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Pronghorn Developmen Co.
ATTN: Mary Kelley
65600 Pronghorn Club Dr.
Bend, OR 97701

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2009-05029



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02/05/2009 09:23:51 AM

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made and effective as of this 9th day of January 2009 by PRONGHORN DEVELOPMENT COMPANY LLC, a Delaware limited liability company (the "Declarant").

RECITALS

A. The Declarant is the developer of the Residences Condominium (the "Condominium"). The Condominium is part of the 640-acre Pronghorn destination resort located in Deschutes County, Oregon (the "Resort"). The Declarant is an affiliate of Pronghorn Investors LLC, a Delaware limited liability company ("Pronghorn Investors"). Pronghorn Investors is the developer of other components of the Resort.

B. Deschutes County (the "County") approved development of the Resort subject to various conditions of approval (the "Land Use Approval"). The Land Use Approval requires that a certain number of overnight lodging units be made available within the Resort for rental by the general public in accordance with the County destination resort zoning regulations that were in effect at the time that the Land Use Approval was obtained (the "Overnight Lodging Requirement").

C. The Declarant desires to subject the unit(s) within the Condominium described on the attached Exhibit A (each, a "Unit" and collectively, the "Units") to the deed restrictions and covenants set forth in this Declaration in order to partially satisfy the Overnight Lodging Requirement for the Resort.

D. It is the express intent of the Declarant that the deed restrictions and covenants set forth in this Declaration be binding upon the Declarant while the Declarant owns the Units and upon all subsequent owners of the Units (each an "Owner" and collectively, the "Owners") upon the transfer of each Unit by the Declarant to an Owner.

E. It is the further intent of the Declarant that because the Units will help the Resort comply with the Overnight Lodging Requirement, the County is to be an intended third-party beneficiary of this Declaration with enforcement rights. This will allow the County to assure that the Units remain as Overnight Lodging.

NOW, THEREFORE, in consideration of the foregoing, the Declarant declares and covenants as follows:

SECTION 1 OVERNIGHT LODGING RESTRICTION.

1.1 Each Unit shall be made available for Overnight Lodging (as defined in Section 1.2) for a minimum of 45 weeks per calendar year (the "Minimum Rental Period"). For the first calendar year, the Minimum Rental Period for each Unit shall be pro-rated based upon the date on which such Unit receives final inspection approval from the County. If the Declarant or an Owner ever obtains written consent from the County approving a shorter Minimum Rental Period for one or more Unit(s) and such Unit(s) with a shorter Minimum Rental Period still satisfies the overnight lodging requirements for individually-owned residential units under the County destination resort zoning regulations, then this Declaration shall be deemed modified as applied to the affected Unit(s) to adopt such shorter Minimum Rental Period.

1.2 "Overnight Lodging" means that the Unit is available for overnight rental use by the general public through a central reservation and check-in service operated by the Resort or by a real estate property manager, as defined in ORS 696.010. Each Owner shall ensure that the Owner, or the central reservation service, as appropriate, provides annual reports to the County on or before January 1 of each year specifying (a) the name of the Owner of the Unit; (b) how many nights out of the year the Unit was available for rent through a central reservation service; and, (c) how many nights out of the year the Unit was rented out as an overnight lodging facility. The Owner shall ensure that any agreement between the Owner and any central reservation and check-in service provider contains terms and conditions substantially similar in all material respects to the provisions set forth on Exhibit B hereto. Neither the Declarant, the owners' association for the Condominium (the "Association") nor any other third party retained by the Declarant or the Association to operate, manage and maintain the electronic key card access and security system for the Condominium shall have any obligation on behalf of an Owner to prepare the annual reports described above for an Owner's Unit or to otherwise record or maintain any information required to complete the annual reports for an Owner's Unit unless the Owner of the Unit executes a separate written agreement with such party to provide central reservation and rental services for the Unit.

SECTION 2 DEFAULT. Any breach of this Declaration or default under this Declaration shall be considered a violation of the Overnight Lodging Requirement by the Unit Owner, and shall allow the County to pursue any remedy against the Unit Owner for such violation as may be available to the County under any applicable law, statute or ordinance. Without limiting the foregoing, the failure of an Owner to make his or her Unit available for Overnight Lodging for the Minimum Rental Period shall be deemed a violation of the Deschutes County Code and shall be subject to code enforcement proceedings by the County. For so long as the Declarant or Pronghorn Investors has any legal or equitable interest in the Resort, the Declarant and/or Pronghorn Investors, as applicable, shall also have the right, but not the obligation, to enforce the terms of this Declaration pursuant to any available legal or equitable remedy available under Oregon law.

SECTION 3 BINDING EFFECT, TRANSFER. This Declaration burdens each Unit, is intended to and shall run with the land, and shall be binding upon the Owner or Owners of each Unit, and their respective successors and assigns.



SECTION 4 THIRD PARTY BENEFICIARY. The County was the approving authority for the Resort and therefore maintains an interest in assuring that the Resort complies with the Overnight Lodging Requirement. For this reason, the Declarant hereby names the County as an intended third-party beneficiary of this Declaration with full rights to enforce. Additionally, except as provided pursuant to Section 1.1 above, no party may amend or terminate this Declaration without the express, written consent of the County.

SECTION 5 GENERAL PROVISIONS.

5.1 Governing Law. This Declaration and the rights of the parties shall be governed by and construed in accordance with the internal laws of the State of Oregon. Any litigation or mediation concerning this Declaration shall take place in Deschutes County, Oregon.

5.2 Severability. If any one or more of the provisions contained in this Declaration shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, this Declaration shall be construed as if such provisions had not been contained herein, and this Declaration shall be interpreted without the invalid, illegal or unenforceable provision so as to carry out the original intent as much as possible.

5.3 Amendment and Termination. Except as otherwise indicated in Section 1.1 above, this Declaration may only be modified, amended or terminated, as to the Units in their entirety, or with respect to any individual Unit, with the written consent of: (i) the County; (ii) the Owner(s) of the affected Unit(s); (iii) the Declarant, if the Declarant holds any legal or equitable interest in the Resort; and (iv) Pronghorn Investors, if Pronghorn Investors holds any legal or equitable interest in the Resort. No party shall unreasonably withhold, condition or delay such consent.

*(Remainder of Page Intentionally Left Blank;
Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first set forth above, to be effective as of the date first set forth above.

DECLARANT: PRONGHORN DEVELOPMENT COMPANY LLC, a
Delaware limited liability company

By: Pronghorn Investors LLC, a Delaware limited
liability company

Its: Sole Member

By: MS-Pronghorn Holding Company, LLC, a
Delaware limited liability company

Its: Sole Member

By: High Desert Development Partners, LLC,
a California limited liability company
Its: Administrator

By: Northwest Resort Development, Inc.,
a California corporation

Its: Sole Managing Member

By: 

Thomas C. Hix, President

State of California)
County of Santa Clara)ss.

This instrument was acknowledged before me this 23 day of January 2009, by Thomas C. Hix, the President of Northwest Resort Development, Inc., a California corporation, the Sole Managing Member of High Desert Development Partners, LLC, a California limited liability company, the Administrator of MS-Pronghorn Holding Company, LLC, a Delaware limited liability company, the Sole Member of Pronghorn Investors LLC, a Delaware limited liability company, the Sole Member of Pronghorn Development Company LLC, a Delaware limited liability company, on behalf of Pronghorn Development Company LLC.

Erika Sowell

Notary Public for the state of California
My Commission Expires: 6-22-2012



EXHIBIT A
Legal Description of Unit(s)

Unit(s) A-1, A-2, A-3, A-4, B-1, B-2, B-3, B-4 of the Residences Condominium located in Deschutes County, Oregon, together with an undivided ownership interest in the common elements of the Residences Condominium pertaining to such Unit(s), as set forth in that certain Declaration of Condominium Ownership for Residences Condominiums recorded in the official records of Deschutes County, Oregon as Document No. _____.

EXHIBIT B
Rental Agreement Provisions

Any rental or other agreement between the Owner and any central reservation and check-in service provider or real estate property manager (the "Rental Agent") shall contain terms and conditions substantially similar in all material respects to the following (capitalized terms used without definition shall have the meaning given them in the Declaration of Restrictive Covenant to which this is an exhibit):

1. The Unit shall be available for Overnight Lodging purposes for a minimum of 45 weeks per calendar year.
2. "Overnight Lodging" means that the Unit is available for overnight rental use by the general public through a central reservation and check-in service operated by the Resort or by a real estate property manager, as defined in ORS 696.010. The failure of an Owner to make his or her Unit available for Overnight Lodging for a minimum of 45 weeks per calendar year shall be deemed a violation of the Deschutes County Code and shall be subject to code enforcement proceedings by Deschutes County. The Rental Agent shall provide annual reports to Deschutes County on or before January 1 of each year specifying (a) the name of the Owner of the Unit; (b) how many nights out of the year the Unit was available for rent through a central reservation service; and (c) how many nights out of the year the Unit was rented out as an overnight lodging facility.
3. The Rental Agent acknowledges that the Unit is part of the Pronghorn resort and the Residences Condominium (the "Condominium") and is subject at all times to the terms and conditions of the: (i) Declaration of Condominium Ownership for the Residences Condominium (the "Declaration"); (ii) Bylaws of the Residences Condominium Owners' Association (the "Bylaws"); and (iii) the rules and regulations of the Condominium adopted in accordance with the Declaration and the Bylaws. The Rental Agent shall at all times comply with the above-referenced restrictions and rules and shall ensure that all guests in the Unit are made aware of the above-referenced restrictions and rules.

Notwithstanding the foregoing, if the Minimum Rental Period for one or more Unit(s) is reduced pursuant to Section 1.1 of the Declaration of Restrictive Covenant, then Paragraphs 1 and 2 above shall be deemed modified for the affected Unit(s) to adopt the shorter Minimum Rental Period.

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