Areas. As full and complete compensation for use by the Club Owners and their Invitees, maintenance by the Association of the servient tenements, and performance of any obligations on Golf Club Property required herein, the Club Owners shall together pay to Association ten percent (10%) of the Association's costs and expenses under Section 6.2 of this Declaration. By execution of this Declaration, the Declarant, as the current owner of the Golf Club Property, binds such property to the obligations of this Section 4.4.6. The Club Owners shall allocate their respective portions of such payment among themselves. The Club Owners shall have the right to review and inspect the books and records of the Association related to the documentation and calculation of the Association's costs and expenses at reasonable times and at its own cost. The Club Owners shall have no obligation to reimburse any portion of the Association's costs and expenses that was not reasonably incurred or that is not reasonably documented.

**(a) Golf Course Overspray and Intrusion Easement:** There is reserved for the benefit of the Golf Club Property, the Club Owners, and their Invitees a non-exclusive right and easement appurtenant to the Golf Club Property for purposes of overspray in connection with the watering of the golf courses, for the intrusion of golf balls from the fairways, roughs and greens thereof and for the retrieval of golf balls. Any person or entity for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner or the Association for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such person. The rights and easements reserved by this subsection shall be for the benefit of the

Golf Club Property as well as for the Declarant and the Club Owners and for the benefit of their employees, contractors, agents, guests, invitees, licensees or members (collectively referred to as "beneficiaries"). Each Owner of a Lot acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include the risk of damage to property or injury to persons and animals from golf balls or from players retrieving golf balls. Each Owner hereby assumes such risks, releases Declarant, the Club Owners and their beneficiaries from and agrees to indemnify Declarant, the Club Owners and their beneficiaries and hold Declarant, the Club Owners and their beneficiaries harmless from and against any and all liability for damage or injury caused by golf balls which intrude in, on or around the Owner's Lot or Residence.

(b) Utility Easement: The Golf Club Property shall have and is hereby granted a non-exclusive easement over, under, through and across the Common Area for the purposes of installing, maintaining, repairing and replacing, and using master television antenna or cable systems, wireless communication systems, security and similar systems, and all permanent and temporary utilities, including, but not limited to, sewers, drainage systems, storm drainage systems, retention ponds, electrical, gas, telephone, and water necessary or appropriate for the development or operation of such Golf Club Property, including tournaments held on any portion of the Golf Club Property.

(c) Ingress and Egress Easement: The Golf Club Property shall have and is hereby granted a non-exclusive appurtenant easement over and across the Common Area for the purposes of ingress to and egress from such Golf Club Property by golf course maintenance vehicles, and vehicles, pedestrians and bicycles using or visiting such Golf Club Property. The Association may not unreasonably restrict rights of ingress and egress to the Golf Club Property. The Association may not impose any restrictions, limitations or requirements for entry into any portion of the Golf Club Property which are not imposed and enforced against all Owners and Invitees. If vehicle passes are issued to Association's Members, they must be made available to the Club Owners and their licensees and members on the same terms as they are made available to Association's Members.

(d) General Easements onto Common Area and 20 Foot Strip Over Lots: The Golf Club Property shall have and is hereby granted a non-exclusive appurtenant easement over and across the Common Area and the first twenty (20) feet of any Lot which shares a common boundary with the Golf Club Property for the following purposes: (i) use and enjoyment of the golf cart paths by golf course maintenance vehicles and vehicles and pedestrians using the golf course located within such Golf Club Property, provided however, no golf cart path shall be constructed on any portion of a Lot, (ii) constructing, maintaining, repairing and replacing pedestrian and golf cart paths and directional signs related to the golf course located within such Golf Club Property, (iii) maintaining any lake, pond, wetland area, waterway, or other body of water and moving and removing unsightly brush, and (iv) permitting registered golf course players and their caddies to enter to retrieve golf balls in accordance with the rules of the game of golf (any such entry shall be limited to pedestrian access for the minimum period of time

required to retrieve golf balls).

(e) Easements To Facilitate Tournaments: The Golf Club Property shall have and is hereby granted a non-exclusive easement over and across the Common Area appurtenant to the Golf Club Property for all purposes reasonably necessary to hold and conduct tournament play at any golf course located on the Golf Club Property including without limitation, ingress and egress by vehicular and pedestrian traffic, parking, utility services, directional signs, traffic control and other related uses. During such periods, the applicable Club Owner(s) shall have the right to take all reasonable actions which are appropriate for holding such an event. Such Club Owner(s) shall be solely responsible for all additional costs incurred as a result of the tournament and shall repair any damage caused to the Common Area as a result of the tournament. The Association shall have no right to prohibit or impair the ability of any Club Owner to take any and all reasonable actions which are appropriate for holding a tournament.

(f) Additional Easements: Each Club Owner and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary or appropriate to the exercise of any rights granted to the Golf Club Property or to the applicable Club Owner by this Declaration, including the right to enter upon Lots and Common Area, subject to the limitations contained in this Declaration.

4.4.7 Sign Easements: The Golf Club Property shall have and is hereby granted a non-exclusive easement over and across the Common Area appurtenant to the Golf Club Property for the purposes of locating, establishing, maintaining, repairing, replacing and lighting all of its signs permitted pursuant to this Declaration, subject to Deschutes County regulations.

4.4.8 Right to Photograph: Declarant and each Club Owner each hereby reserves a non-exclusive easement and right in gross to display, use and distribute for any and all purposes photographs, video recording and similar reproductions of all Residences and Improvements constructed anywhere in the Estates at Pronghorn.

4.4.9 Easement to Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

4.4.10 Association's Easements: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Lots, subject to the limitations contained in this Declaration.

4.4.11 Easement to Declarant for Adjoining Property: Declarant shall have, and hereby expressly reserves, a right and easement over and across the Common Area for

the purposes of reasonable ingress to and egress, from, over and across the Estates at Pronghorn, including private roads and pathways, to adjacent property owned by Declarant until such property is annexed to the Estates at Pronghorn.

4.4.12 Annexation of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the rights and easements specified in this Article and the Lots and the Owners of Lots in the Estates at Pronghorn prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Estates at Pronghorn.

#### 4.5 MEMBERSHIP AND SALES OF LOTS.

4.5.1 Membership and Sales of Lots: No Lot within the Estates at Pronghorn may be sold or transferred to any person, person(s) or entity (collectively, the "Transferee") unless and until such Transferee has been approved for membership in The Club at Pronghorn and complies with all applicable requirements related thereto, including payment of all applicable membership fees and/or dues. The foregoing requirement shall not apply to institutional lenders who assume title to a Lot through foreclosure of a mortgage or trust deed on such Lot, but shall apply to any Transferee of such institutional lender. The Club at Pronghorn is a private club, currently owned by Declarant. The owner of The Club at Pronghorn shall approve or disapprove potential Transferees in its sole and absolute discretion pursuant to such criteria as The Club at Pronghorn owner may establish from time to time in its sole and absolute discretion. There shall be no appeal of a denial of membership to a potential Transferee except as may be established by The Club at Pronghorn owner from time to time in its sole and absolute discretion. Each Transferee shall be bound by the terms and conditions of membership in The Club at Pronghorn, including all fees, dues, rules and regulations established by The Club at Pronghorn owner as the same may be amended from time to time in the sole and absolute discretion of The Club at Pronghorn owner. The Declarant shall have the right, without further notice, to sell or convey its interest in The Club at Pronghorn, in whole or in part, to another entity.

4.5.2 Membership Terms: Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges that privileges to use any property owned or operated by The Club at Pronghorn (or the owners of The Club at Pronghorn) shall be subject to the terms and conditions of the membership documents for The Club at Pronghorn, as the same may be amended from time to time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and membership dues, fees and charges. The Club at Pronghorn, as set forth in the Membership Plan Documents, shall determine these amounts for The Club at Pronghorn. Notwithstanding the fact that the property owned and/or operated by The Club at Pronghorn is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever

the Declarant, The Club at Pronghorn and their partners, officers, directors, employees, agents and affiliates, from: (1) any claim that the property owned and/or operated by The Club at Pronghorn is, or must be, owned and/or operated by the Association or the Owners, and/or (2) any claim that the Owners are entitled to use the property owned and/or operated by The Club at Pronghorn by virtue of their ownership of a Lot without acquiring a membership in The Club at Pronghorn, paying the applicable membership contribution or membership deposit, and dues, fees and charges established by The Club at Pronghorn from time to time, and complying with the terms and conditions of the Membership Plan Documents for The Club at Pronghorn.

4.6 TRANSFER ASSESSMENT: In addition to all other assessments provided for herein, each person, person(s) or entity acquiring fee title to a Lot shall pay an assessment or working capital fee in the amount of Three Hundred Dollars (\$300) to the Association. Such assessment shall be paid at closing of the purchase of the Lot and shall apply each time the Lot is re-sold. The assessment may be used by the Association to defray the costs of reflecting the Lot ownership change on its books and records or such other expenses as it deems appropriate in its sole and absolute discretion.

4.7 TRANSFER FEE: At the time of closing the sale of each Lot within the Estates at Pronghorn, each seller (including Declarant) shall be subject to a transfer fee (the "Transfer Fee") in the amount of Two Thousand Dollars (\$2,000) payable to the Pronghorn Community Foundation, an Oregon non-profit corporation (the "Foundation") or such other non-profit corporation as may be designated by Declarant prior to the Turnover Meeting. The Transfer Fee shall be paid out of escrow at closing. The Transfer Fee shall apply to the initial sale and all subsequent re-sales or transfers (but excluding transfers that do not change the beneficial ownership of the Lot) of each Lot within the Estates at Pronghorn. In the event that the Pronghorn Community Foundation shall ever cease to exist, the Transfer Fee shall be paid to a non-profit corporation designated by Declarant before the Turnover Meeting or by the Board after the Turnover Meeting. The Pronghorn Community Foundation is not a third-party beneficiary hereof and shall have no rights of enforcement for payment of the Transfer Fee in any case.

## ARTICLE V

### PRONGHORN COMMUNITY ASSOCIATION, INC.

5.1 MEMBERSHIP: The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Until the Conversion Date, there shall be two (2) classes of membership, Class A and Class B as described in Section 5.2.

5.2 VOTING RIGHTS: The Association shall have two (2) classes of voting membership:

5.2.1 Class A: Class A members shall be all Owners with the exception of Declarant (except that beginning on the date on which Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners, including Declarant) and shall be entitled to one (1) vote for each Lot owned, regardless of the type of Lot. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. The Owner of a consolidated Lot shall be entitled to voting rights as set forth in Section 7.35.

5.2.2 Class B: The Class B members shall be the Declarant, who shall be entitled to four (4) votes for each Lot it owns.

5.3 SUSPENSION: All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article V or is otherwise in default under this Declaration, the Bylaws or the Rules and Regulations of the Association.

5.4 TURNOVER MEETING: The Declarant shall call a Turnover Meeting within ninety (90) days following the Conversion Date for the purposes of turning over control of the Association to the Class A members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of the Estates at Pronghorn and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this Section 5.4.

5.5 TRANSITIONAL ADVISORY COMMITTEE: Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant for the planned community of the Estates at Pronghorn to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant Lots representing fifty (50) percent or more of the Lots in the Property (which shall exclude any property annexed to the Property for purposes of the foregoing calculation), Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is

required to turn over to the Association under ORS 94.616. If the Owners do not select members for the Transitional Advisory Committee, the Declarant shall have no further obligation to form the Transitional Advisory Committee.

## ARTICLE VI

### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

6.1 INTERIM BOARD: Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting.

6.2 PURPOSE OF MAINTENANCE FUND: The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article IX below the following:

6.2.1 Taxes and Assessments: Taxes, assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Lots and/or Owners, if any.

6.2.2 Common Areas: Maintenance, repairs and enhancement of the Common Areas and any Improvements therein.

6.2.3 Monthly Sewer Fees: Payment of monthly sewer fees as charged by the City of Bend for the Estates at Pronghorn, including Common Areas and all Lots.

6.2.4 Sewer System: Maintenance, repairs, capital improvements to and enhancement of the Sewer System.

6.2.5 Professional Manager: Services of a professional manager or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager; provided that a management agreement entered into prior to the Turnover Meeting shall not have a term in excess of three (3) years and shall be terminable without penalty if the Board gives not less than thirty (30) days written notice of termination to the other party not later than sixty (60) days after the Turnover Meeting.

6.2.6 Legal and Accounting: Legal and accounting services as deemed necessary or advisable by the Board.

6.2.7 Insurance: Policy or policies of insurance insuring the Association and/or its Board and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts

as determined by the Board, including a policy or policies of insurance as provided herein in Article X.

6.2.8 Workers Compensation Insurance: Workers Compensation insurance to the extent necessary to comply with any applicable laws.

6.2.9 Fidelity Bonds: Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

6.2.10 Other: Other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration (including, without limitation, the Association's obligations pursuant to Article XV) or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

6.3 POWERS AND DUTIES OF BOARD: The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association and the powers and duties of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act and a homeowners' association pursuant to ORS 94.630:

6.3.1 Tax Assessments: Execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

6.3.2 Borrow Funds: Borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

6.3.3 Contracts/Bank Accounts: Enter into contracts, maintain one (1) or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

6.3.4 Common Areas: Protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

6.3.5 Rules and Regulations: Promulgate reasonable rules and regulations for the operation of the Common Areas and amend them from time to time.

6.3.6 Annual Report: To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

6.3.7 Insurance Proceeds/Damaged or Lots Property: To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if

proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

6.3.8 Enforcement: To enforce this Declaration and the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

6.3.9 Collect all Assessments: To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

6.4 BOARD POWERS EXCLUSIVE: The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

6.5 MAINTENANCE CONTRACTS: The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

## ARTICLE VII

### USES AND RESTRICTIONS

7.1 ALTERATIONS: Except as otherwise specifically provided in this Declaration, no Improvement (including landscaping) shall be constructed, reconstructed, performed, installed, altered, remodeled or demolished, nor shall the color of any Improvement be changed ("Alteration") until plans have been submitted and approved pursuant to Article XIV. For purposes of this Declaration, the term "Alteration" shall not include (i) repainting or refinishing any Improvement in the same color, (ii) repairing any Improvement with the same materials, (iii) the construction by Declarant of any Improvements prior to the turnover of control to the Association pursuant to Section 5.4.

7.2 ANIMALS: No animals, livestock, reptiles, fowl or poultry shall be raised, bred or kept on the Property, except that dogs, cats or other non-exotic household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and provided further that they are kept in compliance with the terms of this Declaration. No horses are permitted within the Owner's Lot under any circumstances. Such household pets must not constitute a nuisance or cause unsanitary conditions. Incessant barking or howling of a dog or other noise caused by a pet that is clearly audible shall be a nuisance. The Board shall have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is

under the control of a responsible person by lease. Each Owner or his or her Invitee shall restore the Common Area to the condition it was in immediately preceding its use by any dog permitted on the Common Area by the Owner or Invitee. The Association may use any suitable portions of the Common Area for grazing of livestock.

7.3 ANTENNAS: No outside television antenna, microwave or satellite dish, aerial, or other such device shall be erected, constructed or placed on any Common Area or any Lot, unless (i) installed by Declarant or (ii) first approved in accordance with the provisions of Articles XIV.

7.4 APPEARANCE OF GOLF CLUB: Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel any Club Owner or the owner of any golf course on any portion of the Golf Club Property to maintain the Golf Club Property or golf courses or any improvements thereon to any particular standard of care and that the appearance of the Golf Club Property, golf courses and improvements shall be determined in the sole discretion of the respective Club Owner(s).

7.5 BUSINESSES: Except for (i) uses within Residences permitted by local ordinances, (ii) home offices, entertainment, business meetings and social events which do not create regular customer, client or employee traffic, (iii) the business of Declarant and any Builders in completing the development and disposition of the Lots in the Estates at Pronghorn, and (iv) the business of Club Owners in maintaining and operating golf courses or other facilities on the Golf Club Property, no business of any kind shall be established, maintained, operated, permitted or constructed in any portion of the Estates at Pronghorn. However, the provisions of this Section are not intended to preclude special event liquor licenses and other permits that may be obtained for activities within the Estates at Pronghorn.

7.6 CLOTHES DRYING: Except within screened service yards, outside clotheslines and other outside facilities for drying or airing clothes are prohibited and shall not be erected, placed or maintained on any Lot outside of a Residence. No clothing, rugs or other item may be hung on any exterior railing, fence, hedge or wall.

7.7 DRAINAGE: No Owner shall impede, alter or otherwise interfere with the drainage patterns and facilities in the Project until plans have been submitted and approved pursuant to Articles XIV and approved by any public authority having jurisdiction thereof.

7.8 ENGINEERING REQUIRED: No Owner shall grade or fill or otherwise alter the slope or contour of any Lot, as established by Declarant, without first retaining a soils engineer or civil engineer, as appropriate, licensed by the State of Oregon, and receiving from such engineer written recommendations, plans and specifications regarding such proposed grade, fill and/or alteration. No Owner shall perform any such grade, fill or alteration except in conformity with the recommendations, plans and specifications of such engineer. In addition, the Owner shall also obtain prior approval in accordance with

the provisions of Articles XIV of this Declaration and shall comply with all applicable County requirements.

7.9 EXTERIOR LIGHTING: No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service. All exterior lighting shall comply with Deschutes County Code requirements.

7.10 FENCING AND WALLS.

7.10.1 Adjacent to Golf Courses: Except for fencing originally constructed or approved by Declarant, there shall be no fencing constructed, maintained or placed (i) on any portion of the Estates at Pronghorn which adjoins the Golf Club Property, (ii) on any portion of the Common Area or any portion of any Lot which is subject to the twenty (20) foot easement established pursuant to Section 4.4.6(d) of this Declaration or (iii) on any portion of the Estates at Pronghorn which, in the judgment of a Club Owner, unreasonably interferes with the view from that Club Owner's portion of the Golf Club Property. For purposes of the preceding sentence, fencing includes fences, walls, netting, and other similar barriers, including landscaping. Any fencing approved in writing by an affected Club Owner shall be deemed to not be in violation of this subsection.

7.10.2 Chain Link Fences: No chain link fences shall be permitted within the Estates at Pronghorn except for (i) maintenance or buffer areas located within the Common Area or on portions of the Golf Club Property, (ii) tennis courts, and (iii) those erected by Declarant.

7.10.3 Other Fences and Walls: All fences and walls within the Estates at Pronghorn must conform to the overall project fencing plan contained in the Architectural and Landscape Design Guidelines.

7.10.4 "Spite" Fences: Any perimeter fence or wall on a Lot which is constructed parallel to any portion of an existing fence must maintain a minimum ten (10) foot horizontal separation.

7.11 GOLF COURSE AREAS: Owners and their Invitees adjacent to all golf course areas of the Golf Club Property shall not engage in any action which would distract from the playing quality of the golf course. Such actions include but are not limited to burning materials where the smoke will cross the golf course, maintaining pets which are creating excess noise, playing loud radios, stereos, televisions or musical instruments, running, walking, jogging, bicycle riding, or skateboarding on the fairways or golf cart paths, picking up golf balls or otherwise interfering with play.

7.12 GOLF CART PATHS: Portions of the golf cart path system on the Golf Club Property may be situated on the Common Area. No Owner or Invitee shall have any right to use any portion of the golf cart path system, including any portion situated on the Common Area or any Lot without the prior approval of the owner or manager of the

affected portion of the Golf Club Property. All golf cart paths shall be maintained, repaired and replaced by the applicable Club Owner.

**7.13 GOLF TOURNAMENTS:** From time to time, some portion of the Golf Club Property may be used for tournament play. At such times, vehicular and pedestrian traffic within the Estates at Pronghorn is likely to increase substantially as persons who will play in the tournament as well as persons who will watch the tournament will be invited, the broadcast media and their equipment may be present, additional parking, utility services, directional signs, traffic control, security, clean-up crews and other services may be required. During all such periods, the applicable Club Owner(s) shall have the right to take all reasonable actions which are appropriate for holding such an event as long as such Club Owner(s) is solely responsible for all additional costs incurred as a result of the tournament, including repairing any damage caused to the Common Area as a result of the tournament. The Association shall have no right to prohibit any Club Owner from taking any and all reasonable actions which are appropriate for holding a tournament.

**7.14 INTRUSION ONTO GOLF COURSE:** Neither the Association nor any Owner shall have any right of entry onto any portion of the Golf Club Property without the prior written consent of the applicable Club Owner. All permitted entry shall be made only through entry points designated by the applicable Golf Club or Club Owner; no Owner may access any portion of the Golf Club Property or either golf course from any adjacent residential Lot. Neither the Association nor any Owner may permit any irrigation water to overspray or drain from its Common Area or Lot onto any portion of the Golf Club Property without approval of the applicable Club Owner. Neither the Association nor any Owner may permit any fertilizer, pesticides or other chemical substances to overspray, drain, flow or be disposed of in any manner upon any portion of the Golf Club Property. If the Association or any Owner violates the provisions of this Section 7.14, it shall be liable to the affected Club Owner for all damages to the turf resulting from the violation and all damages, including consequential damages suffered by such Club Owner.

**7.15 INVITEES:** Each Owner shall be responsible for compliance with the provisions of the Project Documents by his or her Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by his or her Invitees.

**7.16 IRRIGATION SPECIFICATIONS:** The irrigation specifications contained in the Architectural and Landscape Design Guidelines have been designed to minimize consumption of water in landscape irrigation on individual Lots and Common Area. The Association shall follow the irrigation specifications when irrigating Common Area and all Owners shall follow the irrigation specifications when irrigating their Lots. The water conservation measures listed in the Water Conservation Plan submitted to Deschutes County as part of the Conceptual Master Plan for the Property and Development Property shall be adhered to by all Owners and the Association.

7.17 LANDSCAPING: No hedge, shrubbery, plant or tree which obstructs sight-lines at intersections of driveways, streets or roadways within the Estates at Pronghorn shall be permitted to remain on any Lot. No Owner shall cut, remove, or mutilate any trees, shrubs, bushes or other vegetation having a trunk diameter of six (6) inches or more at a point four (4) feet above ground level, without obtaining approval pursuant to Articles XIV.

7.18 LIQUOR SALES: The Golf Club Property may be used for the sale of liquor to be consumed on-site and/or off-site. In addition, special event liquor licenses and other permits may be obtained for activities within the Estates at Pronghorn from time to time. Special event liquor licenses for events held within Common Area or for events which utilize Common Area are subject to the approval of the Board; the Board shall have sole and absolute discretion to determine whether to grant approval of any request. By acceptance of a deed to a Lot, each Owner agrees not to contest any application for a liquor license to be used for the sale of liquor within the Golf Club Property or any other portion of the Development Property and not to object to any special event liquor licenses applied for or issued from time to time.

7.19 MINERAL EXPLORATION: No Lot shall be used to explore for or to remove any oil, hydrocarbons or minerals of any kind without the approval of the Board and only if permitted by applicable state law and local ordinances.

7.20 OWNERSHIP OF PROPERTY NEAR A GOLF COURSE: By acceptance of a deed to a Lot, each Owner acknowledges and agrees that owning property adjacent to the golf courses has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portion of the Project utilized by the Owner, (b) the entry by golfers onto Owner's Lot or other portions of the Project utilized by the Owner to retrieve golf balls; (c) overspray in connection with the watering of the roughs, fairways and greens on the golf courses; (d) noise from golf course maintenance and operation equipment (including, without limitation, irrigation systems, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf courses; (f) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (g) noise, vehicular and pedestrian traffic, congestion and loss of privacy as a result of tournaments held on the golf courses. Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the golf courses throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the golf courses. Each Owner expressly assumes such detriments and risks and agrees that neither Declarant, the Club Owner(s) or managers of the golf courses, nor any of their successors or assigns shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due

to, arising from or otherwise related to the proximity of the Owner's Lot or Residence to the golf courses, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the managers or Club Owner of the golf courses, or their successors or assigns. Each Owner hereby agrees to indemnify and hold harmless Declarant and the Club Owners, managers of the golf courses, and their respective successors and assigns, against any and all such claims by Owner's Invitees.

By acceptance of a deed to a Lot, each Owner acknowledges and agrees that there are no express or implied easements over the Golf Club Property for view purposes, and no guaranty or representation is made by Declarant or any other person that any view over and across the Golf Club Property will be preserved without impairment, and that neither the Club Owners, The Club at Pronghorn, the Declarant nor the Association shall have any obligation to prune or thin trees or other landscaping to preserve views over the Golf Club Property.

By acceptance of a deed to a Lot, each Owner specifically covenants and agrees that he or she will specifically disclose the existence and contents of this Section 7.20 to his or her subsequent transferees.

7.21 PARKING: Vehicles shall not be parked anywhere in the Estates at Pronghorn except in areas designed and established for the parking of passenger motor vehicles ("Parking Areas"), wholly within garages, or in an approved motor court. Parking is not permitted on streets. All Parking Areas shall be used solely for the parking of motor vehicles used for personal transportation. No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle or any inoperable vehicle shall be parked or stored in any Parking Area. Recreational vehicles or trailer-hauled boats may not be parked within the Estates at Pronghorn. Garage doors shall remain closed, except when a vehicle is entering or leaving the garage. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed. A recreational vehicle or trailer-hauled boat may be parked within a garage only if there is additional space after parking all vehicles belonging to residents of that Lot in the garage. With the exception of garages, no part of the Common Area or any driveway on any Lot shall be used for repair, construction or reconstruction of any vehicle. No resident in the Estates at Pronghorn shall park in any Parking Area designated as "guest parking". As long as applicable ordinances and laws are observed, any vehicle which is in violation of this Declaration may be removed. In addition, parking restrictions may be added or removed for temporary periods at the discretion of the Board to accommodate the planned activities of individual Owners. If the provisions of this Declaration regarding boats, trailers, campers, commercial vehicles, mobile homes, or recreational vehicles are ever amended to be less restrictive than the applicable County Zoning Ordinance, the ordinance shall prevail over those provisions of this Declaration.

7.22 RENTAL OF LOTS: Unless an Owner is prohibited from leasing or renting his or her Lot by the terms of another document, an Owner shall be entitled to rent or

lease his or her Lot if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than one (1) year; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; (iv) the Owner gives each tenant a copy of the Project Documents; and (v) the Lot is rented to not more than one (1) family at any time. Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration. No Owner may lease or rent an unimproved lot.

7.23 RULES: The Board may promulgate rules concerning the use of the Estates at Pronghorn by Owners and their guests. The Board shall have the right to limit the number of an Owner's guests that may use any recreational facilities. Neither an Owner nor its Invitees shall violate any provision of this Declaration, the Bylaws or the Rules as the same may be amended from time to time.

7.24 SIGNS: All signs displayed in the Estates at Pronghorn shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area shall be as follows:

7.24.1 Approved By Board: Signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board;

7.24.2 Declarant's Signs: Signs may be displayed by Declarant on Common Area, unsold Lots or Residences, as Declarant deems appropriate, advertising Lots and/or Residences owned by Declarant for sale or rent;

7.24.3 Golf Club Crossing Signs: Appropriate signs may be displayed by the Club Owners to identify, warn and otherwise control crossings of streets and roads within the Project by golf carts and pedestrian golfers;

7.24.4 Golf Club Identification: Permanent and temporary signs may be displayed by the Club Owners to identify the Golf Clubs and provide appropriate directions to the Golf Club Property and/or golf courses for motorists and pedestrians;

7.24.5 Golf Course Boundaries: Permanent and temporary markers may be displayed by the Club Owners to identify the boundaries of the golf courses;

7.24.6 Legal Proceedings: Signs required by legal proceedings may be displayed;

7.24.7 The Estates at Pronghorn Identification: Appropriate signs may be displayed by the Association to identify the Estates at Pronghorn;

7.24.8 Sale or Rent: Except by Declarant (7.24.2) signs advertising a Lot for sale or rent are prohibited;

7.24.9 Traffic Signs: Appropriate signs may be displayed by the Association to regulate and control vehicular, pedestrian, and other traffic within the Estates at Pronghorn.

7.25 STORAGE OF WASTE MATERIALS: All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers, which may be placed on Common Area or where visible only on the night before and the day that pick-up is to occur.

7.26 SWIMMING POOLS: No swimming pool may be constructed without the approval of the Architectural Committee as provided in Articles XIV.

7.27 TRAFFIC REGULATIONS: The Association may promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits; provided however that the Association may not regulate, beyond that which is necessary for safety reasons, or prohibit golf cart access to streets within the Estates at Pronghorn. Vehicular and pedestrian traffic includes but is not limited to motor vehicles, trailers, golf carts, bicycles, skateboards and roller skates. The Association shall be entitled to enforce such provisions by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof, as long as such procedures are consistent with the Project Documents. Only drivers licensed to operate motor vehicles shall operate any type of motor vehicle within the Estates at Pronghorn. All vehicles of any kind which are operated within the Estates at Pronghorn shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all Owners and their Invitees and the golf courses, the Club Owners and their Invitees.

7.28 USE AND OCCUPANCY OF RESIDENCES: Each Lot shall be used solely for residential purposes. No Residence shall be permanently occupied by any more than two (2) persons per bedroom unless approved by the Association in writing. No Owner may permit or cause anything to be done or kept upon, in or about his or her Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to his or her Lot.

7.29 USE OF COMMON AREA: All use of Common Area is subject to the Rules. All persons residing within the Estates at Pronghorn may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There

shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be physically done or kept in the Common Area or any other part of the Estates at Pronghorn which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No waste shall be committed in the Common Area.

7.29.1 Conveyance of Property by Association: In the event the Association votes to transfer or sell any portion of the Common Area, an equivalent amount of land shall be transferred into the Common Area.

7.29.2 Conveyance of Property to Association: If the Association accepts title to any real property transferred by an Owner, Declarant or any Club Owner as a result of subsequently recorded amended final plats, certificates of correction, lot line adjustments and/or records of survey, the property received shall be Common Area unless the conveyancing deed specifically provides otherwise.

7.30 USES IN SURROUNDING AREAS: In addition to tournaments within the Project, areas within and surrounding the Project may be subject to a wide variety of uses, including but not limited to agricultural, viticultural, commercial, retail, hotel, and bed and breakfast. Each Owner, by acceptance of a deed to a Lot, expressly waives for himself or herself and his or her successors in interest and assigns any and all claims against owners of land within and/or adjacent to the Project, including Declarant and all of its general and limited partners, and their successors in interest and assigns which arise from landowners' business uses of their lands as long as such uses are legal and are customarily considered ordinary and normal within the scope of the business use.

7.31 WELLS AND SEPTIC TANKS: Except as specifically permitted and approved by Declarant in connection with the conveyance of a Lot and as permitted by Deschutes County, no well for water shall be constructed or installed on any Lot. No septic tank shall be constructed or installed on any Lot. Declarant has no express or implied obligation to permit the installation of any well and approving the installation of any well or wells does not impose any express or implied obligation on Declarant to approve the installation of any other well.

7.32 WINDOW COVERINGS: No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or other purposes. No window-mounted heating or air-conditioning unit is permitted. All window coverings shall be subject to approval by the Architectural Design Committee.

7.33 RECLAIMED WATER: Some of the irrigation lines installed by Declarant for the Common Area may provide for the use of reclaimed water which may produce an

offensive odor. The Association shall be permitted to use any such reclaimed water to irrigate Common Area landscaping.

7.34 SEWER PUMPS: Due to the physical contours and layout of the Property, most Lots within the Estates at Pronghorn may require sewage ejector pumps, a pressurized system, or similar facilities to connect to the main sewer lines in the Project. Each Owner shall be responsible for the cost of purchasing, installing and maintaining any such equipment required for his or her Lot.

7.35 UTILITIES: No Owner may obtain water services from any provider other than that designated by the Declarant or the Association. All sewer services to the Estates at Pronghorn shall be provided by the City of Bend via the Sewer System, and no Owner shall construct any septic system or other sewage treatment system.

7.36 LOT CONSOLIDATION/PARTITION: No Lot may be partitioned or otherwise subdivided. Two lots may be consolidated; provided, however, the Owner complies with the following:

- (a) The Owner shall first obtain approval from Deschutes County;
- (b) The Owner shall first obtain approval from the Architectural Design Committee;
- (c) The Owner shall intend and shall actually construct its residential unit on parts of both of the Lots to be consolidated; and
- (d) After consolidation, the consolidated Lot may not be partitioned or otherwise divided.

Commencing the first day of the Association's first complete fiscal year after the consolidation is complete, the newly consolidated Lot shall be considered one (1) Lot for assessment and voting rights purposes, and the Association shall apportion assessments accordingly.

## ARTICLE VIII

### MAINTENANCE, REPAIR AND RECONSTRUCTION OF IMPROVEMENTS

8.1 MAINTENANCE OF COMMON AREA: The Association shall be responsible for the maintenance, repair, replacement, management, operation, painting and upkeep of Common Area and Improvements thereon. The Association shall keep the Common Area and Improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in a first class condition. Notwithstanding the provisions of this Section 8.1 or of Section 8.8, the Association shall not be obligated to continue to maintain, repair or replace any Improvement whose maintenance, repair or

replacement is undertaken subsequent to the recording of this Declaration by any Landscaping and Lighting District, Community Service Area, or other district, governmental or quasi-governmental entity or utility company.

8.1.1 Streets and Street Lighting: All streets and street lighting within the Estates at Pronghorn shall be private and, as Common Area Improvements, shall be operated, maintained, repaired and replaced, as necessary, by the Association. The identification from time to time of some individual components of Common Area Improvements in this Declaration is the result of requirements imposed by the County and shall not be construed as limiting the type, nature or extent of other Common Area Improvements within the Estates at Pronghorn.

8.1.2 150 Foot Building Setback Line: The strip identified as "150 Foot Building Setback Line" on the Plat is a landscaped area adjacent to portions of the perimeter boundary of the Estates at Pronghorn ("150 Foot Building Setback Line"). The 150 Foot Building Setback Line shall be maintained by the Association as a "buffer zone" that has natural vegetation or other landscaping. Permanent structures are prohibited within the 150 Foot Building Setback Line. No trespassing signs shall be posted and maintained at frequent intervals to prevent the 150 Foot Building Setback Line from being used for recreational or other purposes.

8.1.3 Slope Control: The Association shall inspect all slopes and related facilities on Common Area at least once annually prior to October 1 of each year and shall repair any mass soil movement or erosion in a timely manner.

8.1.4 Street Sweeping: The Association shall sweep all streets within the Estates at Pronghorn on a regular schedule to minimize trash, oil, grease, and other toxic urban runoff to watercourses.

8.1.5 Trees: The Association shall maintain the trees on the Common Area in accordance with any requirement of the Final Plat and/or any conditions of any land use approvals issued in connection with the development of the Estates at Pronghorn.

8.1.6 Improvement And Community Services Districts: Notwithstanding any other provision contained herein, the Association shall not be obligated to maintain nor have the right to: control the use, repair, or replace any landscaping, irrigation systems, drainage facilities, waste water treatment facilities, irrigation lakes and/or water features, sanitary sewer systems improvements or geological hazards which are maintained, repaired or replaced by any Geological Hazard Abatement District, Landscaping and Lighting District or other District (including Community Services Districts) and/or governmental or quasi governmental entity.

## 8.2 ALTERATIONS TO COMMON AREA.

8.2.1 Approval: Only the Association or Declarant shall construct, reconstruct, refinish or alter any Improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

8.2.2 Funding: Expenditures for maintenance, repair or replacement of an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of an Improvement for which no reserve has been collected or to alter existing Improvements.

8.2.3 Joint Development and Maintenance of the Common Areas: The Declarant and/or the Association may enter into an Agreement or Agreements with the owners of the Golf Club Property for the joint installation and/or maintenance of any of the Common Area Improvements.

8.2.4 Open Space Standard: The Declarant and the Association shall assure adherence by all Owners and the Association to the fifty percent (50%) open space standard required pursuant to Deschutes County Code for the entire resort.

8.3 MAINTENANCE OF LOTS AND RESIDENCES: Except as otherwise specifically provided in this Declaration, each Owner shall maintain and care for his or her Lot, Residence, and all other Improvements located in or on his or her Lot in a manner consistent with the standards established by the Project Documents and other well maintained residential areas in the vicinity of the Estates at Pronghorn. Special architectural design standards may be established in the Rules. Each Owner shall regularly clear all storm drainage inlets and maintain the capacity and flow of all storm drainage Improvements and drainage swales situated on the Owner's Lot. The finished ground surface of each Lot shall be maintained to slope away from all structures at a minimum five percent (5%) grade for at least five (5) feet or to a drainage swale located at least two and one-half (2 ½) feet from all structures. Landscaping may not be installed in any manner which interferes with the storm drainage improvements or which traps or ponds water adjacent to a Residence. Any Lot upon which a Residence has not yet been constructed shall be maintained by the Owner of the Lot in accordance with the Rules adopted by the Association for maintenance of vacant, improved Lots. The Association shall maintain, repair and replace sidewalk pavements (if any) on all Lots. If the pavement is damaged by the Owner of the Lot or his or her Invitees, the Association shall repair it at the expense of the Lot Owner. The Association shall maintain, repair and replace all exterior light fixtures and bulbs connected to the Association's electric service; provided, however, each Owner shall replace any inoperable light bulb in any such light fixture located on that Owner's Lot within eight (8) feet of ground level.

8.4 ALTERATIONS TO LOTS AND RESIDENCES: Owners may alter or remodel the interiors of their Residences if the alterations do not impair the structural integrity of the Residence and if the Owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for alterations, additions or other Improvements on Lots or to the exteriors of Residences shall be made in accordance with the provisions of Articles XIV.

#### 8.5 MAINTENANCE AND REPAIR OF FENCES.

8.5.1 Fences Adjacent to Golf Clubs: All fences situated on the common boundary of a Lot and any portion of the Golf Club Property shall be maintained by the Owner of the Lot at the sole cost and expense of the Owner. All fences situated on the common boundary of Common Area and any portion of the Golf Club Property shall be maintained by the Association at the sole cost and expense of the Association.

8.5.2 Fences Separating Common Area and Lots: Each fence which separates a Lot from Common Areas shall be maintained, repaired and replaced by the Association; provided however, if the side of the fence which faces a Lot is inaccessible by the Association, the Owner of the Lot shall maintain that fence surface. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

8.6 LANDSCAPING: All landscaping in the Estates at Pronghorn shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other well maintained residential areas in the vicinity of the Estates at Pronghorn. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Rules. The water conservation measures listed in the Water Conservation Plan submitted to Deschutes County as part of the Conceptual Master Plan for the Property and Development Property shall be adhered to by all Owners and the Association.

8.6.1 Association: The Association shall be responsible for all landscaping located on Common Area. The Association shall also irrigate, maintain and replace landscaping located within any public right-of-way described in a Declaration of Annexation.

8.6.2 Owners: Each Owner shall be responsible for all landscaping located within that Owner's Lot. If landscaping within Lots is not installed by Declarant, each Owner shall install permanent landscaping within his or her Lot prior to obtaining the occupancy permit, unless the time period is lengthened in the Architectural and Landscape Design Guidelines. Each Owner shall install and maintain landscaping and any necessary engineering measures to maintain slope stability in order to prevent mass soil movement

and erosion. Any mass soil movement or erosion which occurs on a Lot shall be promptly repaired by the Owner of the Lot. Unless the responsibility is assumed by the Association, each Owner shall also maintain the landscaping and street tree(s) within the right of way between the back of the nearest street curb and the Owner's Lot line. Maintenance of street trees shall include pruning as appropriate.

#### **8.7 RIGHT OF MAINTENANCE AND ENTRY.**

8.7.1 **By Association:** If an Owner fails to perform maintenance and/or repair which that Owner is obligated to perform pursuant to this Declaration, and if the Association determines, after Notice and Hearing given pursuant to the provisions of the Bylaws, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Estates at Pronghorn, the Association may cause such maintenance and/or repair to be performed. The costs of such maintenance and/or repair shall be charged to the Owner of the Lot as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Association is authorized to undertake. Entry within a Lot shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

8.7.2 **By Golf Club:** If either the Association or an Owner ("Defaulting Party") fails to maintain any landscaping or fencing situated adjacent to any portion of the Golf Club Property and within twenty (20) feet of any portion of either golf course, the affected Club Owner shall have the right, but not the duty, to maintain the landscaping or fencing at the sole cost and expense of the Defaulting Party. If the affected Club Owner desires to perform any such maintenance authorized by the preceding sentence, the affected Club Owner shall first notify the Defaulting Party in writing and provide the Defaulting Party with at least thirty (30) days from the date of the notice to perform such maintenance. If the Defaulting Party fails to commence and complete such maintenance within said thirty (30) day period, the affected Club Owner shall have the right to enter the Lot or Common Area on which the maintenance is required during reasonable business hours and perform such maintenance. Written notice of the costs incurred by the affected Club Owner in performing such maintenance and/or repair shall be given to the Defaulting Party who shall have ten (10) days to reimburse the affected Club Owner in full. The affected Club Owner shall have the right to deduct any charges which remain unpaid for longer than thirty (30) days from its obligation to the Association described in Section 4.4.6 of this Declaration. The Association may then assess any such charges which are attributable to a specific Owner against that Owner and the Owner's Lot as a Reimbursement Assessment.

**8.8 DAMAGE AND DESTRUCTION:** The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Common Area Improvement to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association.

8.8.1 Bids: Whenever restoration is to be performed pursuant to this Section 8.8, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Common Area as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

8.8.2 Sufficient Proceeds: The costs of restoration of the damaged Common Area shall be funded pursuant to the provisions and in the priority established by this subsection 8.8.2. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority are insufficient to restore the damaged Common Area. The following funds and procedures shall be utilized:

1. The first priority shall be any insurance proceeds paid to the Association under existing insurance policies.

2. The second priority shall be all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged.

3. The third priority shall be funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted, if any, without the approval of the Members.

4. The fourth priority shall be any funds raised by a Special Assessment against Owners levied by the Board pursuant to a vote of the Members.

8.8.3 Additional Special Assessment: If the total funds available to restore the damaged Common Area pursuant to the first three priorities described in subsection 8.8.2 is insufficient to restore the damaged Common Area, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the damaged Common Area as described above, making use of whatever funds are then available to the Association.

8.9 DAMAGE OR DESTRUCTION TO RESIDENCES AND/OR LOTS: If all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner shall immediately perform whatever work is necessary for the Lot to be clean and safe. Thereafter, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and maintain the Lot in a clean and safe condition. Any restoration under (i) must be performed so that the Improvements are in

substantially the same condition in which they existed prior to the damage, unless the Owner complies with the provisions of Articles XIV. The Owner must commence such work within six (6) months from the date the damage first occurs and must complete the work within one (1) year thereafter.

8.10 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners as to their interests at the time of condemnation. The Association shall represent the interests of all Owners.

## ARTICLE IX

### FUNDS AND ASSESSMENTS

9.1 COVENANTS TO PAY: Declarant and each Owner covenant and agree to pay to the Association the Assessments and any Additional Charges levied pursuant to this Article IX.

9.1.1 Liability for Payment: The obligation to pay Assessments shall run with the land so that each successive record Owner of a Lot shall in turn become liable to pay all such Assessments. No Owner may waive or otherwise escape personal liability for Assessments or release the Lot owned by the Owner from the liens and charges hereof by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Estates at Pronghorn. Each Assessment shall constitute a separate Assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the Assessment was levied and shall bind each Owner's heirs, devisees, personal representatives and assigns. Any Assessment not paid when due is delinquent. The personal obligation of an Owner for delinquent Assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent Assessments. After an Owner transfers fee title of record to his or her Lot, the transferring Owner shall not be liable for any charge thereafter levied against the Lot.

9.1.2 Funds Held in Trust: The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Estates at Pronghorn as provided in this Declaration.

9.1.3 Offsets: No offsets against any Assessment shall be permitted for any reason, including without limitation, any claim that the Association is not properly discharging its duties.

**9.2 FUNDING:** Subject to the terms of this Article IX, the Declarant hereby covenants for each Lot owned within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) annual or periodic assessments or charges; and (ii) special assessments for capital improvements to the Common Areas or acquisition of additional Common Areas, such assessments to be established and collected as hereinafter provided. The annual or periodic assessments shall include any reserve assessments necessary to establish and maintain any reserve funds created under Section 9.6. Such assessments will remain effective for the full term and extended term, if applicable, of the within covenants. The annual and special and other assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them, in writing.

**9.3 ANNUAL ASSESSMENT OR CHARGE FOR LOTS:** Subject to the terms of this Article, each Lot is hereby subject to an initial and annual assessment in an amount not to exceed an amount determined by the Board (until such assessment charge shall be modified as provided in the Bylaws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund" for matters described under Section 9.5, the "reserve fund" for matters described under Section 9.6, as well as any other funds contemplated under this Declaration, or any other fund called for by this Declaration or a Declaration of Annexation. Charges and assessments for funding such funds will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, commencing as to all Lots upon the recordation of this Declaration. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each assessment period. Said rate may be adjusted within the limit permitted by the Bylaws from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The assessment for each type of Lot shall be uniform except as provided in any Declaration of Annexation; provided, however the assessment for different types of Lots (i.e., condominiums, villas and single family detached) will not be uniform. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment for a particular Lot has been paid for a particular assessment period. No Lot Owner shall have any right to any common profits of the Association.

**9.4 DECLARANT RESPONSIBILITY:** So long as there is Class B membership, Declarant hereby covenants and agrees that in the event that the annual maintenance fund revenues are insufficient to pay the operating expenses of the Association, it shall provide

the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their annual maintenance assessments, the Association shall diligently pursue all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected.

**9.5 PURPOSES OF MAINTENANCE FUND:** The Association shall establish a maintenance fund composed of annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Areas, and the Sewer System, for the use and benefit of all members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: (i) normal, recurring maintenance of the Common Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the Improvements to such Common Areas, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Areas; (ii) perpetual maintenance, repair, and enhancement for any fences, columns, walls, grounds, landscaping, lights, irrigation systems, and entry monuments; (iii) perpetual maintenance of storm water quality/quantity pond facilities within or which serve the Property; (iv) payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the maintenance fund applies; (v) payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; (vi) maintenance of those improvements installed pursuant to Article XV; (vii) The payment of monthly sewer fees as charged by the City of Bend for the Estates at Pronghorn, including Common Areas and all Lots; (viii) maintenance, repairs and enhancement of the Sewer System; and (ix) all other activities necessary or desirable in the opinion of the Board to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith.

#### **9.6 RESERVE FUNDS.**

**9.6.1 Reserve Fund for Replacing Common Areas:** Declarant shall in addition establish a reserve fund (the "Reserve Account") in the name of the Association for replacement, in whole or in part, of the Common Area and any Improvements located in, on, or under the Common Area or elsewhere for which the Association is responsible pursuant to this Declaration, that will normally require replacement in more than three (3) and fewer than thirty (30) years, including exterior painting, if the Common Area includes exterior painted surfaces. The Reserve Account need not include those items that could

reasonably be funded from the maintenance fund. Assessments for the reserve fund under this Section shall begin accruing from the date the first Lot assessed is conveyed. Declarant may elect to defer payment of accrued assessments for reserves for a Lot until the date the Lot is conveyed; provided, however, the Declarant may not defer such payment beyond the date of the Turnover Meeting. The book and records of the Association shall reflect the amount owing from the Declarant for all reserve assessments. For purposes of funding the reserve fund, the Association shall impose an assessment to be called the "Reserve Fund Assessment" against each Lot, which assessment shall be spread equally over the Lots. The reserve fund shall be kept separate from other funds and may be used only for the purposes for which reserves have been established as specified in this Section. However, after the Turnover Meeting, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses. Funds borrowed under this Section must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the Budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. The Association shall administer the reserve fund and shall make periodic payments into the account. Following the second year after the Turnover Meeting (pursuant to ORS 94.609 and ORS 94.616 or applicable successor provisions), future assessments for the reserve fund may be reduced or increased by an affirmative vote of Owners of at least seventy-five percent (75%) of the Lots. Any funds established for any of the purposes mentioned in this Section shall be deemed to be a reserve fund notwithstanding that it may not be so designated by the Board. The amount of the reserve fund shall constitute an asset of the Association and shall not be refunded or distributed to any Owner. The reserve portion of the initial assessment determined by the Declarant shall be based upon the initial reserve study described in Section 9.6.2, or other sources of reliable information.

#### 9.6.2 Reserve Study.

(a) Prior to conveying the first Lot, the Declarant shall conduct an initial reserve study, which shall comply with the requirements for reserve studies set forth in Section 9.6.2(b) below.

(b) The Board shall annually conduct a reserve study, or review and update an existing study, to determine the reserve fund account requirements and may adjust the amount of payments as indicated by the study or update and provide for other reserve items that the Board, in its discretion, may deem appropriate. The reserve study shall include (a) identification of all items for which reserves are required to be established; (b) the estimated remaining useful life of each item as of the date of the reserve study; (c) the estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and (d) a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on the reserve fund, to meet the maintenance, repair, and replacement schedule.

**9.7 NON-PAYMENT OF ASSESSMENTS:** Remedies of the Association: Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the highest rate of interest allowed by Oregon law at the time of the non-payment. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of Owner's Lot and/or Unit.

**9.8 SUBORDINATED LIEN TO SECURE PAYMENT:** To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as provided in this Article IX, there is hereby reserved a lien for the benefit of the Association on each Lot, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lien holder by prepaid U.S. registered mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 94.709 shall apply to the Association's lien. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments that became due before such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the real property records of Deschutes County, Oregon.

**9.9 ADDITIONAL ASSESSMENTS:** In addition to the periodic assessments described in this Article IX, the Association shall have the authority to assess an Owner for costs and expenses incurred by the Association for corrective action which is required as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees. Each such additional assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, a

continuing lien upon the Lot, and the personal obligation of the Owner in the manner described in Sections 9.2, 9.7 and 9.8 for annual and special assessments.

**9.10 REALLOCATION UPON ANNEXATION OF PROPERTY:** When additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Common Areas and Common Areas and recompute all applicable assessments for each Lot. New Lots shall be subject to assessment from the time of annexation of such Lots to the Property. The Association shall send notice of any applicable assessment to the Owners of new Lots not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If Additional Property is annexed to the planned community of the Estates at Pronghorn during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60) days after the annexation or with the next occurring annual assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

**9.11 REIMBURSEMENT ASSESSMENTS:** The Association shall levy a Reimbursement Assessment against any Owner and the Owner's Lot to reimburse the Association for the costs of repairing damage caused by an Owner or an Owner's Invitee or if a failure to comply with the Project Documents has (i) necessitated an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Lot into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Notwithstanding any other provision in the Project Documents expressed or implied to the contrary, Reimbursement Assessments are assessments under this Articles IX, but they may not be enforced by any lien rights provided in this Declaration.

**9.12 BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES.**

**9.12.1 Preparation of Operating Budget:** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare and approve one or more pro forma operating Budgets.

(a) **Budget:** A Budget shall be prepared for the Association ("Budget") which shall include all costs and reserves for the maintenance and operating expenses of

the Association ("Budget Costs").

(b) All Budgets: The Budget shall also include all of the following, unless they are not applicable:

- (i) estimated revenue and expenses on an accrual basis;
- (ii) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor;
- (iii) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the future repair, replacement or additions to those major components that the Association is obligated to maintain; and
- (iv) a summary of the Association's reserves. The summary of the Association's reserves shall not be admissible in evidence to show improper financial management of the Association; provided that other relevant and competent evidence of the financial condition of the Association is not made admissible by this provision. The summary of the Association's reserves shall be printed in bold type and shall include all of the following:

A. the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component; and

B. if applicable, as of the end of the fiscal year for which the study is prepared:

i) the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components; and

ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components; and

C. the percentage that the amount determined for purposes of clause (i) of subparagraph B is of the amount determined for purposes of clause (ii) of subparagraph B.

9.12.2 Distribution of Budget: The Budget shall be made available to each Member. Not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year, the Board shall distribute either a copy or a summary of the Budget to all Owners. If a summary of the Budget is distributed, a written notice must accompany it. The written notice must be in at least 10-point bold type on the front page of the summary. It shall state that the Budget is available at the Association's office (or at

another suitable location within the Project) and that copies will be provided upon request and at the expense of the Association. If a Member requests a copy of the Budget, the Board shall provide a copy to the Member by first class United States mail within five (5) days after the Association's receipt of the request.

9.12.3 Annual Report: Within one hundred twenty (120) days after the close of each fiscal year, the Board shall cause to be distributed to each Member an annual report consisting of the following: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of changes in financial position for the fiscal year; and (iv) any other information required to be reported by applicable law. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without independent audit or review from the books and records of the Association. Any annual report prepared for a fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000.00) shall be reviewed in accordance with generally accepted accounting principles by a licensed Oregon accountant and a copy of such review shall be distributed as part of the annual report.

9.12.4 Quarterly Reconciliation: At least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association's Operation and Reserve Accounts.

9.12.5 Notice of Increased Assessments: The Board shall provide notice by first-class, United States mail to the Owners of any increase in Regular Assessments or Special Assessments not less than thirty (30) and not more than sixty (60) days prior to the increased Assessment becoming due.

9.12.6 Statement of Outstanding Charges: Within ten (10) days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent Assessments, penalties, attorneys' fees and other charges against that Owner's Lot. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

9.12.7 Initial Six Month Statement: The Board shall prepare a balance sheet and an operating statement for the period ending on the last day of the sixth (6th) month from the date Regular Assessments were initially levied and distribute them to each Member within sixty (60) days after that date. The operating statement shall include a

schedule of Assessments received and receivable, identified by the Lot number and the name of the Member(s) assessed.

9.12.8 Schedule of Monetary Penalties: If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Member for a violation of the Project Documents by that Member or his or her Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Project Documents. A copy of the schedule shall be personally delivered or mailed by first-class, United States mail, postage prepaid, to each Member by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Member, either personally or by first-class, United States mail, postage prepaid.

9.13 ENFORCEMENT OF ASSESSMENTS: The Board shall annually distribute, not more than sixty (60) and not less than forty-five (45) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording, and foreclosing of liens against Owners' Lots. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each Assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

9.13.1 By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent Assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

9.13.2 By Lien: The Association or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose Assessment liens as provided in Section 9.8 above.

9.13.3 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with the current laws to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on the delinquent Assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of Oregon; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments or sums.

9.13.4 Certificate of Satisfaction of Lien: Upon payment or other satisfaction of a delinquent Assessment for which a notice of intent to foreclose was recorded, the Association shall record a certificate stating the satisfaction and release of the Assessment lien.

9.14 COMMON PROFITS: No Lot Owner shall have any right to any common profits of the Association.

## ARTICLE X

### MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION

10.1 THE ORGANIZATION: The Association shall be organized as a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

10.2 MEMBERSHIP: Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

10.2.1 Appurtenant to Ownership: Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

10.2.2 Annexation: Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of the Lots described in the Declaration of Annexation for that Phase shall become Members.

10.3 VOTING: Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws. Upon annexation, Owners of Lots within such annexed property shall have the same voting rights of all other Owners as described in Article V.

10.4 RULES: The Board may propose, adopt, amend and repeal Rules appropriate for the management of the Estates at Pronghorn, which are consistent with the Project Documents. The Rules may also govern the use of the Common Area by Members or their Invitees. After adoption, a copy of the Rules shall be furnished to each Member. Members shall be responsible for distributing the Rules to their tenants.

10.5 DEDICATION AND EASEMENTS: Subject to any applicable provision in the Bylaws, the Board shall have the power to (i) dedicate any of the Common Area to an appropriate public authority for public use or (ii) grant and convey easements and licenses for use and rights of way in, on, over and under any Common Area.

10.6 INSURANCE: The Board shall make every reasonable effort to obtain and maintain the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

10.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies shall be written with a company legally qualified to do business in the State of Oregon and (i) holding no less than a financial performance index of "6" as established by Best's Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section 10.6, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any

settlement negotiations related thereto.

(d) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, if any, of the Estates at Pronghorn, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement; and

(v) An inflation guard endorsement.

(f) Term: The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(g) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

10.6.2 Types of Coverage: Unless the Association determines otherwise pursuant to Section 10.6.3, the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to one hundred percent (100%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage; provided, however, that such insurance is available at reasonable cost. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00)

(comprised of a primary policy of at least One Million Dollars (\$1,000,000) and an umbrella policy for the remaining amount) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured. The Board shall have the right to increase such amounts from time to time in its reasonable discretion without the approval of the Owners.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of Oregon or the regulations of any governmental body or authority having jurisdiction over the Estates at Pronghorn.

(d) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (1/4th) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering directors and officers, if reasonably available, in types and amounts as the Board determines to be appropriate.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Members.

10.6.3 Annual Review: The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements and Residences without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Estates at Pronghorn is situated. Such adjustment shall not require amendment of this Declaration.

10.6.4 Insurance by Member: Each Member shall obtain insurance coverage which the Member considers necessary or desirable to protect himself or herself, his or her Lot, his Residence and his or her personal property at the Owner's own expense; provided, however, that no Owner shall be entitled to exercise his or her right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

## ARTICLE XI

### DEVELOPMENT RIGHTS

11.1 LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing Lots and other Improvements within the Estates at Pronghorn. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Lots is essential to the establishment and welfare of the Property and the Additional Property as a residential community. In order that the work may be completed and the Estates at Pronghorn be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or any Builder the rights set forth in this Article XI with respect to any portion of the Estates at Pronghorn owned by Declarant or any Builder respectively.

11.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until the fifteenth (15<sup>th</sup>) anniversary of the expiration of the Annexation Period, Declarant, its contractors and subcontractors and any Builder and its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Estates at Pronghorn and/or do within any Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and maintain on the Common Area of the Estates at Pronghorn and/or within any Lot owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a resort, spa and residential community, including all businesses established by Declarant and dispose of the Project in parcels by sale, lease, rental or otherwise.

11.3 SIZE AND APPEARANCE OF ESTATES AT PRONGHORN: Declarant shall not be prevented from increasing or decreasing the number or size of Lots that may be annexed to the Estates at Pronghorn, changing the exterior appearance of any Improvement, building different product types on similarly situated Lots, adding, altering, removing or reconstructing any Improvement located on any property owned by Declarant, adding, realigning or eliminating any proposed street or road, or altering any other matter directly or indirectly connected with the Estates at Pronghorn in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law. Declarant may construct and/or annex any improvements to the Estates at Pronghorn at any time prior to the fifteenth (15<sup>th</sup>) anniversary of the expiration of the Annexation Period.

11.4 ALTERATIONS TO PLAT: At any time within three (3) years from the date that the first Lot in a Phase is conveyed to an Owner other than Declarant or a Builder, the boundaries of any Lot or Common Area in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently recorded record of survey or subdivision plat, provided that the altered boundaries are approved by Declarant and all Owners of the Property involved in the boundary adjustment (the Board, with respect to property owned by the Association). Any such alteration shall be effective upon

recording of the Record of Survey, subdivision plat or comparable document and, upon such recording, the boundaries of the altered Lot or Common Area shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey, subdivision plat or comparable document.

11.5 MARKETING RIGHTS: Declarant and to the extent approved in its sole discretion by Declarant, each Builder, shall have the right to: (i) maintain model homes, sales, leasing and/or rental offices, storage areas and related facilities in any unsold Lots or Common Area within the Estates at Pronghorn as are necessary or reasonable, in the opinion of Declarant, for the sale, lease, rental or other disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Lots; and (iii) conduct its business of disposing of Lots by sale, lease, rental or otherwise. The Declarant or its designee shall have the right to place temporary signs upon the Common Area (including the entrances to the Estates at Pronghorn) relative to the development and sale of its property within and adjacent to the Project. Declarant or its designee may erect such signs and shall maintain them in a first class condition. Upon substantial completion of the sale of the residential Lots in the Estates at Pronghorn, the Declarant or its designee shall remove any temporary sign and should it desire permanent signage at the entrance to the Estates at Pronghorn such signage shall be in conformance with the architecture and design of the Estates at Pronghorn. The Declarant or its designee, in its sole discretion, may use any advertising materials, and public relations efforts reasonably necessary in connection with the sale and marketing of its property and/or businesses, including the sale and marketing of any Residence located in the Estates at Pronghorn.

11.6 TITLE RIGHTS: This Declaration shall not be construed to constitute a limitation on Declarant's title rights to any property adjacent to the Estates at Pronghorn and owned by Declarant prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any property not a part of the Estates at Pronghorn. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself, the Association, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

11.7 AMENDMENT: Until the date that is the tenth (10<sup>th</sup>) anniversary of the expiration of the Annexation Period, the provisions of this Article may not be amended without the written consent of Declarant.

## ARTICLE XII

### RIGHTS OF MORTGAGEES

12.1 CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

12.2 LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

12.3 RESERVE FUND: The Association shall maintain as reserve funds the "Reserve Account" which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements and all other Improvements which the Association is obligated to maintain. The Reserve Account shall be in the name of the Association. This reserve fund shall be funded by regular assessments which are payable in installments, as specified in Section 9.2 hereof, rather than by special assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

12.4 CONTRACTS AND AGREEMENTS: Any agreement for professional management of the Estates at Pronghorn or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

12.5 NOTICES TO ELIGIBLE HOLDERS: The Association shall give timely written notice of each of the following events to each Eligible Holder:

12.5.1 Loss: Any condemnation loss or casualty loss which affects either a material portion of the Estates at Pronghorn or the Lot on which the Eligible Holder holds a First Mortgage;

12.5.2 Delinquency: Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

12.5.3 Insurance: Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

12.5.4 Material Chances: Any proposal to take any action specified in this Article or in Section 9.1.2; or

12.5.5 Default: Any default by an owner-mortgagor of a Lot in the performance of the Owner's obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

12.6 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner, First Mortgagee or Institutional Mortgagee shall be entitled, at its own expense, to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.

12.7 FINANCIAL STATEMENTS FOR MORTGAGEES: If the Estates at Pronghorn contains more than one hundred (100) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year. The audited financial statement shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. The Association shall provide a copy of the audited financial statement to any Mortgagee or Institutional Mortgagee who makes a written request for it. If the Estates at Pronghorn contains one hundred (100) or fewer Lots and if an audited financial statement is not available, any Mortgagee or Institutional Mortgagee who desires to have an audited financial statement of the Association may cause an audited financial statement to be prepared at the Mortgagee's expense.

12.8 VOTING RIGHTS OF MORTGAGEES: For purposes of this Section 12.8, a Mortgagee shall be entitled to one (1) vote for each Lot encumbered by a First Mortgage owned by that Mortgagee.

12.8.1 Institutional Mortgagee Protection: Unless sixty-seven (67%) of the Institutional Mortgagees or sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and Owners shall not be deemed a transfer within the meaning of this subsection 12.8.1(a));

(b) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or other Improvements which serve more than one Lot, or the upkeep of lawns,

plantings or other landscaping in the Estates at Pronghorn;

(c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area as required by Sections 10.6.2(a) and 10.6.3 above;

(d) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

12.8.2 Termination of the Estates at Pronghorn: Any election to terminate the legal status of the Estates at Pronghorn as a Planned Community Development shall require that the same be permissible under applicable law and:

(a) The approval of sixty-seven percent (67%) of the Institutional Mortgagees and the approval of seventy-five percent (75%) of the total eligible votes of the Association, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Estates at Pronghorn; or

(b) The approval of seventy-five percent (75%) of the Members eligible to vote and sixty-seven percent (67%) of the Eligible Holders, if subsection 12.8.2(a), above, is not applicable.

12.9 PAYMENT OF TAXES AND INSURANCE: Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

12.10 SELF-MANAGEMENT: The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder, shall be required to assume self-management of the Estates at Pronghorn, if professional management of the Estates at Pronghorn has been previously required by the Project Documents.

12.11 MORTGAGE PROTECTION: A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Estates at Pronghorn; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustees sale or otherwise.

## ARTICLE XIII

### AMENDMENT AND ENFORCEMENT

13.1 AMENDMENTS: Prior to the conveyance of the first Lot to an Owner other than a Declarant, any Project Document may be amended by Declarant alone. After the conveyance of the first Lot, the Project Documents may be amended in accordance with the following provisions:

13.1.1 Mortgagee Requirements: With respect to any action to be taken under this Section 13.1 which is also governed by provisions of Article XII that expressly require the approval of the Members and/or Mortgagees, the requirements of Article XII must be satisfied in addition to the requirement of this Section 13.1.

13.1.2 Voting Requirements: The approval of Owners holding seventy-five percent (75%) of the eligible votes and the approval of fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder, shall be required to amend any provision of this Declaration unless some greater percentage is specified. The Bylaws may be amended as stated therein. Any amendment or addition to the Declaration or Bylaws shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

13.1.3 Other Approvals: No amendment which materially alters or changes any rights or easements granted to any Club Owner in this Declaration shall be valid without the written consent of the affected Club Owner(s). No amendment shall be valid if the County determines that the same is inconsistent with the conditions imposed on the development of the Project by the County. The provisions relating to the Golf Club Property cannot be amended without the written consent of the affected Club Owner(s).

13.1.4 Recordation of Amendment: Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of an instrument executed by the President and Secretary of the Association which sets forth the terms of the amendment and a statement which certifies that the required percentage of Members have approved the amendment.

13.1.5 Rights of Declarant/Affected Lot Owners: In no event shall an amendment to this Declaration create, limit, or diminish Declarant's special rights without

Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment.

### 13.2 ENFORCEMENT.

13.2.1 Rights to Enforce: The Association, Declarant, and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, temporarily suspend an Owner's use of the recreation facilities or an Owner's voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's individually owned Lot, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision, a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Estates at Pronghorn. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Estates at Pronghorn.

13.2.2 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which creates a nuisance to the other Owners in the Estates at Pronghorn or to the Association, in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

13.2.3 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

13.2.4 Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

13.3 RIGHTS OF COUNTY: In consideration of the approval by Deschutes County of the Estates at Pronghorn, Declarant hereby covenants and agrees, and each

Owner of a Lot by the acceptance of any deed thereto, for itself and its heirs, executors, administrators, successors in interest and assigns, covenants and agrees as follows:

**13.3.1 Failure to Maintain Common Areas.**

(a) If the Association fails to maintain the Common Area so that Owners, lessees, and their guests suffer, or will suffer substantial diminution in the enjoyment, use or property value of their Property, thereby impairing the health, safety and welfare of the residents in the Estates at Pronghorn, the County, by and through its duly authorized officers and employees, shall have the right to enter upon the Estates at Pronghorn and to commence and complete such work as is necessary to maintain the Common Area. The County shall enter and repair only if, after giving the Association written notice of the Association's failure to maintain the Common Area, the Association does not commence correction of such conditions in no more than thirty (30) days from delivery of the notice and proceed diligently to completion. The Association agrees to pay all expenses incurred by the County within thirty (30) days of written demand. Upon failure by the Association to pay within said thirty (30) days, the County shall have the right to impose a lien for the costs against the Common Area.

(b) It is understood that by the provisions hereof, the County is not required to take any affirmative action, and any action undertaken by the County shall be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

(c) It is understood that action or inaction by the County, under the provisions hereof, shall not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the County, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

(d) It is further understood that the remedies available to the County by the provision of this Section 13.3 or by reason of any other provisions of law shall be cumulative and not exclusive, and the maintenance of any particular remedy shall not be a bar to the maintenance of any other remedy.

**13.3.2 Right to Enforce:** The County shall be a third party beneficiary to the provisions of this Declaration and shall have the right but not the duty to enforce any or all of such provisions.

**13.3.3 Amendment:** This Section 13.3 cannot be amended or eliminated without the written consent of the County.

**13.4 ENFORCEMENT BY CLUB OWNER:** Each Club Owner shall be a third party beneficiary to the provisions of this Declaration which confer a benefit upon such Club Owner or any portion of the Golf Club Property owned by such Club Owner. The Club

Owners shall have the right to enforce any and all such provisions against the Association or any Owner in any manner provided by law or in equity. No provision of this Declaration which exists for the benefit of the Club Owners or the Golf Club Property may be amended or eliminated without the written consent of the affected Club Owner(s). This Section cannot be amended or eliminated without the written consent of both Club Owners.

13.5 LIMITATION OF CLAIMS: The Association, whether on its own behalf or on behalf of any Owner or Owners, shall not file any claim or bring any action against Declarant, its agents, affiliates, officers, directors, partners, employees, contractors, subcontractors, material suppliers, architects, engineers, attorneys or consultants, including but not limited to claims or actions relating to the Project or any Lot, Residence or Improvements in the Project, whether pursuant to this Declaration or any purchase and sale agreement between Declarant and any Owner, or otherwise, or for any alleged breach of fiduciary duty or any defect, structural, in material, in workmanship, or otherwise, whether patent or latent, unless such claim is filed or action is brought within four (4) years of the date on which Declarant ceases to be a Class "B" Member pursuant to the Bylaws.

#### ARTICLE XIV

##### ARCHITECTURAL CONTROL

14.1 APPLICABILITY: Except as otherwise provided in this Declaration, proposals for Alterations (as that term is defined in Section 7.1) shall be subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article. The provisions of this Declaration requiring architectural approvals shall not apply to (i) alterations of Common Area Improvements, (ii) the original construction of any Improvements on a Lot by Declarant, its agents, contractors or employees or (iii) prior to the first conveyance of a Lot to an Owner.

14.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Design Committee in accordance with the provisions of this Article XIV. When there is no longer any Member appointed by Declarant on the Architectural Design Committee, the Board may decide to dissolve the Architectural Design Committee and undertake the Architectural Design Committee's responsibilities.

14.3 MEMBERS: The Architectural Design Committee shall consist of a chairman and four (4) additional members. Persons appointed to the Architectural Design Committee need not be Members of the Association. All members shall serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. The Declarant shall be entitled to appoint the majority of the members of the Architectural Committee so long as this Declaration, as amended or restated, shall remain in effect. The Board may appoint a replacement for any member of

the Architectural Design Committee originally appointed by the Board who resigns, is removed by the Board or otherwise fails to act. Declarant may appoint a replacement for any member of the Architectural Design Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section 14.3. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

#### 14.4 DUTIES AND POWERS.

14.4.1 Duties: The Architectural Design committee shall review and approve, disapprove or conditionally approve all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Architectural Design Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Improvements.

14.4.2 Architectural and Landscape Design Guidelines: The Architectural Design Committee, from time to time and in its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural and Landscape Design Guidelines"). The Architectural and Landscape Design Guidelines may also impose additional specific requirements on Lots if those requirements are reasonable in light of specific Lot topography, visibility or other factors. The Architectural and Landscape Design Guidelines shall be effective when they are adopted by the Architectural Design committee. The Architectural and Landscape Design Guidelines shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features which may be used in the Estates at Pronghorn; provided, however, that the Architectural and Landscape Design Guidelines shall not be in derogation of the minimum standards established by this Declaration. The Architectural and Landscape Design Guidelines may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred by the Architectural Design Committee in processing the submittals) and establish the time and manner in which such fees shall be paid. The Architectural and Landscape Design Guidelines shall constitute Rules.

14.4.3 Powers: The Architectural Design Committee may adopt rules and regulations for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Architectural Design Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, disapprove or conditionally approve any matter submitted to it for decision.

14.4.4 Consultants: With the consent of the Board, the Architectural Design Committee may hire and pay consulting architects, landscape architects, urban designers,

engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Design Committee in performing its duties.

**14.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS:** Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Architectural Design Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural and Landscape Design Guidelines or reasonably requested by the Architectural Design Committee. The Architectural Design Committee may require an application to include site plans, diagrams, photographs, sample materials or other presentation material as may be necessary for complete review and consideration of the proposed development. All applications shall be submitted in writing, shall conform to the requirements set forth in the Architectural and Landscape Design Guidelines and shall be accompanied by any required fee. The approval process may also be divided into preliminary and final approvals as set forth in the Architectural and Landscape Design Guidelines.

**14.6 BASIS FOR APPROVAL OF IMPROVEMENTS:** The Architectural Design Committee may approve the proposal only if the Architectural Design Committee finds that:

**14.6.1 Conformity to Architectural and Landscape Design Guidelines:** The plans and specifications conform to this Declaration and to the applicable Architectural and Landscape Design Guidelines in effect at the time the proposal was submitted;

**14.6.2 Architectural Review:** General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and similar elements have been incorporated in order to ensure the compatibility of the proposed improvement with its design concept and the character of adjacent buildings;

**14.6.3 Site Review:** General site considerations including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements have been designed to provide a desirable environment and one which maximizes the view of the surrounding Residences and golf courses considering the location of trees, vegetation and other aesthetic and environmental factors;

**14.6.4 Landscape Review:** The proposal complies with the landscape standards contained in the Pronghorn Architectural and Landscape Design Guidelines, including without limitation, the use of native vegetation, the retention where possible of native landscape features and the coordination of home and landscape appearances;

14.6.5 Drainage: The percentage area of the Lot to be cleared or graded and the percentage area of the Lot to be covered by structures or other Improvements will not cause excessive drainage or surface water run-off due to the topography, percolation rate of the soil, soil types and conditions, vegetation cover and other environmental factors;

14.6.6 Lots on Golf Courses: For those Lots which adjoin or are visible from either golf course, the applicable Club Owner has approved (i) the landscaping plan for the portion of the Lot which adjoins the golf course, (ii) any drainage plan which potentially impacts the golf course; and (iii) the aesthetics of that portion of the Residence and Lot which impact the view from the applicable Golf Club;

14.6.7 Garage Size: The first garage to be constructed on any Lot shall contain sufficient area for a minimum of two (2) parking spaces.

If the Architectural Design Committee makes a negative finding on one or more of the items set forth in this Section 14.6, it shall disapprove such matter, or condition its approval so as to allow such findings to be made.

14.7 FORM OF APPROVALS AND DENIALS: All approvals and denials shall be in writing. Any denial of an application must state the reasons for the decision to be valid. Any application which has not been rejected in writing within ninety (90) days from the date of submission shall be deemed approved.

14.8 PROCEEDING WITH WORK: Upon approval of the Architectural Design Committee, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one hundred eighty (180) days from the date of the approval. If the Owner fails to comply with the provisions of this Section 14.8, the approval given shall be deemed revoked unless the Architectural Design Committee extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Architectural Design Committee finds that there has been no change in the circumstances under which the original approval was granted.

14.9 FAILURE TO COMPLETE WORK: Completion of the work approved must occur within eighteen (18) months following the approval of the work unless the Architectural Design Committee determines that completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or the Owner's agents. If the Owner fails to complete the work within the eighteen (18) month period, the Architectural Design Committee may notify the Owner in writing of his or her non-compliance and shall proceed in accordance with the provisions of Section 14.11, below.

14.10 DETERMINATION OF COMPLIANCE: The Architectural Design Committee shall have the right to inspect any work being performed during the construction period. Whether or not the Owner obtained proper approvals and whether

or not any inspections were performed during the course of construction, the Architectural Design Committee shall inspect any completed work and shall make a determination of compliance as follows:

14.10.1 Notice of Completion: Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Architectural Design Committee. If the Owner fails to give the notice of completion of work performed for which approval was required, the Architectural Design committee may proceed upon its own motion.

14.10.2 Inspection: Within sixty (60) days thereafter, the Architectural Design Committee shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Architectural Design Committee finds that the work was not performed in substantial compliance with the approval granted or if the Architectural Design Committee finds that the approval required was not obtained, the Architectural Design Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

14.11 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Architectural Design Committee has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Architectural Design Committee shall notify the Board, and the Board shall provide notice and hearing, in accordance with the Project Documents, to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

14.12 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

14.13 APPEAL OF DECISION OF ARCHITECTURAL DESIGN COMMITTEE: This Section 14.13 does not apply if the Board has dissolved the Architectural Design Committee or during the period of time that a majority of the Members of the

Architectural Design Committee have been appointed by Declarant. If any Owner who alters his or her Lot or Residence disputes the jurisdiction or powers of the Architectural Design Committee or any requirement, rule, regulation or decision of the Architectural Design Committee (collectively referred to as "decision"), the Owner may appeal such decision to the Board. The Board shall notify such Owner of the time, date and place of a hearing to review the decision of the Architectural Design Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

14.14 LIABILITY: No approval of plans or specifications or publication of Architectural and Landscape Design Guidelines shall be construed as representing or implying that (i) the same comply with applicable law; or (ii) such plans, specifications or Architectural and Landscape Design Guidelines will result in properly designed Improvements if followed; or (iii) any Improvement built in accordance therewith will be built in a good and workmanlike manner or in compliance with applicable law. If members of the Architectural Design Committee have acted in good faith, neither the Architectural Design Committee nor any member shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved, plans, drawings, and specifications; (c) the development of any property within the Estates at Pronghorn; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

14.15 ESTOPPEL CERTIFICATE: Within thirty (30) days after a determination of compliance is made pursuant to Section 14.10 and written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

## ARTICLE XV

### WILDLIFE ISSUES

15.1 DOMESTIC PETS: Outdoor domestic cats are prohibited on the Project. All Owners shall assure that any domestic cat he or she owns, brings onto the Project, or otherwise allows to come onto the Project, shall be confined to the interior of Residences or other enclosed structures and shall not be permitted access to the outdoors. All other domestic pets within the Project shall be permitted outside only when on a leash. All Owners shall comply with this restriction and shall assure that its tenants, licensees, invitees and family members so comply.

15.2 FEEDING OF WILDLIFE: Feeding of wildlife is prohibited on the Project. No Owner shall feed wildlife, including big game species, within the Project. All Owners shall comply with this restriction and shall assure that its tenants, licensees, invitees and family members so comply.

15.3 SWALLOW NEST BOXES: Upon completion of the construction of the two Golf Courses, the Association shall assure that no fewer than 40 and no more than 50 swallow nest boxes shall be placed and maintained near water features on the Project. Declarant shall have the right, but not the obligation, to place such boxes.

15.4 BLUEBIRD AND OWL CAVITY NESTING STRUCTURES: Upon completion of the construction of the two golf courses on the Golf Club Property, the Association shall assure that no fewer than 10 and no more than 20 cavity nesting structures shall be placed and maintained near water features on the Project to serve as nesting structures for bluebirds and small owls. Declarant shall have the right, but not the obligation, to place such structures.

15.5 BAT NESTING BOXES: Upon completion of the construction of the two golf courses, the Association shall assure that no fewer than 30 and no more than 40 bat nesting boxes shall be placed and maintained in the vicinity of water features on the Project. Declarant shall have the right, but not the obligation, to place such boxes.

Declarant declares that the terms of this Article XV shall apply to the Development Property as well as to the Property and shall run with the land and be binding upon successive owners of all portions of the Development Property and Property. Declarant or successor owners of the relevant portions of the Development Property shall grant to the Association such easements or licenses as are reasonably necessary to install and maintain the improvements required on the golf courses pursuant to this Article XV.

## ARTICLE XVI

### OVERNIGHT LODGING

16.1 DESIGNATED OVERNIGHT UNITS: All Lots designated on the Plat as Lots to be owned by individuals, but recorded with deed restrictions identifying such Lots as "overnight lodging" (each, an "Overnight Unit") shall comply with this Article XVI. Each Lot or overnight unit that is created on or from a part of the "Lodging Parcel" and that is recorded with a deed restriction identifying such Lots or units as "overnight lodging" shall also be considered an "Overnight Unit" and shall comply with this Article XVI. Declarant covenants for itself and its successors that sufficient Overnight Units will be created to satisfy applicable Deschutes County ordinances and the requirements contained in the Final Master Plan for Pronghorn. Declarant further declares that the terms of this Article XVI shall run with the land and be binding upon Declarant and each successive owner of each Overnight Unit created from the Lodging Parcel or any other portion of the Development Property. As used herein, the "Lodging Parcel" shall mean that portion of the Development Property described on attached Exhibit C. All Overnight Units shall be available for overnight rentals no fewer than 45 weeks per year. Such rentals shall be through the central reservation system established for the Project. Such central reservation system may be created and operated by Declarant or created and/or operated by an entity to which Declarant assigns such central reservation system, which entity may be the owner or operator of a hotel in the Project.

16.2 RIGHTS OF COUNTY: In consideration of the approval by Deschutes County of the Project, Declarant hereby covenants and agrees, and each Owner of a Lot by the acceptance of any deed thereto, for itself and its heirs, executors, administrators, successors in interest and assigns, covenants and agrees as follows:

(a) If any Owner of an Overnight Unit fails to comply with the terms of this Article XVI, the County shall have authority to enforce such terms.

(b) It is understood that by the provisions hereof, the County is not required to take any affirmative action, and any action undertaken by the County shall be that which, in its sole discretion, it deems reasonable to enforce the provisions.

(c) It is understood that action or inaction by the County, under the provisions hereof, shall not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of this Article XVI or any of the rules, regulations and ordinances of the County, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

(d) It is further understood that the remedies available to the County by the provision of this Article XVI or by reason of any other provisions of law shall be cumulative and not exclusive, and the maintenance of any particular remedy shall not be a bar to the maintenance of any other remedy.

16.2.2 Amendment: This Article XVI cannot be amended or eliminated without the written consent of the County.

## ARTICLE XVII MISCELLANEOUS PROVISIONS

17.1 TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until two-thirds (2/3rds) of the Members approve a termination of this Declaration.

17.2 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned community development pursuant to applicable Oregon law.

17.3 BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants' encumbrances, donees, grantees, mortgagees, lienors and assigns.

17.4 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

17.5 GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

17.6 DISTRIBUTION OF PROJECT DOCUMENTS: Upon the resale of any Lot by any Owner, the Owner shall supply to the buyer of the Lot a copy of each of the Project Documents and a copy of the current Budget.

17.7 EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

17.8 REQUIRED ACTIONS OF ASSOCIATION: The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

17.9 SUCCESSOR STATUTES: Any reference in the Project Documents to a statute shall be deemed a reference to any amended or successor statute.

17.10 CONFLICT: In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

17.11 APPLICABLE LAW: This Declaration shall be governed by and construed in accordance with Oregon law.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 5<sup>th</sup> day of December, 2002.

DECLARANT: "HDDC:"

HIGH DESERT DEVELOPMENT COMPANY LLC,  
an Oregon limited liability company

By High Desert Development Partners LLC,  
a California limited liability company  
Its Managing Member

By Northwest Resort Development, Inc.  
a California corporation  
Its Managing Member

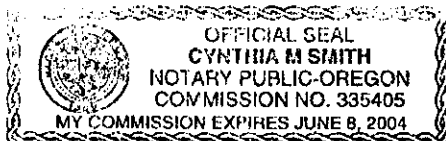
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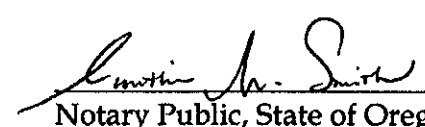
  
Thomas C. Hix  
Its President

STATE OF OREGON )

COUNTY OF Deschutes )

The foregoing instrument was acknowledged before me the 5<sup>th</sup> day of December 2002, by Thomas C. Hix, thereon behalf of High Desert Development Company, LLC, an Oregon limited liability company, on behalf of the company.



  
Notary Public, State of Oregon

My Commission Expires: June 8, 2004

## EXHIBIT A-1

### ESTATES AT PRONGHORN PHASE 1 DESCRIPTION

LOCATED IN SECTION 16, TOWNSHIP 16 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, SAID INITIAL POINT BEING A FOUND 3/4" BRASS CAP MARKED "DESCHUTES COUNTY SURVEYORS OFFICE, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SECTION 16, 15, 21, AND 22, LS 1031", AS RECORDED IN THE DESCHUTES COUNTY SURVEYOR'S RECORDS AS CS14112; THENCE ALONG THE SOUTH LINE OF SAID SECTION 16, NORTH 89° 46' 35" WEST, 1877.80 FEET TO THE INTERSECTION OF SAID SOUTH LINE OF SECTION 16 AND A NON-TANGENT CURVE; THENCE LEAVING SAID SOUTH LINE THROUGH A 177.50 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 74° 28' 41", AN ARC LENGTH OF 230.73 FEET (THE CHORD OF WHICH BEARS NORTH 52° 59' 05" EAST, 214.83 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 89° 46' 35" EAST, 312.01 FEET; THENCE NORTH 33° 42' 52" WEST, 98.85 FEET; THENCE NORTH 61° 28' 52" EAST, 167.90 FEET; THENCE NORTH 53° 00' 05" EAST, 95.90 FEET; THENCE NORTH 24° 23' 09" EAST, 98.85 FEET; THENCE NORTH 26° 41' 25" EAST, 164.01 FEET; THENCE NORTH 27° 30' 49" EAST, 240.88 FEET; THENCE SOUTH 58° 24' 30" EAST, 95.39 FEET; THENCE SOUTH 62° 43' 28" EAST, 116.60 FEET; THENCE NORTH 85° 07' 03" EAST, 81.83 FEET; THENCE NORTH 63° 23' 34" EAST, 49.95 FEET; THENCE NORTH 41° 49' 52" EAST, 63.46 FEET; THENCE NORTH 6° 08' 20" EAST, 120.08 FEET; THENCE NORTH 1° 27' 23" EAST, 621.15 FEET; THENCE NORTH 8° 44' 25" EAST, 382.41 FEET; THENCE SOUTH 83° 43' 09" EAST, 28.75 FEET; THENCE NORTH 8° 30' 38" EAST, 419.67 FEET; THENCE NORTH 55° 52' 03" EAST, 62.07 FEET; THENCE NORTH 32° 30' 00" WEST, 23.46 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 36° 40' 54", AN ARC LENGTH OF 97.63 FEET (THE CHORD OF WHICH BEARS NORTH 50° 50' 27" WEST, 95.97 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21° 51' 27", AN ARC LENGTH OF 67.71 FEET (THE CHORD OF WHICH BEARS NORTH 58° 15' 11" WEST, 67.30 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 27° 35' 55" WEST, 159.93 FEET; THENCE SOUTH 61° 20' 50" WEST, 69.28 FEET; THENCE NORTH 72° 03' 09" WEST, 82.29 FEET; THENCE NORTH 26° 45' 08" WEST, 38.76 FEET; THENCE NORTH 5° 13' 27" WEST, 469.60 FEET; THENCE NORTH 00° 04' 46" WEST, 120.16 FEET; THENCE NORTH 5° 08' 48" EAST, 413.27 FEET; THENCE NORTH 46° 13' 01" WEST, 93.74 FEET; THENCE NORTH 81° 04' 06" WEST, 115.78 FEET; THENCE SOUTH 72° 43' 01" WEST, 141.69 FEET; THENCE NORTH 78° 52' 58" WEST, 111.94 FEET; THENCE NORTH 60° 41' 02" WEST, 126.14 FEET; THENCE NORTH 40° 32' 46" WEST, 119.21 FEET; THENCE NORTH 59° 54' 40" WEST, 86.70 FEET; THENCE NORTH 4° 41' 12" EAST, 124.55 FEET; THENCE NORTH 53° 23' 56" EAST, 101.62 FEET; THENCE SOUTH 36° 36' 04" EAST, 144.31 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 68° 14' 00", AN ARC LENGTH OF 181.61 FEET (THE CHORD OF WHICH BEARS SOUTH 70° 43' 04" EAST, 171.07 FEET) TO A POINT OF A REVERSE CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS REVERSE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 41° 30' 10", AN ARC LENGTH OF 128.57

FEET (THE CHORD OF WHICH BEARS SOUTH 84° 04' 59" EAST, 125.78 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 53° 01' 59", AN ARC LENGTH OF 141.15 FEET (THE CHORD OF WHICH BEARS SOUTH 89° 50' 53" EAST, 136.17 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF 162.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37° 19' 02", AN ARC LENGTH OF 105.84 FEET (THE CHORD OF WHICH BEARS NORTH 82° 17' 38" EAST, 103.98 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 79° 02' 51" EAST, 36.85 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21° 50' 37", AN ARC LENGTH OF 67.67 FEET (THE CHORD OF WHICH BEARS NORTH 25° 54' 46" EAST, 67.26) FEET TO A POINT OF TANGENCY; THENCE NORTH 36° 50' 04" EAST, 32.38 FEET; THENCE NORTH 55° 31' 11" WEST, 152.50 FEET; THENCE NORTH 12° 33' 37" WEST, 85.34 FEET; THENCE NORTH 7° 02' 50" WEST, 112.04 FEET; THENCE NORTH 19° 43' 13" EAST, 123.70 FEET; THENCE NORTH 48° 07' 38" WEST, 63.80 FEET; THENCE NORTH 9° 23' 46" WEST, 142.91 FEET; THENCE NORTH 33° 38' 53" EAST, 94.44 FEET; THENCE NORTH 73° 13' 35" WEST, 328.29 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 262.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37° 13' 34", AN ARC LENGTH OF 170.55 FEET (THE CHORD OF WHICH BEARS NORTH 54° 36' 48" WEST, 167.57 FEET) TO A POINT OF TANGENCY; THENCE NORTH 36° 00' 01" WEST, 67.57 FEET; THENCE NORTH 53° 59' 59" EAST, 122.38 FEET; THENCE SOUTH 73° 55' 42" EAST, 133.58 FEET; THENCE SOUTH 75° 37' 37" EAST, 101.87 FEET; THENCE SOUTH 70° 30' 56" EAST, 109.37 FEET; THENCE SOUTH 75° 35' 27" EAST, 120.33 FEET; THENCE SOUTH 74° 16' 31" EAST, 116.55 FEET; THENCE SOUTH 71° 31' 59" EAST, 160.95 FEET; THENCE SOUTH 46° 38' 45" EAST, 138.59 FEET; THENCE SOUTH 8° 38' 28" EAST, 267.31 FEET; THENCE SOUTH 3° 49' 30" EAST, 115.50 FEET; THENCE SOUTH 12° 42' 42" WEST, 102.05 FEET; THENCE SOUTH 8° 05' 48" EAST, 73.17 FEET; THENCE SOUTH 40° 16' 43" EAST, 156.79 FEET; THENCE SOUTH 4° 31' 14" WEST, 173.46 FEET; THENCE SOUTH 11° 59' 09" WEST, 453.22 FEET; THENCE SOUTH 5° 09' 23" WEST, 104.05 FEET; THENCE SOUTH 3° 38' 05" EAST, 245.86 FEET; THENCE SOUTH 00° 38' 16" WEST, 119.02 FEET; THENCE SOUTH 1° 37' 54" WEST, 103.45 FEET; THENCE SOUTH 62° 15' 42" WEST, 128.20 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 36° 40' 54", AN ARC LENGTH OF 113.64 FEET (THE CHORD OF WHICH BEARS SOUTH 50° 50' 27" EAST, 111.71 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 32° 30' 00" EAST, 171.90 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 212.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 4° 47' 00", AN ARC LENGTH OF 17.74 FEET (THE CHORD OF WHICH BEARS SOUTH 30° 06' 31" EAST, 17.74 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 89° 34' 10" EAST, 323.94 FEET TO THE INTERSECTION OF THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 16; THENCE ALONG SAID EAST LINE, SOUTH 00° 25' 50" WEST, 2,214.53 FEET TO THE POINT OF BEGINNING.

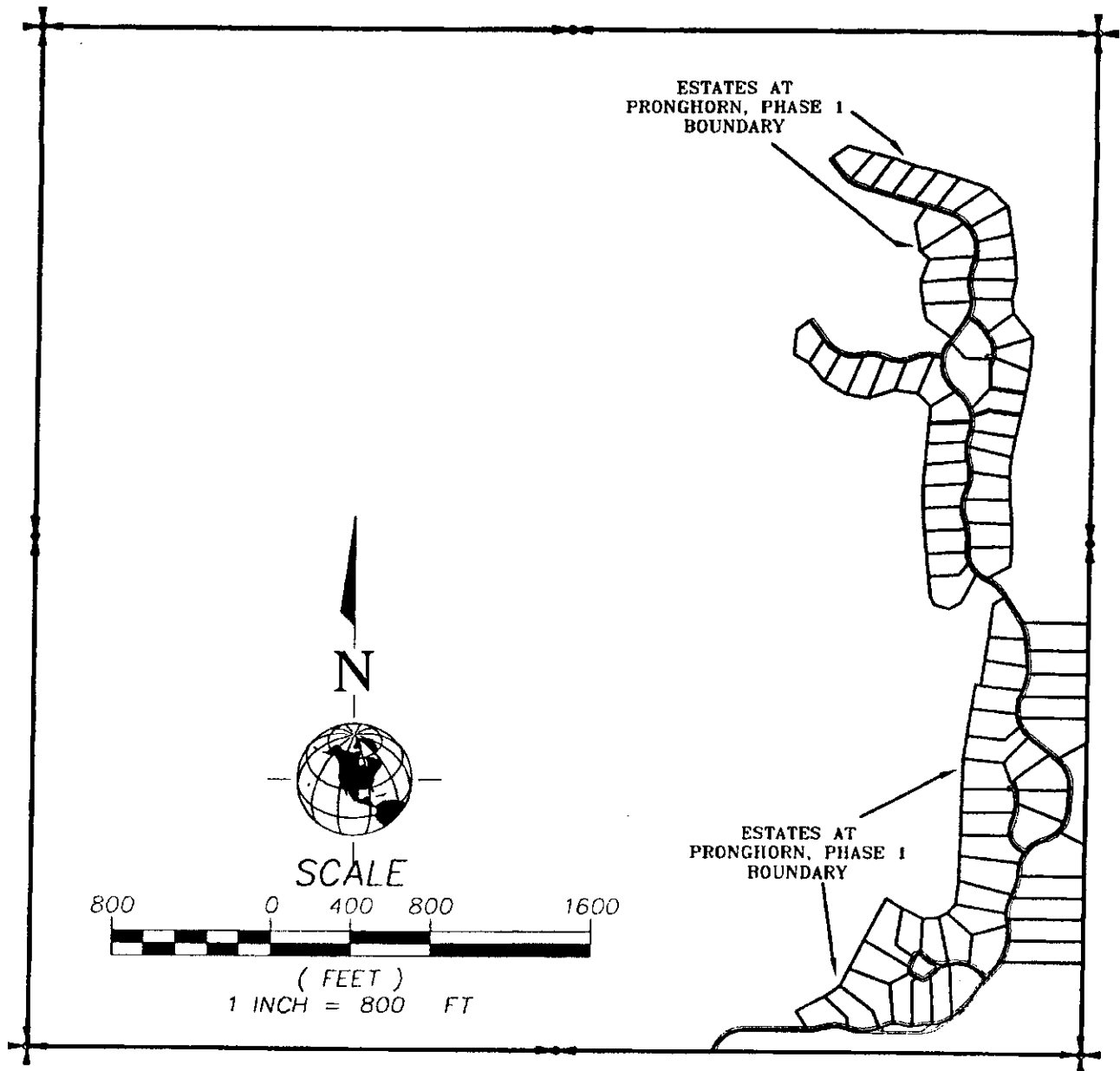
11/26/2002  
PPICCR.DOC

# EXHIBIT A-1

## ESTATES AT PRONGHORN, PHASE 1

LOCATED IN THE EAST 1/2, OF SECTION 16, TOWNSHIP 16  
SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN,  
DESCHUTES COUNTY, OREGON

NOVEMBER 2002



OFFICE: BEND / SYSTEM: BO\_185615 / USER: REM

DRAWN BY		CHECKED BY	
PJP		TAW	
LAST LOT		PLOT DATE	
		12/04/02	
DATE	BY	REV	REVISION

**WH**  
WILLAMETTE HOLDINGS

880 Drake, Suite C-100  
Bend, Oregon  
97702-1041

Real Estate  
Real Estate  
Real Estate

HIGH DESERT DEVELOPMENT COMPANY LLC  
ESTATES AT PRONGHORN  
EXHIBIT A-1

PRONGHORN / DESCHUTES

SCALE: 1"=800'	PROJECT NO. 30121	DRAWING FILE NAME PEP1	1 SHEET 1/1
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OREGON

## EXHIBIT A-2

LOCATED IN SECTION 16, TOWNSHIP 16 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF SAID SECTION 16, TOWNSHIP 16 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON.

EXCLUDING THE FOLLOWING:

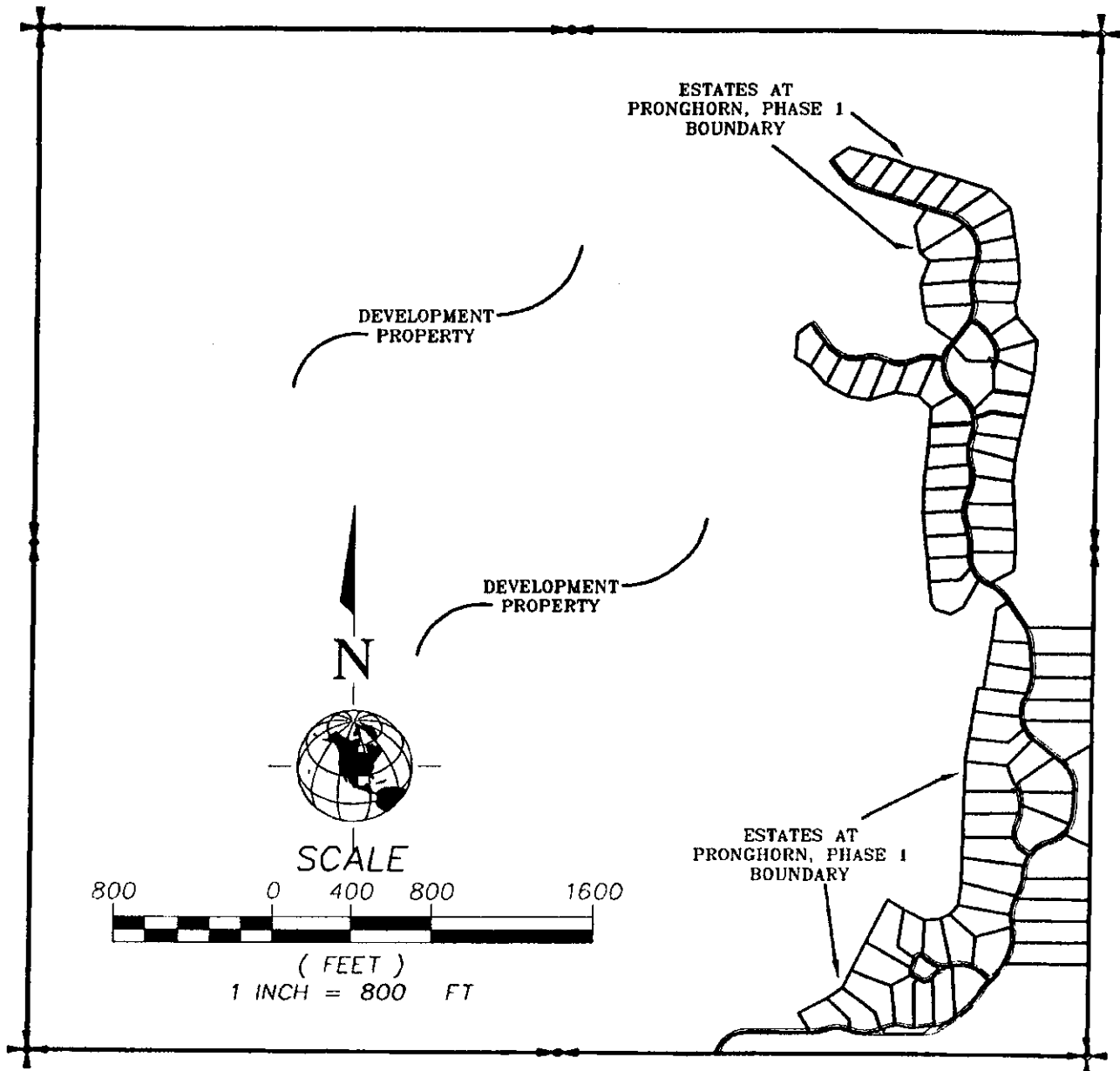
BEGINNING AT THE INITIAL POINT, SAID INITIAL POINT BEING A FOUND 3/4" BRASS CAP MARKED "DESCHUTES COUNTY SURVEYORS OFFICE, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SECTION 16, 15, 21, AND 22, LS 1031", AS RECORDED IN THE DESCHUTES COUNTY SURVEYOR'S RECORDS AS CS14112; THENCE ALONG THE SOUTH LINE OF SAID SECTION 16, NORTH 89° 46' 35" WEST, 1877.80 FEET TO THE INTERSECTION OF SAID SOUTH LINE OF SECTION 16 AND A NON-TANGENT CURVE; THENCE LEAVING SAID SOUTH LINE THROUGH A 177.50 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 74° 28' 41", AN ARC LENGTH OF 230.73 FEET (THE CHORD OF WHICH BEARS NORTH 52° 59' 05" EAST, 214.83 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 89° 46' 35" EAST, 312.01 FEET; THENCE NORTH 33° 42' 52" WEST, 98.85 FEET; THENCE NORTH 61° 28' 52" EAST, 167.90 FEET; THENCE NORTH 53° 00' 05" EAST, 95.90 FEET; THENCE NORTH 24° 23' 09" EAST, 98.85 FEET; THENCE NORTH 26° 41' 25" EAST, 164.01 FEET; THENCE NORTH 27° 30' 49" EAST, 240.88 FEET; THENCE SOUTH 58° 24' 30" EAST, 95.39 FEET; THENCE SOUTH 62° 43' 28" EAST, 116.60 FEET; THENCE NORTH 85° 07' 03" EAST, 81.83 FEET; THENCE NORTH 63° 23' 34" EAST, 49.95 FEET; THENCE NORTH 41° 49' 52" EAST, 63.46 FEET; THENCE NORTH 6° 08' 20" EAST, 120.08 FEET; THENCE NORTH 1° 27' 23" EAST, 621.15 FEET; THENCE NORTH 8° 44' 25" EAST, 382.41 FEET; THENCE SOUTH 83° 43' 09" EAST, 28.75 FEET; THENCE NORTH 8° 30' 38" EAST, 419.67 FEET; THENCE NORTH 55° 52' 03" EAST, 62.07 FEET; THENCE NORTH 32° 30' 00" WEST, 23.46 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 36° 40' 54", AN ARC LENGTH OF 97.63 FEET (THE CHORD OF WHICH BEARS NORTH 50° 50' 27" WEST, 95.97 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21° 51' 27", AN ARC LENGTH OF 67.71 FEET (THE CHORD OF WHICH BEARS NORTH 58° 15' 11" WEST, 67.30 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 27° 35' 55" WEST, 159.93 FEET; THENCE SOUTH 61° 20' 50" WEST, 69.28 FEET; THENCE NORTH 72° 03' 09" WEST, 82.29 FEET; THENCE NORTH 26° 45' 08" WEST, 38.76 FEET; THENCE NORTH 5° 13' 27" WEST, 469.60 FEET; THENCE NORTH 00° 04' 46" WEST, 120.16 FEET; THENCE NORTH 5° 08' 48" EAST, 413.27 FEET; THENCE NORTH 46° 13' 01" WEST, 93.74 FEET; THENCE NORTH 81° 04' 06" WEST, 115.78 FEET; THENCE SOUTH 72° 43' 01" WEST, 141.69 FEET; THENCE NORTH 78° 52' 58" WEST, 111.94 FEET; THENCE NORTH 60° 41' 02" WEST, 126.14 FEET; THENCE NORTH 40° 32' 46" WEST, 119.21 FEET; THENCE NORTH 59° 54' 40" WEST, 86.70 FEET; THENCE NORTH 4° 41' 12" EAST, 124.55 FEET; THENCE NORTH 53° 23' 56" EAST, 101.62 FEET; THENCE SOUTH 36° 36' 04" EAST, 144.31 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 68° 14' 00", AN ARC LENGTH OF 181.61 FEET (THE CHORD OF WHICH BEARS SOUTH 70° 43' 04" EAST, 171.07 FEET) TO A POINT OF A

REVERSE CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS REVERSE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 41° 30' 10", AN ARC LENGTH OF 128.57 FEET (THE CHORD OF WHICH BEARS SOUTH 84° 04' 59" EAST, 125.78 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF 152.50 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 53° 01' 59", AN ARC LENGTH OF 141.15 FEET (THE CHORD OF WHICH BEARS SOUTH 89° 50' 53" EAST, 136.17 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF 162.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37° 19' 02", AN ARC LENGTH OF 105.84 FEET (THE CHORD OF WHICH BEARS NORTH 82° 17' 38" EAST, 103.98 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 79° 02' 51" EAST, 36.85 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21° 50' 37", AN ARC LENGTH OF 67.67 FEET (THE CHORD OF WHICH BEARS NORTH 25° 54' 46" EAST, 67.26) FEET TO A POINT OF TANGENCY; THENCE NORTH 36° 50' 04" EAST, 32.38 FEET; THENCE NORTH 55° 31' 11" WEST, 152.50 FEET; THENCE NORTH 12° 33' 37" WEST, 85.34 FEET; THENCE NORTH 7° 02' 50" WEST, 112.04 FEET; THENCE NORTH 19° 43' 13" EAST, 123.70 FEET; THENCE NORTH 48° 07' 38" WEST, 63.80 FEET; THENCE NORTH 9° 23' 46" WEST, 142.91 FEET; THENCE NORTH 33° 38' 53" EAST, 94.44 FEET; THENCE NORTH 73° 13' 35" WEST, 328.29 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 262.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37° 13' 34", AN ARC LENGTH OF 170.55 FEET (THE CHORD OF WHICH BEARS NORTH 54° 36' 48" WEST, 167.57 FEET) TO A POINT OF TANGENCY; THENCE NORTH 36° 00' 01" WEST, 67.57 FEET; THENCE NORTH 53° 59' 59" EAST, 122.38 FEET; THENCE SOUTH 73° 55' 42" EAST, 133.58 FEET; THENCE SOUTH 75° 37' 37" EAST, 101.87 FEET; THENCE SOUTH 70° 30' 56" EAST, 109.37 FEET; THENCE SOUTH 75° 35' 27" EAST, 120.33 FEET; THENCE SOUTH 74° 16' 31" EAST, 116.55 FEET; THENCE SOUTH 71° 31' 59" EAST, 160.95 FEET; THENCE SOUTH 46° 38' 45" EAST, 138.59 FEET; THENCE SOUTH 8° 38' 28" EAST, 267.31 FEET; THENCE SOUTH 3° 49' 30" EAST, 115.50 FEET; THENCE SOUTH 12° 42' 42" WEST, 102.05 FEET; THENCE SOUTH 8° 05' 48" EAST, 73.17 FEET; THENCE SOUTH 40° 16' 43" EAST, 156.79 FEET; THENCE SOUTH 4° 31' 14" WEST, 173.46 FEET; THENCE SOUTH 11° 59' 09" WEST, 453.22 FEET; THENCE SOUTH 5° 09' 23" WEST, 104.05 FEET; THENCE SOUTH 3° 38' 05" EAST, 245.86 FEET; THENCE SOUTH 00° 38' 16" WEST, 119.02 FEET; THENCE SOUTH 1° 37' 54" WEST, 103.45 FEET; THENCE SOUTH 62° 15' 42" WEST, 128.20 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF A 177.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 36° 40' 54", AN ARC LENGTH OF 113.64 FEET (THE CHORD OF WHICH BEARS SOUTH 50° 50' 27" EAST, 111.71 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 32° 30' 00" EAST, 171.90 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 212.50 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 4° 47' 00", AN ARC LENGTH OF 17.74 FEET (THE CHORD OF WHICH BEARS SOUTH 30° 06' 31" EAST, 17.74 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 89° 34' 10" EAST, 323.94 FEET TO THE INTERSECTION OF THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 16; THENCE ALONG SAID EAST LINE, SOUTH 00° 25' 50" WEST, 2,214.53 FEET TO THE POINT OF BEGINNING.

11/26/2002  
 PP11:EXHIBIT A2.DOC

# EXHIBIT A-2 DEVELOPMENT PROPERTY

LOCATED IN SECTION 16, TOWNSHIP 16 SOUTH,  
RANGE 13 EAST, WILLAMETTE MERIDIAN,  
DESCHUTES COUNTY, OREGON  
NOVEMBER 2002



OFFICE: BEND, SYSTEM: BO, TBS6.5, USER: RCH

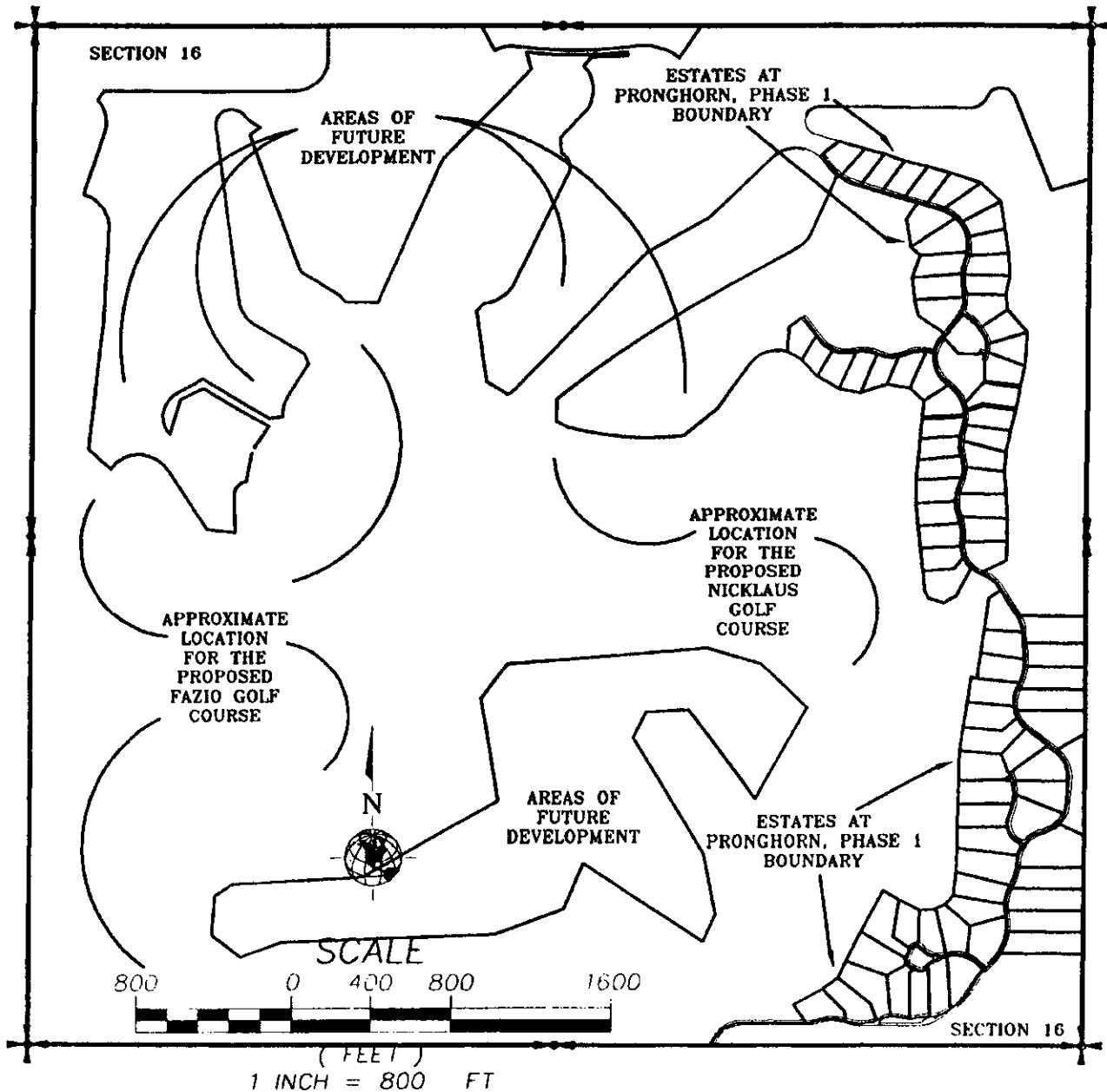
DRAWN BY: <u>RJP</u>		CHECKED BY: _____	
LAST EDIT: _____		APPROVED BY: <u>TAW</u>	
PLOT DATE: <u>12/04/02</u>		REVISION: _____	
DATE	BY	REV#	CK'D APPR

**W&H**  
INCORPORATED  
620 Drakey, Suite C-100  
Bend, Oregon  
97708-1041  
Ph: (503) 338-0500  
Fax: (503) 338-0500  
www.wah-inc.com

HIGH DESERT DEVELOPMENT COMPANY LLC DEVELOPMENT PROPERTY <b>EXHIBIT A-2</b>			
PRONGHORN / DESCHUTES		OREGON	
SCALE: <b>1"=800'</b>	PROJECT NO: <b>30121</b>	DRAWING FILE NAME: <b>PEP1</b>	<b>1</b> SHEET <b>1/1</b>

# EXHIBIT B GOLF CLUB PROPERTY

LOCATED IN SECTION 16, TOWNSHIP 16 SOUTH, RANGE 13  
EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON  
NOVEMBER, 2002



OFFICE: BEND / SYSTEM: BO-185615 / USER: PEM

DRAWN BY: <b>PJP</b>		CHECKED BY:	
LAST EDIT:		APPROVED BY: <b>JAW</b>	
		PLOT DATE: <b>12/04/02</b>	
DATE	BY	REV	REVISION

**WH**  
WILLAMETTE HOLDINGS  
800 Drake, Suite C-100  
Bend, Oregon  
97708-1041  
(503) 338-4444  
(503) 338-4888 Fax  
wh@willamette.com

HIGH DESERT DEVELOPMENT COMPANY LLC ESTATES AT PRONGHORN <b>EXHIBIT B</b>			
PRONGHORN / DESCHUTES			
SCALE: <b>1"=800'</b>	PROJECT NO: <b>30121</b>	DRAWING FILE NAME: <b>PEP1</b>	OREGON <b>1 SHEET 1/1</b>

## **EXHIBIT C**

### **CORE AREA DESCRIPTION**

LOCATED IN THE SOUTH HALF OF SECTION 16, TOWNSHIP 16 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

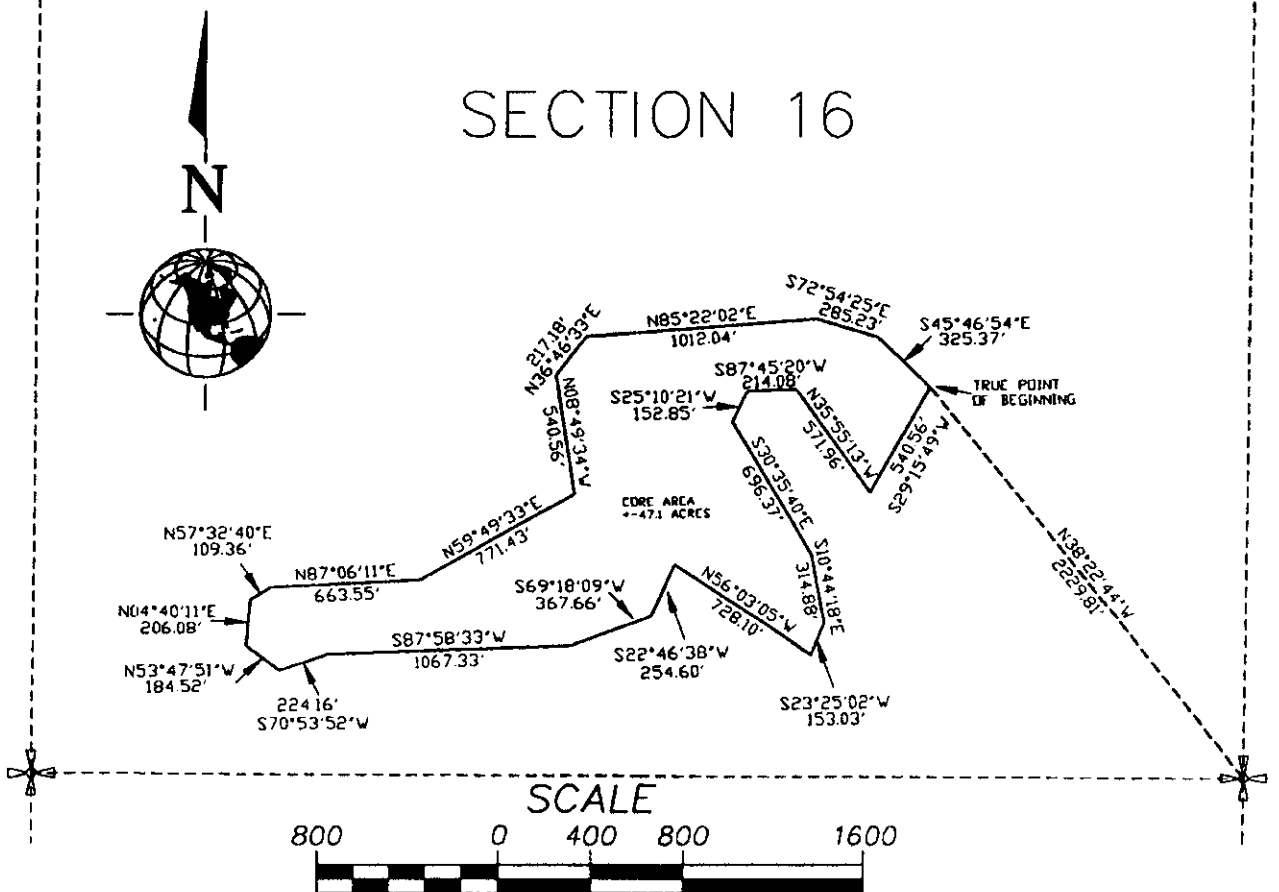
COMMENCING AT A FOUND 3/4" BRASS CAP MARKED "DESCHUTES COUNTY SURVEYORS OFFICE, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SECTION 16, 15, 21, AND 22, LS 1031", AS RECORDED IN THE DESCHUTES COUNTY SURVEYOR'S RECORDS AS CS11112; SAID BRASS CAP BEING THE SOUTHEAST CORNER OF SAID SECTION 16, THENCE NORTH 38°22'44" WEST, 2229.81 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 29°15'49" WEST, 540.56 FEET; THENCE NORTH 35°55'13" WEST, 571.96 FEET; THENCE SOUTH 87°45'20" WEST, 214.08 FEET; THENCE SOUTH 25°10'21" WEST, 152.85 FEET; THENCE SOUTH 30°35'40" EAST, 696.37 FEET; THENCE; SOUTH 10°44'18" EAST, 314.88 FEET; THENCE SOUTH 23°25'02" WEST, 153.03 FEET; THENCE NORTH 56°03'05" WEST, 728.10 FEET; THENCE SOUTH 22°46'38" WEST, 254.60 FEET; THENCE SOUTH 69°18'09" WEST, 367.66 FEET; THENCE SOUTH 87°58'33" WEST, 1067.33 FEET; THENCE SOUTH 70°53'52" WEST, 224.16 FEET; THENCE NORTH 53°47'51" WEST, 184.52 FEET, THENCE NORTH 4°40'11" EAST, 206.08 FEET; THENCE NORTH 57°32'40" EAST, 109.36 FEET; THENCE NORTH 87°06'11" EAST, 663.55 FEET; THENCE NORTH 59°49'33" EAST, 771.43 FEET; THENCE NORTH 8°49'34" WEST, 540.56 FEET; THENCE NORTH 36°46'33" EAST, 217.18 FEET; THENCE NORTH 85°22'02" EAST, 1012.04 FEET; THENCE SOUTH 72°54'25" EAST, 285.23 FEET; THENCE SOUTH 45°46'54" EAST, 325.37 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 47.1 ACRES MORE OF LESS.

# **EXHIBIT C FOR HIGH DESERT DEVELOPMENT COMPANY, LLC CORE AREA**

**LOCATED IN THE SOUTH HALF OF  
SECTION 16, TOWNSHIP 16  
SOUTH, RANGE 13 EAST,  
WILLAMETTE MERIDIAN DESCHUTES  
COUNTY, OREGON**

SECTION 16



DESIGNED BY _____			CHECKED BY _____	
DRAWN BY _____			APPROVED BY _____	
LAST EDIT: _____			PLOT DATE: 12/04/02	
DATE	BY	REV	REVISION	CK'D APPR

**WH**  
800 Bimby, Suite C-100  
Bend, Oregon 97708-1041  
(541) 339-0880  
(541) 339-0880 Fax  
whpronghorn.com

**HIGH DESERT DEV. CO. LLC  
PRONGHORN  
CORE AREA  
EXHIBIT C**

OREGON

PRONGHORN / DESCHUTES	PROJECT NO.	DRAWING FILE NAME:	1 SHEET
SCALE 1"=800'		SROWPRONGHORN	