



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. 2015-512, Joint Escrow Instructions for Recording the Amended Improvement Agreement for the Phase V Plat of the Tetherow Destination Resort (CU-04-94, M-05-2, TP-06-973).

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.

Amendment #3 to this agreement (Document 2105-381) releases SFI Cascade Highlands LLC from this improvement agreement and adds Olympus Northwest, LLC in its place. The new owner requested that the improvement agreement amendment and bond be placed in escrow in order for all the various documents related to the closing happen at the same time. Therefore, specific escrow arrangements are required in order for the escrow officer to follow the County's process for recording the amendment. Those arrangements are detailed in County Document 2015-512.

FISCAL IMPLICATIONS:

None.

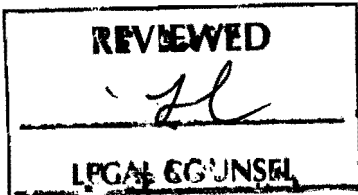
RECOMMENDATION & ACTION REQUESTED:

Motion: Approve Chair signature of Document 2015-512.

ATTENDANCE: Will Groves

DISTRIBUTION OF DOCUMENTS:

CDD Staff, Legal



JOINT ESCROW INSTRUCTIONS

Date: _____, 2015

Ms. Lori Welsh
Western Title & Escrow
360 SW Bond Street, Suite 100
Bend, OR 97702

Re: Your File No. 96051: SFI Cascade Highlands LLC/Olympus Northwest, LLC

Dear Ms. Welsh:

This letter constitutes the joint escrow instructions of SFI Cascade Highlands LLC, a Delaware limited liability company ("**Seller**"), Olympus Northwest, LLC, an Oregon limited liability company ("**Buyer**"), and Deschutes County, a political subdivision of the State of Oregon (the "**County**"), to Western Title & Escrow Company ("**Escrow Agent**") in connection with the closing of the transaction contemplated by an Amended and Restated Agreement of Purchase and Sale dated April 23, 2015, as amended by First Amendment dated July 6, 2015, and Second Amendment dated _____, 2015 (as amended, the "**Purchase Agreement**"), providing, among other matters, for the sale to Buyer of Tetherow Phase 5, a subdivision in Deschutes County, Oregon (the "**Property**"). These instructions relate to limited elements of the transaction contemplated by the Purchase Agreement and Seller and Buyer may submit separate escrow instructions to you in connection with the subject transaction except that instructions regarding the Development Agreement described below may not be altered without County consent. Seller, Buyer and the County may be referred to singly as a "Party" and collectively as the "Parties"

Escrow Agent has issued a Preliminary Title Report dated May 26, 2015, covering the Property (the "**Title Report**"). Pursuant to separate instructions submitted to you by Buyer and as a condition to closing of the transaction contemplated by the Agreement, Buyer requires Escrow Agent to issue an owner's policy of title insurance to Buyer and a mortgagee's policy of title insurance to Buyer's lender (the "**Title Policies**").

Pursuant to a development agreement entitled "Improvement Agreement" dated May 14, 2008, Deschutes County Document No. 2008-237, and recorded in the Official Records of Deschutes County, Oregon (the "**Records**") under Document No. 2008-23841, as amended by Amendment No. 1 dated July 5, 2012, Deschutes County Document No. 2008-287, and recorded in the Records under Document No. 2012-28399, and by Amendment No. 2 dated December 27, 2012, Deschutes County Document No. 2012-666, and recorded in the Records under Document No. 2013-02416 (as amended, the "**Development Agreement**"), Seller is obligated to complete various subdivision improvements and infrastructure in connection with the development of the Property and, to secure performance of those obligations, Seller has caused Philadelphia Indemnity Insurance Company (the "**Indemnity Company**") to issue a bond for the benefit of the County in the face amount of \$2,222,744.40 (the "**Seller Bond**"). Pursuant to the Purchase

Agreement, Buyer is obligated to cause the County to amend the Development Agreement (the "**Development Agreement Amendment**") for purposes of substituting Buyer as the obligor under the Development Agreement, releasing Seller from its obligations under the Development Agreement and releasing the Seller's Bond to Seller upon substitution by Buyer of a replacement bond acceptable to the County (the "**Buyer's Bond**"). The Parties have approved the form of the Development Agreement Amendment and Buyer's Bond and now desire to utilize this escrow as a means to manage the recording of the Development Agreement Amendment and delivery of Buyer's Bond to the County in exchange for the release by the County of Seller's Bond and the execution of the Development Agreement Amendment by all Parties.

The Parties have delivered the following items to you:

A. **SELLER'S DEPOSITS.** Seller has delivered to you executed counterparts of the following documents:

1. A Deed in a form previously approved by the Parties, executed and acknowledged by Seller, conveying the common areas of the Property to Buyer (the "**Deed**");
2. The Development Agreement Amendment;
3. A certificate stating that Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, executed by Seller;
4. A certificate of authority executed on behalf of Seller; and
5. Seller's Closing Statement, executed by Seller.

B. **BUYER'S DEPOSITS.** Buyer has delivered to you executed counterparts of the following documents:

1. The Development Agreement Amendment;
2. Buyer's Bond;
3. A certificate of authority executed on behalf of Buyer;
4. Buyer's Closing Statement, executed by Buyer; and
5. Loan documents (the "**Loan Documents**") evidencing and securing a loan (the "**Loan**") to be made to Buyer by Washington Federal ("**Lender**").

No later than 10:00 a.m. local time on _____, 2015, Buyer also will cause to be deposited with you the sum disclosed as owing by Buyer on Buyer's Closing Statement in immediately available federal funds.

C. **COUNTY'S DEPOSIT.** The County has delivered to you an executed counterpart of the Development Agreement Amendment signed by the Board of County Commissioners.

D. INSPECTION OF CLOSING DOCUMENTS. All documents delivered to you are to be held in trust and in accordance with these instructions and released and distributed by you only in accordance with these instructions.

E. AUTHORIZATION TO CLOSE; ISSUANCE OF POLICIES; RECORDING.

When:

1. You hold the funds referred to in Section B above and have confirmed that all of the disbursements, credits and debits reflected on the Seller's Closing Statement and the Buyer's Closing Statement (collectively, the "**Closing Statements**") are consistent with each other and these instructions;

2. You hold original counterparts of all the documents referred to in Sections A, B and C, and such documents have been duly executed and acknowledged where required;

3. You are unconditionally committed to issue the Title Policies;

4. You have received electronic mail confirmation from counsel to Seller, Buyer and the County authorizing you to proceed with the closing;

5. You have executed and forwarded, via e-mail, an executed copy of these instructions to Seller, Buyer and the County;

6. You have complied with the instructions of Lender and are authorized to disburse the Loan proceeds; and

7. You have complied with the instructions of the Indemnity Company and are authorized to reconvey the lien described in Special Exception 28 of the Title Report;

then you will be authorized and directed to take the following actions, in the following sequence:

(a) Hand deliver to the appropriate County Community Development Department Planner the Buyer's Bond and an original with fully executed counterparts of the Development Agreement Amendment;

(b) Record, in the presence of the County Planner, the Development Agreement Amendment in the Records, including a copy of Buyer's Bond properly marked as an exhibit to the Development Agreement Amendment;

(c) Cause the County to deliver the Seller's Bond to Seller's counsel, Tia Lewis;

(d) Record the Deed in the Records;

(e) Deliver to each of the County, Seller and Buyer an original counterpart of the Development Agreement Amendment; and

- (f) Make the disbursements and deliveries described in Section F.

F. **DISBURSEMENTS AND DELIVERIES.** When all of the requirements and conditions of Sections A through E have been satisfied, you are then authorized and directed to proceed as follows:

1. Pay all title insurance and escrow charges from the accounts of the responsible Parties as reflected on the Closing Statements.
2. Pay from the escrowed proceeds the applicable payees as specified on the Closing Statements in the amounts shown thereon;
3. Wire transfer to Seller the amount payable to Seller as shown on Seller's Closing Statement pursuant to Seller's Wiring Instructions attached to these instructions;
4. Wire transfer any funds due Buyer as shown on the Buyer's Closing Statement pursuant to Buyer's Wiring Instructions attached to these instructions;
5. Provide Buyer's counsel and Seller's counsel with the recording information and time-stamped/recorded copies of the Development Agreement Amendment and Deed promptly upon recording;
6. Deliver the remaining documents deposited into your escrow as follows:
 - (a) To Buyer's counsel: (i) the original FIRPTA Affidavit, (ii) the Buyer's Closing Statement, signed by Escrow Agent, and (iii) certified copies of all other documents;
 - (b) To Seller's counsel: (i) Seller's Closing Statement, signed by Escrow Agent, and (ii) certified copies of all other documents.

G. **TERMINATION OF ESCROW; INVESTMENT OF DEPOSITS; AND STANDARD PROVISIONS.**

1. **Termination of Escrow Prior to Closing.** In the event you have not received all deposits on or before August 3, 2015, you are to continue to comply with these instructions until you receive a demand in writing for the return of deposits from the Party having completed its required deposits. Upon receipt of such demand you are to notify any Party who has failed to make its required deposits by telephone with written notice (by e-mail) to follow and such Party shall have one (1) business day from the date of your written notice in which to complete its deposits. If such deposits are not received within said period, then upon receipt of a further written demand, you are to return all deposits and funds to the respective depositors.
2. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or made (i) upon delivery by hand or transmittal by facsimile transmission or email, provided receipt of such facsimile or email is confirmed by the recipient, (ii) two (2) business days after deposit in the

United States Mail, certified or registered, postage pre-paid, return receipt requested or earlier upon receipt, or (iii) the business day immediately following timely deposit with a nationally recognized overnight courier service (which shall include Federal Express) for next day delivery to the Parties at the following addresses:

If to Seller:

SFI Cascade Highlands LLC
1114 Avenue of the Americas
39th Floor
New York, New York 10036
Attn.: Chief Legal Officer

with a copy to:

iStar Financial Inc.
4350 Von Karman Avenue, Suite 225
Newport Beach, California 92660
Attn: Steve Magee

and:

Alec G. Nedelman
iStar Financial Inc.
10960 Wilshire Boulevard, Suite 1260
Los Angeles, California 90024

and with a copy to:

Mark A. Manulik
Schwabe Williamson & Wyatt
1211 S.W. Fifth Ave., Suite 1800
Portland, OR 97204

If to Buyer:

David Swisher, Manager
Olympus NW, LLC
250 N.W. Wall Street, Suite 204
Bend, Oregon 97701

and with a copy to:

John P. Lietz, Manager
Tartan Druim, LLC
250 N.W. Wall Street, Suite 204
Bend, Oregon 97701

If to Escrow Agent, to:

Lori Welsh
Western Title & Escrow
360 S.W. Bond Street, Suite 100
Bend, Oregon 97702

If to County, to:

Deschutes County
Legal Counsel Department
1300 NW Wall Street, Suite 205
Bend, Oregon 97703

Except for the Development Agreement Amendment, executed counterparts of these instructions may be delivered by facsimile transmission or by e-mail.

The Escrow Agent acknowledges receipt and acceptance of these instructions, agrees to be bound by these instructions and agrees to proceed strictly in accordance with the terms and conditions of these instructions.

SELLER:

SFI Cascade Highlands LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

BUYER:

Olympus Northwest, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

COUNTY:

Deschutes County, Oregon

By: _____

Name: Anthony DeBone

Title: Chair, Board of County Commissioners

ACCEPTED AND AGREED TO:

Western Title & Escrow Company

By: _____

Lori Welsh, Escrow Agent

Date: _____, 2015

SELLER'S WIRING INSTRUCTIONS

Bank Name: JP Morgan Chase

Address: _____

Account Name: iStar Real Estate Services, Inc.

Account No.: 230-337171

Routing No.: 021-00-021

Description: Tetherow Phase V

BUYER'S WIRING INSTRUCTIONS

Bank Name:

Address:

Account Name:

Account No.:

Routing No.: