

3-C-10

Meeting Date: 12/16/08 ☒ **Consent** ☐ **Regular**
☐ **Public Hearing**
Department
Submitted By: Engineering and Public Works
Submitted For: Traffic Division

Motion and Title: Staff recommends motion to approve: A Consent to Assignment and Assumption of an Agreement dated May 7, 1986, as amended March 1, 1990, February 21, 2002 and September 12, 2006 collectively Traffic Agreement between PGA National Venture, LLLP, (PGA National) and WFGRR Resort Core V, L.L.L.C. (WFGRR).

Summary: PGA National was party to the Traffic Agreement that defined rights and responsibilities relating to Ryder Cup Boulevard within PGA National Resort Community. PGA National desires to assign, and WFGP desires to assume PGA National's rights and obligations under the Traffic Agreement which among other things sets forth operational procedures for guardhouse, information booth and traffic control gate. District 1 (MRE)

Background and Justification: On May 7, 1986, PGA National Resort Community together with the City of Palm Beach Gardens, Northern Palm Beach County Improvement District, and the PGA Property Owners Association entered in to the Ryder Cup Traffic Agreement as amended March 1, 1990, and further amended February 21, 2002, and joined into by Palm Beach County on September 12, 2006 as R2006-2003. PGA National desires to assign and WFGP desires to assume PGA National's rights and obligations under the Traffic Agreement. Under the terms of the Agreement, all the parties must consent to any assignment. Approval of this agenda item fulfills the requirement that the County consents to the assignment.

1. Assignment and Assumption of an Agreement

Recommended by: _____
Division Director Date
Approved by: A. T. Webb 12/2/08
County Engineer Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 12-5-08
OFMB
SN 12/5/08 CP 12/02/08

 12/5/08
Contract Dev. and Control
12/5/08

B. Approved as to Form and Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made as of the ____ day of _____, 2008, by and between PGA NATIONAL VENTURE, LLLP, a Florida limited liability limited partnership ("Assignor"), and WFGR Resort Core V, L.L.C., a Delaware limited liability company ("Assignee").

RECITALS:

A. Assignor, as the master developer of the PGA National Resort Community in Palm Beach County Florida, is a party, together with the CITY OF PALM BEACH GARDENS, FLORIDA, the NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, and the PGA PROPERTY OWNERS ASSOCIATION, INC., to that certain Ryder Cup Traffic Agreement dated May 7, 1986, as amended March 1, 1990 and further amended February 21, 2002, and joined into by the COUNTY OF PALM BEACH, FLORIDA on September 12, 2006, as Resolution 2006-2003 (the "Traffic Control Agreement").

B. Assignor desires to assign, and Assignee desires to assume, Assignor's rights and obligations under the Traffic Control Agreement.

C. Any assignment under the Traffic Control Agreement must be consented to by all parties to the Traffic Control Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions herein contained, the parties hereto hereby act and agree as follows:

1. Assignment. Assignor hereby assigns, sets over and transfers to Assignee, and Assignee hereby takes and accepts from Assignor, all of Assignor's rights, title and interest in, to and under the Traffic Control Agreement.

2. Assumption of Obligations and Liabilities by Assignee. Assignee hereby assumes all of the obligations and liabilities of Assignor accruing from and after the date hereof with respect to the Traffic Control Agreement.

3. Indemnifications of Assignor and Assignee. Assignor shall hold harmless, indemnify and defend Assignee, its successors and assigns, from and against any claim or liability for any obligation or liability with respect to the Traffic Control Agreement prior to the date hereof. Assignee shall hold harmless, indemnify and defend Assignor, its successors and assigns, from and against any claim or liability for any obligation or liability with respect to the Traffic Control Agreement on or after the date hereof.

4. Further Assurances. Assignor shall promptly execute and deliver to Assignee any additional instrument or other document which Assignee reasonably requests to evidence or better effect the assignment contained herein.

5. Governing Law. This Assignment shall be deemed to be an agreement made under the laws of the State of Florida and for all purposes shall be governed by and construed in accordance with such laws.

6. Binding Effect. This Assignment shall be binding upon and inure to the benefit of, respectively, Assignor and Assignee and their respective successors and permitted assigns.

7. Counterparts. This Assignment may be executed by the parties in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed and delivered by their respective representatives, each duly authorized, as of the date first above written.

ASSIGNOR:

PGA NATIONAL VENTURE, LLLP, a Florida limited liability limited partnership

By: North County Sales Company, a Florida corporation, its general partner

By: 

E. Liwyd Ecclestone, President

ASSIGNEE:

WFGR RESORT CORE, L.L.C.,
a Delaware limited liability company

By: WFGR Resort Core Mezz V., L.L.C.,
a Delaware limited liability company
its Sole Member

By: Walton Florida Golf Resort Investors V., L.L.C.,
a Delaware limited liability company
its Sole Member

By: Walton Florida Golf Resort Holdings V, L.L.C.,
a Delaware limited liability company
its Managing Member

By: Walton Acquisition REOC Holdings V, L.L.C.,
a Delaware limited liability company
its Sole Member

By: Walton Street Real Estate Fund V, L.P.,
a Delaware limited partnership
its Managing Member

By: Walton Street Managers V, L.P.,
a Delaware limited partnership
its General Partner

By: WSC Managers V, Inc.,
a Delaware corporation
its General Partner

By: 

Name: James R. Odenbach

Title: Vice President

CONSENT OF OTHER PARTIES TO THE TRAFFIC CONTROL AGREEMENT

The undersigned being all of the parties other than Assignor to the Traffic Control Agreement, hereby consent to the foregoing Assignment.

COUNTY OF PALM BEACH

CITY OF PALM BEACH GARDENS

By: _____

By: _____

Attest: _____

Attest: _____

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

PGA PROPERTY OWNERS
ASSOCIATION, INC.

By: _____

By: *RJ Hodgson*

ROBERT J. HODGSON, PRES.

APPROVED AS TO TERMS AND CONDITIONS:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

CONSENT OF OTHER PARTIES TO THE TRAFFIC CONTROL AGREEMENT

The undersigned being all of the parties other than Assignor to the Traffic Control Agreement, hereby consent to the foregoing Assignment.

COUNTY OF PALM BEACH

By: _____

Attest: _____

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

By: Marilyn Jacobs
Marilyn Jacobs, President

CITY OF PALM BEACH GARDENS

By: _____

Attest: _____

PGA PROPERTY OWNERS
ASSOCIATION, INC.

By: _____

CONSENT OF OTHER PARTIES TO THE TRAFFIC CONTROL AGREEMENT

The undersigned being all of the parties other than Assignor to the Traffic Control Agreement, hereby consent to the foregoing Assignment.

COUNTY OF PALM BEACH

By: _____

Attest: _____

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

By: _____

CITY OF PALM BEACH GARDENS

By:  _____

Attest: _____

PGA PROPERTY OWNERS
ASSOCIATION, INC.

By: _____

APPROVED AS TO TERMS AND CONDITIONS:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

CONSENT OF OTHER PARTIES TO THE TRAFFIC CONTROL AGREEMENT

The undersigned being all of the parties other than Assignor to the Traffic Control Agreement, hereby consent to the foregoing Assignment.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____