

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated the _____ day of May, 2017, and entered into between **PELICAN GOLF LLC, a Florida limited liability company** ("Developer"), its successors and assigns, and the **TOWN OF BELLEAIR, FLORIDA, a municipal corporation of the State of Florida** ("Town").

RECITALS:

WHEREAS, Florida Statutes Sections 163.3220 - 163.3243, the Florida Local Government Development Agreement Act ("Act"), authorizes the Town to enter into binding development agreements with persons having a legal or equitable interest in real property located within the corporate limits of the Town; and

WHEREAS, Section 74-86 of the Town's Land Development Code ("Code") provides for the Town to enter into development agreements in connection with projects in a Planned Mixed Use (PMU) zoning district; and

WHEREAS, the Developer has contracted to acquire 135 acres of real property located at 1501 Indian Rocks Road (the "Property") in the corporate limits of the Town, more particularly described on the attached Exhibit "A", which Property is currently owned by the Town; and

WHEREAS, the Property currently consists of an operating golf course (the "Golf Course Parcel") and a clubhouse (the "Clubhouse Parcel"); and

WHEREAS, the Developer desires to renovate the existing Golf Course Parcel for continued use as a golf course and to raze the existing clubhouse and build a new clubhouse on the Clubhouse Parcel. The Clubhouse Parcel and the Golf Course Parcel are collectively referred to as the "Property"; and

WHEREAS, the Developer has applied for approval of a preliminary development plan and a development agreement; and

WHEREAS, the architectural elevations of the clubhouse to be located on the Clubhouse Parcel are attached hereto as Exhibit "B-1" and the plans for the renovation of the Golf Course Parcel are attached hereto as Exhibit "B-2"; and

WHEREAS, the Town has published and mailed notice of intent to consider this Agreement and has conducted such public hearings as are required by and in accordance with Florida Statutes Section 163.3225, Section 74-86 of the Code and any other applicable law; and

WHEREAS, the Town has determined that, as of the date of this Agreement, the proposed Project is consistent with the Town's Comprehensive Plan and the Town's Land Development Code; and

WHEREAS, approval of this Agreement is in the interests of the Town and in furtherance of the Town's goals; and

WHEREAS, at a duly noticed and convened public meetings on May 2, 2017, and May 16, 2017 the Town Commission approved this Agreement and authorized and directed its execution by the appropriate officials of the Town; and

WHEREAS, Developer has approved this Agreement and has duly authorized the undersigned to execute this Agreement on Developer's behalf.

STATEMENT OF AGREEMENT

In consideration of and in reliance upon the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound and in accordance with the Act and Code, agree as follows:

SECTION 1. Recitals. The above recitals are true and correct and are a part of this Agreement.

SECTION 2. Incorporation of the Act. This Agreement is entered into in compliance with and under the authority of the Code and the Act, the terms of which as of the date of this Agreement are incorporated herein by this reference and made a part of this Agreement. Words used in this Agreement without definition that are defined in the Act shall have the same meaning in this Agreement as in the Act.

SECTION 3. Property Subject to this Agreement.

3.1 The Property described on the attached Exhibit "A" is subject to this Agreement.

3.2 The Property currently has a land use designation of Recreation/Open Space and is zoned CG, Golf Course District by the Town.

3.3 The Property is owned in fee simple by the Town and by virtue of a purchase agreement the equitable owner is Developer.

SECTION 4. Scope of Project.

4.1 The development uses permitted on the Property, include General Commercial on the Clubhouse Parcel and Golf Course on the Golf Course Parcel, pursuant to the provisions of Chapter 74, Land Use regulations of the Town of Belleair.

4.2 Descriptions of the public services that will serve the Project, including who shall provide such facilities and a schedule to assure public facilities are available concurrent with the impact of the Project are provided in Section 7 of this Agreement.

4.3 No reservation or dedication of land for public purposes is required for the Project.

4.4 A description of all local development permits approved or needed to be approved for the Project is provided in Section 8 of this Agreement.

4.5 The applicant shall obtain approval from the Town of a parking plan for each phase of development and for construction workers, prior to the issuance of a building permit.

4.6 Developer agrees to comply with the provisions of the Overflow Parking Covenant set forth in Exhibit "D" in order to prevent offsite overflow parking.

4.7 The improvements shown on the final approved site plan shall be made a part of this development agreement.

4.8 The Clubhouse Parcel and the Golf Course Parcel of Project may be developed in two phases (each a "Phase" and collectively, the "Phases"). Phases of the Project may be developed in such order as Developer determines to appropriate based on market conditions subject to the agreed deadline dates set forth on Exhibit "E". All Project infrastructure required to service a Phase shall be completed prior to the issuance of the final certificate of occupancy or close out of the applicable building permit for such Phase.

SECTION 5. Effective Date/Duration of this Agreement.

5.1 This Agreement shall be effective upon the recording of this Agreement in the public records of Pinellas County, Florida pursuant to Florida Statutes Section 163.3239 ("Effective Date").

5.2 Within fourteen (14) days after the Town enters into this Agreement, the Town shall record this Agreement with the Clerk of the Circuit Court for Pinellas County. The Developer shall pay the cost of such recording.

5.3 This Agreement shall continue in effect for thirty (30) years from the Effective Date unless earlier terminated as set forth herein or extended by mutual consent of the Town Commission and the Developer subject to public hearings as required for the initial approval.

5.4 It shall be the responsibility of Applicant to submit an annual report to the Town sufficient to fulfill the requirements as stated in the provisions of the Act, and Ordinance No. . The Applicant, or its assign, shall submit an annual report at least 30-

days prior to the annual review date. This report shall contain a section-by-section listing of what obligations have been met and the date finalized, as good faith compliance with the terms of the agreement. The Town shall review the annual report subject to this Agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of this Agreement. If the Town finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, the Town shall provide the Applicant with a fifteen (15) day written notice and opportunity to cure the non-compliance. The Applicant shall have 45 days after the expiration of the 15-day notice period to begin to cure the non-compliance, after which this Agreement may be revoked or modified by the Town.

5.5 If state or federal laws are enacted after the execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, this Agreement shall be modified or revoked as is necessary to comply with such relevant state and federal laws.

SECTION 6. Obligations under this Agreement.

6.1 Obligations of the Developer:

6.1.1 The obligations under this Agreement shall be binding upon and the benefits of this Agreement shall inure to the Developer and its successors in interest that specifically assumes such obligations by recorded assignment and assumption agreement.

6.1.2 At the time of development of the Property, the Developer will submit such applications and documentation as are required by law and shall comply with the Code applicable at the time of building permit review.

6.1.3 The following restrictions shall apply to development of the Property:

6.1.3.1 The Property and improvements located thereon shall be developed in substantial conformance with the Preliminary Development Plan attached as Exhibit "C". Any modifications to the Preliminary Development Plan determined by the Town Manager as either inconsistent with this Agreement or constituting a substantial deviation from this Agreement shall require an amendment to this Agreement in accordance with the procedures of the Act and the Code, as necessary and applicable. Any and all such approved and adopted amendments shall be recorded in the public records of Pinellas County, Florida. Subsequent to approval of the Preliminary Development Plan by the Town of Belleair Town Commission, should minor revisions be necessary, the Town Manager may review and approve such changes without further formal amendment to this agreement.

6.1.3.2 The Developer shall obtain appropriate final site plan approval for the Project within six (6) months from the Effective Date of

this Agreement. The Developer shall thereafter timely obtain building permits and commence vertical construction thereunder, defined as work on the Project other than clearing, grubbing or other preliminary site preparation work and procure required certificates of occupancy consistent with the Code. Nothing herein shall restrict Developer from seeking an extension of site plan approvals pursuant to the Code or state law. In the event that work is not so commenced, the Town may deny future development approvals and/or certificates of occupancy for the Project, and may terminate this Agreement in accordance with Section 10.

6.1.3.3 The provisions of this Development Agreement may be amended, added to, deleted, modified, or changed from time to time by recorded instrument executed by the then owners of the Property and the Town. Any modifications to the Site Plan must comply with the regulations for development contained in Chapter 74, Land Use regulations of the Town of Belleair.

6.2 Obligations of the Town:

6.2.1 The Town shall promptly process site and construction plan applications and building permits for the Project that are consistent with the Preliminary Development Plan and that meet the requirements of the Code.

6.2.2 The Town shall provide the public services to the Project as provided in Section 7 below.

6.2.3 The Town shall provide credits to Developer against impact fees due for the Project in accordance with the schedule of credits attached as Exhibit "D".

SECTION 7. Public Facilities to Service Development. The following public facilities are presently available to the Property from the sources indicated below. Development of the Property will be governed by the concurrency ordinance provisions applicable on the Effective Date of this Agreement. The requirements for concurrency as set forth in the Comprehensive Plan and Code, have been satisfied. No new public facilities will be required to be constructed at the expense of the Town to serve the Project.

7.1 Potable water is currently provided by the Town. The Developer shall be responsible for all necessary main extensions and applicable connection fees.

7.2 Sewer service is currently provided by Pinellas County. The Developer shall be responsible for all necessary main extensions and applicable connection fees.

7.3 Fire protection is currently provided by the Town. The Developer shall be responsible for all necessary main extensions.

7.4 Drainage facilities for the Property will be provided by the Developer at the Developer's sole expense.

7.5 All improvements associated with the public facilities identified in Subsections 7.1 through 7.4 required for service to any Phase shall be completed by Developer, at Developer's expense, prior to the issuance of any certificate of occupancy.

7.6 If necessary for the Project, Developer agrees to provide a cashier's check, a payment and performance bond, or letter of credit to be deposited with the Town to secure construction of any new public facilities and services required to be constructed by this Agreement in accordance with the Code. Such construction shall be completed prior to issuance of a certificate of occupancy for the respective Phase of the Project.

7.7 Solid waste is provided by the Town.

7.8 Compliance with concurrency requirements as to parks and recreation and schools have been demonstrated.

SECTION 8. Required Local Government Approvals. The required local government development approvals for development of the Property that have been received. Future local government development approvals include the following:

- 8.1 Final site plan approval(s);
- 8.2 Construction plan approval(s);
- 8.3 Building permit(s);and
- 8.4 Certificate(s) of occupancy;

SECTION 9. Finding of Consistency. The Town finds that development of the Property consistent with the terms of this Agreement is consistent with the Town Comprehensive Plan and the Code.

SECTION 10. Termination. If the Developer's obligations set forth in this Agreement are not followed in a timely manner, as reasonably determined by the Town Manager, after written notice to the Developer and an opportunity to be heard, existing permits shall be administratively suspended and issuance of new permits suspended until the Developer has fulfilled its obligations. Failure to timely fulfill its obligations may serve as a basis for termination of this Agreement by the Town after written notice to the Developer and an opportunity for the Developer to be heard.

SECTION 11. Other Terms and Conditions. Except in the case of termination, until thirty (30) years after the date of this Agreement, the Town may apply laws and policies adopted subsequently to the Effective Date of this Agreement if the Town has held a public hearing and determined:

- (a) They are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement;
- (b) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to the development that is subject to this Agreement;
- (c) They are specifically anticipated and provided for in this Agreement;
- (d) The Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement;
or
- (e) This Agreement is based on substantially inaccurate information provided by the Developer.

SECTION 12. Compliance with Law. The failure of this Agreement to address any particular permit, condition, term or restriction shall not relieve the Developer from the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions.

SECTION 13. Notices. Notices and communications required or desired to be given under this Agreement shall be given to the parties by hand delivery, by nationally recognized overnight courier service such as Federal Express, or by certified mail, return receipt requested, addressed as follows (copies as provided below shall be required for proper notice to be given):

If to the Developer: PELICAN GOLF LLC
c/o Thomas C. Nash, II
Macfarlane Ferguson & McMullen
625 Court Street, Suite 200
Clearwater, FL 33756

With Copy to: Thomas C. Nash, II
Macfarlane Ferguson & McMullen
625 Court Street
Suite 200
Clearwater, FL 33756

If to Town: Town of Belleair
Attn: Town Manager
901 Ponce de Leon Blvd.
Belleair, Florida 33756

Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, or on the third (3rd) day following deposit in the United States mail, certified mail, return receipt requested. The parties may change the addresses set forth above (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

SECTION 14. Assignments.

14.1 By the Developer:

14.1.1 The Developer may sell, convey, assign or otherwise dispose of any or all of its right, title, interest and obligations in and to the Project, or any part thereof (each a "Parcel"), only with the prior written notice to the Town, provided that such party (hereinafter referred to as the "assignee"), to the extent of the sale, conveyance, assignment or other disposition by the Developer to the assignee, shall be bound by the terms of this Agreement the same as the Developer for such part of the Project as is subject to such sale, conveyance, assignment or other disposition.

14.1.2 If the assignee of the Developer's right, title, interest and obligations in and to the Project, or any part thereof assumes all of the Developer's obligations hereunder for the Project, or that part subject to such sale, conveyance, assignment or other disposition, then the Developer shall be released from all such obligations hereunder which have been so assumed by the assignee, and the Town agrees to execute an instrument evidencing such release, which shall be in recordable form.

14.1.3 An assignment of the Project, or any part thereof, by the Developer to any corporation, limited partnership, limited liability company, general partnership, or joint venture, in which the Developer (or an entity under common control with Developer) has either the controlling interest or through a joint venture or other arrangement shares equal management rights and maintains such controlling interest or equal management rights shall not be deemed an assignment or transfer, provided, however, that notice of such assignment shall be given by the Developer to the Town promptly after such assignment being effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Developer in the absence of such assignment.

14.2 Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the Town, and its successors and assigns, and the Developer and, as applicable to the parties comprising Developer, their personal representatives, trustees, heirs, successors and assigns, except as may otherwise be specifically provided herein.

SECTION 15. Minor Non-Compliance. The Developer will not be deemed to have failed to comply with the terms of this Agreement in the event such noncompliance,

in the judgment of the Town Manager, reasonably exercised, is of a minor or inconsequential nature.

SECTION 16. Covenant of Cooperation. The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Property.

SECTION 17. Approvals. Whenever an approval or consent is required under or contemplated by this Agreement such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing.

SECTION 18. Completion of Agreement. Upon the completion of performance of this Agreement or its revocation or termination, a statement evidencing such completion, revocation or termination shall be signed by the parties hereto and recorded in the official records of the Town.

SECTION 19. Entire Agreement. This Agreement (including any and all Exhibits attached hereto all of which are a part of this Agreement to the same extent as if such Exhibits were set forth in full in the body of this Agreement), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

SECTION 20. Construction. The titles, captions and section numbers in this Agreement are inserted for convenient reference only and do not define or limit the scope or intent and should not be used in the interpretation of any section, subsection or provision of this Agreement. Whenever the context requires or permits, the singular shall include the plural, and plural shall include the singular and any reference in this Agreement to the Developer includes the Developer's successors or assigns. This Agreement was the production of negotiations between representatives for the Town and the Developer and the language of the Agreement should be given its plain and ordinary meaning and should not be strictly construed against any party hereto based upon draftsmanship. If any term or provision of this Agreement is susceptible to more than one interpretation, one or more of which render it valid and enforceable, and one or more of which would render it invalid or unenforceable, such term or provision shall be construed in a manner that would render it valid and enforceable.

SECTION 21. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall with the remainder of this Agreement continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party hereto, to the extent that the purpose of this Agreement or the benefits sought to be received hereunder are frustrated by such partial invalidity, such party shall have the right to terminate this Agreement upon fifteen (15) days written notice to the other parties.

SECTION 22. Code Amendments. Subsequently adopted ordinances and codes of the Town which are of general application not governing the development of land shall be applicable to the Property, and such modifications are specifically anticipated in this Agreement.

SECTION 23. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida.

SECTION 24. Counterparts. This Agreement may be executed in counterparts, all of which together shall continue one and the same instrument.

SECTION 25. Amendment. This Agreement may be amended by mutual written consent of the Town and the Developer so long as the amendment meets the requirements of the Act, applicable Town ordinances, and Florida law.

BALANCE OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have hereto executed this Agreement the date and year first above written.

In the presence of:

PELICAN GOLF LLC, a Florida limited Liability company

Print Name_____

By:_____

Name: _____

Title: _____

Print Name_____

As to Developer

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ of PELICAN GOLF LLC, a Florida limited liability company, on behalf of the corporation, who is ☐ personally known to me, or who has ☐ produced _____ as identification.

Notary Public

My Commission expires:

TOWN OF BELLEAIR, FLORIDA

By: _____

Name: JP Murphy

Title: Town Manager

Attest:

Town Clerk

Approved as to Form:

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by J.P. Murphy, as Town Manager of the Town of Belleair, Florida, who is ☐ personally known to me or who has ☐ produced _____ as identification.

Notary Public

Print Name: _____

My Commission Expires _____

EXHIBIT “A”

Legal Descriptions

CLUBHOUSE PARCEL:

GOLF COURSE PARCEL:

EXHIBIT “B-1”

Architectural Elevations for Clubhouse

EXHIBIT “B-2”

Renovation Plans for the Golf Course Parcel

EXHIBIT “C”

Preliminary Development Plan

EXHIBIT D

OVERFLOW PARKING COVENANT

The Town has granted Developer a variance with respect to the minimum number of on-site parking spaces required by the Town Code with respect to the proposed uses of the Property. That variance was granted after consideration of the Developer's analysis of parking needs as a result of anticipated attendance of club patrons for its various uses – golf, dining, and fitness activities; and the fact that Developer will make available [236] temporary parking spaces on the golf practice range to accommodate overflow parking if required for either regular or special events on the Property. Avoidance of club patron parking on streets adjacent to the Property is of high importance to the Town. In order to prevent such on street parking whether or not due to the unavailability of on-site parking, Developer agrees to the following:

1. Club members and guests will be advised through club rules or signage on the property that parking on the adjacent streets for club activities is prohibited.
2. Developer will insure that during all club business hours there is the capability to immediately open the overflow parking area to vehicles in the event there are insufficient regular on-site parking spaces.
3. The Town will also consider the granting of special permits to allow on-street parking for special events by prior application to the Town Commission.

EXHIBIT E

DATES FOR COMPLETION OF PROJECT PHASES

1. Golf Course Parcel – completion of construction of the portion of the Property utilized for golf play shall be completed on or before March 31, 2018.
2. Clubhouse Parcel – completion of construction of new clubhouse and accessory structures shall be completed on or before August 31, 2018.