

## DEED IN ESCROW AGREEMENT

THIS DEED IN ESCROW AGREEMENT ("Agreement") is made by and among **TOWN OF BELLEAIR, a Florida municipal corporation**, whose mailing address is: 901 Ponce de Leon Boulevard, Belleair, FL 33756 ("Seller"); **PELICAN GOLF LLC, a Florida limited liability company**, whose mailing address is: 625 Court Street, Suite 200, Clearwater, FL 33756 ("Purchaser"); and **GRAY ROBINSON, P.A., a Florida professional association**, whose mailing address is: 402 E. Jackson Street, Suite 2700, Tampa, FL 33602 ("Escrow Agent").

This Agreement is made under the following circumstances:

A. Seller and Purchaser are the parties to that certain Purchase and Sale Agreement (the "Sales Contract") bearing Dates of Execution by Seller on February 11, 2016, by Purchaser on February 18, 2016, and by Seller's Town Attorney on February 18, 2016.

B. The Sales Contract provides the terms and conditions pursuant to which certain property currently owned by Seller (the "Property", as defined and more particularly described therein, which Property includes, but is not limited to, certain "Land" as described in Exhibit "A" to the Sales Contract, and all structures and improvements on the Land) will be conveyed to Purchaser.

C. The subject Land is and has been used for many years as a golf course known as the Belleview Biltmore Golf Course or Pelican Golf Course, and contains a clubhouse and other facilities and amenities directly related to golf course operations. It is the intention of Purchaser, after the closing of its purchase of the Property from Seller, to undertake extensive renovations, modifications and rebuilding of the golf course, the clubhouse and other facilities and amenities on the Land, including removal and replacement of non-indigenous trees and vegetation, wetlands enhancement, and creation of natural bird and animal habitat, all in accordance with applicable laws, ordinances and regulations (collectively, the "Course Renovations").

D. Section 4.6 of the Sales Contract (entitled "Special Condition Regarding Future Use of Golf Course.") establishes a special condition (defined therein as the "Green Space Condition") of Seller's obligation to sell pursuant to the terms of the Sales Contract: the implementation of a mechanism to assure that all portions of the Land currently being used for golf play purposes shall, in perpetuity, remain designated as green space and not be made subject to development.

E. This Agreement, and the terms and conditions set forth herein, constitute the mechanism chosen and mutually agreed upon by Seller and Purchaser to effectuate the Green Space Condition under Section 4.6 of the Sales Contract.

F. Seller and Purchaser desire to designate Gray Robinson, P.A., as Escrow Agent under this Agreement, and Gray Robinson, P.A., has agreed to accept such designation in accordance with the terms hereof.

G. This Agreement shall survive the closing of the sale from Seller to Purchaser pursuant to the Sales Contract, and shall by no means be deemed merged into the deed executed and delivered by Seller in favor of Purchaser in effecting that sale.

NOW, THEREFORE, in consideration of the mutual promises and agreements made by Seller and Purchaser in the Sales Contract, including Section 4.6 thereof, the further provisions of this Agreement, the Agreement for Future Grant of Easement in Exhibit "A" hereof, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller, Purchaser and Escrow Agent hereby covenant and agree as follows:

1. Incorporation by Reference. The foregoing recitals are hereby incorporated into this Agreement as substantive provisions hereof for all purposes, to the same force and effect as if repeated verbatim herein. Capitalized terms used in the Sales Contract and not otherwise defined in this Agreement shall have the meaning ascribed to them in the Sales Contract.

2. Reconveyance Deed in Escrow. Seller and Purchaser have entered into a certain Agreement for Future Grant of Easement, a true copy of which is attached hereto as Exhibit "A" hereof. To secure Purchaser's timely delivery to Seller of the duly finalized and executed original Perpetual Conservation Easement as provided in Section 3(a) below and in accordance with the Agreement for Future Grant of Easement, at or about the same time as the making of this Agreement, Purchaser has executed and delivered to Escrow Agent, in escrow, the original of that certain Special Warranty Deed to Seller (the "Reconveyance Deed"), a true copy of which is attached hereto as Exhibit "B" hereof. The Reconveyance Deed, if delivered to Seller, would serve to reconvey to Seller the Property that is the subject of the Sales Contract, whereupon the Sales Agreement, this Agreement, and the Agreement for Future Grant of Easement would terminate, except for this Section 2.

Further, if Purchaser shall desire to convey title to the Land or any of the other Property to any third party(ies) prior to the release of the Reconveyance Deed from escrow hereunder, then, as conditions precedent to such conveyance, (a) Purchaser shall give prior written notice of same to Seller and (b) prior to making such conveyance, Purchaser shall obtain and deliver to Seller in writing (i) the agreement of such third party(ies) to assume and agree to be jointly and severally liable to Seller (and jointly and severally with Purchaser, if Purchaser is to retain a title interest in the Land and/or other Property) for the covenants and obligations of Purchaser under this Agreement and the Agreement for Future Grant of Easement in Exhibit "A" hereof to the extent that the same, or any part of same, remain executory in any respect at that time, including finalization, and execution and delivery, of the Perpetual Conservation Easement in accordance with Section 3(a), below; and (ii) an executed revision of the Reconveyance Deed to include due execution thereof by such third party(ies), as well as by Purchaser if Purchaser is to retain a title interest in the Land, which revision shall be substituted for Exhibit "B" hereof upon receipt by Escrow Agent.

Escrow Agent hereby acknowledges its receipt of the original executed Reconveyance Deed, and agrees to hold the same in escrow pursuant to the terms and provisions of this Agreement. It is the agreement and understanding of Seller and Purchaser that, in the event that Purchaser fails to timely deliver to Seller the duly finalized and executed original Perpetual Conservation Easement in accordance with the Agreement for Future Grant of Easement in Exhibit "A", then Seller shall be unconditionally entitled to obtain the original executed Reconveyance Deed from Escrow Agent and record the same in the public records of Pinellas County, Florida, in which event Purchaser will promptly (i) pay all construction and other costs for the Course Renovations then unpaid, indemnifying Seller for all third party claims therefor and all expenses, including reasonable attorneys' fees, incident thereto, and (ii) pay or reimburse Seller for all Reconveyance Deed recording fees and applicable transfer taxes.

3. Perpetual Conservation Easement. Pursuant to the Agreement for Future Grant of Easement in Exhibit "A" hereof) made by Seller and Purchaser before or concurrently with making this Agreement, Purchaser has agreed to execute and deliver the following:

(a) **To Seller:** a perpetual conservation easement (the "Perpetual Conservation Easement") substantially in the form of Exhibit "C" to this Agreement). The time for the Purchaser's due execution and delivery of the finalized and executed Perpetual Conservation Easement shall be in accordance with the Section of the Agreement for Future Grant of Easement entitled "Time of Easement Grant." Seller and Purchaser acknowledge and agree that (i) finalizing certain aspects of the Easement must necessarily follow Purchaser's completion of the Course Renovations (e.g., the legal description of the golf course itself upon such completion), and (ii) the Easement's perpetual term and express limitation to use of the Land occupied by the playing green space of the golf course shall remain in accordance with the Recreation/Open Space (ROS) land use category pursuant to the Comprehensive Plan of the Town of Belleair and any related enactments by the Town applicable to that Recreation/Open Space (ROS) land use category, as provided in Exhibit "C" hereof, except and only if Seller, in its sole and absolute discretion, shall agree to any modification thereof.

(b) **To Escrow Agent:** the original of the Reconveyance Deed in the form of Exhibit "B" hereof, duly executed by Purchaser. The time for delivery to Escrow Agent of the finalized and duly executed Reconveyance Deed shall be at, and in any event prior to the consummation of, the closing of the sale from Seller to Purchaser under the Sales Contract. The execution of this Agreement by Escrow Agent shall constitute acknowledgement of receipt by Escrow Agent of the original of the Reconveyance Deed as executed by Purchaser.

4. Release of the Reconveyance Deed from Escrow. Escrow Agent shall promptly release the original of the Reconveyance Deed from escrow and effect the delivery thereof, as follows:

(a) **To Purchaser,** upon Escrow Agent's receipt of written instructions by Seller to do so. Purchaser hereby agrees to promptly destroy the original of the Reconveyance Deed upon Purchaser's receipt thereof; or

(b) **To Seller,** upon Escrow Agent's receipt of written instructions by Seller to do so, setting forth therein that an Event of Default under Section 5 of this Agreement has occurred, and the nature of the Event of Default involved; or

(c) Upon Escrow Agent's receipt of, and in accordance with, joint written instructions to Escrow Agent by Seller and Purchaser.

Upon Escrow Agent's release and delivery of the original of the Reconveyance Deed, as aforesaid, this Agreement shall cease and terminate.

5. Events of Default. The occurrence of any of the following shall each constitute an Event of Default by Purchaser under this Agreement:

(a) Purchaser's failure to either timely commence, or timely complete, the Course Renovations pursuant to Purchaser's Development Agreement with Seller.

(b) The filing with any governmental agency of any application by, on behalf of, or with the authorization of Seller, to allow development or vertical construction of or on all or any part of the Land currently being used for golf play purposes.

(c) Purchaser's use of any part of the Land occupied by the playing green space of the golf course other than in accordance with the Recreation/Open Space (ROS) land use category pursuant to the Comprehensive Plan of the Town of Belleair and any related enactments by the Town applicable to that Recreation/Open Space (ROS) land use category or golf courses generally.

(d) Purchaser's failure to timely deliver to Seller the Perpetual Conservation Easement, duly executed and as finalized in accordance with this Agreement and the Agreement for Future Grant of Easement in Exhibit "A" hereof.

If any Event of Default occurs, then Seller shall have the absolute and unconditional right, at any time thereafter and at its option, in its sole and absolute discretion, and without prior notice to Purchaser, to cause or direct Escrow Agent via written instructions to release from escrow and deliver to Seller the original of the executed Reconveyance Deed, notwithstanding any directions or instructions from Purchaser to the contrary. Accordingly, Purchaser hereby directs Escrow Agent to disregard any such directions or instructions from Purchaser, and this provision shall be irrevocable.

Further, if any Event of Default occurs and the original of the executed Reconveyance Deed is released by Escrow Agent and delivered to Seller, then Seller shall automatically become the owner of the Property, including the Course Renovations by Purchaser on the Land, free and clear of all claims of Purchaser or any person or entity arising by, through or under Purchaser.

6. Purchaser's Acknowledgment. Purchaser acknowledges and agrees, at the time the Reconveyance Deed may be released from escrow hereunder to Seller, (a) that the Reconveyance Deed is intended to effect a present and absolute conveyance and unconditional transfer, for adequate consideration, of the Land, the Course Renovations by Purchaser, the other property described therein as conveyed thereby and, to the full extent assignable, all licenses, rights, and privileges associated therewith; (b) that Purchaser shall promptly after such transfer vacate the Property and remove therefrom, at its sole cost and expense, all property that is not conveyed to Seller under the Reconveyance Deed; and (c) that Seller and/or its designees or assigns shall, upon such transfer, have the immediate right to possess, occupy, operate, use, enjoy, sell, and transfer the same or any part thereof for its or their own account, at its or their sole and absolute discretion. Purchaser hereby absolutely and unconditionally, with the advice of and after consultation with Purchaser's counsel, expressly waives any right to assert any common law or statutory right of redemption or reinstatement with respect to the transfer of the Property to Seller pursuant to the Reconveyance Deed.

7. Further Assurances. If Seller instructs Escrow Agent to release the Reconveyance Deed to Seller from escrow, then Purchaser shall execute and deliver to Seller such further documents, deliveries, certificates, lien releases and forms as Seller shall reasonably require in writing that Purchaser provide to transfer the entire property conveyed by the Reconveyance Deed to Seller, including such affidavits, confirmations, and

acknowledgments as any title insurance company shall reasonably require in order to insure Seller's title pursuant to or deriving from the Reconveyance Deed.

8. Specific Performance. The provisions of this Agreement may be enforced by an action for specific performance.

9. No Escrow Agent Liability. Seller and Purchaser each waives, releases, and covenants not to assert any claims of any kind against Escrow Agent, including any claims for equitable relief, except in the event of Escrow Agent's willful misconduct or gross negligence. In the event of any dispute regarding this Agreement, any claims of Seller and/or Purchaser shall be resolved solely between those parties.

10. Duties of Escrow Agent. Escrow Agent shall have no duties or responsibilities with respect to the subject matter of this Agreement other than those expressly set forth herein. Without limiting the generality of the foregoing, except as expressly set forth herein, Escrow Agent shall have no duty to enforce any obligation of any person, and shall have no liability or responsibility to the other parties hereto, or to anyone else, by reason of any failure on the part of any party hereto or any other person to perform their respective obligations.

11. No Responsibility. In its capacity as Escrow Agent, Escrow Agent shall not be responsible for the genuineness or validity of any security, instrument, document, or item deposited with it; shall have no responsibility other than to faithfully follow the instructions contained herein; shall not be responsible for the validity or enforceability of any security interest of any party; and shall be fully protected in acting in accordance with any written instrument, directive or instructions given to it pursuant to this Agreement and reasonably believed by Escrow Agent to have been signed by the proper person. Unless Escrow Agent has actual knowledge of contrary facts, Escrow Agent may conclusively assume, without further inquiry, that any person purporting to give any notice hereunder has been duly authorized to do so. In the event that, for any reason, there is any dispute or Escrow Agent is uncertain concerning any action to be taken hereunder, Escrow Agent shall have the right to take no action until it shall have received identical or joint written instructions from Purchaser and Seller, and/or any other person or entity having an interest in the Property, or until directed by a judgment or order of a court of competent jurisdiction in the State of Florida or a federal court therein, whereupon Escrow Agent shall take such action as shall be in accordance with such instructions, or such judgment or order.

12. No Liability. It is specifically understood and agreed that the duties of Escrow Agent hereunder are purely ministerial in nature. Escrow Agent shall not be liable to the other parties hereto or to anyone else for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith and in the exercise of reasonable judgment, except for acts of willful misconduct or gross negligence. Unless Escrow Agent has actual knowledge of contrary facts, Escrow Agent may rely conclusively upon, without further inquiry, and shall be protected in acting upon, any order, notice, demand, certificate, opinion, or advice of Escrow Agent's counsel, statement, instrument, report, or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is reasonably believed by Escrow Agent to be genuine and to be signed or presented by proper and duly authorized person(s). At the option of Escrow Agent, Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination, or rescission of this Agreement, or of any of the terms hereof, unless evidenced by a final judgment or order of a court of competent jurisdiction in the State of Florida or a federal court therein, or a writing delivered to Escrow Agent signed by the proper

party or parties. Further, except for a court judgment or order, if the duties or rights of Escrow Agent are affected by any notice, demand, paper or document of the type mentioned in this Section, Escrow Agent shall not be bound thereby unless it shall give its prior written consent thereto.

13. Determination of Facts. Unless Escrow Agent has actual knowledge or shall have received written notice of contrary facts from a proper person(s), Escrow Agent shall have the right to assume that a fact or an event by reason of which an action would or might be taken by Escrow Agent does/does not exist, or has/has not occurred, without incurring liability to Purchaser, Seller and/or anyone else for any action taken or omitted, or any action suffered by it to be taken or omitted, in good faith and in the exercise of reasonable judgment, in reliance upon such assumption.

14. Indemnification. Except in connection with Escrow Agent's willful misconduct or gross negligence, Escrow Agent shall be indemnified and held harmless jointly and severally by Purchaser and Seller from and against any and all costs, expenses or losses suffered by Escrow Agent, including reasonable attorneys' fees (or the fair value of legal services rendered by Escrow Agent on behalf of itself), in connection with any action, suit, or other proceeding involving any claim, which arises out of or relates to this Agreement (including any claim made by Purchaser and/or Seller against Escrow Agent), the services of Escrow Agent hereunder or the documents and instruments held by it hereunder. Promptly after the receipt by Escrow Agent of notice of any demand or claim, or of the commencement of any action, suit, or proceeding, Escrow Agent shall, if a claim in respect thereof is to be made against Purchaser and/or Seller, promptly notify such party(ies) in writing, *provided, however*, that the failure by Escrow Agent to give such notice shall not relieve Purchaser and/or Seller from any liability which such party(ies) may have to Escrow Agent hereunder or with respect hereto.

15. Resignation. Any Escrow Agent hereunder may resign as such upon giving five (5) days' prior written notice to that effect to each of Purchaser and Seller. In each such event, the successor Escrow Agent shall be a reputable law firm, or a nationally recognized title insurance company, selected by Seller and reasonably acceptable to Purchaser. The successor Escrow Agent shall execute and deliver a written acknowledgement of its succession as Escrow Agent to Purchaser, Seller and Escrow Agent, whereupon the resigning Escrow Agent shall deliver to (and be entitled to an immediate written receipt from) its successor as Escrow Agent, the Reconveyance Deed and any related documentation then held by the resigning Escrow Agent. Upon such delivery, the successor Escrow Agent shall hold the Reconveyance Deed and any related documentation delivered to it therewith pursuant to the terms and provisions of this Agreement. If no such successor Escrow Agent has been designated on or before the effective date of the resigning Escrow Agent's resignation, its obligations as Escrow Agent shall continue until such successor is appointed, *provided, however*, the resigning Escrow Agent's sole obligation thereafter shall be to safely keep all documents and instruments then held by it and to deliver the same to a successor Escrow Agent once designated, or until such delivery is directed by a final order or judgment of a court of competent jurisdiction in the State of Florida or a federal court therein, whereupon Escrow Agent shall make disposition thereof in accordance with such order or judgment. If no successor Escrow Agent is designated and qualified within five (5) days after a resigning Escrow Agent's resignation is effective, then such resigning Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent. Further, an Escrow Agent may at any time resign by depositing or interpleading the Reconveyance Deed and any related documentation then held by the Escrow Agent with any court of competent jurisdiction, and duly notifying Purchaser and Seller that the Escrow Agent has done so.

16. Representation of Parties. Purchaser acknowledges that the undersigned Escrow Agent is legal counsel to the Seller with respect to the subject matter of this Agreement, and hereby agrees that said Escrow Agent shall nevertheless be entitled to represent Seller in any matter, including any litigation in connection herewith.

17. Time. Time is of the essence of this Agreement and every provision hereof, including Exhibits attached hereto. All relevant time periods shall be calculated in calendar days.

18. Mortgages on the Land. While Seller, pursuant to the Sales Contract, is conveying the Land to Purchaser free and clear of all mortgages and other liens, Seller acknowledges that Purchaser intends to finance all or part of the Course Renovations through one or more third parties, and to secure such financing by mortgages or similar security instruments. Nothing in this Agreement shall be construed to prevent or limit Purchaser's doing so, *provided, however*, that each such mortgage or similar security instrument shall expressly provide that, in the event that Seller becomes the owner of the Land or any of the other Property under the Sales Contract during the term of the third party financing, (a) Seller shall be exempt from the operation of any due-on-sale and similar rights of the mortgagee or secured party; (b) Seller shall have the right to take title to the Land and assume the third party financing without any underwriting qualification or change in financing terms, and free of any assumption-related fees or other charges by the mortgagee or secured party; and (c) the mortgagee or secured party shall be bound to expressly subordinate its mortgage or security instrument to the Perpetual Conservation Easement in Exhibit "C", subject to the provisions of Section 3(a), above. However, for the avoidance of doubt, notwithstanding the requirement that any mortgagee or secured party subordinate to the Perpetual Conservation Easement as aforesaid, there shall be no requirement for such subordination to the rights or interests of Seller under the Reconveyance Deed, or to any other instrument conveying ownership to Seller of the Land or any of the other Property under the Sales Contract.

19. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall collectively constitute one and the same instrument, and all of which may be collated to physically form a single instrument.

20. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement may not be changed or amended except by a writing signed by each of Seller, Purchaser and Escrow Agent. Unless otherwise expressly provided, as used in this Agreement, the term "including" and its derivatives shall be without limitation, and the term "hereof" and its derivatives shall refer to the entirety of this Agreement, rather than to any particular section, paragraph, subsection, subparagraph or other part of this Agreement. This Agreement shall bind and inure to the benefit of Seller, Purchaser, Escrow Agent, and their respective successors and assigns.

**SIGNATURES APPEAR ON FOLLOWING PAGE(S)**

**SELLER:**

Date of Execution by Seller:

\_\_\_\_\_, 2017

**TOWN OF BELLEAIR, a Florida municipal corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**PURCHASER:**

Date of Execution by Purchaser:

\_\_\_\_\_, 2017

**PELICAN GOLF LLC, a Florida limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**JOINDER OF ESCROW AGENT**

**ESCROW AGENT:**

Date of Execution by Escrow Agent:

\_\_\_\_\_, 2017

**GRAY ROBINSON, P.A., a Florida professional association**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_