

PREPARED BY AND RETURN TO:

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Space above this line for recorder's use only

SHARED FACILITIES USE AND EASEMENT AGREEMENT

THIS SHARED FACILITIES USE AND EASEMENT AGREEMENT (this (“**Agreement**”)) is made and entered into as of the Effective Date (as defined herein), by and between the TOWN OF BELLEAIR, a Florida municipal corporation, whose mailing address is 901 Ponce de Leon Boulevard, Belleair, Florida 33756 (the “**Town**”) and PELICAN GOLF LLC, a Florida limited liability company, whose mailing address is 1501 Indian Rocks Road, Belleair Florida 33756 (“**Pelican**”). The Town and Pelican are collectively referred to herein as the “**Parties**.”

RECITALS

A. Pelican purchased the Belleview Biltmore Golf Course and Club from the Town (the “**Golf Course Property**”) in 2017 and is in the process of renovating and upgrading the Golf Course Property and will operate the renovated Golf Course Property as a golf course and club and other related uses under the name “**Pelican Golf Club**”.

B. The Town owns certain property adjacent to the Golf Course Property at the southern end of Belleair Avenue between the Town’s water plant property and the Pinellas Trail (the “**Town’s Property**”), as more particularly depicted on the Site Plan attached hereto as **Exhibit A** (the “**Site Plan**”).

C. As part of the renovation and upgrading of the Golf Course Property, Pelican will be constructing, at its sole cost and expense, two (2) metal equipment storage garages (the “**New Garages**”) east of the of the existing metal equipment storage garage (the “**Existing Garage**”) as shown on the Site Plan. The New Garages shall be substantially similar in appearance and be built with similar construction materials as the Existing Garage and will be approximately 160’ feet in length and 22’ in width. The New Garage to be located the furthest east as shown on the Site Plan will be on the Town’s Property and is hereinafter referred to as the “**East Garage**” and the New Garage to be constructed between the Existing Garage and the East Garage as shown on the Site Plan will be on the Golf Course Property and is hereinafter referred to as the “**Middle Garage**”.

D. The East Garage shall contain nine (9) bays and Pelican shall have a license from the Town to have possession and use of (6) contiguous bays (the “**Pelican Bays**”) as shown on the Site Plan for storage and other uses consistent with the operation of the Pelican Golf Club and the Town shall have possession of the remaining three (3) contiguous bays (the “**Town’s Bays**”) for use by the Town.

E. In addition to the construction of the East Garage on the Town Property, Pelican has agreed to construct and install, at its sole cost and expense, six (6) storage bins for use by the Town (the “**Town’s Storage Bins**”) on the south side of the East Garage as shown on the Site Plan. The Town’s Storage Bins shall be of the same size and appearance as the existing storage bins located on the Golf Course Property (the “**Existing Storage Bins**”). Pelican has agreed to remove the Existing Storage Bins from the Golf Course Property, at Pelican’s sole cost and expense.

F. There is an existing access gate as shown on the Site Plan being used by the Parties to provide access to the Golf Course Property and the Town Property. Pelican has agreed to remove the exiting access gate and replace it with a new and larger electric gate, at Pelican’s sole cost and expense (the “**New Access Gate**”).

G. The site improvements associated with all of the work to be performed by Pelican under this Agreement, including, but not limited to, paving, curbing, storm water structures, landscaping improvements and other related improvements (the “**Site Improvements**”) shall be constructed, and thereafter maintained, by Pelican.

H. The Town has agreed to grant Pelican an easement for ingress and egress over the existing driveway inside of the existing access gate to provide access to the Golf Course Property and the Pelican Bays and Pelican has agreed to grant an easement to the Town for ingress and egress over that portion of the Golf Course Property that is reasonably necessary to access the East Garage, the Town’s Bays and the Town’s Storage Bins.

I. All of the work and improvements that Pelican has agreed to perform under this Agreement shall be commenced when the Plans and Specifications (as hereinafter defined) have been finalized and Pelican has obtained all necessary permits and approvals from the Town to commence construction and shall thereafter be completed on or before December 31, 2018 (the “**Completion Date**”).

J. In addition to the above, the Parties have agreed to make certain other agreements that are more particularly set forth hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and promises as hereinafter expressed, and Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Recitals and Defined Terms.** The above recitals are true and correct and are incorporated herein by reference.

2. Access Easements. The Town hereby grants to Pelican, and its employees, contractors, and other agents, a perpetual non-exclusive easement over and across the existing drive as shown on the Site Plan for ingress and egress to provide access to the Golf Course Property and the Pelican Bays, such easement area being more particularly described on Exhibit A-1 attached hereto (the “Pelican Access Easement Area”). Pelican hereby grants to the Town, and its employees and agents, a perpetual non-exclusive easement over and across that portion of the Golf Course Property that is reasonably necessary for in ingress and egress to access and use of the East Garage, the Town’s Bays and the Town’s Storage Bins as shown on the Site Plan, such easement area being more particularly described on Exhibit A-2 attached hereto (the “Town Access Easement Area”).

3. Temporary Parking Easement. The Town hereby grants to Pelican, and its employees, contractors and other agents, a non-exclusive temporary easement to park no more than five (5) maintenance, delivery or construction work related vehicles on the Town’s existing fleet parking area as shown on the Site Plan during the period of time that Pelican is completing the work that Pelican has agreed to perform under this Agreement. Upon completion of such work, Pelican shall no longer have any parking rights over the Town’s fleet parking area. The maintenance of the Town’s existing fleet parking area shall be at the sole cost of the Town.

4. Plans and Specifications; Permits and Approvals. On or before ten (10) days from the Effective Date, Pelican shall provide a detailed set of plans and specifications to the Town for all the work to be performed by Pelican under this Agreement, which shall include all Site Improvements, the construction of the East Building, the Town’s Storage Bins and the East Building, and the New Access gate, for the Town’s approval (the “Plans and Specifications”). The Town agrees to reasonably approve the Plans and Specifications so long as they are consistent with all of the terms and conditions of this Agreement and contain adequate detail for the Town confirm that the construction of all improvements as shown on the Plan and Specifications, when completed, shall comply with all rules, regulations, ordinances and other applicable requirements of the Town. Pelican agrees not commence construction until the Plans and Specifications have been approved by the Town and all appropriate permits and approvals have been obtained by Pelican that are required to commence construction from the various applicable departments of the Town.

5. East Building. Pelican hereby agrees to construct the East Building, and associated Site Improvements, on the Town’s Property in the location as shown on the Site Plan in accordance with the Plans and Specifications and to complete construction of the East Building, and associated Site Improvements, on or before the Completion Date. The construction of the East Building, including the associated Site Improvements, shall be at the sole cost of Pelican. Pelican, at its sole cost and expense, shall keep the East Garage in good condition and repair, normal wear and tear excepted. Upon completion of the construction of the East Building and the associated Site Improvements, the Town hereby grants to Pelican, and it’s employees, a license to use the Pelican Bays for uses consistent with the operation of the Pelican Golf Club, without the payment of any consideration to the Town for so long as the Pelican Golf Club is being operated on the Golf Course Property. In the event that Pelican abandons the use of the Pelican Bays or defaults under the terms of this Agreement, Pelican’s license to use the Pelican Bays may be terminated by the Town. The license granted to Pelican under this Paragraph 5 shall not

be assignable or transferable and Pelican shall not allow any other entity or person to use and/or occupy the Pelican Bays.

6. Storage Bins. Pelican hereby agrees to remove the Existing Storage Bins and complete the construction and installation of the Town's Storage Bins in accordance with the Plans and Specifications on or before the Completion Date. The Town shall have the exclusive possession and use of the Town's Storage Bins.

7. East Boundary Fencing. The Town agrees to have installed a security/privacy fence along the eastern boundary of the Town's Property following completion of the Site Improvements on the Town's Property at the Town's cost.

8. Height Considerations/Restrictions. In order to obscure stored equipment from the golf course play areas, the Town agrees that it will not park or store equipment or materials exceeding seventy eight inches (78") within the Town's Property located south of the Town's Storage Bins except as may be required to address emergency situations or temporary maintenance projects, and provided Pelican adheres to the same restriction on the Golf Course Property.

9. New Access Gate. Pelican hereby agrees to remove the existing access gate providing access to the Golf Course Property and the Town's Property and install a New Access Gate on or before the Completion Date. The cost of the new access gate shall be shared equally by Pelican and the Town. The size and type of the New Access Gate shall be subject to approval by the Town and installation of the New Access Gate by Pelican shall be accordance with the Plans and Specifications. Pelican and the Town will have access cards or codes to open the New Access Gate, without any restrictions on the days and times that access is available. The continuing costs and expenses associated with maintaining and repairing the New Access Gate shall be shared equally between the Parties.

10. Insurance. The Town shall insure the East Garage, the Access Gate and other structures on the Town's Property against casualty loss under its casualty insurance policy. The other garages and structures on the Golf Course Property shall be insured by Pelican.

11. Indemnification. The Town hereby holds harmless and indemnifies Pelican, including all of its members, managers, officers, and employees, from and against any claim, loss, damage, cost, or expense, including attorney's fees and any costs they incur arising out of any act, error, omission, occurrence, or negligent act by the Town or its agents or employees relating to or involving the use and possession of the Golf Course Property granted under the terms of this Agreement; provided, however, nothing herein shall be construed to waive or modify the provisions of Section 768.28, Florida Statutes or the doctrine of sovereign immunity. Pelican hereby holds harmless and indemnifies the Town, including all of its officials, representatives, officers, and employees, from and against any claim, loss, damage, cost, or expense, including attorney's fees and any costs they incur arising out of any act, error, omission, occurrence, or negligent act by Pelican or its agents or employees relating to or involving the use and possession of the Town's Property, including the East Garage, granted under the terms of this Agreement.

12. Default. In the event of a breach of any of the terms, covenants and conditions of this Agreement, the non-defaulting party shall be entitled to any and all remedies available at law

or in equity, including, but not limited to, a claim for actual or consequential damages, or the claim for the equitable remedy of specific performance or mandatory or prohibitory injunction by a court of appropriate jurisdiction.

13. Attorneys' Fees. The prevailing Party in any litigation involving this Agreement shall be entitled to recover from the non-prevailing party all attorneys' fees, paralegal fees and costs and expenses incurred in connection with such litigation, including all costs of appeal or otherwise, including reasonable attorneys' fees and paralegal fees in the enforcement of this Agreement.

14. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement and the application of such terms or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

15. Covenants Running With the Land. The provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon the Parties and each of their successors and assigns, and all other persons acquiring any interest in any property described herein or any portion thereof, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the owners of such properties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to Florida law.

16. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue with respect to any litigation shall be in Pinellas County, Florida.

17. Notices. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall either be (i) hand-delivered; (ii) sent by Federal Express or a comparable overnight delivery service; (iii) sent by facsimile transmission, provided that an original copy of the transmission shall be sent by overnight delivery service for receipt to be effective; or (iv) sent by certified mail, return receipt requested. Notice shall be deemed to have been given upon mailing of such notice. The addresses for the purpose of this paragraph may be changed by giving written notice. Unless and until such written notice is received, the last address for a party stated in the first paragraph of this Agreement shall be deemed to continue in effect for all purposes hereunder. Notice delivered on a Saturday, Sunday or a national holiday shall be deemed delivered on the next business day.

18. No Waiver. No waiver of any of the provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

19. Reliance. The Parties each represent that they have relied upon, or had the opportunity to rely upon, the advice of an attorney of their own choice, have completely read

the terms of this Agreement, and fully understand and voluntarily accept the terms set forth herein.

20. Authority. The Parties each represent and warrant they have lawful right, power, authority and capacity to bind themselves to the terms of this Agreement. The execution and delivery of this Agreement does not (i) violate or conflict with the organizational documents of either Party, or (ii) breach the provisions of, or constitute a default under, any contract, agreement, instrument or obligation to which either Party is bound.

21. Effective Date; Counterparts. The **“Effective Date”** of this Agreement shall be the date on which the last of the Town or Pelican executes this Agreement. This Agreement may be executed in counterparts, each and all of which when taken together shall constitute one agreement and be binding on the Parties hereto.

[SIGNATURE PAGES 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

By: _____
Print Name: _____

By: _____
Name: _____
Title: _____

By: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, 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:

In the presence of:

TOWN OF BELLEAIR, FLORIDA, a Florida
municipal corporation

By: _____

Print Name: _____

By: _____

Name: JP Murphy, Town Manager

By: _____

Print Name: _____

Attest:

Town Clerk

Approved as to Form:

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by JP 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

Site Plan

EXHIBIT A-1

Pelican Access Easement Area

EXHIBIT A-2

Town Access Easement Area