



TO: HONORABLE BOARD OF SUPERVISORS

FROM: Arlan M. Colton, Planning Director

DATE: October 8, 2014

SUBJECT: AMENDMENT (#3) TO THE DEVELOPMENT AGREEMENT BETWEEN
PIMA COUNTY, ARIZONA AND TNR&S ACQUISITIONS, INC.
REGARDING OMNI TUCSON NATIONAL RESORT AND SPA

The above referenced Development agreement is scheduled for the Board of Supervisors' **TUESDAY, OCTOBER 21, 2014** hearing.

September 9, 2014

Amendment (#3) to the Development Agreement between Pima County, Arizona and
TNR&S Acquisitions, Inc. regarding Omni Tucson National Resort and Spa

Background

In 2005, the Board of Supervisors entered into a development agreement with TNR&S Acquisitions, Inc. and Stewart Title Trust of Tucson T-3526 and T-3527 regarding the development of rezoned land adjacent to Omni Tucson National Resort and Spa. The agreement includes terms for dedication of lands along the Canyon del Oro Wash and requires that Omni Tucson National Golf Course utilize reclaimed water. The agreement requires that Tucson National purchase and use reclaimed water within 180 days after Metropolitan Water constructs a delivery line. The delivery line is currently in place.

Omni Tucson National Resort and Spa is requesting an extension to September 25, 2016 for the obligation to begin using reclaimed water. They cite the competing expense associated with converting to reclaimed water with the expense associated with trying to establish a PGA event at the resort. The proposed, amended agreement stipulates that the resort provide notice to the County by December 1, 2014 that the Professional Golf Association (PGA) has committed to holding an event. If the resort fails to provide notice by the deadline, they will be required to begin using reclaimed water on April 1, 2015.

The previous two amendments to the development agreement were in regards to the wash dedication and trail construction.

Recommendation

Staff recommends that the Board of Supervisors approve the amended development agreement as presented. A PGA event would provide a significant economic development boost to the region.

Sincerely,

Arlan M. Colton
Planning Director

AMR/CP/ar

Attachments

c: C.H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator for Public Works
Carmin DeBonis, Jr., Director, Development Services
Andrew Flagg, Deputy County Attorney

When recorded, return to:

County Administrator's Office
130 W. Congress
10th Floor
Tucson AZ 85701

For Recorder's Use

**AMENDMENT THREE TO
DEVELOPMENT AGREEMENT**

between

PIMA COUNTY, ARIZONA

and

TNR&S ACQUISITION, INC.

AMENDMENT THREE TO DEVELOPMENT AGREEMENT

This Amendment Three to Development Agreement ("Amendment Three"), for reference purposes dated _____, 2014, is by and between PIMA COUNTY, ARIZONA, a body politic and corporate ("County" or "Pima County") and TNR&S ACQUISITION, INC., an Arizona corporation ("TNR&S" or "Developer").

RECITALS

- A. County and Developer are parties to the Development Agreement recorded on September 27, 2005, in Docket 12647, Page 636, and re-recorded to insert documentation for Exhibit E in Docket 12740, Page 1447, of the Official Records of the County Recorder, Pima County, Arizona (the "Development Agreement"); and amended by Amendment One, recorded on May 22, 2008, in Docket 13312, Page 916 of the Official Records of the County Recorder, Pima County, Arizona; and further amended by Amendment Two, recorded on July 14, 2009, in Docket 13599, Page 3111, in the Official Records of the County Recorder, Pima County, Arizona. Except as otherwise expressly provided in this Amendment Three, all capitalized terms used in this Amendment Three have the same meanings given to those capitalized terms in the Development Agreement and prior amendments.
- B. Paragraph 2.5 of the Development Agreement establishes the terms, conditions, and timing of Developer's obligation to purchase and use reclaimed water on the Development Property. Paragraph 2.5.1.2 of the Development Agreement requires Developer to purchase and use reclaimed water commencing no later than a "Commencement Date" that is defined as one hundred and eighty (180) days after completion of a New Line to the boundary of the Dedication Property.
- C. The New Line has been satisfactorily completed. Therefore the contingency set forth in Section 2.5.1.1 of the Development Agreement has been satisfied.
- D. Developer has asked to extend the Commencement Date to September 25, 2016 because (1) Developer is in discussions with the Professional Golf Association (PGA) to host a PGA Champions Tour Event at the Resort in 2015 and 2016; and (2) Developer is evaluating renovation and expansion plans for the Resort.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

- 1. **Recitals Incorporated.** Each of the Recitals set forth above is hereby incorporated into this Amendment Three by reference. Each party acknowledges the accuracy of the statements in the Recitals.
- 2. **Extension of Commencement Date.** The "Commencement Date" defined in Paragraph 2.5.1.2 of the Development Agreement is hereby changed to September 25, 2016, if

Developer notifies County in writing, by December 1, 2014, that PGA has committed to holding a PGA Champions Tour Event at the Resort in 2015 and 2016. If Developer either notifies County in writing that PGA has not committed to holding a PGA Champions Tour Event at the Resort in 2015 and 2016, or fails to provide written notice to County by December 1, 2014, then the "Commencement Date" is changed to April 1, 2015.

3. **Effect of Amendment.** The Development Agreement, as amended by Amendment One, Amendment Two, and this Amendment Three, is hereby ratified, affirmed, and approved and shall remain in full force and effect. County and Developer each acknowledge that, as of the date of this Amendment Three, the other party is not in default under the Development Agreement.

4. **Authority of Developer.** Developer represents and warrants that TNR&S is the same entity identified in the Development Agreement as "TNR&S Acquisition, Inc., a Delaware corporation," and that TNR&S currently holds fee title to the entire Resort and the entire Development Property, except any subdivided lots that are no longer subject to the Development Agreement as described in paragraph 12.14 of the Development Agreement.

5. **Counterparts.** This Amendment Three may be executed in counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument.

6. **Recordation.** Promptly upon the full execution of this Amendment Three by the Parties, County will cause this Amendment Three to be recorded in the Official Records of the County Recorder, Pima County, Arizona.

PIMA COUNTY

Chair, Pima County Board of Supervisors
Date: _____

ATTEST:

Clerk of the Board of Supervisors


APPROVED AS TO FORM:



Deputy Pima County Attorney

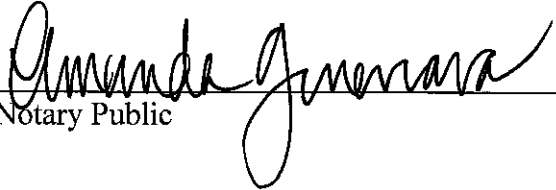
ANDREW FLAGG

TNR&S ACQUISITION, INC., an Arizona corporation

By: 
Title: Vice President
Date: 9-3-14
Printed Name: Michael G. Smith

STATE OF Texas)
COUNTY OF Dallas) ss.

The foregoing instrument was acknowledged before me this 3 day of September, 2014, by Michael G. Smith, Vice President, of TNR&S Acquisition, Inc., an Arizona corporation, on behalf of the corporation.


Notary Public

My Commission Expires:

6-8-2015



RESOLUTION 2014-_____

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY,
ARIZONA; APPROVING AND AUTHORIZING THE EXECUTION OF AN
AMENDED DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY AND
TNR&S ACQUISITION, INC.**

The Board of Supervisors of Pima County, Arizona finds that:

- A. Pima County (the "County") may, pursuant to A.R.S. § 11-1101, enter into development agreements relating to property located in unincorporated Pima County.
- B. The County and TNR&S Acquisition Inc., an Arizona corporation ("Developer"), previously entered into a development agreement, and subsequently amended it twice (the "Development Agreement").
- C. Section 2.5 of the Development Agreement establishes a deadline by which Developer must begin purchasing and using reclaimed water on certain resort property owned by Developer.
- D. Developer has asked to extend that deadline, for financial reasons, while Developer attempts to secure a Professional Golf Association ("PGA") event at the resort and evaluates renovation costs.
- E. The Board of Supervisors supports Developer's efforts to secure a PGA event because it would bring an economic benefit to the region.
- F. Under A.R.S. § 11-1101, the Development Agreement may be amended by mutual consent of the parties.

NOW, THEREFORE, IT IS RESOLVED:

- 1. Amendment Three to the Development Agreement, in the form presented to the Board of Supervisors, is approved.
- 2. The Chair of the Board is authorized and directed to sign Amendment Three on behalf of the County.
- 3. The various officers and employees of the County are authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the amended Development Agreement.

Passed and adopted, this _____ day of _____, 2014.

Chair, Pima County Board of Supervisors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney
ANDREW FLAGG

APPROVED:



Executive Secretary
Planning and Zoning Commission