



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

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of 7/27/15

DATE: 7/16/15

FROM: Will Groves CDD 388-6518

TITLE OF AGENDA ITEM:

Consideration and Signature of Document No. 2015-381, Amending Deschutes County Contract No. 2008-237, the Improvement Agreement for Phase V of the Tetherow Resort, to add Olympus Northwest, LLC as a party to the Improvement Agreement.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

TD Cascade Highlands, LLC. submitted an Improvement Agreement (IA-08-2) related to the Phase V plat of the Tetherow Destination Resort (CU-04-94, M-05-2, TP-06-973). This Improvement Agreement ensures that the infrastructure, such as roads and utilities, for this phase are completed to county standards. The financial assurance (bond) is for \$2,222,744.40. The agreement was amended on July 23, 2012 by Document No. 2012-287 as Amendment No. 1 and on December 17, 2012 by Document No. 2012-666 as Amendment No. 2 to assign to SFI Cascade Highlands LLC to the agreement.

The current amendment releases SFI Cascade Highlands LLC from this improvement agreement and adds Olympus Northwest, LLC in its place. Attached to this agenda request is the draft amendment. Attached to that draft amendment is a proposed form of the bond. The applicant asked that the Board approve and sign the amendment before receiving the actual bond and to allow the amendment to be placed in escrow. The applicant will provide a completed and signed bond in escrow. The applicant and County Legal have created escrow instructions to assure the proper recording of the amendment and placement of the original new bond into the Clerk's safe. Those escrow instructions are before the Board for approval following approval of this amendment.

FISCAL IMPLICATIONS:

With this amendment, the County is choosing not to exercise its right to call on the bond and begin building the roads and utilities in a subdivision in which no lots have been sold.

RECOMMENDATION & ACTION REQUESTED:

Motion: Approve signature of Document 2015-381.

ATTENDANCE: Will Groves

DISTRIBUTION OF DOCUMENTS:

CDD Staff, Legal



For Recording Stamp Only

After Recording Return to:
Deschutes County
Community Development Department
147 NW Lafayette Street
Bend, OR 97701

DOCUMENT NO. 2015-381
AMENDING DESCHUTES COUNTY CONTRACT NO. 2008-237
(Amendment No. 3)

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2008-237 dated May 14, 2008, and recorded in the Deschutes County Official Records at 2008-23841 by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and TD CASCADE HIGHLANDS LLC, an Oregon Limited Liability Corporation, as amended on July 23, 2012 by Document No. 2012-287 as Amendment No. 1 and on December 17, 2012 by Document No. 2012-666 as Amendment No. 2 to assign to SFI CASCADE HIGHLANDS LLC, a Delaware Limited Liability Company ("Owner"), is hereby further amended effective upon signing of all parties, as set forth below. OLYMPUS NORTHWEST, LLC, an Oregon Limited Liability Company ("New Owner") is added as a party to this Agreement. Except as provided herein, all other provisions of the contract remain the same and in full force.

The above listed Agreement is amended as follows:

ADDITIONAL RECITALS:

WHEREAS, on _____, New Owner acquired ownership of the Real Property described in the attached Exhibit A through a Warranty Deed recorded in the Deschutes County Official Records at _____.

WHEREAS, the parties agree to the substitution of all of Owner's rights and responsibilities under Deschutes County Contract No. 2008-237 as amended by Document No. 2012-287 and Document No. 2012-666 to New Owner and a Release of SFI Cascade Highlands LLC from all obligations under the original Agreement, and amendments thereto.

WHEREAS, new financial security will be provided to the County from New Owner to substitute for the financial security attached as Exhibit G to Document No. 2012-666.

WHEREAS, New Owner assumes and agrees to perform the Owner responsibilities in the original Agreement and any amendments thereto and certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment No. 3 and with the same effect as though made at the time of this Amendment No. 3.

WHEREAS, the County consents to the assignment from Owner to and assumption by New Owner of the above mentioned Agreement and amendments and to the Release of SFI Cascade Highlands LLC; now therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promises hereinafter stated, as follows:

3. Exhibits. The exhibits listed below and attached to the Agreement and Amendment No. 1 and No. 2 remain the same and in place except Exhibit D to the original Agreement, Exhibit F to Amendment No. 1 and Exhibit G to Amendment No. 2, are replaced with a new Bond attached hereto as Exhibit H. The New Exhibit H listed below and attached hereto, together with the Exhibits listed below, are hereby incorporated herein by reference:

- 3.1 Exhibit A – Legal Description of Real Property.
- 3.2 Exhibit B – List of Roads and Utilities Required Improvements and cost estimates – submitted by the Owner.
- 3.3 Exhibit C – Deschutes County Tentative Plat approval, File No. TP-06-973.
- 3.4 Exhibit D – ~~Security – Bond No. 786032S~~ (replaced by Exhibit G).
- 3.5 Exhibit E – Contractor List per DCC 17.24.120(A)(1).
- 3.6 Exhibit F – Security – ~~Bond Rider No. _____~~ (replaced by Exhibit G).
- 3.7 Exhibit G – Security – ~~Bond No. PB0275090007~~ (replaced by Exhibit H).
- 3.8 Exhibit H – Security – Bond No. _____.

SIGNATURES ON THE FOLLOWING PAGES

OWNER:
SFI CASCADE HIGHLANDS LLC,
a Delaware Limited Liability Company

(signature)

By: _____
(printed name)

Its: _____
(print title)

STATE OF _____)
County of _____) ss.

Before me, a Notary Public, personally appears _____ and
acknowledged the foregoing instrument as _____ of

SFI CASCADE HIGHLANDS LLC.

DATED: _____

NOTARY PUBLIC, STATE OF _____

My Commission Expires: _____

NEW OWNER:
OLYMPUS NORTHWEST, LLC
an Oregon Limited Liability Company

(signature)

By: _____
(printed name)

Its: _____
(print title)

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appears _____ and
acknowledged the foregoing instrument as _____ of OLYMPUS
NORTHWEST, LLC.

DATED: _____

NOTARY PUBLIC, STATE OF _____

My Commission Expires: _____

COUNTY:

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ALAN UNGER, Vice Chair

ATTEST:

Recording Secretary

TAMMY BANEY, Commissioner

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared ANTHONY DEBONE, ALAN UNGER and TAMMY BANEY, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this _____ day of _____, 2015.

Notary Public for Oregon

My Commission Expires: _____

Exhibit A

(Property Owned by Olympus Northwest, LLC

Common Area Tracts W, U and AS and all private road tracts as shown on the plat of Tetherow Phase 5, Plat Cabinet H-721 recorded in the Official Records for Deschutes County as Document No. 2008-23839.

SUBDIVISION IMPROVEMENTS PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **Olympus Northwest LLC**, as Principal, and **Lexon Insurance Company**, a corporation organized and doing business under and by virtue of the laws of the state of **Texas** and duly licensed to conduct a general surety business in the state of Oregon as Surety, are held and firmly bound unto **Deschutes County, Oregon** as Obligee, in the sum of **Two Million Two Hundred Twenty Two Thousand Seven Hundred Forty Four and 40/100 (\$2,222,744.40)** Dollars, for which payment well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee to construct in Deschutes County, Oregon the following improvements: **construction and installation** of certain requested improvements for **JA-08-2, Phase 5** for the **Cascade Highlands/Tetherow Destination Resort** (the "Resort"), as required in the conditions of approval in Deschutes County File No. **TP-06-973** (the "Tentative Plan") and the improvement Agreement, Deschutes County Document **2008-237** as amended by Deschutes County Document No. **2012-666** and as further amended by Deschutes County Document NO. 2015-381.

NOW THEREFORE, the condition of this obligation is such, that if the above Principal shall well and truly perform said agreement or agreements during the original term thereof or of any extension of said term that may be granted by the Obligee with or without notice to the Surety, this obligation shall be void, otherwise it shall remain in full force and effect.

PROVIDED, this bond is not subject to cancellation pursuant to ORS 742.366(2).

PROVIDED, Surety hereby waives notice of any change, alteration, extension of time or addition to the improvements authorized by the Obligee.

PROVIDED, in no event the Surety's aggregate liability exceed the penal sum as outlined above.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact this _____ day of _____, 2015.

Olympus Northwest LLC _____
Principal

Lexon Insurance Company

Ericka Y. Turner, Attorney-in-Fact