

## **AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED WATER**

**THIS AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED WATER** (the "Agreement") is made and entered into this \_\_\_\_ day of May, 2017, by and between **TOWN OF BELLEAIR**, a Florida municipal corporation, whose mailing address is: 901 Ponce de Leon Boulevard, Belleair, FL 33756, ("Town"), and **PELICAN GOLF LLC**, A Florida limited liability company, whose mailing address is: 625 Court Street, Suite 200, Clearwater, FL 33756 ("Developer"). The Town and the Developer may also be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

### **RECITALS**

**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 the development of both parcels is referred to as the "Project; and,

**WHEREAS**, the Developer has applied for and received the Town's approval of a preliminary development plan for its proposed development of the Golf Course Parcel and the Clubhouse Parcel and incident thereto the Town and the Developer intend to enter into a development agreement which will set forth certain requirements for the Project; and,

**WHEREAS**, the Town previously owned, operated and maintained a wastewater treatment plant and associated facilities ("Facilities") but sold the Facilities to Pinellas County (the "County") in 2003; and,

**WHEREAS**, the Town entered into that Agreement for Supply and Use of Reclaimed Water for the Town of Belleair with the County on October 9, 2003 (hereafter "County Bulk Supply Agreement"); and,

**WHEREAS**, the County Bulk Supply Agreement controls the volume, availability, and price of reclaimed water which the Town has available to sell to consumers within the Town; and,

**WHEREAS**, the Town previously supplied reclaimed water to the Golf Course Parcel pursuant to that Agreement dated July 6, 1987 between the Town and the Postepe Corporation, a former owner of the Property (hereafter the "Prior Reclaimed Water Agreement"); and,

**WHEREAS**, it is the intent of the Parties that this Agreement shall be substituted for and used in place of the Prior Reclaimed Water Agreement; and,

**WHEREAS**, the Parties to this Agreement acknowledge and agree that the County is ultimately responsible for producing the reclaimed water to be used under this Agreement as that term is defined in Fla. Admin. Code Chapter 62-600 (hereafter "Reclaimed Water") which may be used for productive and beneficial purposes as permitted by the Florida Department of Environmental Protection ("FDEP"); and,

**WHEREAS**, the Developer desires to use Reclaimed Water from the Facilities for use on the Property.

**ACCORDINGLY**, in consideration of the above stated Recitals and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the Parties agree to the following terms and conditions:

**SECTION 1. RECITALS.** The above Recitals are true and correct, are incorporated herein, and by this reference made a part of this Agreement.

**SECTION 2. TERM OF AGREEMENT.** This Agreement shall be effective on the date of execution by the last Party and for a term of ten (10) years from the date of execution. The term of this Agreement shall be renewed automatically from year to year beyond the initial ten-year term unless terminated by the Developer or the Town by written notice not less than 180 days in advance of the term renewal. Notwithstanding anything to the contrary set forth herein, however, this Agreement may be terminated by the Town if the County terminates the County Bulk Supply Agreement.

**SECTION 3. SERVICE RATES.** Rates for the sale of reclaimed water shall be set and modified by the Town and are subject to the reserved power of the Town to modify rates, fees, and charges that are just, fair, and equitable.

a) The rates applicable to the Developer shall be those established by Ordinance of the Town Commission for the class of customers for which the Developer qualifies. The Developer and the Town agree that each and all of these rates may be changed by the Town Commission from time to time and that following the adoption of new rates, the new rates shall apply to the Developer pursuant to this Agreement.

b) For the existing and proposed uses under this Agreement, the current rate classification for which the Developer qualifies is \_\_\_\_\_ cents (\$0.\_\_\_\_) per thousand gallons.

#### **SECTION 4. USE OF RECLAIMED WATER; DEVELOPER'S SYSTEM.**

a) The Developer shall use the Reclaimed Water delivered by the Town for use on the Property and shall be responsible to ensure that any and all such use of the Reclaimed Water shall be in compliance and consistent with current and future rules and regulations of the Town, FDEP, the applicable Water Management District and any other governmental or regulatory agencies having jurisdiction over the Property or the use of the Reclaimed Water.

b) The Developer shall use the Reclaimed Water delivered by the Town in accordance with Town Utilities Department Operating Practices. The Town may, in its sole discretion, amend its Operating Practices from time to time and the Developer shall fully comply with such amended Operating Practices accordingly. Additionally, in no event will the Developer allow the discharge of the Reclaimed Water directly into surface waters of the State of Florida. Current Operating Practices are available from the Town Utilities Department.

c) The connection point and distribution system within the Property has previously been installed to use the volume of water per Section 6. The Developer agrees to submit construction plans for review under the Town's standard plan review process for any changes or expansion of the distribution system. The design and construction of the distribution system shall conform to Town requirements as same may exist from time to time. Developer shall install a meter of size, make and model acceptable to the Town to measure consumption for use on the Property at a location to be approved by the Town as a condition precedent to receipt of any Reclaimed Water hereunder. The Developer shall provide, in a manner approved by appropriate regulatory agencies, appropriate backflow prevention devices between the distribution system and any wells which are connected to groundwaters of the State of Florida.

d) The Developer shall be solely responsible for the ownership, operation, and maintenance of all portions of the storage, distribution, and irrigation system located downstream of the Meter. For the purposes of this Agreement, the "distribution system" is defined as the Developer's system of Reclaimed Water infrastructure built and operated for the purpose of conveying Reclaimed Water within the boundaries of the Property. The Developer shall agree to implement, maintain and renew any permits, licenses or other programs required by state, regional or federal regulatory agencies to continue or expand the Developer's Reclaimed Water system.

e) The Developer shall be responsible for installing and maintaining a reduced pressure zone (RPZ) principle back flow preventer at the Developer's point of service to the Property with any potable water system and is responsible for its inspections and operation according to all applicable federal, state and local Cross Connection Control ordinances and regulations.

f) If monitoring is required pursuant to the use of Reclaimed Water for the Property, the Developer is responsible for installation of monitoring

equipment, collecting, analyzing, and reporting all required information to the Town, the FDEP, and/or any other governmental agency requiring such monitoring.

g) Appropriate advisory signs shall be posted around the sites utilizing Reclaimed Water by the Developer to designate the nature of the water and its non-potability. The signs shall be designed and posted in accordance with current FDEP rules and regulations. The Developer is responsible for obtaining, installing and maintaining and ensuring signs are posted in accordance with applicable rules pertaining to such signage for the life of the Agreement.

h) The Developer will also take all reasonable precautions, including signs, labeling, and color-coding to clearly identify Reclaimed Water systems to prevent inadvertent human consumption. The signs, labeling, and color-coding shall be in accordance with applicable FDEP regulations.

i) No cross-connections shall be made between the Reclaimed Water system and a potable water system or any well. Should a groundwater well be on the property as a backup system or any other use, there shall be a minimum Double Check Back Flow Preventer installed at the well. The Developer shall fully comply with provisions of applicable Florida Administrative Codes and Town policies and ordinances pertaining to cross connections.

j) A buffer as required by FDEP, the Town, and all other applicable agencies shall be maintained between the edge of the wetted area of the Reclaimed Water irrigation system application site and any existing or approved (but not yet constructed) potable water supply wells.

k) The Developer shall operate its system such that Reclaimed Water does not discharge off-site, either directly or through a stormwater drainage system.

l) The Developer shall use the Reclaimed Water and operate its system in accordance with the rules and regulations, as they exist now and as they may be amended or implemented in the future, of the Town, FDEP, the applicable water management district, and other governmental or regulatory agencies having jurisdiction.

m) The Town shall have the right to interrupt Reclaimed Water service to the Developer in the event that the Developer fails to fulfill any of the responsibilities or requirements set forth in this Section 4. Service so interrupted would be resumed upon the Developer's complete fulfillment of the particular responsibility or requirement in question.

**SECTION 5. WATER QUALITY.** The Town will deliver to the Developer at the Meter, Reclaimed Water of a quality consistent with the requirements for "public access" treatment levels described in the rules of the FDEP, Chapters 62-600 through 62-650, Florida Administrative Code.

## **SECTION 6. DELIVERY OF RECLAIMED WATER.**

a) The Parties acknowledge and agree that the Town makes no guarantees of a specific minimum daily gallon delivery of Reclaimed Water since it can only provide what it receives from the County. Nevertheless, pursuant to and subject to the provisions of the County Bulk Reclaimed Water Agreement the Town will use its best efforts to deliver, to the extent needed by Developer, approximately one-half of the daily volume delivered by the County to the Town from the County system less a portion used by the Town for its town hall and recreation center grounds and sports fields. The Developer agrees that Reclaimed Water furnished from the Town's Facilities pursuant to the provisions of this Agreement shall be used by the Developer for irrigation uses on the Property. The total anticipated annual average reclaimed water demand is approximately 290,000 gallons per day.

b) If Reclaimed Water is not sufficiently available, the Town acknowledges and agrees that the Developer shall have the right, subject to proper permitting by the appropriate regulatory agencies, to: (i) utilize other water supplies delivered by the Town to the Property as supplemental water sources for industrial purposes on the Property, subject to availability and then existing rates, fees, and charges; and (ii) use water supplies in surface storage ponds on the Property and available from the Developer's legally permitted artesian well(s) located on the Property.

c) The Developer may be allowed to draw additional amounts of Reclaimed Water, subject to availability of the Reclaimed Water supplies as determined by the Town.

d) Both Parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification of the Reclaimed Water delivery. During such adverse conditions, the Town may restrict or curtail the use of the Reclaimed Water by the Developer until the Town determines that the adverse conditions have passed. During these periods, Reclaimed Water flow may be reduced significantly from normal levels. These reductions may include, but not be limited to, the volume and pressure of the Reclaimed Water supplied to the Developer. The Developer shall have the right to restrict or refuse the use of the Reclaimed Water to be delivered in the event of adverse weather conditions or unforeseen circumstances.

e) If the Town's transmission system fails for reasons or events beyond the Town's control, or when the Town performs maintenance or repairs the system, then delivery of Reclaimed Water under the requirements of this Agreement may be temporarily interrupted or limited in quantity.

## **SECTION 7. CONSTRUCTION OF CONNECTIONS.**

a) Developer shall be responsible for all costs and expenses associated with the Meter installations and connection to the Reclaimed Water

main that exists at the Property line necessary in accordance with the latest version of the Manual and the Code of Ordinances of the Town of Belleair, Florida, as same may be amended from time to time.

b) Easements for Reclaimed Water connections shall be on Developer's Property and provided by Developer to the Town at no cost for the Town to carry out its obligations or exercise rights under this Agreement. Developer shall provide such easement, in recordable form acceptable to the Town, to the area where the Meter is to be installed, together with sufficient easement area necessary to enable the Town to read and maintain any such Meter and to accommodate necessary antenna installation(s) for communications with the Town's Supervisory Control and Data Acquisition (SCADA) System. Easement areas shall be as shown on the Town approved construction plans.

**SECTION 8. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS.** If for any reason during the term of this Agreement, and through no fault of either Party to this Agreement, local, regional, state or federal governments, agencies or courts shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of Reclaimed Water by the Developer, then to the extent that such requirements shall affect the ability of either Party to perform any of the terms of this Agreement or significantly increase the cost to either Party, the affected Party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible or necessary, by the Parties hereto in conformity with such permits, approvals, or requirements.

**SECTION 9. CESSATION OF DELIVERY.** The Town may cease delivery of Reclaimed Water to the Developer if any invoice is not paid in full within thirty (30) days of the date of the invoice. Reclaimed Water service will be reinstated upon full payment of the invoice, together with any late payment fee called for in the Town's Reclaimed Water Rate Resolution. Additionally, the following costs shall be added as may be necessary to accounts with an outstanding balance due: returned check charges; lien charges; collection costs or fees; legal fees and expenses; any other costs outside the normal activity of the Town Utilities Department; and any sum permitted by law or a court if legal action is filed. The Town may terminate this Agreement, with thirty (30) days prior written notice to the Developer, if any such invoice described above is not paid in full within sixty (60) days of the date of the invoice.

**SECTION 10. 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 (3<sup>rd</sup>) 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 11. INSPECTION.** The Town shall have the right, upon written or oral notice to the Developer and when reasonably necessary, to enter upon the Property to review and inspect the Developer's operating practices and equipment as related to this Agreement and any backflow prevention devices between the Developer's system and any well and potable water system connection which is maintained by the Developer.

**SECTION 12. DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the formal Parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal Party hereto.

**SECTION 13. SEVERABILITY.** If any court finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated.

**SECTION 14. ASSIGNMENT.**

a) The Town shall have the right to transfer all or any part of the treatment, transmission, or distribution facilities and to assign all or any part of its rights and obligations under this Agreement.

b) The Developer shall have no right to assign or transfer this Agreement or the rights thereunder to any parcel of land not included in the Property, and any attempted assignment shall be void and of no effect and shall be treated by the Town as a material breach entitling the Town to terminate this Agreement as per Section 9(c) above.

c) The Developer must notify the Town in writing of any proposed sale or transfer of the Property at least ninety (90) days prior to the scheduled sale or transfer date. Upon the sale or transfer of the Property, this Agreement will terminate and any subsequent property Developer who wishes to continue to receive Reclaimed Water on the Property must enter into a new agreement with the Town, at the Town's option. In the event the Property is proposed to be subdivided and not sold in its entirety, the same notice provision above applies and this Agreement will be amended by the Parties to reflect that only the portion of the Property remaining in the Developer's possession will be subject to this Agreement. Failure by the Developer to timely notify the Town of a proposed sale, transfer, or subdivision of the Property will constitute a material breach of this Agreement entitling the Town to terminate this Agreement as per Section 9(c) above.

**SECTION 15. NON-WAIVER.** The failure of either Party to insist upon the other Party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release the other Party from its duties to comply with such obligations in all other instances.

**SECTION 16. INDEMNIFICATION.** The Developer will indemnify and hold harmless the Town from any and all claims, actions, and judgments, including all costs of defense and attorney's fees in defending against same and regarding property damage or bodily harm, arising from and related to the Developer's negligent use of the Town's Reclaimed Water provided pursuant to this Agreement. For purposes of this Section, the Developer's acts include the acts of any of the Developer's agents and/or employees.

**SECTION 17. APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, governed by, and interpreted according to the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall lie in the state courts located and lying within Pinellas County, Florida.

**SECTION 18. ENTIRE AGREEMENT.** This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the Parties and shall supersede and replace any and all prior or contemporaneous representations, negotiations, statements, understandings, or agreements between the Parties, whether verbal or written, relating to the matters set forth herein. The Parties hereto fully understand the terms and conditions of this Agreement, have entered into this Agreement voluntarily, and have received or had the opportunity to receive independent advice and legal counsel.



**SECTION 19. MODIFICATION.** Any and all modifications to the provisions herein shall be by mutual agreement of the Parties, in writing, and executed by the Parties thereto.

**SECTION 20. ADDITIONAL CONDITIONS TO AGREEMENT; TERMINATION OF PRIOR RECLAIMED WATER AGREEMENT.** This Agreement shall not take effect unless and until the Property is sold by the Town to the Developer. The Town's obligations to deliver Reclaimed Water shall be subject to installation of the Meter and payment of applicable rates, fees, and charges for the Reclaimed Water as specified herein. The Parties agree that a memorandum of this Agreement may be recorded in the Public Records of Pinellas County, Florida. Upon execution of this Agreement, the Parties agree that the Prior Reclaimed Water Agreement is hereby terminated, void, and of no further force or effect.

**IN WITNESS WHEREOF,** the Parties hereto have caused these presents to be executed as of the dates indicated below.

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:

\_\_\_\_\_  
David Ottinger, Town Attorney

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"**  
**Property Legal Description**