AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of July 27, 2016

DATE: 7/18/16
FROM: Will Groves                      CDD 388-6518

TITLE OF AGENDA ITEM:
Consideration and Signature of Document No. 2016-504, Amendment to Deschutes County Document No. 2008-237, Partial Release And Modification Of Improvement Agreement Security For Tartan Druim, Tetherow Phase V.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:
Deschutes County and Olympus Northwest, LLC, previously entered into an Improvement Agreement (Doc No. 2015-381), amending Deschutes County Contract No. 2008-237, to provide security for the construction of the Roads and Utilities in the Tetherow Phase V. The owner has completed the Roads and Utilities Required Improvements for Phase 1 of the Subdivision, as confirmed by the Deschutes County Road Department and amount of the bond may be reduced.

The existing Bond may be reduced (or as appropriate, replaced) by the amount of One Million Three Hundred Four Thousand One Hundred Ten and 08/100 Dollars ($1,304,110.08) from Two Million Two Hundred Twenty Two Thousand Seven Hundred Forty Four and 40/100 Dollars ($2,222,744.40) for a revised value of Nine Hundred Eighteen Thousand Six Hundred Thirty Four and 32/100 Dollars ($918,634.32).

A warranty bond in the amount of ten percent (10%) of the construction costs is required for work completed for less than one year. This is split into a bond for the City of Bend for sewer/water infrastructure and the County for all other infrastructure. A Warranty Bond has been accepted by the City of Bend for sewer/water infrastructure. The Owner will provide to the County a cash warrantee in the amount of $27,649.55 to secure the Phase 1 warranty obligations under this amendment.

FISCAL IMPLICATIONS:
The Board is making a determination with this release that the funds remaining in the bond are sufficient to pay for the remaining infrastructure improvements.

RECOMMENDATION & ACTION REQUESTED:
Motion: Approve signature of Document 2016-504.

ATTENDANCE: Will Groves

DISTRIBUTION OF DOCUMENTS:
CDD Staff, Legal
PARTIAL RELEASE AND MODIFICATION OF IMPROVEMENT AGREEMENT SECURITY FOR TARTAN DRUIM
(Also known as Phase V at Tetherow)

Whereas, Deschutes County, Oregon, a political subdivision of the State of Oregon (the “County”), with an address of 1300 NW Wall Street, Bend, Oregon 97703, and Olympus Northwest, LLC, an Oregon limited liability company (“Owner”), with an address of 250 NW Franklin Ave., Suite 401, Bend, Oregon 97702, previously entered into that certain Improvement Agreement (Roads and Utilities) (Deschutes County Document No. 2015-381), thereby amending Deschutes County Contract No. 2008-237, which was recorded in the official records of Deschutes County, Oregon on August 10, 2015 as Document No. 2015-32824, as amended (the “Improvement Agreement”); and

Whereas, pursuant to the Improvement Agreement, Owner provided security for the construction of the Roads and Utilities Required Improvements in the form of a Performance Bond on July 21, 2015 under Bond Number 1117741 in the amount of Two Million Two Hundred Twenty Two Thousand Seven Hundred Forty Four and 40/100 Dollars. ($2,222,744.40) by Lexon Insurance Company for the benefit of the County (the “Subdivision Improvement Bond”), per attached as Exhibit A; and

Whereas, pursuant to Section 5.3.1 of the Improvement Agreement, Owner completed, or caused to be completed, on or about November 20th, 2015 (the “Phase 1 Completion Date”), the Roads and Utilities Required Improvements for Phase 1 of the Subdivision, (the “Phase 1 Roads and Utilities Required Improvements”), in substantial conformance with the road and utility improvement plans approved by the County Road Department; and

Whereas, pursuant to Section 16.2 of the Improvement Agreement, the amount of the Subdivisions Improvements Performance Bond may be reduced upon Owner’s satisfactory completion of the Phase 1 Roads and Utilities Required Improvements in accordance with the construction schedule and the IA-08-2, Phase 5 Cascade Highlands/Tetherow Destination Resort cost estimates set forth in the Improvement Agreement per the attached Exhibit B; and
Whereas, pursuant to Section 6.1 of the Agreement, Owner shall: (a) warrant that the Phase 1 Utilities and Road Required Improvements will remain free from defects in materials or workmanship and that the Phase 1 Utilities and Road Required Improvements will continue to meet County and State of Oregon standards for twelve (12) months following the Phase 1 Completion Date (the “Phase 1 Warranty Obligations”); and (b) has provided a Warranty Bond under Bond Number: 10034892, attached as Exhibit C, in favor of, and as has been accepted by the City of Bend in the amount of ten percent (10%) of the construction costs of the Required Phase-1 Utility Improvements. In addition, per Exhibit D, the Required Phase-1 Road Improvements shall be provided to the County, in the amount of ten percent (10%) of the construction costs of the required Phase-1 road and storm sewer components, which Cash Value shall be $27,649.55. Combined with the City of Bend Warranty Bond and the Cashier’s Check, as a security deposit for the warranty of the required Phase-1 road and storm sewer improvements, in the amount of $27,649.55 have been/ will be issued to secure the Phase 1 Warranty Obligations; and

Whereas, Owner seeks to reduce the amount of the Subdivisions Improvements Performance Bond to reflect the completion of the Phase 1 Roads and Utilities Required Improvements and to designate a portion of the remaining funds available under the Subdivisions Improvements Performance Bond as security for the final phase Road and Utility Required Improvements; and

Whereas the County desires to confirm its agreement with the foregoing, all as more fully provided in this instrument and subject to the terms and conditions set forth in this instrument.

Now, therefore, Owner and the County hereby agree as follows:

1. **Recitals.** The foregoing recitals are ratified as true and correct and are incorporated herein and made a part hereof by this reference.

2. **Defined Terms.** Any capitalized terms utilized in this instrument, and not otherwise defined, shall have the definitions given to such terms in the Improvement Agreement (as amended).

3. **Reduction of the Subdivisions Improvements Performance Bond.** The existing Subdivisions Improvements Performance Bond shall be reduced (or as appropriate, replaced) by the amount of One Million Three Hundred Four Thousand One Hundred Ten and 08/100 Dollars ($1,304,110.08) from from Two Million Two Hundred Twenty Two Thousand Seven Hundred Forty Four and 40/100 Dollars ($2,222,744.40) for a revised value of Nine Hundred Eighteen Thousand Six Hundred Thirty Four and 32/100 Dollars ($918,634.32). The foregoing reduction represents: (a) the release of the security for the completion of the Phase 1 Roads and Utilities Required Improvements, in the amount of One Million Three Hundred Four Thousand One Hundred Ten and 08/100 Dollars ($1,304,110.08) from the Total security for the completion of the entirety of Roads and Utility Required Improvements in the amount of Two Million Two Hundred Twenty Two Thousand Seven Hundred Forty Four and 40/100 Dollars ($2,222,744.40).
4. **Designation of Security and Allocation of Available Credit.** The Subdivisions Improvements Performance Bond, as reduced in accordance with Section 3 above, shall secure the following obligations under the Improvement Agreement up to the following maximum amounts:

(a.) Nine Hundred Eighteen Thousand Six Hundred Thirty Four and 32/100 Dollars ($918,634.32) as 120% of the Engineering Cost Estimates, attached as **Exhibit D**, for the remainder of IA-08-2, Phase 5 Cascade Highlands/Tetherow Destination Resort.

5. **Subdivisions Improvements Performance Bond.** Amendment (or as appropriate replacement) to this Subdivisions Improvements Performance Bond, excepting the value to the revised amount of Nine Hundred Eighteen Thousand Six Hundred Thirty Four and 32/100 Dollars ($918,634.32), but in all other aspects in the form attached as **Exhibit A** is hereby approved and incorporated herein by this reference.

6. **Ratification.** Except as modified by this instrument, the Improvement Agreement remains in full force and effect.

COUNTY: BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

__________________________________
ALAN UNGER, Chair

__________________________________
TAMMY BANEY, Vice-Chair

ATTEST:

Recording Secretary

ANTHONY DEBONE, Commissioner

STATE OF OREGON )
County of Deschutes )

On ________________, 2016, 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.

__________________________________
Notary Public, State of Oregon
My Commission Expires: _____________

(Signatures Continued on Following Page)
PARTIAL RELEASE AND MODIFICATION OF IMPROVEMENT AGREEMENT SECURITY FOR TRIPLE KNOT TOWNHOMES, Document No. 2016-504

OWNER: Olympus Northwest, LLC, an Oregon limited liability company

By: Dave Swisher
Its: Manager

By:________________________
Dave Swisher, Manager

STATE OF OREGON)

County of__________________)

The foregoing instrument was acknowledged before me this ____ day of ____________, 2016, by Dave Swisher, Manager of Olympus Northwest, LLC, an Oregon limited liability company, on its behalf.

___________________________
Notary Public for Oregon
My commission expires:____________
EXHIBIT A

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 21st day of July, 2015.

Olympus Northwest LLC

[Signature]
Principal

Lexon Insurance Company

[Signature]
Ericka Y. Turner, Attorney-in-Fact
POWEOF ATTORENN

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Ericka Y. Turner

Its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $2,500,000.00, Two-million five hundred thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY

BY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY L. TAYLOR
Notary Public-State of Tennessee
Davidson County
My Commission Expires 01-09-16

BY

Amy L. Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.


BY

Andrew Smith
Assistant Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."
After Recording Return to:
Deschutes County
Community Development Department
147 NW Lafayette Street
Bend, OR 97701

IMPROVEMENT AGREEMENT
(Roads and Utilities Phase 5)

This Improvement Agreement (Agreement), relating to the construction and installation of certain required improvements (the "Roads and Utilities Required Improvements," as defined below in Section 4) for the Cascade Highlands/Tetherow Destination Resort (the "Resort"), as required in the subdivision approval in File No. TP-06-973 (the "Tentative Plat"), by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon ("County") and TD CASCADE HIGHLANDS, LLC, ("Owner").

RECITALS:

WHEREAS, Owner has developed previous phases of the Resort for which the first three Phases of the Tentative Subdivision Plat were approved under TP-06-973; and

WHEREAS, the Roads and Utilities Required Improvements under the approval for the next phase of the Tentative Plat have not been completed; and

WHEREAS, Owner has filed an application for a final subdivision plat for Phase 5 of the Resort (the "Tetherow Phase 5 Final Plat"), File No. FPA 08-7, prior to the completion of the Roads and Utilities Required Improvements; and

WHEREAS, Deschutes County Code (DCC) Section 19.106.110 provides that Owner may, in lieu of completing Roads and Utilities Required Improvements, enter into an agreement with the County for the completion of the Roads and Utilities Required Improvements and provide a good and sufficient form of security, to provide for the completion of the Roads and Utilities Required Improvements; and

WHEREAS, this Agreement is contingent upon the recording of the Tetherow Phase 5 Final Plat approved in File No. FPA-08-7 and that plat stating that it is subject to this agreement; and

WHEREAS, Roads and Utilities Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.011(1)(aa); and

WHEREAS, the subdivision approval in TP-06-973 is exempt from ORS 92.305 to 92.945 for the reason that the County's Comprehensive Land Use Plan and implementing ordinances are acknowledged under ORS 197.251; now, therefore,

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

This Warranty Bond is issued by Tartan Druml, LLC as Principal and Hudson Insurance Company as Surety and is intended to secure performance of Principal's warranty obligations to the City of Bend (City).

Recitals

A. Principal has constructed the following public improvements under Permit No. PZ 15-0520 / BP 15-2000:

Water and Sewer improvements (the Work).

B. The City requires persons installing public improvements to provide a one-year warranty for the improvements.

C. Surety meets the requirements for acting as a surety on the required performance bond.

Terms of Bond

1. Principal warrants the Work to be free from defects for the period of one year from completion of the Work.

2. If the Work exhibits defects during the warranty period and Principal fails to repair the defects, Surety shall either cause Principal's performance to be completed or pay City an amount not to exceed $45,888.00 for repair of the Work.

3. If the Work does not exhibit any defects during the warranty period, Principal and Surety shall have no further obligations under this Bond. City shall release the Bond on satisfactory expiration of the warranty period.

4. Surety's obligations under Section 2 shall arise if City sends written notice of default to Principal and Surety. Principal shall have 30 days after the notice of default to inform the City how it will honor its commitments under this Bond.

5. Nothing in this bond precludes City and Surety and/or Principal from negotiating the terms by which the Work is to be completed or repaired.

6. Notices shall be sent as follows:

COPY
DATE: 6/21/2016

TO: Will Groves, Senior Planner

FROM: George Kolb, County Engineer

RE: Tetherow Phase 5, C3 Construction Warranty Bond

CC: Jeff Clay, Sun Country Engineering and Surveying, Inc.
    David Doyle, County Legal Counsel

Attached is a cost estimate from Sun Country Engineering and Surveying for the warranty bond amount for Tetherow Phase 5, C3 along with the final construction billing for the project. The warranty bond amount covers the cost for the installation of the road and storm sewer components of the project. The final cost of the improvements was $276,495.50 so the warranty bond will be in the amount of $27,649.55.

Please give me a call if I can be of further assistance.
Sun Country Engineering & Surveying, Inc.
920 S.E. Armour Road
Bend, Oregon 97702
382-8882
fax 385-5832

Tetherow Phase 5, C3

Construction Warranty Bond

June 21, 2016

George, the following is the construction costs for the warranty bond.

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<th>Description</th>
<th>Cost</th>
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<tr>
<td>Compaction testing</td>
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<tr>
<td>Clearing</td>
<td>$10,000</td>
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<tr>
<td>Subgrade Prep Roadway</td>
<td>$31,000</td>
</tr>
<tr>
<td>12&quot; Standard Curb</td>
<td>$7,008</td>
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<tr>
<td>12&quot; Mountable Curb</td>
<td>$40,320</td>
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<tr>
<td>4&quot; Sidewalk</td>
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<tr>
<td>2&quot; AC/16&quot; Base Roads</td>
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<td>8&quot; Angle/Cleanout</td>
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<tr>
<td>Catch Basins</td>
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</table>

Total: $276,495.50

10% Bond amount: $27,649.55

Sun Country Engineering and Surveying

Jeff Clay, PE, CWRE

Attachment:

Jack Robinson sons, Inc. Final Monthly pay request.