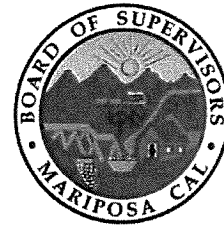


MARIPOSA COUNTY

Public Works • 209 966 5356



RESOLUTION - ACTION REQUESTED 2018-82

MEETING: February 27, 2018
TO: The Board of Supervisors
FROM: Mike Healy, Public Works Director
RE: Approve a Bond and Covenant for Grading Restoration Surety for Tenaya Cabins

RECOMMENDATION AND JUSTIFICATION:

Approve the Form of a Faithful Performance Bond and Associated Covenant of Agreement to Establish a Grading Restoration Surety for the Tenaya Cabins Project; and Authorize the Board of Supervisors Chair to Sign the Covenant Agreement Upon Submittal of the Fully Executed Bond.

Condition 36 of the Tenaya Cabins Project states: "Prior to the issuance of any building or grading permits, the permit holder shall submit restoration surety in a form satisfactory to the County Counsel. The amount of surety shall be 10% of the total construction cost of the project or equal to an engineer's estimate of the cost of site preparation and grading, whichever is greater plus 50% contingency. This amount of the surety is to be confirmed by the Department of Public Works, and guaranteed by an appropriate agreement with the County. Upon completion of the grading and final approval by the County, the required security shall be returned to the "permit holder".

Public Works has established the appropriate size of the Surety, as described in the condition and including contingency, as \$2,746,773. County Counsel has reviewed and approved the form of the bond and the associated Covenant Agreement. It is therefore requested that the Board approve the form of these documents, and authorize the Board Chair to execute the Covenant Agreement upon submittal of the executed Bond, which is a prerequisite to the issuance of a grading permit.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

This Condition is specific to the Tenaya Cabins project and therefore does not rely on a prior history of Board actions on this matter. The County has, however, previously accepted similar surety to ensure performance and/or restoration of approved projects.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose to direct changes to the documents and approve them in

Resolution - Action Requested 2018-82

the modified form subject to the concurrence of the submitting party. The Board could choose to reject the form of the Bond which would place the satisfaction of condition 36, and by association the entire project, in jeopardy.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Grading Plan Exhibit B (PDF)

Covenant Agreement - Tenaya Cabins(DOCX)

Tenaya Cabins Project- Perf Bond (DOC)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Kevin Cann, District IV Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

County of Mariposa
Covenant Agreement

Project: Conditional Use Permit #2014-164
Land Division Application #2014-165

This Covenant Agreement ("Agreement") is made and entered into this 23 day of January, 2018, by and between Delaware North Parks and Resorts at Tenaya, Inc.- A Delaware Corporation ("Permit Holder") and the County of Mariposa ("County").

Recitals

A. The County has issued Conditional Use Permit #2014-164 and Land Division Application 2014-165 (collectively, the "Permits"), and in conjunction therewith adopted Conditions of Approval for the Permits (collectively, the "Conditions of Approval");

B. Item 36 of the Conditions of Approval require that, prior to the issuance of a building or grading permit, the Permit Holder would enter into an appropriate agreement with the County to guarantee that certain intended grading activities will be properly and timely conducted, or otherwise the site would be restored to its grade contours that exist prior to the commencement of any grading activity.

NOW THEREFORE, it is hereby agreed as follows:

1. Grading Permit Issuance. Attached as Exhibit "A" is a topographical map that reflects the existing grading contours of the site. Attached as Exhibit "B" is a plan that indicates the grading activities and appurtenant improvements ("Grading Activities"). The Permit Holder is responsible for stabilizing the site pursuant to a grading permit to be issued substantially and concurrently herewith by the County (the "Grading Permit").

2. Grading Obligations. Permit Holder covenants, in favor of County, to fully perform the Grading Activities delineated on Exhibit "B", within the time periods authorized by the Grading Permit, or any extension of the Grading Permit that may be issued by the County. Upon the completion of the Grading Activities, the Surety described in paragraph 5 below, will be released within 10 days.

3. Cure of Default. Permit Holder shall have ten (10) business days to cure any default (or such longer period as is required in the exercise of due diligence if the Permit Holder commences such cure within the initial ten (10) business-day period) after the Permit Holder receives written notice of such default from the County.

4. Restoration Obligations. In the event Permit Holder fails to cure any default in its obligations to complete the Grading Activities, the Permit Holder shall, following written demand of the County, restore the site to its grade contours that exist prior to the commencement of any grading activity conducted under the Grading Permit (the "Restoration Obligations").

5. Restoration Surety. Permit Holder agrees to furnish security that complies with item 36 of the Conditions of Approval, to guarantee the faithful performance of this Agreement.

6. Miscellaneous.

a. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding such matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which is not embodied in this Agreement and no other agreement, statement or promises shall be valid or binding.

b. Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

c. Attorneys' Fees. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which it may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Mariposa, State of California for any proceeding arising hereunder.

d. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto.

e. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

f. Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date specified above.

County:

County of Mariposa

By: 

Rosemarie Smallcombe
Printed Name

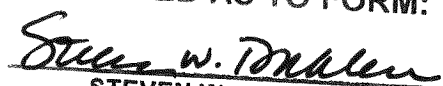
Board Chair
Title

Permit Holder:

Delaware North Parks and Resorts at Tenaya Inc. - A Delaware Corporation

By: 

APPROVED AS TO FORM:


STEVEN W. DAHLEM
COUNTY COUNSEL

BOND NO. 39S221086
PREMIUM NO. \$16,481.00

FAITHFUL PERFORMANCE BOND
(County of Mariposa)

PROJECT: Tenaya Cabins Project
Conditional Use Permit #2014-164
Land Division Application #2014-165

WHEREAS, the County of Mariposa ("County") has issued Conditional Use Permit #2014-164 and Land Division Application #2014-165 (collectively, the "Permits"), and in conjunction therewith adopted and amended Conditions of Approval for the Permits (collectively, the "Conditions of Approval");

WHEREAS, Item 36 of the Conditions of Approval requires the permit holder to enter into an appropriate agreement with the County to complete certain grading activities in accordance with approved plans, or to restore the subject site to the grade contours that exist prior to the commencement of such grading activities, and to secure such obligations through specified "Restoration Surety", in an amount equal to the greater of: (a) 10% of the total construction costs of the project; or, (b) the total costs of site preparation and grading (in each instance incorporating a 50% contingency element);

WHEREAS, attached as Exhibit "1" is a Covenant Agreement (the "Agreement") between the County and DNC Parks & Resorts at Tenaya, Inc., 1122 Highway 41, Fish Camp, CA 93623 (the "Permit Holder")

WHEREAS, the Director of Public Works of the County of Mariposa has evaluated engineer estimates of the total construction costs of the project and the total costs of site preparation and grading, and determined that the amount of the Restoration Surety bond is to be in the amount of Two Million, Seven Hundred Forty-Six Thousand, Seven Hundred Seventy-Three Dollars (\$2,746,773.00), representing 10% of the total construction costs of the project entitled by the Permits, including a 50% contingency element;

NOW, THEREFORE, Liberty Mutual Insurance Company ("Surety"), is held and firmly bound unto County in the penal sum of Two Million, Seven Hundred Forty-Six Thousand, Seven Hundred Seventy-Three Dollars (\$2,746,773.00), lawful money of the United States, for the payment of which Surety binds itself, its heirs, successors, executors, and administrators, jointly and severally.

The condition of this obligation is such that the obligation shall become null and void if the Permit Holder or its heirs, executors, administrators, successors, or assigns: (a) fully perform the Grading Activities delineated on Exhibit "B" of the Agreement, or, (b) upon demand by the County, restores the property to the existing grade contours reflected on Exhibit "A" of the Agreement (collectively, the "Grading/Restoration Obligations") if such grading activities are commenced and not completed within the time period specified in the Agreement, otherwise, this obligation shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, costs and necessary disbursements incurred by County in successfully enforcing the completion of the Grading/Restoration Obligations, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Grading/Restoration Obligations shall in any way affect its obligations on this bond. Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of Grading/Restoration Obligations.

In accordance with Item 36 of the Conditions of Approval, the County shall return this Surety Bond to the Permit Holder not later than ten (10) business days following final approval of such Grading Activities by the County. In addition, provided no grading work is commenced prior thereto, the County shall return this Surety Bond to the Permit Holder not later than ten (10) business days following expiration of the Grading Permit, or the Permit Holder's voluntary relinquishment of such Grading Permit.

IN WITNESS WHEREOF, this instrument has been duly executed by Surety on
January 23rd, 2018,

Surety

Liberty Mutual Insurance Company

Cynthia L. Choren
Attorney-in-Fact Cynthia L. Choren

Address: 175 Berkeley Street, Boston, MA 02116

Exhibit "1" Covenant

Agreement

County of Mariposa
Covenant Agreement

Project: Conditional Use Permit #2014-164
Land Division Application #2014-165

This Covenant Agreement ("Agreement") is made and entered into this 23 day of January, 2018, by and between Delaware North Parks and Resorts at Tenaya, Inc.- A Delaware Corporation ("Permit Holder") and the County of Mariposa ("County").

Recitals

- A. The County has issued Conditional Use Permit #2014-164 and Land Division Application 2014-165 (collectively, the "Permits"), and in conjunction therewith adopted Conditions of Approval for the Permits (collectively, the "Conditions of Approval");
- B. Item 36 of the Conditions of Approval require that, prior to the issuance of a building or grading permit, the Permit Holder would enter into an appropriate agreement with the County to guarantee that certain intended grading activities will be properly and timely conducted, or otherwise the site would be restored to its grade contours that exist prior to the commencement of any grading activity.

NOW THEREFORE, it is hereby agreed as follows:

1. Grading Permit Issuance. Attached as Exhibit "A" is a topographical map that reflects the existing grading contours of the site. Attached as Exhibit "B" is a plan that indicates the grading activities and appurtenant improvements ("Grading Activities"). The Permit Holder is responsible for stabilizing the site pursuant to a grading permit to be issued substantially and concurrently herewith by the County (the "Grading Permit").
2. Grading Obligations. Permit Holder covenants, in favor of County, to fully perform the Grading Activities delineated on Exhibit "B", within the time periods authorized by the Grading Permit, or any extension of the Grading Permit that may be issued by the County. Upon the completion of the Grading Activities, the Surety described in paragraph 5 below, will be released within 10 days.
3. Cure of Default. Permit Holder shall have ten (10) business days to cure any default (or such longer period as is required in the exercise of due diligence if the Permit Holder commences such cure within the initial ten (10) business-day period) after the Permit Holder receives written notice of such default from the County.
4. Restoration Obligations. In the event Permit Holder fails to cure any default in its obligations to complete the Grading Activities, the Permit Holder shall, following written demand of the County, restore the site to its grade contours that exist prior to the commencement of any grading activity conducted under the Grading Permit (the "Restoration Obligations").

5. Restoration Surety. Permit Holder agrees to furnish security that complies with item 36 of the Conditions of Approval, to guarantee the faithful performance of this Agreement.

6. Miscellaneous.

a. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding such matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which is not embodied in this Agreement and no other agreement, statement or promises shall be valid or binding.

b. Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

c. Attorneys' Fees. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which it may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Mariposa, State of California for any proceeding arising hereunder.

d. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto.

e. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

f. Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date specified above.

County:

County of Mariposa

By: _____

Printed Name

Title

Permit Holder:

Delaware North Parks and Resorts at Tenaya
Inc. - A Delaware Corporation

By:  _____

ACKNOWLEDGMENT BY SURETY

STATE OF Missouri }
City of St. Louis } ss.

On this 23rd day of January, 2018, before me personally appeared Cynthia L. Choren, known to me to be the Attorney-in-Fact of Liberty Mutual Insurance Company

_____, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

Debra C. Schneider
Notary Public in the State of Missouri
County of St. Charles
Commission No. 12419088

My Commission Expires: May 20, 2020

(Seal)



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7985853

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Pamela A. Beelman; Cynthia L. Choren; Brittany D. Clavin; JoAnn R. Frank; Sandra L. Ham; Kelsey M. Jones; Heidi A. Notheisen; Karen L. Roider; Debra C. Schneider

all of the city of Saint Louis, state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations; in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 19th day of January, 2018



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 19th day of January, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 23rd day of January, 2018



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

