

**ORIGINAL DOCUMENTS CHECKLIST & ROUTING SLIP
TO ACCOMPANY ALL ORIGINAL DOCUMENTS SENT TO
THE BOARD OF COUNTY COMMISSIONERS OFFICE FOR SIGNATURE**

11B

Print on pink paper. Attach to original document. The completed routing slip and original documents are to be forwarded to the County Attorney Office at the time the item is placed on the agenda. All completed routing slips and original documents must be received in the County Attorney Office no later than Monday preceding the Board meeting.

**** ROUTING SLIP ****

Complete routing lines #1 through #2 as appropriate for additional signatures, dates, and/or information needed. If the document is already complete with the exception of the Chairman's signature, draw a line through routing lines #1 through #2, complete the checklist, and forward to the County Attorney Office.

Route to Addressee(s) (List in routing order)	Office	Initials	Date
1.			
2. (Enter your Dept here)			
3. County Attorney Office	County Attorney Office	JAK/MB	9/6/23
4. BCC Office	Board of County Commissioners	RL by MB [s]	9/6/23
5. Minutes and Records	Clerk of Court's Office		

PRIMARY CONTACT INFORMATION

Normally the primary contact is the person who created/prepared the Executive Summary. Primary contact information is needed in the event one of the addressees above may need to contact staff for additional or missing information.

Name of Primary Staff Contact / Department	Madison Bird	Phone Number	2939
Agenda Date Item was Approved by the BCC	8/22/23	Agenda Item Number	11B
Type of Document(s) Attached	Management Agreement	Number of Original Documents Attached	1
PO number or account number if document is to be recorded			

INSTRUCTIONS & CHECKLIST

	Initial the Yes column or mark "N/A" in the Not Applicable column, whichever is appropriate.	Yes (Initial)	N/A (Not Applicable)
1.	Does the document require the chairman's signature? (stamped unless otherwise stated)	MB	
2.	Does the document need to be sent to another agency for additional signatures? If yes, provide the Contact Information (Name; Agency; Address; Phone) on an attached sheet.		N/A
3.	Original document has been signed/initialed for legality. (All documents to be signed by the Chairman, with the exception of most letters, must be reviewed and signed by the Office of the County Attorney.)	MB	
4.	All handwritten strike-through and revisions have been initialed by the County Attorney Office and all other parties except the BCC Chairman and the Clerk to the Board.	MB	
5.	The Chairman's signature line date has been entered as the date of BCC approval of the document or the final negotiated contract date whichever is applicable.	MB	
6.	"Sign here" tabs are placed on the appropriate pages indicating where the Chairman's signature and initials are required.	MB	
7.	In most cases (some contracts are an exception), the original document and this routing slip should be provided to the County Attorney Office at the time the item is uploaded to the agenda. Some documents are time sensitive and require forwarding to Tallahassee within a certain time frame or the BCC's actions are nullified. Be aware of your deadlines!		N/A
8.	The document was approved by the BCC on <u>8/22/23</u> and all changes made during the meeting have been incorporated in the attached document. The County Attorney Office has reviewed the changes, if applicable.	JAK/MB	N/A is not an option for this line.
9.	Initials of attorney verifying that the attached document is the version approved by the BCC, all changes directed by the BCC have been made, and the document is ready for the Chairman's signature.	JAK/MB	N/A is not an option for this line.

**MANAGEMENT AGREEMENT
PELICAN BAY COMMUNITY PARK**

THIS MANAGEMENT AGREEMENT (“Agreement”) is made and entered into on this 22nd day of August, 2023 (“Effective Date”), by and between Collier County, a political subdivision of the State of Florida, hereinafter referred to as the “County,” and the Pelican Bay Foundation, Inc., a Florida not-for-profit corporation, hereinafter referred to as the “Foundation,” (collectively referred to as the “Parties”).

RECITALS:

WHEREAS, the County owns a community park along Vanderbilt Beach Road called Pelican Bay Community Park (the “Park”); and

WHEREAS, the Foundation is the master property owner’s association for the Pelican Bay Planned Unit Development, that desires to manage a portion of the Park including the tennis courts and future pickleball courts in addition to its existing powers, rights, and responsibilities; and

WHEREAS, together with and in consideration for obtaining a use right and possessory interest in the Premises, the Foundation will make certain capital improvements to the Park to be owned by the County, including the construction of parking spaces, as well as new tennis and pickleball courts, and 6,000 sf building, worth an estimated \$6 million dollars; and

WHEREAS, the County wishes to allow the Foundation to manage racquet sport activities for the benefit of the public and defined private usage, including court rentals and tournaments, under the terms of this Management Agreement; and

WHEREAS, the Parties have determined it is in their respective best interests to approve the proposed Management Agreement.

WITNESSETH:

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the County and the Foundation hereby agree as follows:

1. Description of Premises. This Management Agreement is for the Premises graphically depicted in Exhibit A, and is comprised of 8 tennis courts, 20 pickleball courts, a to be built 6,000 square foot building to include pro shop/concession/maintenance/restrooms

("Maintenance Building"), paved parking lot, fencing, landscaping and irrigation, tennis posts, signage, sound barrier for the pickleball courts, water fountains, benches and seating.

2. Capital Improvements. The Foundation will complete or cause to be completed capital improvements to the Park as detailed in Exhibit B, which includes but is not necessarily limited to, the construction of new tennis courts, pickleball courts, fencing, sound mitigation, shade and seating areas, a new Maintenance Building, expansion of the existing parking lot, addition of bike racks, relocation of the existing baseball/softball field, and augmentation of landscaping (collectively referred to as "Improvements"). The Foundation will coordinate with the County with respect to the Improvements which shall be constructed in accordance with plans and specifications approved in writing by the County. If the County and Foundation do not agree to the Improvements within 180 days of the Effective Date, this Agreement may be terminated by either party on written notice to the other. The Foundation shall also pay for the ADA approved artificial turf materials (but not the labor to install such materials) for resurfacing of the playground that will be renovated by Collier County in the future, which payment shall be capped at \$100,000, which resurfacing shall not constitute part of the Improvements. The Foundation shall be responsible for all costs associated with the design, permitting and construction of the Improvements, which construction shall be completed as follows: (1) the tennis courts and pickleball courts within six (6) months of commencing construction of the courts; and (2) the remaining Improvements within twelve (12) months of commencing construction of the remaining Improvements. The completion dates may be extended by the parties. Upon completion of the Improvements, the County shall own the Improvements.

3. Management. The public shall have access to the Premises. The County shall allow the Foundation to manage racquet sports activities, which includes the rental, reservation, instruction, and hosting of events and tournaments on the Premises, all of which uses the County has found to be in the public's interest. No more than fifty percent (50%) of the pickleball courts shall be for usage by members of the Foundation. No more than thirty-eight percent (38%) of tennis courts will be for usage by members of the Foundation. Usage calculations shall be made during fully occupied periods when no courts are unused. Usage data will be aggregated monthly for reporting and compliance purposes. The Foundation shall maintain records documenting this usage and shall comply with all public records laws.

4. Usage Fees. The Foundation shall charge usage fees for the courts in accordance with the existing Collier County Parks and Recreation fee policy rates and fees pursuant to Resolution 2023-87, as may be amended from time to time. All fees received will be retained by the Foundation.

5. Maintenance. Throughout the term of this Agreement, at its own cost, and without any expense to the County, the Foundation shall keep and maintain the Premises in good, sanitary, and neat order, condition, and repair, and shall abide with all applicable law. Such maintenance and repair shall include, but not be limited to, surface areas, irrigation, netting, fencing, landscaping, lighting, fountains, benches and seating. If in the opinion of the County the Premises are not in such compliance, the Foundation will be so advised in writing. If corrective action is not begun within thirty (30) days of the receipt of such notice and prosecuted diligently until corrective action is completed, the County may cause the same to be corrected and the Foundation shall promptly reimburse the County for the expenses incurred. The Foundation shall resurface the tennis and pickleball courts if needed as reasonably determined by the Parties. The Foundation shall line and reseal the parking lot if needed as reasonably determined by the Parties. The County will pay all fees related to all utilities, including, but not limited to, electric, water, waste water and waste management related to the Premises.

6. Park Rules and Regulations. The Foundation and its members shall at all times abide by and observe the County Park Rules and Regulations to the extent the County Rules and Regulations do not conflict with the terms of this Agreement.

7. Use of Premises. The Premises shall be used exclusively for tennis and pickleball play, and related uses, including without limited to selling concessions, operation of a pro shop, private/group lessons, leagues, tournaments and other uses related to the operation of a tennis and pickleball facility. The sale of alcoholic beverages is not permitted, however, the Foundation may sell alcoholic beverages at special events/tournaments if the Foundation has obtained the proper licensing/tax permits for such sales and has obtained prior written approval from the Director of the Parks and Recreation Division, or designee. The Foundation will not: (i) do or permit to be done in or about the Premises, nor bring to, keep or permit to be brought or kept in the Premises, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation which is in force or which may be enacted or promulgated after the Effective Date of this Agreement; (ii) do or permit anything to be done

in or about the Premises which will in any way obstruct or interfere with the ability of the County to operate and maintain the Park; (iii) do or permit anything to be done in or about the Premises which is dangerous to persons or property; or (iv) cause, maintain or permit any nuisance in, on or about the Premises or commit or allow to be committed any waste in, on or about the Premises. At all times during the Term of this Agreement, so long as Foundation is not in default hereunder, and subject to the shared rights of public use set forth in Section 3 above, the Foundation will have the exclusive use, occupancy, and quiet enjoyment of the Premises.

8. Lighting of Courts. Tennis courts shall be lit for play until 9PM daily. Pickleball courts shall not be lit unless approved by the County, however, the Foundation shall construct all pickleball courts with electrical wiring, conduits, and footings should lighting be appropriate in the future. If pickleball court lighting is approved by the County and the Foundation, their installation and maintenance costs shall be the responsibility of the Foundation.

9. Modifications. The Foundation shall not make any modifications, alterations, additions, or improvements to the Premises or to the Park, except that the Foundation may construct, alter, remove, repair or relocate upon the Premises those improvements identified in Exhibit B and all necessary utilities, infrastructure, and related improvements as part of the capital improvements, without the County's prior written consent. This does not include maintenance of the Premises. All the personal property shall remain the property of the Foundation. At the expiration or earlier termination of this Agreement, the Foundation will have the right to remove all personal property from the Premises.

10. County's General Reservations and Representations. The County shall at all times, retain overall control of the Park. The Foundation shall have the right to install and maintain security and access control devices and measures within and surrounding the area that is managed and maintained by the Foundation. Should the County require other out-sourcing to concessionaires, or public-private arrangements at the Park, the Foundation will be given first rights of refusal to perform said required duties. This includes, but is not limited to, any additional tennis or pickleball courts. No provision contained herein shall be interpreted or construed to prevent or interfere with the County's police powers. To the extent deemed necessary, County, at its sole discretion, reserves the right to exercise its police powers to suspend or prohibit the use of the Premises and related ancillary facilities in furtherance of the general public health, safety, and welfare.

County represents that: (a) County has the full right, power, and authority to enter into this Agreement and to perform its covenants for the entire Term created hereby; (b) to the best of County's actual knowledge, the Premises has adequate required public utilities for the intended use; (c) to the best of County's actual knowledge, there are no violations of any federal, state, county or municipal law, code, ordinance, order, regulation, rule or requirement affecting the Premises, including, but not limited to, those relating to zoning, subdivision, environmental, building, fire and health, and no notice asserting any violation has been received by County; (d) there is no pending or, to the best of County's actual knowledge, threatened litigation affecting the Premises; (e) there is no pending or, to the best of County's actual knowledge, threatened condemnation or similar proceedings affecting the Premises; (f) there are no leases, tenancies, licenses or other rights to occupancy or management or use for any portion of the Premises; (g) there are no existing or pending agreements of sale, options to purchase or rights of first refusal with respect to all or any portion of the Premises; (h) there are no management, labor, collective bargaining, service, equipment, maintenance or other management agreements affecting the Premises; (i) there are no liens affecting the Premises and the County will not allow any liens to be filed against the Premises or any of the Foundation's improvements or personal property during the term of this Agreement; (j) County has made no commitments for dedications, payments or other transfers which are binding on the Foundation or the Premises; and (n) County has not received notice, inspection, or report claiming any defects or deficiencies in the Premises that has not been corrected.

11. Insurance. As long as the insurance coverages set forth in this paragraph are available to be obtained by the Foundation, the Foundation shall, at its own expense, secure and deliver to the County not less than thirty (30) days prior to the Effective Date of this Agreement and shall keep in force at all times during the term of this Agreement: (i) Commercial general liability insurance on an occurrence-based policy in form reasonably acceptable to the County, including property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, Two Million Dollars (\$2,000,000) aggregate, and at least five million dollars (\$5,000,000) umbrella coverage and broad form property damage. The Foundation will name the County as Additional Insured, for ongoing operations, with a waiver of subrogation. All insurance companies providing coverage under this Agreement, shall be licensed to do business

in the State of Florida and have an A.M. Best “A” rating.” The coverage must be primary and non-contributory. If the Foundation permits a third party to host an event on the Premises or perform work on the Premises (such as a contractor or subcontractor), the County will require that the third party provide comprehensive liability insurance coverage for all of its activities on the Premises and with such insurer and coverage amounts required by the County. The third party will be required to list the County and the Foundation as additional insured for all such insurance coverage and shall provide County with written proof of said coverage before commencing any of the activities permitted under this Agreement.

12. Indemnification. The Foundation shall indemnify, defend and hold harmless “Collier County, Florida, a political subdivision of the State of Florida”, and its officers, directors, agents, and employees from and against any and all claims, losses, demands, loss, liabilities, costs, expenses (including reasonable attorneys’ fees) causes of action, suits, or judgments from (i) any failure by the Foundation to perform its obligations hereunder, or (ii) any accident, illness, injury, or for death to persons or for loss of or damage to property arising out of, or in connection with, the use and occupancy of the Premises managed or maintained by the Foundation, its officers, agents, sub-contractors, employees, participants or invitees. In the event such a claim is made, or suit is filed, the County shall give the Foundation written notice thereof, and the Foundation shall defend or settle same at its sole expense. To the extent permitted by law, and as limited and pursuant to the provisions of Section 768.28, Florida Statutes, the County shall indemnify, defend and hold harmless the Foundation for all claims, losses, demands, loss, liabilities, costs, expenses (including reasonable attorneys’ fees) causes of action, suits, or judgments from (i) any failure by the County to perform its obligations hereunder, or (ii) any accident, illness, injury, or for death to persons or for loss of or damage to property arising out of, or in connection with, the use and occupancy of areas of the Park outside the direct management and maintenance of the Foundation.

13. Term. The term of this Agreement and shall commence on the date the County authorizes the Foundation to take possession of the Premises, and unless terminated earlier by the Parties, shall terminate on the 30th year anniversary of the date the Foundation completes construction of the tennis and pickleball courts (“Term”). One year prior the end of the Term or any renewal term, the County or Foundation shall provide written notice indicating that Party’s intent to either (i) renew the Agreement on the same terms and conditions hereof, for an

additional fifteen (15) year term or (ii) terminate the Agreement at the end of the Term (or any renewal term as applicable).

14. Default. Failure of the County or Foundation to comply with any material covenant or condition of this Agreement, which failure is not commenced to be cured within ninety (90) days from receipt of written notice and prosecuted diligently until corrective action is completed shall constitute a default, whereby the non-defaulting party may at its option, terminate this Agreement by giving the defaulting party thirty (30) days written notice unless the default is corrected within the thirty (30) day notice period (or such additional time as is agreed in writing by the non-defaulting party as being required to correct such default). As an alternative, if the defaulting party does not timely cure the default, the remedy of specific performance may be utilized. Should the County elect to terminate this Agreement due to the Foundation's breach, there will be no reimbursement to the Foundation for the cost of the Improvements. Should the Foundation elect to terminate this Agreement due to the County's breach, the County shall reimburse the Foundation for the cost of the Improvements less 1/360th per month that this Agreement has been in effect.

15. Termination for Convenience. Either Party may terminate this Agreement at any time with or without cause with thirty (30) days' written notice. If this Agreement is terminated for convenience by the County, the County shall pay to the Foundation the cost of the Improvements less 1/360th per month that this Agreement has been in effect. If this Agreement is terminated by the Foundation, the County shall not be responsible for any costs associated with the Improvements.

16. Casualty. The County shall carry casualty insurance for the replacement value of the improvements. If all or part of the Improvements are destroyed or damaged to any extent, as reasonably determined by the County, by fire or other casualty, the County shall restore the Improvements to substantially their condition prior to such casualty event, unless otherwise mutually agreed upon by the Parties. Notwithstanding the foregoing, if the casualty damage occurs during the last three (3) years of the Term of this Agreement, the County will have the option not to restore and to instead remove all debris and remaining personal property at the County's expense, and to terminate this Agreement. Should the County elect to terminate this Agreement, the County shall reimburse the Foundation for the cost of the Improvements less 1/360th per month that this Agreement has been in effect.

17. Legal Notices. Notices hereunder shall be given in writing to the Parties set forth below and shall be made by hand delivery, overnight delivery or by regular mail. If given by hand delivery or regular mail, the notice shall be deemed to have been given when actually received. Notice shall be deemed to have been received on the next successive business day to the date of the courier waybill if sent by nationally recognized overnight delivery service. For the purpose of calculating time limits which run from the giving of a particular notice the time shall be calculated from receipt of the notice. Time shall run only on business days which, for purposes of this Agreement shall be any day other than a Saturday, Sunday or legal public holiday. Any notices required or permitted to be given under this Agreement shall be addressed to the parties at the addresses set forth below:

COUNTY: County Manager
Collier County Manager's Office
3299 East Tamiami Trail, Suite 202
Naples, Florida 34112

FOUNDATION: Pelican Bay Foundation, Inc.
Attn: Jim Hoppensteadt
6251 Pelican Bay Blvd.
Naples, Florida 34108

Each party to this Agreement has the affirmative duty to notify the other party hereto in writing of any change in the address provided above. Failure to do so will excuse any failure to receive timely notice that has been sent to the address provided herein.

Legal Matters

18. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

19. The Parties acknowledges that the failure of this Agreement to address any permit, condition, term, or restriction shall not relieve the Parties, or their successors or assigns, of the necessity of complying with any law, ordinance, rule, or regulation governing said permitting requirements, conditions, terms or restrictions.

20. In the event state or federal laws are enacted after the execution of this Agreement, which are applicable to and preclude in whole or in part the Parties' compliance with

the terms of this Agreement, then in such event this Agreement shall be modified or revoked as is necessary to comply with such laws, in a manner which best reflects the intent of this Agreement.

21. The Foundation shall execute this Agreement prior to it being submitted for approval by the Collier County Board of County Commissioners. This Agreement shall be recorded by the Foundation, at its sole cost and expense, in the Official Records of Collier County, Florida, within fourteen (14) days after the County enters into this Agreement. A copy of the recorded document will be provided to the County within fourteen (14) days of recording.

22. This Agreement shall be governed by and construed under the laws of the State of Florida. The Parties shall attempt in good faith to resolve any dispute concerning this Agreement through negotiation between authorized representatives. If these efforts are not successful, the Parties shall utilize the County's Alternative Dispute Resolution procedure to address any disputes. This Agreement may be enforced by the Parties in any manner authorized by law but the only remedies a party may seek are specific performance for violation of the terms and conditions of this Agreement, or termination as set forth elsewhere in this Agreement. Each party shall bear its own costs and attorney's fees related to this matter.

23. This Agreement is personal to each party, and the rights and interests hereunder may not be sold, transferred, or assigned, in whole or in part, without the prior written consent of the other Party, which such other Party may deny in its sole discretion.

24. There are no third party beneficiaries to this Agreement.

25. This Agreement constitutes the entire agreement between the Parties with respect to the activities noted herein and supersedes and takes the place of any and all previous agreements entered into between the Parties hereto relating to the transactions contemplated herein. All prior representations, undertakings, and agreements by or between the Parties hereto with respect to the subject matter of this Agreement are merged into, and expressed in, this, and any and all prior representations, undertakings, and agreements by and between such Parties with respect thereto hereby are canceled. This Agreement shall only be amended by mutual written consent of the Parties hereto or by their successors in interest.

26. Nothing contained herein shall be deemed or construed to create between or among any of the Parties any joint venture or partnership nor otherwise grant to one another the right, authority or power to bind any other party hereto to any agreement whatsoever.

27. Except to the extent necessary to construct the Improvements and then only in accordance with applicable law, the Foundation will not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous materials upon or about the Premises, nor permit employees, representatives, agents, contractors, sub-contractors, sub-sub-contractors, material men and/or suppliers to engage in such activities upon or about the Premises.

28. The Foundation will not incur any liability with respect to or be responsible for any failure to perform or delays in performing any of Foundation's obligations hereunder if such failure is due to a Force Majeure Event. A "Force Majeure Event" means, but is not limited to, an act of war; domestic and/or international terrorism; civil riots or rebellions; labor disturbances, supply shortages, and/or supply chain disturbances; quarantines, embargoes, moratorium and/or other governmental action; pandemics, epidemics, local disease outbreaks, public health emergencies; extraordinary elements of nature or acts of God; and/or or other events beyond the reasonable control of the Foundation. Upon the occurrence of a Force Majeure Event, (i) the amount of time for Foundation to perform any of Foundation's obligations shall automatically be extended, without further action required by either party, by the amount of time Foundation is delayed in performing such obligation, and (ii) the County shall not be entitled to any damages nor shall any such delay, failure or interruption in Foundation's performance abate or suspend the County's obligations required by this Agreement.

29. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances will, to any extent, be deemed lawfully invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected thereby and each term, covenant, and condition of this Agreement will be valid and enforced to the fullest extent permitted by law.

30. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

FOR THE COUNTY:

BOARD OF COMMISSIONERS
COLLIER COUNTY, FLORIDA

ATTEST:
CRYSTAL K. KINZEL, Clerk

By: [Signature]
Attest as to Chairman's Deputy Clerk
signature only

By: [Signature]
Rick LoCastro, Chairman

Approved as to form
and legality:

[Signature]
Jeffrey A. Klatzkow
County Attorney

WITNESSES:

[Signature]
Signature
James Hoppersteadt
Print Name

[Signature]
Signature
Melanie Miller
Print Name

PELICAN BAY FOUNDATION, INC.,
a Florida not-for-profit corporation

By: [Signature]
Michael A. Ruffolo
Name & Title
Chairman of the Board
Pelican Bay Foundation

Pelican Bay Community Park Proposed Improvements

As part of the Management Agreement, the Pelican Bay Foundation will:

- Expand the existing parking by at least 30 parking spots with bike racks and landscaping.
- Demolish existing concrete racquetball / handball court and small building to accommodate 2 new Har-Tru (clay) courts.
- Construct 2 new Har-Tru tennis courts with new irrigation, fencing, lighting, shaded seating, and landscaping.
- Completely refurbish the existing 6 clay courts including irrigation and fencing as necessary.
- Relocate the baseball / softball backstop to the northeast corner of the green space.
- Build 20 new pickleball courts with fencing, noise mitigation, shaded seating, electrical conduit for lighting, but no lighting erected, and landscaping.
- Build a new publicly accessible pro shop with restrooms and court maintenance space.
- Fund, on a one-time basis, the surface to provide accessibility / inclusion of the existing playground.