



**AGENDA REPORT
April 10, 2018**

SUBJECT:

Brevard County, Florida v. Eugene Garrote, et al.; Case No.: 05-2018-CA- 018288-XXXX-XX

FISCAL IMPACT:

Fiscal impact: Brevard County shall be paid \$200,000.00 over a period of 5 years.

Fund Account and Cost Code: 4311- R30181-3696000

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

It is requested that the Board approve and authorize the Chair to execute a settlement agreement in the amount of \$200,000.00 for the release of all claims against Eugene Garrote, Integrity Golf Company LLC, IGC–Habitat Golf Course LLC, IGC–Spessard Holland Golf Course LLC, and IGC-Savannahs Golf Course LLC.

SUMMARY EXPLANATION and BACKGROUND:

A complaint was filed against Eugene Garrote, Integrity Golf Company LLC, IGC–Habitat Golf Course LLC, IGC–Spessard Holland Golf Course LLC, and IGC-Savannahs Golf Course LLC, for breach of contract relating to the operation and management of the 3 county-owned golf courses.

On March 15, 2018, the Board of County Commissioners met in an attorney-client private meeting and approved the settling of this matter in return for the payment of \$200,00.00 to Brevard County under the following terms:

- The Defendants shall pay Brevard County \$200,000.00 over a period of 5 years. Specifically, \$20,000.00 dollars shall be paid up front with subsequent monthly payments of \$3,000.00.
- Eugene Garrote will stipulate to a judgment against himself, personally, if there is a default in payment.
- The stipulated judgment will be in the amount of \$500,000.00.

The initial payment of \$20,000.00 is being held in the Defendants' attorney's trust account pending execution of the settlement agreement.

Staff requests:

1. approval of the attached settlement agreement and authorization for the Chair to execute; and
2. authorization for staff to draft and execute any other necessary documents in order to effectuate settlement of this matter pursuant to the above terms.

Contact information: Matthew Soss, Assistant County Attorney/Eden Bentley, Interim County Attorney Matthew.Soss@brevardfl.gov

CLERK TO THE BOARD INSTRUCTIONS:

Please provide two (2) certified copies of the Settlement Agreement to the CAO.

ATTACHMENTS:

Description

- **Agreement**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 11, 2018

MEMORANDUM

TO: Eden Bentley, Interim County Attorney

RE: Item II.D.2., Brevard County, Florida v. Eugene Garrote, et al.; Case No. 05-2018-CA-018288-XXXX-XX

The Board of County Commissioners, in regular session on April 10, 2018, executed a Settlement Agreement in the amount of \$200,000 for the release of all claims against Eugene Garrote, Integrity Golf Company, LLC, IGC-Habitat Golf Course, LLC; IGC-Spessard Holland, LLC; and IGC-Savannahs Golf Course, LLC. Enclosed are two certified copies of the Settlement Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encls. (2)

cc: Budget
Finance

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT ("Agreement") is made on this 10 day of April, 2018, by and between Plaintiff Brevard County Florida Board of County Commissioners, hereinafter referred to as "Brevard County," and Defendants Eugene Garrote; Integrity Golf Company, LLC; IGC-Habitat Golf Course, LLC; IGC-Spessard Holland Golf Course; and IGC-Savannahs Golf Course, LLC, each of whom is referred to herein as "Party" or, collectively, as the "Parties."

WITNESSETH:

WHEREAS, the Plaintiff filed an action regarding alleged claims against the Defendants in the case styled: *Brevard County v. Eugene Garrote; Integrity Golf Company, LLC; IGC-Habitat Golf Course, LLC; IGC-Spessard Holland Golf Course; and IGC-Savannahs Golf Course, LLC*, Case No. 05-2018-CA-018288-XXXX-XX, in the County Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (the "Litigation"); and

WHEREAS, the Parties desire to enter into this Agreement, which constitutes a full, complete, final and binding resolution between and among them of all issues that were alleged or could have been alleged in the Litigation; and

WHEREAS, the Parties deem the consideration provided as adequate and sufficient.

NOW THEREFORE, in consideration of the mutual releases, promises and benefits hereinafter set forth and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties acknowledge that the above and foregoing recitals which apply to each of them are true and correct and are essential terms of this Agreement which are incorporated herein by this reference, except only that no admission against interest or liability is intended or made by this adoption by reference.

2. **Representations.** On behalf of themselves, each of the Parties hereby warrant, covenant and represent to the other Party that the full execution and delivery of this Agreement was duly authorized by all necessary corporate actions by that respective Party. Each of the Parties hereby further warrants, covenants and represents that the terms of this Agreement, and the contract contemplated hereby, constitute valid and legally binding and enforceable obligations of that respective Party. No consent, approval, or other action by any entity, person, group of persons, or governmental authorities are required with the execution, delivery, and performance of this Agreement by the Parties. Prior to entering into this Agreement, the Parties caused their own investigation to be made regarding this Agreement and the Litigation. The parties have entered into this Agreement based upon that investigation and have relied upon the advice of independent legal counsel. The Parties were not induced to enter into this Agreement by any representations of any other Party other than those representations expressly set forth in this Agreement. Except as stated herein, the releases and covenants exchanged herein are executed without reliance upon any statement or representation of any other Party concerning the nature, merit, legal liability, or value of

any claim or claims released herein, or any other matter.

3. Settlement Payment and Dismissal with Prejudice.

a. In consideration of this Agreement and in exchange for the terms and conditions set forth herein, and all other consideration described herein, the receipt and sufficiency of which is hereby acknowledged, and without admission of liability by any of the Parties, and in full satisfaction of all claims, the Plaintiff agrees to dismiss its claims against Defendants in the Litigation with prejudice as provided herein.

b. Defendants agree to pay the sum of Two Hundred Thousand and 00/100 dollars (\$200,000.00) in lawful money of the United States of America ("Settlement Payments"), to the Plaintiff as follows: \$20,000.00 upon execution of this Agreement and monthly payments of \$3,000.00 for sixty (60) consecutive months thereafter. Said monthly payments shall be due on or before the 5th of each month. Failure to make an installment payment on or before the 5th of a month shall constitute a default on the Defendants' obligations as described herein.

c. The Settlement Payments will be made payable to "Brevard County Board of County Commissioners," and delivered to the following address: ATTN: Parks and Recreation Director, Brevard County Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Bldg B., Viera, FL 32940, or such other address as Plaintiff may direct in writing.

d. The Parties agree that within five days after full payment of the Settlement Payments are made as provided herein, the Parties will cause to be executed the Joint Stipulation for Dismissal with Prejudice, which shall thereupon be filed by the Plaintiff within thirty (30) business days of receipt of the final installment of \$3,000.00 of the Settlement Payments in accordance with the terms herein.

e. The Parties agree that within five days after execution of this Settlement Agreement, the Parties will cause to be executed the Joint Motion for Order Adopting Settlement, which shall thereupon be promptly filed by Plaintiff along with the proposed Order Adopting Settlement.

4. No Admission of Liability. This Agreement resolves any and all disputes between the Parties arising from or in any way related to the Litigation. Each Party hereto expressly acknowledges and agrees this resolution is made for the purpose of avoiding the expense associated with litigating any issues arising out of or related to the Litigation and that the Parties individually and collectively deny any wrongdoing. This Agreement shall be inadmissible as provided in Section 90.408, *Florida Statutes*, except to the extent necessary for its enforcement, or as otherwise required under the applicable provisions of Chapter 720, *Florida Statutes*.

5. Released Parties. For the purpose of this Agreement, the term "Released Party" or "Released Parties" for all purposes in this Agreement shall mean a Party hereto and/or the Parties, as the context may dictate, and their respective partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities,

and any and all agents, accountants, attorneys, insurers and sureties of the Parties, to include their respective partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities, of the foregoing, as well as all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

6. The Plaintiff's Release of Defendants. The Plaintiff hereby fully and forever, irrevocably and unconditionally releases, remises, discharge and acquits the Defendants and their respective heirs, trustees, beneficiaries, partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities, and any and all agents, accountants, attorneys, insurers and sureties of the Parties, to include their respective partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities, of the foregoing, as well as all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, from any and all claims, demands, actions and causes of action, lawsuits, claims for costs, attorney's fees, damages, losses and expenses of any kind or nature based on or relating in any way to the claims alleged or any and all other claims which could have been alleged against the foregoing Released Party in the Litigation.

7. Defendants' Release of the Plaintiff. The Defendants, hereby fully and forever, irrevocably and unconditionally release, remise, discharge and acquit the Plaintiff and its respective heirs, trustees, beneficiaries, partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities, and any and all agents, accountants, attorneys, insurers and sureties of the Plaintiff, to include their respective partners, officers, directors, stockholders, members, employees, parents, subsidiaries, affiliates, successors, assigns, related entities, and affiliated entities, of the foregoing, as well as all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, from any and all claims, demands, actions and causes of action, lawsuits, claims for costs, attorney's fees, damages, losses and expenses of any kind or nature based on or relating in any way to the claims alleged or any and all other claims which could have been alleged against the foregoing Released Party in the Litigation.

8. Plaintiff's Default Remedy. In the event that Defendants shall fail to make payment of any one of the payments as required herein, constituting the Settlement Payments described herein, then in that event, Plaintiff shall be entitled to a default Judgment of \$500,000.00 against the Defendants jointly and severally, as provided for herein.

Brevard County shall give notice of default to Defendants c/o Alan Taylor via electronic mail to ataylororlando@gmail.com with paper copy to Alan Taylor, 5728 Major Blvd. Suite: 700. Orlando, Florida 32819. In the event that Defendants fail to cure the default within five (5) days of receipt of the notice of default, Brevard County shall be entitled to file this Settlement Agreement with the Court along with an affidavit of default and a Motion for Default Final Judgment whereupon Brevard shall be entitled to obtain a judgment against Eugene Garrote, Integrity Golf Company, LLC, IGC-Habitat Golf Course, LLC, IGC-Spessard Holland Golf Course, and IGC-Savannahs Golf Course, LLC jointly and severally, ex parte and without notice or hearing for \$500,000.00 due and owing, plus attorneys' fees and costs incurred to date. The only defense that Eugene Garrote, Integrity Golf Company, LLC, IGC-Habitat Golf Course, LLC, IGC-Spessard Holland Golf Course, and IGC-Savannahs Golf Course, LLC may assert against the entry of this judgment is that they have

properly made payment(s) towards the Settlement Amount to Brevard County, in which case any payments made shall be credited against the amount of the Final Judgment.

9. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be a duplicate original, but all of which taken together shall constitute one and the same instrument; any of the Parties hereto may execute this Agreement by signing any such counterpart or counterparts. Facsimile and electronic copies shall be deemed originals for all purposes, including enforcement.

10. Section Headings. The section headings used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements or representations herein set forth, or limit the provisions or scope of any section herein.

11. Modification. No modification of this Agreement shall be valid or effective unless it is in writing and signed by all Parties. This Agreement supersedes any and all prior oral and written agreements and understandings.

12. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

13. Successors and Assigns. This Agreement shall be binding on the successors and assigns of each Party.

14. Choice of Law and Venue. The laws of the State of Florida and the federal laws of the United States of America, excluding the laws of those jurisdictions pertaining to the resolution of conflicts with laws of other jurisdictions, shall govern the validity, construction, enforcement, and interpretation of this Agreement. The Parties agree that venue for the enforcement or interpretation of the Agreement shall be the appropriate State Courts of Brevard County, Florida, and waive any defense, whether asserted by motion or pleading, that Brevard County, Florida, is an improper or inconvenient venue.

15. Attorney's Fees. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

16. No Waiver. No delay or omission by either Party to exercise any right under this Agreement shall impair any such right, nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. No waiver, consent, or approval under this Agreement shall be effective unless it is in writing. The Parties represent and warrant that they own and have not assigned, sold or factored, in whole or in part, any claims, causes of action, or any other similar rights or interest related to those released herein.

17. Fully Read and Understood. The Parties hereby declare that the terms of this

Agreement have been completely read, fully understood and voluntarily accepted by them, that they have had an opportunity to review the terms hereof with their respective legal, financial and tax advisors, that they have been provided the opportunity to review such information as they deem necessary, that they, together with their advisors, have made the decision to enter into this Agreement in reliance upon their own (or their advisors') review, independent investigation and inquiry.

18. Cooperation. The Parties will sign and deliver to the other Parties such further instruments, contracts, forms and other documents and will perform such further acts as may be necessary or desirable to carry out, complete and perform all the parties' covenants and obligations pursuant to this Agreement.

19. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

20. Joint Drafting. The Parties acknowledge this Agreement is the product of joint drafting efforts and shall not be construed against any one Party as the drafter.

WHEREFORE, the Parties hereto have caused this Agreement to be executed in their names by their respective duly authorized officers as of the date below written.

Plaintiff:

BREVARD COUNTY

By: 
Name: RITA PRITCHETT, CHAIR

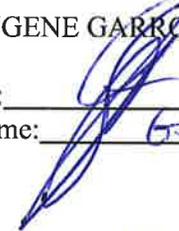
As approved by the Board of County Commissioners on April 10, 2018

ATTEST:


SCOTT ELLIS, CLERK

Defendants:

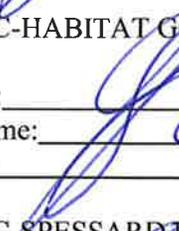
EUGENE GARROTE

By: 
Name: Eugene Garrote

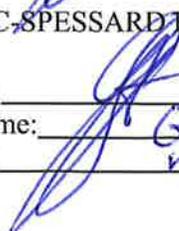
INTEGRITY GOLF COMPANY, LLC

By: 
Name: Eugene Garrote
Its: manager

IGC-HABITAT GOLF COURSE, LLC

By: 
Name: Eugene Garrote
Its: manager

IGC-SPESSARD HOLLAND GOLF COURSE

By: 
Name: Eugene Garrote
Its: manager

IGC-SAVANNAH'S GOLF COURSE, LLC

By: _____

Name: Gene Garrick

Its: Manager

A handwritten signature in blue ink, appearing to be 'Gene Garrick', is written over the signature line and extends upwards and to the left.