

AFTER RECORDING, RETURN TO:

BT1403134W

AmeriTitle
15 NW Oregon Avenue
Bend, Oregon 97701-2788
Attn: Yvonne Ward, Sr. Escrow Officer

Deschutes County Official Records **2012-033637**
D-CCR
Stn=1 BN **08/28/2012 10:18:55 AM**
\$55.00 \$11.00 \$10.00 \$16.00 \$6.00 **\$118.00**
\$20.00
I, Nancy Blankenship, County Clerk for Deschutes County, Oregon,
certify that the instrument identified herein was recorded in the Clerk
records.
Nancy Blankenship - County Clerk

SPACE ABOVE FOR RECORDER'S USE

RESTRICTIVE COVENANT AGREEMENT

DATED: August 28, 2012

BETWEEN: WESTON INVESTMENT CO. LLC
an Oregon limited liability company
2154 NE Broadway, Suite 200
Portland, Oregon 97232-1590 ("WIC")

VRE LODGE HOMES, L.L.C.
a Missouri limited liability company
100 South Brentwood Boulevard, Suite 240
Clayton, Missouri 63105-1635 ("VRE Lodge Homes")

VRE TRACT AC, L.L.C.
a Missouri limited liability company
100 South Brentwood Boulevard, Suite 240
Clayton, Missouri 63105-1635 ("VRE Tract AC")

VRE TRACT Y, L.L.C.
a Missouri limited liability company
100 South Brentwood Boulevard, Suite 240
Clayton, Missouri 63105-1635 ("VRE Tract Y")



TETHEROW GLEN 58, LLC
an Oregon limited liability company
61240 Skyline Ranch Road
Bend, Oregon 97702-3539 (“Tetherow Glen”)

TETHEROW GOLF COURSE, LLC
an Oregon limited liability company
61240 Skyline Ranch Road
Bend, Oregon 97702-3539 (“Tetherow Golf”)

VRE Crescent, L.L.C.
a Missouri limited liability company
100 South Brentwood Boulevard, Suite 240
Clayton, Missouri 63105-1635 (“VRE Crescent”)

The above named parties shall sometimes hereinafter be referred to, collectively, as Parties.

RECITALS:

- A. WIC is the owner of that certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract AA (“Tract AA”), which said tract is located within the Tetherow Destination Resort (“Tetherow”) and is more particularly described on **Exhibit A** hereto as Tract AA.
- B. VRE Lodge Homes is the owner of that certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract AB (“Tract AB”), which said tract is located within Tetherow and is more particularly described on **Exhibit A** hereto as Tract AB.
- C. VRE Tract AC is the owner of that certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract AC (“Tract AC”), which said tract is located within Tetherow and is more particularly described on **Exhibit A** hereto as Tract AC.
- D. WIC is the owner of most of the platted lots in that certain partially improved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract AE (“Tract AE”), which said tract is located within Tetherow and is more particularly described on **Exhibit A** hereto as Tract AE.
- E. Tetherow Golf is the owner of that certain improved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract Z (“Tract Z”), which said tract is located within Tetherow and is more particularly described on **Exhibit A** hereto as Tract Z.
- F. Tetherow Glen is the owner of that certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tracts AD, AF, AG and AH, (“Tract AD”, “Tract AF”, “Tract AG”, and “Tract AH”, respectively), which said tracts

are located within Tetherow and are more particularly described on **Exhibit A** hereto as Tracts AD/AF/AG/AH.

- G. VRE Tract Y, L.L.C. is the owner of the certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Development Tract Y ("Tract Y"), which said tract is located within Tetherow and is more particularly described on **Exhibit A** hereto as Tract Y.
- H. VRE Crescent, L.L.C. is the owner of certain unimproved property located in the County of Deschutes, State of Oregon, commonly known as Tetherow Crescent Phases 2 and 3 ("Crescent Property"), which said property is more particularly described on **Exhibit A** hereto as Crescent Property.
- I. VRE Lodge Homes, VRE Tract AC, VRE Tract Y and VRE Crescent are hereinafter sometimes referred to, collectively, merely as "VRE."
- J. The Parties hereto wish to memorialize their agreements one with the other with respect to the type and number of Visitor-Oriented Overnight Lodging Units, as said term is used in Section 19.106 of the Deschutes County Code ("DCC") ("OLU"), and/or the type and number of Other Residential Uses/Units ("ORUs")¹, that may be constructed on the various parcels above mentioned, which said parcels, collectively, shall be hereinafter referred to herein as "the subject property."

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual promises of the Parties to this Restrictive Covenant Agreement ("Agreement"), the Parties hereto agree as follows:

- 1. Unless the total number of OLU's authorized for Tetherow is increased above 300, whether the ratio of Residential Units to Overnight Lodging Units is 2:1 or 2.5:1, no more than 198 OLU's together with Ancillary Commercial Uses, as defined in Section 19.106.070(Q) of the DCC ("ACU"), may be approved and/or constructed on Tract AA, whether said OLU's and/or ACU's were approved and/or constructed prior to or after the date of this Agreement.
- 2. Unless the total number of OLU's authorized for Tetherow is increased above 300, whether the ratio of Residential Units to Overnight Lodging Units is 2:1 or 2.5:1, no more than 78 OLU's together with ACU's may be approved and/or constructed on Tracts AB and/or Y, collectively, whether said OLU's and/or ACU's were approved and/or constructed prior to or after the date of this Agreement.

¹ For purposes hereof, Other Residential Uses/Units ("ORUs") shall include those residential uses/units other than single-family residences (as identified and rated in the applicable ITE Trip Generation Manual) that generate no more weekday-PM peak hour trips than at the trip generation rate for Apartments (ITE Manual LU Code 220).

3. Unless the total number of OLUs authorized for Tetherow is increased above 300, whether the ratio of Residential Units to Overnight Lodging Units is 2:1 or 2.5:1, no more than 24 OLUs together with ACUs may be approved and/or constructed on Tract Z, whether said OLUs and/or ACUs were approved and/or constructed prior to or after the date of this Agreement.
4. Only OLUs and ACUs may be constructed on Tract AA.
5. Only OLUs, ACUs and a Golf Clubhouse may be constructed on Tract Z.
6. Only 48 ORUs may be constructed on Tracts AD, AF, AG and AH, collectively.
7. Only 56 ORUs may be constructed on Tract AE.
8. Only 106 ORUs may be constructed on Tracts AB, AC and Y, collectively; provided, however, these ORUs may be approved and/or constructed on Tracts AB and Y (but not AC) in combination with the OLUs referenced in paragraph 2, above. In other words, OLUs shall not be constructed on Tract AC.
9. There are presently 198 required OLUs approved and guaranteed for Tetherow. Those approved and guaranteed OLUs have allowed for the platting, to date, of 301 single family residential lots and 56 ORUs. An additional 39 single family residential lots and/or ORUs are subject to approval and platting as a result of the 198 approved and guaranteed OLUs. VRE has claimed the right to those 39 entitlements. WIC, Tetherow Glen and Tetherow Golf will not oppose, directly or indirectly, VRE's claim to those 39 entitlements and agree that they shall not, directly or indirectly, without the prior written consent of VRE, make any claim whatsoever to use any of said 39 entitlements to offset WIC's, Tetherow Glen's and/or Tetherow Golf's development of additional single-family and/or ORUs on any property within Tetherow, whether now owned or hereafter acquired by them.
10. The Parties intend that the benefits and burdens of this Agreement, as applicable, and the covenants set forth in this Agreement, shall run with the subject property and all portions thereof and shall be binding in perpetuity. Failure of any party to exercise its rights under this Agreement for any period, shall not be deemed to be an abandonment of such rights.
11. If any suit or action is brought by any party hereto arising out of or relating to this Agreement, the prevailing or non-defaulting party shall be entitled to recover its costs and fees (including, without limitation, reasonable attorneys' fees and costs) incurred by such party, including those on appeal or review.
12. The Parties hereto acknowledge and agree that the covenants in this Agreement are reasonable in all respects and are of benefit to each of the Parties hereto and to all or any portion of the subject property, as it may be used, partitioned, subdivided or conveyed.

13. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement. Invalidation of any provision of this Agreement, in whole or in part, or of any application of a provision of this Agreement, by judgment or court order shall in no way affect other provisions or applications.
14. The Agreement shall bind and inure to the benefit of each of the Parties and their respective successors and assigns, and any party hereafter claiming any interest in all or any portion of the subject property.
15. All notices given by a party to the other Parties shall be in writing and shall be sent either (i) by United States Postal Service registered or certified mail, postage prepaid, return receipt requested, or (ii) by prepaid nationally recognized overnight courier service for next business day delivery, addressed to the other party or Parties at the following addresses listed below, or (iii) by facsimile transmission to the facsimile numbers listed below; provided, however, that if such communication is given by facsimile transmission, an original counterpart of such communication shall concurrently be sent in the manner specified in subparagraph (ii) above. Addresses and facsimile numbers of the Parties are as follows:

As to WIC:

Weston Investment Co. LLC
2154 NE Broadway, Suite 200
Portland, Oregon 97232-1590
Attn: Keith Vernon
Fax: (503) 284-5458

with a copy at the same time to:

Radler White Parks & Alexander LLP
111 SW Columbia Street – Suite 1100
Portland, Oregon 97201-5865
Attention: Dina E. Alexander
Fax: (971) 634-0222

As to VRE:

Virtual Realty Enterprises, L.L.C.
100 South Brentwood Boulevard, Suite 240
Saint Louis, Missouri 63105-1635
Attention: Henry D. Warshaw
Fax: (314) 244-3519

with a copy at the same time to:

James D. Eckhoff
555 N. New Ballas Road, Suite 130
Saint Louis, Missouri 63141-6884
Fax: (314) 997-4237

As to Tetherow Glen and Tetherow Golf:

Tetherow Golf Course, LLC
61240 Skyline Ranch Road
Bend, Oregon 97702-3539
Attn: Chris van der Velde
Fax: (541) 388-9810

with a copy at the same time to:

Paul J. Taylor
Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702-1231
Fax: (541) 389-3386

or to such other addresses as the respective Parties may hereafter designate by notice in writing in the manner specified above. Any notice may be given on behalf of any party by its counsel. Notices given in the manner aforesaid shall be deemed sufficiently served or given for all purposes under this Agreement upon the earlier of actual receipt (including receipt of a facsimile copy upon production of a transmittal record showing such facsimile copy was delivered, but only if an original of such facsimile is properly sent by overnight courier as provided above) or refusal by the addressee to accept delivery thereof.

16. The Agreement may not be amended except by recorded written agreement of all then owners of the subject property.

Executed by the Parties effective as of the date first above written.

[Signature/Notary Pages (3) Follow]

WIC:

WESTON INVESTMENT CO. LLC
an Oregon limited liability company

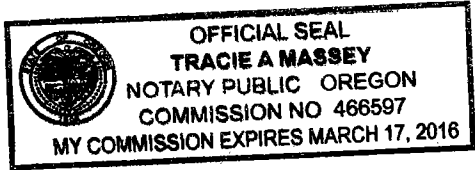
By: Weston Trust Corp.
An Oregon corporation
Its Manager

By: *Joseph E. Weston*
Joseph E. Weston, President

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on the 16th day of August, 2012 by Joseph E. Weston as President of Weston Trust Corp.

Tracie A Massey
Notary Public for Oregon
Commission No. 466597
My Commission Expires: 3/17/16



VRE:

VRE Tract Y, L.L.C.
VRE Tract AC, L.L.C.
VRE Crescent, L.L.C.
VRE Lodge Homes, L.L.C.
each a Missouri limited liability company

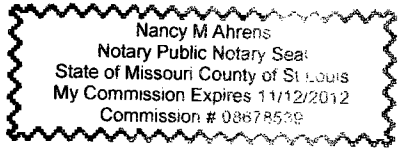
By: Ocala First Corporation, Inc.
a Florida corporation
Its Manager

By: *Henry Warsaw*
Henry Warsaw, President

STATE OF MISSOURI)
) ss.
COUNTY OF SAINT LOUIS)

This instrument was acknowledged before me on the 20TH day of August, 2012 by Henry Warsaw, President of Ocala First Corporation, Inc.

Nancy M. Ahrens
Notary Public for Missouri
Commission No. 08678539
My Commission Expires: 11/12/2012



Tetherow Golf:

Tetherow Golf Course, LLC
Tetherow Glen 58, LLC
each an Oregon limited liability company

By: Total Golf LLC
an Oregon limited liability company
Its Manager,

By: *Christiaan van der Velde*
Christiaan van der Velde, Its Manager

Tetherow Glen:

Tetherow Glen 58, LLC

By: *Christiaan van der Velde*
Christiaan van der Velde, Authorized Signatory

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on the 23 day of August, 2012 by Christiaan van der Velde, Manager of Total Golf LLC and Authorized Signatory of Tetherow Glen 58, LLC.

Samuel
Notary Public for Oregon
Commission No. 449827
My Commission Expires: 6/25/2014



EXHIBIT A
To
Restrictive Covenant Agreement

Legal Description of Tract AA

Development Tract AA, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tract AB

Development Tract AB, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tract AC

Development Tract AC, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tract AE

Development Tract AE, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tract Z

Development Tract Z, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tracts AD, AF, AG, AH

Development Tracts AD, AF, AG, AH, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tract Y

Development Tract Y, TETHEROW PHASE 1, Deschutes County, Oregon, according to the Plat of Tetherow Phase 1 recorded in the official records of Deschutes County, Oregon on September 24, 2007 in Plat Cabinet H at Page 470 and as Document No. 2007-51564.

Legal Description of Tetherow Crescent Phases 2 and 3

All that portion of land located in Sections 1 and 2, Township 18 South, Range 11 East, Willamette Meridian, in Deschutes County, Oregon, more particularly described as follows:

That portion of Parcel 2 of Partition Plat No. 2006-23, recorded on May 2, 2006, Partition Cabinet 3-259, in Volume 2006, Page 30472, Official Records, Deschutes County, Oregon lying northerly of Tetherow Phase 1, filed September 24, 2007, Plat Cabinet H-470, Deschutes County, Oregon.