



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](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of August 1, 2016**

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**DATE:** 7/28/16

**FROM:** Will Groves                      CDD                      388-6518

**TITLE OF AGENDA ITEM:**

Consideration and Signature of Document No. 2016-536, Amendment to Deschutes County Document No. 2006-016, Caldera Springs Resort, Partial Release of Improvement Agreement Bonds

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

Deschutes County and Caldera Springs Real Estate LLC ("CSRE") previously entered into an Improvement Agreement that provided security for the construction and warranty of 8 remaining overnight lodging units out of a total of 160 overnight lodging units required for the resort, pursuant to Bond No. 8835804 (as reduced under prior amendments to the Agreement) in the total amount (completion and warranty) of \$1,121,664 (the "Bond").

CSRE has constructed 167 overnight lodging units, thus completing CSRE's obligation to construct 160 overnight lodging units at the resort. A warranty bond in the amount of ten percent (10%) of the construction costs is required for work completed for less than one year. CSRE has requested a reduction in the Bond to the amount of \$136,788, which is equal to 10% of the value of each of the three (3) cabins completed in the last twelve months.

**FISCAL IMPLICATIONS:**

The Board is making a determination with this release that the funds remaining in the bond are sufficient to warranty the remaining 3 units of overnight lodging units for one year following completion of construction.

**RECOMMENDATION & ACTION REQUESTED:**

Motion: Approve signature of Document 2016-536.

**ATTENDANCE:** Will Groves

**DISTRIBUTION OF DOCUMENTS:**

CDD Staff, Legal

REVIEWED

LEGAL COUNSEL

After recording, return to:  
Deschutes County  
Community Development Department  
117 NW Lafayette Street  
Bend, Oregon 97703

For Recording Stamp Only

**DESCHUTES COUNTY DOCUMENT NO. 2016-536  
AMENDMENT TO DESCHUTES COUNTY DOCUMENT NO. 2006-016  
CALDERA SPRINGS RESORT  
PARTIAL RELEASE OF  
IMPROVEMENT AGREEMENT BONDS**

A. Deschutes County (the "County") and Caldera Springs Real Estate LLC ("CSRE") previously entered into that certain Improvement Agreement recorded February 17, 2006 at 2006-11382, as amended by Document No. 2007-510, recoded January 17, 2008 at 2008-02159 and as amended by Document No. 2015-540 (the "Agreement"); and

B. Pursuant to the Agreement, CSRE provided security for the construction and warranty of the Required Improvements (as defined in the Agreements) consisting of 8 overnight lodging units out of a total of 160 overnight lodging units required for the resort, pursuant to Bond No. 8835804 (as reduced pursuant to the amendments to the Agreement) in the total amount (completion and warranty) of \$1,121,664 (the "Bond"); and

C. As of the effective date of this Agreement, CSRE has constructed 167 overnight lodging units, thus completing CSRE's obligation to construct 160 overnight lodging units at the resort; and

D. CSRE has requested a reduction in the Bond to the amount of \$136,788, which is equal to 10% of the value of each of the three (3) cabins completed in the last twelve months.

E. The County has agreed to a partial release of the Bond as requested by CSRE.  
NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree as follows:

1. **Partial Release of Bonds.** The County hereby approves an amended release and/or reduction of the Bond as follows:

A. Bond No. 8835804. Bond No. 8835804 guarantees construction and warranty of overnight lodging units.

As set forth on Exhibit A, all 106 of the 106 overnight lodging units secured by the Bond have been completed, as have all the required 160 overnight lodging units, with three (3) cabins containing overnight lodging units under warranty, reflecting their completion within the previous 12-month period. The construction cost for these three (3) cabins was \$1,367,880. The warranty bond is required to be ten percent (10%) of this amount or \$136,788.

The total amount of the Bond shall be reduced to \$136,788. The bond riders, copies of which are attached as Exhibit B and incorporated by reference herein, reflect those approved amounts.

2. **Release of Bonds; Termination of Agreement.** The Bonds provide that they shall terminate upon the written acceptance of the Required Improvements by the County. Provided that CSRE is not in default under the Agreement on July 1, 2017, the County shall, upon request of CSRE, notify the Surety of the Bonds in writing that the County has accepted the Required Improvements. Upon such written notice, this Agreement shall automatically terminate and be of no further force or effect.

3. **Effect of Amendment.** Except as modified by this Amendment, the Agreement remains in full force and effect according to its terms.

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 )ss.  
)

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: \_\_\_\_\_

DEVELOPER:

CALDERA SPRINGS REAL ESTATE LLC  
By Sunriver Resort Limited Partnership, Sole member  
By: Lowe Sunriver Inc., General Partner

\_\_\_\_\_  
Name: Tom O'Shea, Executive Director

STATE OF OREGON, County of Deschutes) ss

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by Tom O'Shea and acknowledged the foregoing instrument as executive director of Lowe Sunriver Inc., the general partner of Sunriver Resort Limited Partnership, the sole member of Caldera Springs Real Estate LLC, on behalf of Caldera Springs Real Estate LLC.

\_\_\_\_\_  
Notary Public - State of Oregon

My Commission Expires: \_\_\_\_\_

OWNER:

Olympus Northwest, LLC, an  
Oregon limited liability company

By: Dave Swisher  
Its: Manager

By: \_\_\_\_\_  
Dave Swisher, Manager

STATE OF OREGON )

)ss.  
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 -- Caldera Springs VOA Current Bond Calculation

July 5, 2015

	Cabins	Keys	Cost	Estimate Date
Single Cabin Construction	1	4	\$ 364,769	October 20, 2009
All Cabin Construction	40	160	\$14,590,760	
All Site/Landscape Construction	40		\$ -	
Full Required Construction Cost	40	160	<u>\$14,590,760</u>	

**Current Date**

<b>Full Construction Bond for all Keys</b>	<b>110%</b>	<b>160</b>	<b>\$16,049,836</b>	<b>August 1, 2016</b>
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Completed Cabins	Cabins	Keys	10% Bond	Completion Date
2	1	5	\$ -	July 1, 2016
3	1	3	\$ -	September 1, 2011
4	1	5	\$ -	July 10, 2015
5	1	5	\$ -	May 11, 2015
6	1	5	\$ -	April 13, 2015
7	1	4	\$ -	May 1, 2014
8	1	5	\$ -	May 1, 2014
9	1	4	\$ -	July 1, 2013
10	1	4	\$ -	April 15, 2013
11	1	4	\$ -	April 15, 2013
12	1	5	\$ -	November 15, 2013
13	1	5	\$ -	November 6, 2014
14	1	5	\$ -	March 5, 2015
15	1	5	\$ -	July 7, 2015
16	1	5	\$ 45,596	September 7, 2015
17	1	5	\$ -	May 5, 2014
18	1	5	\$ -	May 6, 2014
19	1	5	\$ -	May 1, 2014
20	1	5	\$ 45,596	June 15, 2016
21	1	5	\$ 45,596	June 15, 2016

Warranty not required  
because over 160 keys.

Completed Cabins	Cabins	Keys	10% Bond	Completion Date
22	1	4	\$ -	May 1, 2014
23	1	5	\$ -	May 1, 2014
24	1	3	\$ -	March 12, 2009
25	1	4	\$ -	June 22, 2007
26	1	4	\$ -	January 9, 2009
27	1	3	\$ -	January 27, 2009
28	1	4	\$ -	November 20, 2009
29	1	3	\$ -	April 1, 2012
30	1	4	\$ -	February 2, 2009
31	1	4	\$ -	May 9, 2008
32	1	4	\$ -	May 12, 2008
33	1	4	\$ -	May 15, 2008
34	1	4	\$ -	April 29, 2008
35	1	4	\$ -	April 25, 2008
36	1	4	\$ -	April 25, 2008
40	1	4	\$ -	April 1, 2010
43	1	3	\$ -	June 1, 2010
44	1	4	\$ -	February 18, 2009
45	1	4	\$ -	September 8, 2009
			\$ -	
<b>Total Cabins/Keys/Bonds</b>	<b>39</b>	<b>167</b>	<b>\$ 136,788</b>	<b>Total Maintenance Bond</b>

**Keys/Bonds Remaining to Complete Total Requirement      0      \$ -      Construction Performance Bond**

**Total Performance and Warranty Bond Needed at Current Date      \$ 136,788      August 1, 2016**

SURETY RIDER

To be attached to and form a part of

Bond No. **8835804**

Type of **Subdivision-Caldera Springs**  
Bond:

dated  
effective **February 01, 2006**  
(MONTH-DAY-YEAR)

executed by **Caldera Springs Real Estate, LLC**, as Principal,  
(PRINCIPAL)

and by **Fidelity and Deposit Company of Maryland**, as Surety,  
(SURETY)

in favor of **County of Deschutes, OR**  
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

**The Bond Amount:**

**From: One Million One Hundred Twenty One Thousand Six Hundred Sixty Four and 00/100 Dollars (\$1,121,664.00)**

**To: One Hundred Thirty Six Thousand Seven Hundred Eighty Eight and 00/100 Dollars (\$136,788.00)**

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective **July 25, 2016**  
(MONTH-DAY-YEAR)

Signed and Sealed **July 25, 2016**  
(MONTH-DAY-YEAR)

**Caldera Springs Real Estate, LLC**  
(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

**Fidelity and Deposit Company of Maryland**  
(SURETY)

By: \_\_\_\_\_  
**Brenda Wong, Attorney-In-Fact**