

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT  
DISTRICT**

**October 2, 2023**

**BOARD OF SUPERVISORS  
REGULAR MEETING  
AGENDA**

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**AGENDA  
LETTER**

# Lake Powell Residential Golf Community Development District

## OFFICE OF THE DISTRICT MANAGER

2300 Glades Road, Suite 410W • Boca Raton, Florida 33431

Phone: (561) 571-0010 • Fax: (561) 571-0013 • Toll-Free: (877) 276-0889

September 25, 2023

**ATTENDEES:**  
Please identify yourself each time you speak to facilitate accurate transcription of meeting minutes.

Board of Supervisors

Lake Powell Residential Golf Community Development District

Dear Board Members:

The Board of Supervisors of the Lake Powell Residential Golf Community Development District will hold a Regular Meeting on October 2, 2023 at 2:00 p.m. (Central Time), at Shark's Tooth Clubhouse, 2003 Wild Heron Way, Panama City Beach, Florida 32413. The agenda is as follows:

1. Call to Order/Roll Call
2. Public Comments
3. Discussion: Memorandum on Public/Private Roadways and Gated Access
4. Discussion: Current Agreement for Security Services Management and Associated Post Orders
5. Update: District Engineer's Report to Support Creating an O&M Methodology
6. Discussion: Re-Engagement with St. Joe on Cost Share Agreement(s)
7. District Engineer: Discussion/Consideration/Update
  - A. FDOT Compliance
8. District Counsel: Discussion/Consideration/Update
  - A. Stormwater Facility Management Services Agreement (*CDD approved, awaiting POA approval*)
  - B. POA Maintenance Agreement (*CDD approved, awaiting POA approval*)
    - Landscape Standards
  - C. Possible Land Swap with the POA for Gate Installation at Wild Heron Way and Pinfish
9. District Ecologist: Discussion/Consideration/Update
  - A. Conservation Easement Signage

- B. DEP Conservation Easement Swap
  - C. Speed Enforcement Device Proposals
  - D. Stormwater Camera Inspection
10. Acceptance of Unaudited Financial Statements as of August 31, 2023
  11. Approval of August 7, 2023 Public Hearing and Regular Meeting Minutes
  12. Staff Reports
    - A. Ecologist/Operations: *Cypress Environmental of Bay County, LLC*
    - B. District Counsel: *Burke Blue*
    - C. District Engineer: *McNeil Carroll Engineering, Inc.*
    - D. District Manager: *Wrathell, Hunt and Associates, LLC*
      - Consideration of Meeting Location for February 5, 2024 Regular Meeting Through Remainder of Fiscal Year 2024
      - NEXT MEETING DATE: December 4, 2023 at 2:00 PM (Central Time)

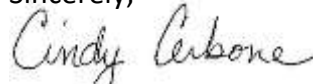
○ QUORUM CHECK

|        |                |                                    |                                |                             |
|--------|----------------|------------------------------------|--------------------------------|-----------------------------|
| SEAT 1 | DAVID HOLT     | <input type="checkbox"/> IN PERSON | <input type="checkbox"/> PHONE | <input type="checkbox"/> NO |
| SEAT 2 | DAVID DEAN     | <input type="checkbox"/> IN PERSON | <input type="checkbox"/> PHONE | <input type="checkbox"/> NO |
| SEAT 3 | THOMAS BALDUF  | <input type="checkbox"/> IN PERSON | <input type="checkbox"/> PHONE | <input type="checkbox"/> NO |
| SEAT 4 | JERRY ROBINSON | <input type="checkbox"/> IN PERSON | <input type="checkbox"/> PHONE | <input type="checkbox"/> NO |
| SEAT 5 | FRANK SELF     | <input type="checkbox"/> IN PERSON | <input type="checkbox"/> PHONE | <input type="checkbox"/> NO |

13. Board Member Comments
14. Public Comment
15. Adjournment

Should you have any questions or concerns, please do not hesitate to contact me directly at (561) 346-5294 or Jamie Sanchez (561) 512-9027.

Sincerely,

  
 Cindy Cerbone

District Manager

**FOR BOARD MEMBERS AND STAFF TO ATTEND BY TELEPHONE**

**CALL-IN NUMBER: 1-888-354-0094  
 PARTICIPANT PASSCODE: 131 733 0895**



**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**3**



David P. Persson\*\*  
Andrew H. Cohen  
Kelly M. Fernandez\*  
Maggie D. Mooney\*  
R. David Jackson\*  
Regina A. Kardash\*  
Lori M. Dorman  
Daniel P. Lewis

Telephone (941) 306-4730  
Facsimile (941) 306-4832  
Email: acohen@flgovlaw.com

\* Board Certified City, County, and Local Government Law  
\*\*Of Counsel

Reply to: Lakewood Ranch

## MEMORANDUM

**DATE:** September 22, 2023  
**TO:** Chairman David Holt and Board of Supervisors  
**FROM:** Andrew H. Cohen, Esq.  
**SUBJECT:** Public/Private Roadways and Gated Access

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### **Purpose:**

Questions regarding the relationship between public and private roadways in a community development district are often raised by board members, community members and the public in general. This memorandum is designed to address certain issues regarding the history, financing, relevant legal considerations, and associated inquiries for the Lake Powell Residential Golf Community Development District (“Lake Powell CDD” or “District”) main thoroughfare known as Wild Heron Way.

### **History of Community Development Districts in Florida**

In 1980, the Florida Legislature passed the Uniform Community Development District Act (“Act”) to create a uniform process to support, finance and manage the infrastructure needed for the development of new communities. The Legislature found: “there is a need for uniform, focused, and fair procedures in state law to provide a reasonable alternative for the establishment, power,

operation, and duration of independent districts to manage and finance basic community development services.”<sup>1</sup>

This Act created what are known as community development districts (“CDDs”). CDDs are independent special districts operating as a “local unit of special-purpose government” limited to the specified functions as provided for in Chapter 190, F.S.<sup>2</sup> Districts are required to operate under government requirements including public records, Sunshine Law, and other public body type rules.

The legislature granted districts certain special powers for public improvements and facilities including the ability to finance, fund, construct and maintain infrastructure including, but not limited to, district roads, water management, water supply, bridges, and conservation areas. Florida law defines district roads to include “highways, streets, roads, alleys, sidewalks, landscaping, storm drains, bridges, and thoroughfares of all kinds and descriptions.”<sup>3</sup> If the local jurisdiction consents to the exercise of these powers, the district also has the power to plan, construct, and maintain additional systems for “[s]ecurity, including, but not limited to, guardhouses, fences and gates, electronic intrusion detection systems... .”<sup>4</sup>

### **Financing Community Development Districts**

CDD public financing involves multiple levels of regulation including reporting and transparency requirements. Some of the general powers granted to districts include the ability to borrow money and issue bonds, to levy tax and non-ad valorem special assessments, impose ad valorem taxes, and to enforce fees or other user charges.<sup>5</sup>

Many CDDs use tax-exempt bonds to be able to develop infrastructure at the same pace as the community growth, often at a lower cost. The Tax Reform Act of 1986 distinguished types of municipal bonds including tax-exempt governmental bonds (public) or taxable nongovernmental (private activity) bonds. Governmental bonds can finance activities owned and operated by a state/local government including highways or sewer and water. All entities using tax exempt bonds are subject to IRS rules and regulations, including, in the case of governmental bonds, employing the funds to serve a public function.

The tax-exempt governmental bonds can be further classified into different types including but not limited to general obligation bonds and revenue bonds. General obligation bonds are used to raise funds immediately to cover day-to-day obligations and are supported by the taxing power of the district. Revenue bonds are used to fund infrastructure and are supported by the income generated by that infrastructure.

Districts are required to provide a full disclosure to the county in which they are located and this includes information relating to the public financing and maintenance of improvements to real

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<sup>1</sup> [Section 190.002\(1\)\(a\), F.S.](#)

<sup>2</sup> [Section 190.003\(6\), F.S.](#)

<sup>3</sup> [Section 190.003\(11\), F.S.](#)

<sup>4</sup> [Section 190.012\(2\)\(d\), F.S.](#)

<sup>5</sup> [Section 190.011\(9\), F.S.](#) The procedure to authorize bonds is found in [Section 190.016, F.S.](#)

property undertaken by the district.<sup>6</sup> Additional reports are required to be filed with various state agencies including an annual financial report (Florida Department of Financial Services), an annual financial audit report (Florida Auditor General), and public disclosure statements (Department of Economic Opportunity).

### **Public Roads**

Legal resources, both at the state and local levels, have consistently found that roadways within a district owned by a CDD (similar to the roadway in question which was conveyed to the District by deed and dedicated to the District via plat) are public and the district must provide public access. The Florida Attorney General and local County Attorney's Offices have both addressed questions regarding public access on public roads.

The Florida Attorney General's Office ("AGO") has considered the legal authority to install gates on public roads and, relying on Section 316.2045, F.S., opined that construction cannot "...obstruct the free, convenient and normal use of the public road by impeding or restraining traffic on such road."<sup>7</sup> Such opinion has been interpreted to allow gatehouses and restrictions which "control" access but do not "deny" access.

In 1992, the Manatee County Attorney's Office ("CAO") responded to an inquiry regarding the construction of a gatehouse within the right-of-way of a public road. The CAO determined that it would be unlawful to obstruct a public road and found that the primary consideration was the public nature of the road.<sup>8</sup> Then, in March 2002, the Manatee County Attorney's Office addressed the installation of guard gates on roads located in a (different) CDD in Manatee County. Relying on the same sections of law and referencing the 1992 analysis, the CAO determined that construction of gates in any public street or roadway would appear to run afoul of Florida Law. The opinion noted that a CDD "as a special-purpose local government, would be held to the same standard as a county or city under Florida law regarding public roads."<sup>9</sup>

Finally, though, in June, 2002, the Manatee County Attorney's Office responded to an inquiry regarding the construction of gate houses and clarified that in certain circumstances the construction could be legal. The CAO emphasized that public access remained a critical component. The "approval of gates and guardhouses can and should be conditioned upon the requirement that public access is always allowed, 24 hour/seven days a week on a permanent basis."<sup>10</sup>

### **Lake Powell Residential Golf Community Development District**

On or about July 25, 2000, Lake Powell CDD, an independent special district, was created pursuant to Ordinance No. 00-19 of Bay County, Florida (the "Ordinance.") Within the Ordinance, Bay County consented to the District's use of special powers as allowed by Chapter 190, F.S. including:

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<sup>6</sup> [Section 190.009, F.S.](#)

<sup>7</sup> Florida Attorney General Opinion [90-51](#). See also AGO [2004-65](#).

<sup>8</sup> Manatee County Attorney Memo re: Proposed "guardhouse" at entrance to Flamingo Cay Subdivision dated January 31, 1992.

<sup>9</sup> Manatee County Attorney Memo re: Guard Gates at University Place, Phase C dated March 12, 2002.

<sup>10</sup> Manatee County Attorney Memo re: Administrative Appeal AA02-01 dated June 12, 2002.

“security, including, but not limited to, guardhouses, fences and gates.” The District has a manned gatehouse.

While the Ordinance does consent to the special powers of Section 190.012(2), Fla. Stat., allowing the District to construct gates based on security concerns, it remains that the District, a public entity, cannot deny access to its public roadways. As discussed previously, authorities have consistently found that public roadways must meet the public access requirements of 24 hours a day, seven days a week.

The plats for various neighborhoods in Lake Powell CDD, recorded in Bay County official records, dedicate certain property and infrastructure to Lake Powell CDD. Dedication generally means the appropriation of land for public use by or on behalf of the public.

The District’s capital improvements were financed with tax-exempt governmental bonds which are required to be used for public purposes. The District took advantage of this financing tool to finance and construct infrastructure, including certain roadways, within the District. There still remains bonds outstanding and there still remains public infrastructure (e.g., stormwater ponds, conservation areas) located behind the gates. If there was an effort to move a roadway from public to private use, it is conceivable that the IRS could audit the historical use of tax-exempt bonds to determine compliance with tax regulations. If the IRS found that the bonds used to fund infrastructure were directed to private activity, there is the potential for the IRS to declare the bonds taxable.

### **Additional/Associated Questions**

*Can the District dedicate the road to the HOA and then make the roadway private?*

While a CDD and an HOA have complementary responsibilities, they are two very different creations. A CDD is a public entity with an elected board that has the ability to impose and levy taxes and build and maintain infrastructure. An HOA is a private entity responsible for the enforcement of deed restrictions and maintenance of certain common areas or amenities. Many communities maintain both and, in those cases, they work together for the overall benefit of the development.

In 2002, the Florida Legislature created a mechanism to allow a county to convey interest in roads to an HOA provided certain conditions are met.<sup>11</sup> These conditions include, but are not limited to, a written request for conveyance, written consent of at least 80% of the property owners, the HOA is properly incorporated as a not for profit and is in good standing with the power to levy and collect assessments. The public process also requires assurances of funding sources and reserves for the ongoing operation, maintenance, and repair of the roads and other conveyed interests.

This section of law provides for the conveyance of interest from a *county* to an HOA, not from a CDD to an HOA. A few years back, an effort was put forth to have the legislature consider similar legislation that may help a CDD dedicate roads to an HOA, but the effort

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<sup>11</sup> [Section 336.125](#), F.S.

failed. In addition, as further discussed below, roads subject to this transfer become private roads held for the interest of the property owners within the community. Any effort to vacate the public roadways is near impossible as the effort would involve the property owners on either side of the roadway and potentially their mortgage holders as well.

*If the District pays off the bonds, can it then convert the road to a private road?*

No. The development and construction of the infrastructure was funded by tax-exempt bonds for a public function. The payment in full of bonds does not eliminate the tax benefits to the bondholders or the community and the infrastructure is still required to serve a public function purpose. Moreover, the roadway is still owned by a public entity (CDD) and therefore, public.

*Can the District work to change Florida law to allow a district to make public roadways private?*

A legislative change to existing law might allow a process for CDDs to convert public roads to private roads but to date, to our knowledge, all legislative efforts have been to no avail as there are multiple complications. The legislation must address process issues around existing agreements, plats, bonds, and other financing, etc. It should be noted that a change in Florida law may not remove the concerns around the IRS in terms of the restricted use of tax-exempt bonds used for public functions.

There was a recent example of legislative changes creating solutions for Heritage Isles, a CDD located in the Tampa area. However, this legislation would not allow privatization of Wild Heron Way if that were the goal. At Heritage Isles, the original developer conveyed the roads and infrastructure to the City of Tampa via plat through each phase of development. The City required that any gate arms automatically open, which resulted in the community removing the guard and leaving the entrances open. Over time, the community worked to renegotiate the gate requirements without success partly due to City concerns regarding outstanding district bond debt. When the bond debt was paid off in 2019, the issue was again revisited with no plausible solution for transfer of ownership.

With no legal mechanism to allow the City to transfer the roads to the CDD, the community hired a lobbyist in an effort to amend Florida law. In 2021, the legislative changes were adopted into what is now [Section 177.107, F.S.](#) This section of law is somewhat similar to the existing process for a conveyance to an HOA and allows for conveyance to districts provided certain conditions are met. These conditions include a written resolution to convert to a gated neighborhood with monitored public access, two-thirds approval vote by landowners, and entering into an interlocal agreement for funding, maintenance, and reserves.

While the HOA conveyance statute and Heritage Isles statutory law have similarities, a quite significant difference is whether, after the conveyance, roads remain public or are private. Section 336.125, F.S. allows for the conveyed roads to be held by the HOA for the benefit of the (private) owners of the property while Section 177.107, F.S. requires that

the CDD “hold the roads and rights-of-way in trust for the benefit of the public and owners.” Upon conveyance from the City, Heritage Isles will continue to be subject to the public access requirements for roads within the community.

*What other options does the District have?*

While the District cannot deny access, it can look to ensure safety on the public roadways within the District’s boundaries. If public access is causing safety issues such as cut through traffic or speeding, the District can install traffic calming devices such as speed tables or other deterrents to enhance the safety of the roadways.

In addition, I know there is a concern of new development utilizing and degrading Wild Heron Way. Again, the District cannot deny access but IF the parties agree, the District could potentially enter into an Agreement with the developer utilizing the roadway to either make a one-time contribution for roadway repairs or a continued contribution.

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**4**



**AGREEMENT FOR SECURITY SERVICES MANAGEMENT  
BETWEEN  
LAKE POWEL RESIDENTIAL GOLF COMMUNITY DEVELOPMENT DISTRICT  
And  
WILD HERON PROPERTY OWNERS ASSOCIATION, INC.**

This Agreement for Security Services Management between the Lake Powell Residential Golf Community Development District, a Florida unit of special-purpose local government, (“CDD”) and the Wild Heron Property Owners Association, Inc. (“POA”) (“Agreement”) is made and entered into this 16<sup>th</sup> day of January, 2017.

WHEREAS, the CDD is a Florida unit of special-purpose local government that is authorized to provide security services within the boundaries of the CDD pursuant to §190.12(2)(d), Florida Statutes, and Ordinance No. 00-19, Bay County, Florida; and,

WHEREAS, the POA is a Florida not for profit corporation organized pursuant to Chapter 720, Florida Statutes, which also operates within the boundaries of the CDD; and,

WHEREAS, the CDD and the POA currently provide safety and surveillance services for the properties which each owns within the boundaries of the CDD through separate contracts with a Security Agency that meets CDD requirements; and,

WHEREAS, the POA safety and surveillance services are conducted as outlined in the current Post Orders agreed to by the parties: and,

WHEREAS, the POA manages the day to day operations of their Security Agency, including, but not limited to, issues related to surveillance, and interacts with the Wild Heron residents on a daily basis; and,

WHEREAS, CDD safety and surveillance services are conducted as outlined in the current Post Orders agreed to by the parties; and,

WHEREAS, the CDD has made a request to the POA to manage the day to day operations of their Security Agency, including, but not limited to, issues related to safety and surveillance, and to alert the District Management regarding service delivery related matters requiring the CDD’s attention; and,

WHEREAS, the CDD Board of Supervisors finds that it is in the best interests of the community that matters related to security services contracted by the CDD be managed by the POA; and,

WHEREAS, the POA Board of Directors finds that it is in the best interests of the community that the POA manages the day to day operations of the CDD Security Agency contract;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties do agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Term and Termination.
  - (a) This Agreement shall commence on January 1, 2017 and shall terminate on September 30, 2017; thereafter, this Agreement shall be “evergreen” and automatically renew for 365 day terms, unless either party shall provide to the other party at least 60 days written notice of its intent to terminate this Agreement.
  - (b) At any time during the initial term or any renewal term of the this Agreement, this Agreement may be canceled, with or without cause by either party by providing at least 60 days written to the other party. Upon the effective date of the cancellation or termination this Agreement, the CDD shall not be obligated for any additional fees to the POA, but shall be responsible for any unpaid fees due to the Security Agency.

Services. The CDD shall contract with a Security Agency, as that term is defined in Chapter 493, Florida Statutes, which is properly licensed to provide security services within the State of Florida, to provide security services within the boundaries of the CDD. The POA shall act as the CDD’s agent and onsite manager for all matters relating to the security services agreement, between the CDD and the Security Agency, with which the CDD has entered into a contract.

The CDD and POA intend for the POA to provide the following management services, which include, but are not limited to, validation that services contracted for by the Security Agency, have been provided; resolving invoicing disputes and corrections, handling resident phone calls and resolving issues in a timely fashion, communicating effectively with the District Management Company and its District Manager and office staff regarding the services provided by the POA and the Security Agency. The POA shall also provide a report to the CDD informing the CDD of any invoice disputes, delivery or quality of service issues and any other issues for which the CDD or POA deem is desirable for the report. The report shall be made at least quarterly; provided, however, that the CDD may request monthly reports.

Nothing contained herein is intended to permit the POA to enter into any contracts on behalf of the CDD. Any and all contracts related to security services for the benefit of the CDD shall be between the CDD and the vendor. The CDD shall appoint the POA as its agent under any security services agreement(s) with a vendor(s).

The POA shall not use CDD funds for any purpose, whatsoever, except for the benefit of the CDD. In the event that the POA uses CDD funds for any private purpose, then

this Agreement shall automatically be terminated and the POA shall immediately reimburse the CDD the amount of funds that have been improperly appropriated.

3. **Payment for Services.** The vendor shall promptly provide its invoice for services directly to the CDD District Manager by mail. Upon receipt of an invoice from the vendor, the CDD District Manager will provide an accounts payable, aging report supported by the invoice, via email to the POA. The POA shall code/classify the expenditure and approve it for payment. Within 48 hours of receipt of the aging report from the District Manager, the POA shall approve the invoice for payment or provide specific reasons why the invoice should not be paid. If the POA rejects an invoice for payment, the POA shall immediately contact the vendor to resolve the payment dispute. Upon approval of an invoice by the POA, the CDD shall remit payment to the vendor.
  
4. **Public versus Private Property.** The POA recognizes that the CDD is a Florida local unit of special-purpose government. As such, the CDD may only expend its funds for services that have a public purpose. This Agreement is only intended for the POA management of the contract security services rendered to the CDD on the real property that is owned and controlled by the CDD. Exhibit 1 attached hereto and incorporated herein, depicts the ownership of the Wild Heron Community as a whole. The POA covenants and agrees to limit the Security Agency's services which are paid for by the CDD to only those assets depicted in Exhibit 1 as "CDD" owned assets, unless directed to do so by a law enforcement officer or directed by the Lake Powell Residential Golf Community Development District Board of Supervisors as set forth in its "Post Orders", rules and regulations.

Nothing contained herein is intended to prohibit the POA from entering into comprehensive agreements with the Security Agency to provide services for POA property within the boundaries of the District, so long as the Security Agency contracts clearly separate the services performed and the agreements are coordinated between the parties to insure services are complimentary, not double billed and meets the CDD's statutory obligations.

6. **Indemnification.** The CDD and POA hereby agree to defend, indemnify and hold harmless each other and their agents and employees from any claims, demands, suits, etc., including, but not limited to reasonable attorney's fees and costs whether pre-litigation, or at the trial or appellate levels, if applicable, against it or them by any other party, resulting from or related to claims arising from the intentional acts or gross negligence of the CDD, POA or the Security Agency or its employees in the performance of its duties under this Agreement or for the commission of any acts that are outside the scope of this Agreement.

7. **Miscellaneous.**

7.1 In any legal action arising from this Agreement or connected herewith the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees incurred (whether pre-trial, at mediation, arbitration or trial and in any appeals).

7.2 In any litigation arising from this Contract, venue shall be solely in Bay County, Florida.

7.3 CDD and POA hereby irrevocably and unconditionally waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal action or proceeding arising out of or relating to this Agreement or any contract or transactions contemplated hereby, and for any counterclaim in connection herewith.

7.4 No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

7.5 No modification, release, discharge or waiver of any provision hereof shall be of any force, effect or value, unless in writing, signed by both of the parties to this Agreement, their respective successors and assigns.

7.6 If any term or condition of this Agreement is, to any extent, invalid or unenforceable, the remainder of this Agreement is not to be affected thereby and each term and condition of this Agreement is to be valid and enforceable to the fullest extent permitted by law. This Agreement will be construed in accordance with the laws of the State of Florida.

7.7 This Agreement constitutes the entire understanding and agreement between the parties hereto, supersedes all prior written or oral agreements with respect to its subject matter. Notwithstanding the foregoing, this Agreement shall not act to excuse any amounts due and unpaid under a previous contract between the parties, nor shall this Agreement act to extinguish any obligations from a previous contract between the parties which specifically survive the termination or expiration thereof. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

7.8 The parties hereto expressly acknowledge that the CDD is a Florida local unit of special-purpose government created pursuant to the Uniform Community Development CDD Act of 1980 and as such enjoys sovereign immunity under the laws of Florida. Nothing contained in this Agreement is intended to waive sovereign immunity between the parties or for any third party.

7.9 Any notices required under this Agreement shall be sent to:

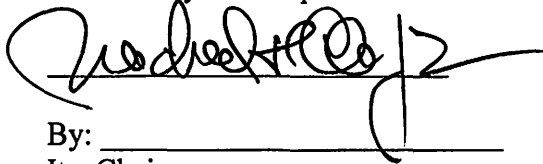
If to CDD Manager: Wrathell, Hunt & Associates, LLC  
Attn: Howard McGaffney

\_\_\_\_\_  
\_\_\_\_\_  
Email: mcgaffneym@whassociates.com

If to POA: Wild Heron Property Owners Association, Inc.  
Attn: POA President  
1100 Prospect Promenade  
Panama City Beach, FL 32413

In witness whereof, the parties hereto have set their hands and seals on the date first set forth above.

Lake Powell Residential Golf  
Community Development District

  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Chairman

Wild Heron Property  
Owners Association, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Chairperson

(Corporate Seal)

Attest:

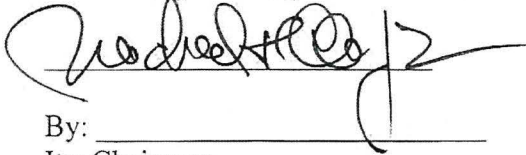
\_\_\_\_\_  
District Manager,  
Lake Powell Residential Golf CDD

\_\_\_\_\_  
\_\_\_\_\_  
Email: mcgaffneym@whassociates.com

If to POA: Wild Heron Property Owners Association, Inc.  
Attn: POA President  
1100 Prospect Promenade  
Panama City Beach, FL 32413

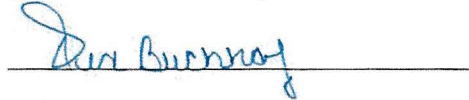
In witness whereof, the parties hereto have set their hands and seals on the date first set forth above.

Lake Powell Residential Golf  
Community Development District

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

Its: Chairman

Wild Heron Property  
Owners Association, Inc.

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

Its: Chairperson

(Corporate Seal)

Attest:

\_\_\_\_\_  
District Manager,  
Lake Powell Residential Golf CDD

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**9C**

**From:** [Graham DENNIS](#)  
**To:** [bethany.cypressenvironmental.com](mailto:bethany.cypressenvironmental.com)  
**Subject:** Elan City Radar Speed Signs - Lake Powell Residential Golf CDD, FL  
**Date:** Wednesday, August 16, 2023 12:09:44 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[Evolis Specs Sheet 2023.pdf](#)

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Hello,

My name is **Graham**, and I am the account manager at ELAN CITY Radar Speed Signs.

Thank you for contacting us!

As you know, we are currently running our **TWIN PACK SPECIAL OFFER!**

Below you will find lots of great information on the Portable EVOLIS Radar Speed Sign, info about the promotional offer, and a copy of the specs sheets for the Evolis in the attachments.

## **How will your community benefit from an EVOLIS Radar Speed Sign?**

- Decrease in average speed by 25% or more where installed
- Increase in driver's overall awareness through visual engagement with the Evolis RSS
- By securing dangerous traffic zones without deploying additional manpower
- By optimizing your enforcement actions with the traffic data



collection and analysis software

## What makes the EVOLIS RSS the BEST on the market?

- Highly visible 15-inch speed digits enhanced through 3 rows of ultra-bright, tri-color, LEDs!
- Superior Doppler Radar technology for extended vehicle detection range (1,000+ feet!)
- Bi-directional traffic data collection and analysis software included
  - **NO subscription fees and FREE updates for life!**
- Entirely customizable messages (examples: Thank You, Slow Down, Fine \$175, etc.)
- School-Zone / Timer-Mode: Alternates speed threshold and messages at selected hours
- Stealth-Mode for comparative data analysis
- 3g/4g connectivity available for all units with a plug and play option
- Aesthetic urban furniture, ingeniously designed to simplify installation, set up and general usage
- All-inclusive packages at very affordable prices
- Excellent customer service and tech support!

## Portable EVOLIS RSS packages:

Depending on your community's particular needs, Elan City offers two fully portable Evolis RSS packages. Choose from either the fully autonomous Solar-Mobile pack or the Ultra-Mobile pack for very frequent mobility.

- The EVOLIS **SOLAR-MOBILE** Pack - Go green on a budget! The fully autonomous Solar powered Evolis radar is ideal for permanent placement or mobile use! It includes a 32 X 37 inch, 95W solar panel and two 12V/22AH batteries, one mounting bar, as well as

traffic data collection and all the standard pack features.

- The EVOLIS **ULTRA-MOBILE** Pack - The trailer replacer! Need to move your radar to different locations every week? Then this is the product for you! The entirely battery-operated Ultra-Mobile pack, with an autonomy of 7-10 days on average, is ideal for multiple location projects and frequent location rotation! It includes four 12V/22AH batteries, an external battery charger, two mounting bars, as well as traffic data collection and all the standard pack features. Note: For effortless mobility, we recommend ordering additional mounting-bars to be pre-installed at the designated locations - only \$50 a piece!
- The **Evolis A/C Pack** - A stationary option, includes 1x 12v/22AH battery per sign. Requires a direct A/C connection for installation.

**TWIN PACK SPECIAL OFFER:** There has never been a better time to invest in your community's safety than now with our Twin Pack Special! For the price of one RSS elsewhere, get TWO of the best radar speed signs on the market! Available on both the Solar-Mobile and the Ultra-Mobile Evolis RSS packs! (Limited time only)

**TWIN PACK SPECIAL OFFER! TWO full-option Evolis**

**RSS packages for only \$6,499!**

**Or \$3,499 for one.**

## **STANDARD PACK FEATURES:**

- 30"X 28" Evolis Radar Speed Sign & Mounting Kit (pole and pole straps not included)

- Highly visible 15" speed digits: 3 rows of tri-color LEDs (or amber-only mode)
- Customizable Message Display
- Bi-Directional Traffic Data Collection + Comprehensive Data Analysis & Configuration Software
- **FREE Updates & NO Subscription Fees!**
- Bluetooth® + Smartphone App (Apple and Android compatible)
- 3g/4g Remote connectivity (optional)

Could you please answer the following questions so I can draw up a suitable quotation for you?

- Which above power option(s) are you interested in?
- In what speed limit you will be installing these in?
- How many units would you like to purchase?
- What's the budget for the project?
- When is your next board/council meeting for budget approval?

**And make sure to check out our new website! There you will find our helpful and extensive list of frequently asked questions, tons of great information on the EVOLIS Radar Speed Sign, and lots more helpful info!**

<https://www.elancity.net/>

<https://www.elancity.net/elan-city/frequently-asked-questions/>

**Don't miss out on the limited-time, TWIN PACK**

**SPECIAL offer!**  
**Give your community the best while saving the most**  
**with TWO Evolis Radar Speed Signs!**

Thank you for your interest in becoming part of the Elan City community!

We look forward to hearing from you soon!

Kind regards,



**Graham DENNIS**  
Account Manager

---

[graham.dennis@elancity.net](mailto:graham.dennis@elancity.net)

(646) 878-6259 / Fax : (646) 770-3906

450 7th Avenue Suite 1501

New York, NY 10123-1591

[www.elancity.net](http://www.elancity.net)





# TWIN PACK SPECIAL 2023

## EVOLIS Radar Speed Signs

Get your free quote NOW!

# The new EVOLIS Radar Speed Sign

...MORE AUTONOMOUS,  
EFFICIENT AND  
CONNECTED!

The EVOLIS Radar Speed Sign is a highly effective traffic-calming tool that can be used in a wide variety of traffic scenarios and environments.

**The EVOLIS Radar Speed Sign:** a portable powerhouse in traffic safety... Built with durable ABS Injection Molded Resin, weighing a mere 20lbs! With an extended vehicle detection range of over 1,000 feet, it uses superior Doppler radar technology. The 15" speed digits, illuminated by ultra-bright, tricolor LEDs, catch attention. Driver behavior correction is achieved through programmable messages and speed digits, resulting in an impressive 25% decrease in overall speed.

**Choose flexibility with the EVOLIS RSS:** battery-operated or solar-powered options available. Embrace energy autonomy and reduce your carbon footprint. The full-option package ensures immediate functionality and a remarkable autonomy of up to 7000 vehicles per day. Additionally, enjoy bi-directional traffic data collection and comprehensive analysis software, eliminating the need for subscription fees and providing free updates for life.

Join the global success of the EVOLIS RSS, trusted by **10,000 communities worldwide with over 30,000 units installed.** Its superior design, advanced technology, and user-friendly nature make it an indispensable tool for enhancing road safety and promoting responsible driving.

**GET A QUOTE NOW!**

>  
WANT MORE  
INFORMATIONS



## EACH PACKAGE INCLUDES:

- 30"x28" Evolis Radar Speed Sign (2 power choices)
- Highly visible 15" speed digits: 3 rows of tri-color LEDs
- 3M Diamond Grade Reflective Sheeting Front Face
- Customizable message display
- Bi-directional traffic data collection
- Comprehensive analysis & configuration software
- FREE updates & NO subscription fees!
- Bluetooth + smartphone app
- Mounting kit & specific accessories for solar or battery-operated packs
- 2 year warranty

ElanCity

450 7<sup>th</sup> Avenue  
Suite 1501  
New York, NY 10123-1591

(646) 878- 6259

[www.elancity.net](http://www.elancity.net)  
[sales@elancity.net](mailto:sales@elancity.net)



# The new EVOLIS

## Radar Speed Sign

### TECHNICAL CHARACTERISTICS

>  
WANT MORE  
INFORMATIONS




|                       |                        |   |
|-----------------------|------------------------|---|
| SPEED DISPLAY         | Speed Digits           | Height: 15"   |
|                       | "YOUR SPEED" legend    | 1.65" Highway-Gothic font   |
|                       | LEDs                   | Ultra-bright, 3-row thick LEDs. Amber-only mode or tri-color: Amber, Green and Red.                                       |
|                       | Visibility             | 1.000 feet  |
|                       | Power consumption      | Ultra-low power consumption. Average <5W  |
|                       | Flash rate             | Default setting: 54 cycles/minute. Configurable   |
| TEXT DISPLAY          | LEDs                   | Ultra-bright, Amber   |
|                       | Messages               | Pre-programmed or entirely personalized   |
|                       | Size-font / Graphics   | Choice of size and font, 1 or 2 lines of text   |
| DETECTION             | Doppler radar          | Bidirectional, K-Band, 24.125 GHz (FCC part 15 compliant)   |
|                       | Accuracy               | +/- 1 Mph, 99% accuracy   |
|                       | Beam width             | 33° Horizontal and Vertical   |
|                       | Speed detection        | 9 – 160 Mph   |
|                       | Detection range        | 500 feet to 1.000 feet (configurable)   |
| CASING                | Material               | Robust, anti-corrosive ABS injection molded resin; Curved polycarbonate front face  |
|                       | Size / Weight          | Dimensions: 30"H x 28"W x 6"D - Weight: 20lbs (without batteries)   |
|                       | Front face             | 3M Diamond Grade Reflective Sheeting  |
|                       | Waterproof rating      | NEMA 4R / IP 65   |
|                       | Color                  | UV treated light grey (other colors available)  |
|                       | Temperature resistance | -40° F to +140° F (operational in extreme weather conditions)   |
|                       | User access            | External access to the batteries, the control screen and the USB port. Secured by two locks                               |
| CONFIGURATION         | Evocom                 | Software for radar configuration + FREE updates   |
|                       | Communication          | USB, Bluetooth®, EVOMOBILE Smartphone application and 4G (Optional)   |
|                       | Thresholds             | Speed (min, limit, max), anti-racing, flashing, color change (if activated)   |
|                       | Timer mode             | (School-zone mode) Alternative speed threshold: up to 2 settings / 4 time slots per day                                   |
|                       | Stealth mode           | Continuous traffic data collection with blank display   |
| TRAFFIC DATA ANALYSIS | Evograph               | Software for traffic data analysis + FREE updates & NO subscription fees ever   |
|                       | Speed                  | Average and maximum speed, 85th percentile, distribution per speed group  |
|                       | Count                  | Estimated vehicle count   |
|                       | Type                   | Bi-directional, time-stamped data   |
|                       | Memory storage         | Up to 5 millions vehicles   |
|                       | Format                 | Charts and graphs in Excel and/or Pdf form, for easy report printing  |
| POWER OPTIONS         | "Solar-Mobile"         | Solar-powered Portable, fully autonomous, powered through solar panel and batteries                                       |
|                       | "Ultra-Mobile"         | Battery-operated Portable, fully battery-powered with average 14 days autonomy, includes external charger                 |
|                       | "AC"                   | City lighting (available in certain states) Stationary, powered by battery charged through and dependent on city lighting |
| ACCESSORIES           | Mounting kits          | Curved, ABS-injected resin, universal mounting-bar (pole and pole straps not included)                                    |
|                       | Solar panel            | 32" x 27" x 1.4", 95 Watts solar panel w/ aluminum bracket mounting kit   |
|                       | Batteries              | 12V/22AH batteries included: AC X 1, Solar-Mobile X 2, Ultra-Mobile X 4   |

ElanCity



450 7<sup>th</sup> Avenue  
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New York, NY 10123-1591

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ELAN CITY  
 450 7th Avenue (& 34th St.) Suite 1501  
 New York City, NY 10123-1591  
 United States  
 Phone. : (646) 878-6259  
 Fax. : (646) 770-3906  
 Email: [sales@elancity.net](mailto:sales@elancity.net)

**Shipping address :**

Lake Powell Residential Golf CDD c/o  
 Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States

**Invoice address :**

Lake Powell Residential Golf CDD c/o  
 Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States

Lake Powell Residential Golf CDD c/o  
 Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States

## Quotation N° S08952

| Your Reference | Quotation Date | Contact       | Payment Term |
|----------------|----------------|---------------|--------------|
|                | 08/17/2023     | Graham DENNIS |              |

| Description  | Qté          | P.U      | Disc.(%) | Discounted price          | Price              |
|--|--------------|----------|----------|---------------------------|--------------------|
| [EPRA0154AA] US[AS-BT] EVOLIS RADAR SPEED SIGN - SOLAR Version - Reflective WHITE Front Panel<br>ready to install including:<br>- Speed display: 15" high (green/amber/red)<br>- Polycarbonate front panel screen-printed "YOUR SPEED"<br>- Integrated solar power regulator<br>- USB and BLUETOOTH LE (Low Energy) connection<br>- Upgradable to 3G/4G (optional)<br>-BI-DIRECTIONAL traffic data and statistics,<br>- Software provided for PC and Smartphone,<br>- Mounting kit included (excluding clamps),<br>- 2-year warranty | 1.00 Unit(s) | 3,000.00 | 0.00     | 3,000.00                  | \$ 3,000.00        |
| [EACC0042AA] 95W solar panel (fastenings included - IN)  | 1.00 Unit(s) | 600.00   | 0.00     | 600.00                    | \$ 600.00          |
| [EACC0046AB] Yuasa battery pack 12V22Ah with integrated fuse protection (8A)   | 2.00 Unit(s) | 125.00   | 0.00     | 125.00                    | \$ 250.00          |
| [99900] Discount TPS23   | 1.00 Unit(s) | -351.00  | 0.00     | -351.00                   | \$ -351.00         |
| [DCE] Delivery Charge EXPRESS  | 1.00 Unit(s) | 200.00   | 0.00     | 200.00                    | \$ 200.00          |
|  |              |          |          | <b>Total discount HT:</b> | <b>\$ 351.00</b>   |
|  |              |          |          | <b>Net Total :</b>        | <b>\$ 3,699.00</b> |
|  |              |          |          | <b>Taxes (20%):</b>       | <b>\$ 0.00</b>     |
|  |              |          |          | <b>Total :</b>            | <b>\$ 3,699.00</b> |

**CUSTOMER CONTACT INFO:**

- Name: Bethany Womack
- Phone: 850-481-6824
- Email: [bethany@cypressenvironmental.com](mailto:bethany@cypressenvironmental.com)

**QUOTE PRICING AND EXPIRATION:**



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ELAN CITY  
450 7th Avenue (& 34th St.) Suite 1501  
New York City, NY 10123-1591  
United States  
Phone. : (646) 878-6259  
Fax. : (646) 770-3906  
Email: sales@elancity.net

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| Description | Qté | P.U | Disc.(%) | Discounted price | Price |
|-------------|-----|-----|----------|------------------|-------|
|-------------|-----|-----|----------|------------------|-------|

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- Quote valid until :
- PROMO CODE / OFFER:

**Valid for agreement**  
(Stamp, Signature and Date)

The :

**GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS ELAN CITY, INC.**

**1.Applicability**

(a) These terms and conditions of sale (these "Terms") are the only terms that govern the sale of the goods ("Goods") by the seller named on the previous pages of these Terms ("Seller") to the buyer named on the reverse side of these Terms ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying purchase order (the "Sales Confirmation" and these Terms (collectively, this "Agreement")) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

**2.Delivery**

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer's location (the "Delivery Point") using Seller's standard methods for packaging and shipping such

Goods. Buyer shall take delivery of the Goods within seven (7) days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance)..

**3.Non-Delivery.**

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's

negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

**4.Title and Risk of Loss.**

Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

**5.Amendment and Modification.**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

**6.Inspection and Rejection of Nonconforming Goods.**

Buyer shall inspect the Goods within three (3) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

7.Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date of Buyer's purchase order.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

8.Payment Terms

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the (a) Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder by any Payment Method and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs

incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

9.Limited Warranty

(a) Seller warrants to Buyer that for a period of twenty-four (24) months ("Warranty Period"), from the date of shipment of the Goods that such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. This statement excludes the Batteries, for which the Warranty Period is limited to six (6) months.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party ("Third Party Product")

may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 11. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 11 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within three (3) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 11 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 11 above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 11 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.

10.Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID

TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 12(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

11.Indemnification for Improper Use.

To the extent permitted by applicable law, the Buyer will defend the Seller and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Seller, and its respective officers, representatives, directors, employees, and agents ("Indemnified Party") from and against any and all third party claims, lawsuits, damages, costs (including reasonable attorneys' fees), expenses, liens and proceedings arising from personal injury (including death) or damage to property, incurred by or asserted against an Indemnified Party, in any manner arising out of or relating to a) Buyer's acts, omissions and misrepresentations, b) Buyer's failure or alleged failure to comply with applicable laws, and/or (c) Buyer's use, promotion or sale of products provided by Seller (each a "Third-Party Claim" and collectively "Third-Party Claims") and will indemnify for damages finally awarded by a court of competent jurisdiction with respect to any Third-Party Claim

12.Compliance with Law.

Buyer shall comply with all applicable laws, regulations, and ordinances in connection with the proper use of these products. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes

all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

13.Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14.Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked,

designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

#### 16. Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God ; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as pandemics, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating

the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 18, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

#### 17. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

#### 18. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### 19. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

#### 20. Governing Law.

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

#### 21. Arbitration.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York, NY. The arbitration shall be governed by the laws of the State of New York. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. The arbitration will be based on the submission of documents and there shall be no in-person or oral hearing. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. Any award in an arbitration initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without



the prior written consent of both parties.

**22. Notices.**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the signed quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of

transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**23. Severability.**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this

Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. Survival.**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Arbitration and Survival.

**INFORMATION - SIGNATURE - STAMP**

**Delivery address**

Site name: .....  
 Address: .....  
 Post code: ..... City: .....

**Delivery schedule :** (mandatory in case of equipment purchase)

Monday to Friday: ..... to .....  
 Closing days: .....

**Contact**

Name : .....  
 Tel.: .....  
 E-mail address of .....@.....

**Specific information**

.....  
 .....

The signatory declares having the capacity to represent and bind the buyer.  
 S/he declares having reviewed and validated these general terms and conditions of sale.

Approved on:

First name Last name:

Title:

**Signature**

ELAN CITY  
 450 7th Avenue (& 34th St.) Suite 1501  
 New York City, NY 10123-1591  
 United States  
 Phone. : (646) 878-6259  
 Fax. : (646) 770-3906  
 Email: [sales@elancity.net](mailto:sales@elancity.net)

**Shipping address :**

Lake Powell Residential Golf CDD  
 c/o Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States

**Invoice address :**

Lake Powell Residential Golf CDD  
 c/o Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States

**Lake Powell Residential Golf CDD c/o  
 Wrathell Hunt & Associates  
 PO Box 810036  
 Boca Raton, FL 33481  
 United States**

## Quotation N° S08953

| Your Reference | Quotation Date | Contact       | Payment Term |
|----------------|----------------|---------------|--------------|
|                | 08/17/2023     | Graham DENNIS |              |

| Description  | Qté          | P.U       | Disc.(%) | Discounted price | Price              |
|--|--------------|-----------|----------|------------------|--------------------|
| [EPRA0154AA] US[AS-BT] EVOLIS RADAR SPEED SIGN - SOLAR Version - Reflective WHITE Front Panel<br>ready to install including:<br>- Speed display: 15" high (green/amber/red)<br>- Polycarbonate front panel screen-printed "YOUR SPEED"<br>- Integrated solar power regulator<br>- USB and BLUETOOTH LE (Low Energy) connection<br>- Upgradable to 3G/4G (optional)<br>-BI-DIRECTIONAL traffic data and statistics,<br>- Software provided for PC and Smartphone,<br>- Mounting kit included (excluding clamps),<br>- 2-year warranty | 2.00 Unit(s) | 3,000.00  | 0.00     | 3,000.00         | \$ 6,000.00        |
| [EACC0042AA] 95W solar panel (fastenings included - IN)  | 2.00 Unit(s) | 600.00    | 0.00     | 600.00           | \$ 1,200.00        |
| [EACC0046AB] Yuasa battery pack 12V22Ah with integrated fuse protection (8A)   | 4.00 Unit(s) | 125.00    | 0.00     | 125.00           | \$ 500.00          |
| [999900] Discount TPS23  | 1.00 Unit(s) | -1,201.00 | 0.00     | -1,201.00        | \$ -1,201.00       |
| [DCE] Delivery Charge EXPRESS  | 1.00 Unit(s) | 310.00    | 0.00     | 310.00           | \$ 310.00          |
| <b>Total discount HT:</b>  |              |           |          |                  | \$ 1,201.00        |
| <b>Net Total :</b>   |              |           |          |                  | \$ 6,809.00        |
| <b>Taxes (20%):</b>  |              |           |          |                  | \$ 0.00            |
| <b>Total :</b>   |              |           |          |                  | <b>\$ 6,809.00</b> |

**CUSTOMER CONTACT INFO:**

- Name: Bethany Womack
- Phone: 850-481-6824
- Email: [bethany@cypressenvironmental.com](mailto:bethany@cypressenvironmental.com)

**QUOTE PRICING AND EXPIRATION:**

---

ELAN CITY  
450 7th Avenue (& 34th St.) Suite 1501  
New York City, NY 10123-1591  
United States  
Phone. : (646) 878-6259  
Fax. : (646) 770-3906  
Email: sales@elancity.net

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| Description | Qté | P.U | Disc.(%) | Discounted price | Price |
|-------------|-----|-----|----------|------------------|-------|
|-------------|-----|-----|----------|------------------|-------|

---

- Quote valid until :
- PROMO CODE / OFFER:

**Valid for agreement**  
(Stamp, Signature and Date)

The :



**GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS ELAN CITY, INC.**

**1.Applicability**

(a) These terms and conditions of sale (these "Terms") are the only terms that govern the sale of the goods ("Goods") by the seller named on the previous pages of these Terms ("Seller") to the buyer named on the reverse side of these Terms ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying purchase order (the "Sales Confirmation" and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

**2.Delivery**

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer's location (the "Delivery Point") using Seller's standard methods for packaging and shipping such

Goods. Buyer shall take delivery of the Goods within seven (7) days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance)..

**3.Non-Delivery.**

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's

negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

**4.Title and Risk of Loss.**

Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

**5.Amendment and Modification.**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

**6.Inspection and Rejection of Nonconforming Goods.**

Buyer shall inspect the Goods within three (3) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

7.Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date of Buyer's purchase order.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

8.Payment Terms

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the (a) Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder by any Payment Method and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs

incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

9.Limited Warranty

(a) Seller warrants to Buyer that for a period of twenty-four (24) months ("Warranty Period"), from the date of shipment of the Goods that such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. This statement excludes the Batteries, for which the Warranty Period is limited to six (6) months.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party ("Third Party Product")

may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 11. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 11 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within three (3) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 11 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 11 above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 11 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.

10.Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID

TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 12(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

11.Indemnification for Improper Use.

To the extent permitted by applicable law, the Buyer will defend the Seller and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Seller, and its respective officers, representatives, directors, employees, and agents ("Indemnified Party") from and against any and all third party claims, lawsuits, damages, costs (including reasonable attorneys' fees), expenses, liens and proceedings arising from personal injury (including death) or damage to property, incurred by or asserted against an Indemnified Party, in any manner arising out of or relating to a) Buyer's acts, omissions and misrepresentations, b) Buyer's failure or alleged failure to comply with applicable laws, and/or (c) Buyer's use, promotion or sale of products provided by Seller (each a "Third-Party Claim" and collectively "Third-Party Claims") and will indemnify for damages finally awarded by a court of competent jurisdiction with respect to any Third-Party Claim

12.Compliance with Law.

Buyer shall comply with all applicable laws, regulations, and ordinances in connection with the proper use of these products. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes

all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

13.Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14.Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked,

designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

#### 16. Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God ; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as pandemics, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating

the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 18, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

#### 17. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

#### 18. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### 19. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

#### 20. Governing Law.

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

#### 21. Arbitration.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York, NY. The arbitration shall be governed by the laws of the State of New York. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. The arbitration will be based on the submission of documents and there shall be no in-person or oral hearing. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. Any award in an arbitration initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without



the prior written consent of both parties.

22. Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the signed quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of

transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this

Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival.

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Arbitration and Survival.

**INFORMATION - SIGNATURE - STAMP**

**Delivery address**

Site name: .....  
 Address: .....  
 Post code: ..... City: .....

**Delivery schedule** : (mandatory in case of equipment purchase)

Monday to Friday: ..... to .....  
 Closing days: .....

**Contact**

Name : .....  
 Tel.: .....  
 E-mail address of .....@.....

**Specific information**

.....  
 .....

The signatory declares having the capacity to represent and bind the buyer.  
 S/he declares having reviewed and validated these general terms and conditions of sale.

Approved on:

First name Last name:

Title:

**Signature**

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**UNAUDITED  
FINANCIAL  
STATEMENTS**

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
FINANCIAL STATEMENTS  
UNAUDITED  
AUGUST 31, 2023**

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
BALANCE SHEET  
GOVERNMENTAL FUNDS  
AUGUST 31, 2023**

|  | General<br>Fund     | Debt<br>Service Fund<br>Series 2012 | Total<br>Funds      |
|--|---------------------|-------------------------------------|---------------------|
| <b>ASSETS</b>                          |                     |                                     |                     |
| Operating accounts                     |                     |                                     |                     |
| BB&T                                   | \$ 156,538          | \$ -                                | \$ 156,538          |
| Wells Fargo - operating                | 279,501             | -                                   | 279,501             |
| Centennial Bank                        | 258,884             | -                                   | 258,884             |
| FineMark                               |                     |                                     |                     |
| Designated - stormwater compliance     | 127,064             | -                                   | 127,064             |
| Undesignated                           | 121,980             | -                                   | 121,980             |
| FineMark - ICS                         | 339,624             | -                                   | 339,624             |
| Investments                            |                     |                                     |                     |
| Revenue                                | -                   | 384,209                             | 384,209             |
| Reserve                                | -                   | 219,431                             | 219,431             |
| Prepayment A                           | -                   | 2,809                               | 2,809               |
| Due from other                         | 9,850               | -                                   | 9,850               |
| Deposits                               | 2,075               | -                                   | 2,075               |
| Total assets                           | <u>\$ 1,295,516</u> | <u>\$ 606,449</u>                   | <u>\$ 1,901,965</u> |
| <b>LIABILITIES &amp; FUND BALANCES</b> |                     |                                     |                     |
| Liabilities:                           |                     |                                     |                     |
| Accounts payable off-site              | \$ 338              | \$ -                                | \$ 338              |
| Total liabilities                      | <u>338</u>          | <u>-</u>                            | <u>338</u>          |
| Fund balances:                         |                     |                                     |                     |
| Committed                              |                     |                                     |                     |
| Disaster                               | 150,000             | -                                   | 150,000             |
| Restricted for:                        |                     |                                     |                     |
| Debt service                           | -                   | 606,449                             | 606,449             |
| Assigned to:                           |                     |                                     |                     |
| 3 months working capital               | 221,899             | -                                   | 221,899             |
| Unassigned                             | 923,279             | -                                   | 923,279             |
| Total fund balances                    | <u>1,295,178</u>    | <u>606,449</u>                      | <u>1,901,627</u>    |
| Total liabilities and fund balances    | <u>\$ 1,295,516</u> | <u>\$ 606,449</u>                   | <u>\$ 1,901,965</u> |



**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN FUND BALANCES  
GENERAL FUND  
FOR THE PERIOD ENDED AUGUST 31, 2023**

|                             | Current<br>Month | Year to Date   | Budget         | % of<br>Budget |
|-----------------------------|------------------|----------------|----------------|----------------|
| <b>REVENUES</b>             |                  |                |                |                |
| Assessment levy             | \$ -             | \$ 728,055     | \$ 717,935     | 101%           |
| Interest & miscellaneous    | 4,614            | 7,079          | 1,000          | 708%           |
| Total revenues              | <u>4,614</u>     | <u>735,134</u> | <u>718,935</u> | 102%           |
| <b>EXPENDITURES</b>         |                  |                |                |                |
| <b>Administrative</b>       |                  |                |                |                |
| Supervisors                 | 2,153            | 8,612          | 5,000          | 172%           |
| Management                  | 2,596            | 28,557         | 31,153         | 92%            |
| Accounting                  | 918              | 10,094         | 11,012         | 92%            |
| Assessment roll prep        | 1,209            | 13,301         | 14,510         | 92%            |
| Audit                       | -                | 7,750          | 7,800          | 99%            |
| Legal                       | 2,740            | 7,020          | 12,000         | 59%            |
| Engineering                 | 4,427            | 11,067         | 13,280         | 83%            |
| Postage                     | 180              | 1,311          | 1,775          | 74%            |
| Telephone                   | 88               | 962            | 1,050          | 92%            |
| Website maintenance         | -                | 705            | 750            | 94%            |
| Insurance                   | -                | 7,489          | 8,352          | 90%            |
| Printing and binding        | 125              | 1,375          | 1,500          | 92%            |
| Legal advertising           | 307              | 841            | 2,500          | 34%            |
| Other current charges       | 22               | 460            | 1,200          | 38%            |
| Meeting room rental         | -                | 1,000          | -              | N/A            |
| Office supplies             | -                | -              | 500            | 0%             |
| Special district annual fee | -                | 175            | 175            | 100%           |
| Trustee                     | -                | 4,080          | 7,431          | 55%            |
| Arbitrage                   | -                | 750            | 1,200          | 63%            |
| Dissemination agent         | 84               | 917            | 1,000          | 92%            |
| ADA website compliance      | 210              | 210            | 210            | 100%           |
| Total administrative        | <u>15,059</u>    | <u>106,676</u> | <u>122,398</u> | 87%            |

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN FUND BALANCES  
GENERAL FUND  
FOR THE PERIOD ENDED AUGUST 31, 2023**

|  | <u>Current<br/>Month</u> | <u>Year to Date</u> | <u>Budget</u>      | <u>% of<br/>Budget</u> |
|--|--------------------------|---------------------|--------------------|------------------------|
| <b>Security</b>  |                          |                     |                    |                        |
| Contractual rangers  | 25,110                   | 158,405             | 153,000            | 104%                   |
| Total security   | <u>25,110</u>            | <u>158,405</u>      | <u>153,000</u>     | 104%                   |
| <b>Lake wetland &amp; upland monitoring</b>                  |                          |                     |                    |                        |
| Mitigation and monitoring                                    |                          |                     |                    |                        |
| Prescribed fires and gyro mulching                           | -                        | 50,492              | 46,050             | 110%                   |
| Ecologist  | 11,235                   | 48,140              | 57,980             | 83%                    |
| Signage  | -                        | 4,574               | 10,000             | 46%                    |
| Total lake wetland & upland monitoring                       | <u>11,235</u>            | <u>103,206</u>      | <u>114,030</u>     | 91%                    |
| <b>Roadway services</b>                                      |                          |                     |                    |                        |
| Sidewalk repairs and maintenance                             |                          |                     |                    |                        |
| Roadway repairs and maintenance                              | 24,285                   | 151,160             | 93,700             | 161%                   |
| Road restriping, painting and other projects                 | 572,748                  | 572,748             | 40,000             | 1432%                  |
| Bridge repairs and maintenance                               | -                        | 126,560             | 50,000             | 253%                   |
| Total roadway services                                       | <u>597,033</u>           | <u>850,468</u>      | <u>183,700</u>     | 463%                   |
| <b>Stormwater management</b>                                 |                          |                     |                    |                        |
| Operations   | -                        | -                   | 17,250             | 0%                     |
| Pond aeration  | 724                      | 27,870              | 45,000             | 62%                    |
| Electricity - lift stations                                  | 152                      | 843                 | 600                | 141%                   |
| Stormwater system repairs                                    | -                        | 52,579              | 18,000             | 292%                   |
| Total stormwater management                                  | <u>876</u>               | <u>81,292</u>       | <u>80,850</u>      | 101%                   |
| <b>Other charges</b>   |                          |                     |                    |                        |
| Feral swine removal  | -                        | 175                 | -                  | N/A                    |
| Boat house drop downs  | -                        | -                   | 50,000             | 0%                     |
| Tax collector  | -                        | 14,556              | 14,957             | 97%                    |
| Street lighting  | -                        | 8,316               | -                  | N/A                    |
| Total other charges  | <u>-</u>                 | <u>23,047</u>       | <u>64,957</u>      | 35%                    |
| Total expenditures   | <u>649,313</u>           | <u>1,323,094</u>    | <u>718,935</u>     | 184%                   |
| Excess/(deficiency) of revenues<br>over/(under) expenditures | (644,699)                | (587,960)           | -                  |                        |
| Fund balances - beginning                                    | <u>1,939,877</u>         | <u>1,883,138</u>    | <u>1,742,519</u>   |                        |
| Fund balances - ending                                       |                          |                     |                    |                        |
| Committed  |                          |                     |                    |                        |
| Disaster   | 250,000                  | 250,000             | 250,000            |                        |
| District bridge projects                                     | 100,000                  | 100,000             | 100,000            |                        |
| Road projects  | 550,000                  | 550,000             | 550,000            |                        |
| Storm system upgrades  | 50,000                   | 50,000              | 50,000             |                        |
| Assigned   |                          |                     |                    |                        |
| 3 months working capital                                     | 185,998                  | 185,998             | 185,998            |                        |
| Unassigned   | 159,180                  | 159,180             | 606,521            |                        |
| Fund balances - ending                                       | <u>\$1,295,178</u>       | <u>\$1,295,178</u>  | <u>\$1,742,519</u> |                        |

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN FUND BALANCES  
DEBT SERVICE FUND SERIES 2012  
FOR THE PERIOD ENDED AUGUST 31, 2023**

|  | Current<br>Month  | Year to<br>Date   | Budget            | % of<br>Budget |
|--|-------------------|-------------------|-------------------|----------------|
| <b>REVENUES</b>  |                   |                   |                   |                |
| Assessment levy  | \$ -              | \$ 431,397        | \$ 425,394        | 101%           |
| Special assessment - direct bill                             | -                 | 1,675             | 1,675             | 100%           |
| Interest   | 2,306             | 17,281            | -                 | N/A            |
| Total revenues   | <u>2,306</u>      | <u>450,353</u>    | <u>427,069</u>    | 105%           |
| <b>Debt service</b>  |                   |                   |                   |                |
| Principal  | -                 | 220,000           | 220,000           | 100%           |
| Principal prepayment   | -                 | 5,000             | -                 | N/A            |
| Interest   | -                 | 163,469           | 163,613           | 100%           |
| Total debt service   | <u>-</u>          | <u>388,469</u>    | <u>383,613</u>    | 101%           |
| <b>Other charges</b>   |                   |                   |                   |                |
| Tax collector  | -                 | 8,625             | 8,862             | 97%            |
| Total other charges  | <u>-</u>          | <u>8,625</u>      | <u>8,862</u>      | 97%            |
| Total expenditures   | <u>-</u>          | <u>397,094</u>    | <u>392,475</u>    | 101%           |
| Excess/(deficiency) of revenues<br>over/(under) expenditures | 2,306             | 53,259            | 34,594            |                |
| Fund balance - beginning                                     | 604,143           | 553,190           | 535,959           |                |
| Fund balance - ending  | <u>\$ 606,449</u> | <u>\$ 606,449</u> | <u>\$ 570,553</u> |                |

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
AMORTIZATION SCHEDULE - SERIES 2012  
\$5,160,000**

| Date         | Principal              | Interest Rate | Interest             | Total Principal & Interest |
|--------------|------------------------|---------------|----------------------|----------------------------|
| 05/01/2023   | -                      | -             | 81,362.50            | 81,362.50                  |
| 11/01/2023   | 235,000.00             | 5.750%        | 81,362.50            | 316,362.50                 |
| 05/01/2024   | -                      | -             | 74,606.25            | 74,606.25                  |
| 11/01/2024   | 250,000.00             | 5.750%        | 74,606.25            | 324,606.25                 |
| 05/01/2025   | -                      | -             | 67,418.75            | 67,418.75                  |
| 11/01/2025   | 265,000.00             | 5.750%        | 67,418.75            | 332,418.75                 |
| 05/01/2026   | -                      | -             | 59,800.00            | 59,800.00                  |
| 11/01/2026   | 280,000.00             | 5.750%        | 59,800.00            | 339,800.00                 |
| 05/01/2027   | -                      | -             | 51,750.00            | 51,750.00                  |
| 11/01/2027   | 300,000.00             | 5.750%        | 51,750.00            | 351,750.00                 |
| 05/01/2028   | -                      | -             | 43,125.00            | 43,125.00                  |
| 11/01/2028   | 315,000.00             | 5.750%        | 43,125.00            | 358,125.00                 |
| 05/01/2029   | -                      | -             | 34,068.75            | 34,068.75                  |
| 11/01/2029   | 330,000.00             | 5.750%        | 34,068.75            | 364,068.75                 |
| 05/01/2030   | -                      | -             | 24,581.25            | 24,581.25                  |
| 11/01/2030   | 355,000.00             | 5.750%        | 24,581.25            | 379,581.25                 |
| 05/01/2031   | -                      | -             | 14,375.00            | 14,375.00                  |
| 11/01/2031   | 370,000.00             | 5.750%        | 14,375.00            | 384,375.00                 |
| 05/01/2032   | -                      | -             | 3,737.50             | 3,737.50                   |
| 11/01/2032   | 130,000.00             | 5.750%        | 3,737.50             | 133,737.50                 |
| <b>Total</b> | <b>\$ 2,830,000.00</b> |               | <b>\$ 909,650.00</b> | <b>\$ 3,739,650.00</b>     |

**LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT  
RECONCILIATION OF STORMWATER COMPLIANCE MONIES  
AUGUST 31, 2023**

|                            |                   |                             |
|----------------------------|-------------------|-----------------------------|
| <b>Beginning balance</b>   |                   | \$ 218,317.74               |
| Kossen                     |                   |                             |
| Invoice #54115             | (8,040.75)        |                             |
| Invoice #55223             | (8,040.75)        |                             |
| Invoice #55961             | (8,040.75)        |                             |
| Invoice #55964             | <u>(3,233.00)</u> | (27,355.25)                 |
| Panhandle Engineering      |                   |                             |
| Invoice #60503-1/19        | (1,450.00)        |                             |
| Invoice #60503-1/20        | (2,900.00)        |                             |
| Invoice #60521/01          | (1,800.00)        |                             |
| Invoice #60521/02          | (500)             |                             |
| Invoice #60521/03          | (1,000)           |                             |
| Invoice #60521/04          | (500)             |                             |
| Invoice #60521/07          | (3,500)           |                             |
| Invoice #60521/08          | (8,835)           |                             |
| 30-Apr-22                  | (39,289)          |                             |
| Invoice #60521/11          | <u>(2,000)</u>    | (61,774.00)                 |
| The Service House          |                   |                             |
| Invoice #60396             | (291.69)          |                             |
| Invoice #60397             | <u>(291.69)</u>   | (583.38)                    |
| Shark's Tooth Golf Club    |                   |                             |
| Invoice #60947             | (3,180.00)        |                             |
| Credit memo #63609         | <u>908.46</u>     | (2,271.54)                  |
| Interest income            | 848.51            |                             |
| Bank charges               | <u>(118.34)</u>   | 730.17                      |
| Remaining available monies |                   | <u><u>\$ 127,063.74</u></u> |

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**MINUTES**

**DRAFT**

**MINUTES OF MEETING  
LAKE POWELL RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the Lake Powell Residential Golf Community Development District held a Public Hearing and Regular Meeting on August 7, 2023 at 2:00 P.M. (Central Time), at Shark’s Tooth Clubhouse, 2003 Wild Heron Way, Panama City Beach, Florida 32413.

**Present were:**

|                                |                     |
|--------------------------------|---------------------|
| David Holt                     | Chair               |
| David Dean                     | Vice Chair          |
| Jerry Robinson (via telephone) | Assistant Secretary |
| Thomas Balduf                  | Assistant Secretary |
| Frank Self                     | Assistant Secretary |

**Also present were:**

|                |  |
|----------------|--|
| Jamie Sanchez  | District Manager                         |
| Cindy Cerbone  | Wrathell, Hunt and Associates, LLC (WHA) |
| Mike Burke     | District Counsel                         |
| Bethany Womack | Ecologist/District Operations Manager    |

**Residents present were:**

|                    |                    |                |                     |
|--------------------|--------------------|----------------|---------------------|
| Eddie Levick       | Jim Throneberry    | Paul Levick    | Paul Fox            |
| Kelly Fredrickson  | Patrick Richardson | Sherri Mallory | Melinda Whitton     |
| Kenneth Black      | David Fleet        | Pam Malone     | Richard & Donna Lee |
| Steven Undercoffer | Patti Undercoffer  | Becky Ferris   |                     |

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Ms. Sanchez called the meeting to order at 2:05 p.m. Supervisors Holt, Dean, Balduf and Self were present, in person. Supervisor Robinson attended via telephone.

**SECOND ORDER OF BUSINESS**

**Public Comments**

No members of the public spoke.

41 **THIRD ORDER OF BUSINESS** **Public Hearing on Adoption of Fiscal Year**  
42 **2023/2024 Budget**

- 43  
44 **A. Proof/Affidavit of Publication**  
45 **B. Consideration of Resolution 2023-04, Relating to the Annual Appropriations and**  
46 **Adopting the Budgets for the Fiscal Year Beginning October 1, 2023, and Ending**  
47 **September 30, 2024; Authorizing Budget Amendments; and Providing an Effective Date**

48 Ms. Sanchez recalled that the proposed Fiscal Year 2024 budget was previously reviewed  
49 and edits were made based on the Board’s recommendations.

50  
51 **On MOTION by Mr. Holt and seconded by Mr. Self, with all in favor, the Public**  
52 **Hearing was opened.**

53  
54  
55 No members of the public spoke.

56  
57 **On MOTION by Mr. Balduf and seconded by Mr. Dean, with all in favor, the**  
58 **Public Hearing was closed.**

59  
60  
61 Ms. Sanchez presented Resolution 2023-04 and read the title.

62  
63 **On MOTION by Mr. Holt and seconded by Mr. Dean, with all in favor, the**  
64 **Resolution 2023-04, Relating to the Annual Appropriations and Adopting the**  
65 **Budgets for the Fiscal Year Beginning October 1, 2023, and Ending September**  
66 **30, 2024; Authorizing Budget Amendments; and Providing an Effective Date, was**  
67 **adopted.**

68  
69  
70 **FOURTH ORDER OF BUSINESS** **Consideration of Resolution 2023-05,**  
71 **Making a Determination of Benefit and**  
72 **Imposing Special Assessments for Fiscal**  
73 **Year 2023/2024; Providing for the**  
74 **Collection and Enforcement of Special**  
75 **Assessments; Certifying an Assessment**  
76 **Roll; Providing for Amendments to the**  
77 **Assessment Roll; Providing a Severability**  
78 **Clause; and Providing an Effective Date**



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Ms. Sanchez presented Resolution 2023-05 and read the title.

**On MOTION by Mr. Dean and seconded by Mr. Holt, with all in favor, Resolution 2023-05, Making a Determination of Benefit and Imposing Special Assessments for Fiscal Year 2023/2024; Providing for the Collection and Enforcement of Special Assessments; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll; Providing a Severability Clause; and Providing an Effective Date, was adopted.**

**FIFTH ORDER OF BUSINESS**

**Presentation of Audited Financial Statements for Fiscal Year Ended September 30, 2022, Prepared by Carr, Riggs & Ingram, LLC**

Ms. Cerbone presented the Audited Financial Statements for Fiscal Year Ended September 30, 2022 and noted the pertinent information. There were no findings, recommendations, deficiencies on internal control or instances of non-compliance; it was a clean audit. Asked about the amount of reserve funds in the 2024 budget for the road from the gate to 98, Ms. Cerbone stated the Audit does not have a line-item level of detail that would facilitate an answer; the question should be revisited when the unaudited financials are presented.

**SIXTH ORDER OF BUSINESS**

**Consideration of Resolution 2023-06, Hereby Accepting the Audited Financial Statements for the Fiscal Year Ended September 30, 2022**

**On MOTION by Mr. Dean and seconded by Mr. Balduf, with all in favor, Resolution 2023-06, Hereby Accepting the Audited Financial Statements for the Fiscal Year Ended September 30, 2022, was adopted.**

**SEVENTH ORDER OF BUSINESS**

**District Engineer: Discussion Consideration/ Update**

**A. Speed Enforcement Device Proposals**

117 Ms. Sanchez stated that the District Engineer is not present but Mr. Holt, Mr. Dean and  
118 Ms. Womack will provide updates.

119 Mr. Holt stated he lives near the four-way stop and observed motorists pass by at 50 or  
120 60 miles per hour. Recently, a vehicle almost struck a pedestrian. He stated his opinion that  
121 something must be done to deter speeding. He distributed a handout/brochure for a speed  
122 enforcement device and explained how it works, its effectiveness in nearby communities and the  
123 cost.

124 Discussion ensued regarding whether the device is adjustable, if it is capable of capturing  
125 license plate numbers, installing signage and speed humps on Wild Heron Way.

126 The consensus was for Ms. Womack to work with the District Engineer to obtain proposals  
127 and present prices and options at the next meeting.

128 This item would be kept on the agenda, under District Ecologist.

129 **B. FDOT Compliance**

130 Ms. Womack stated the bridge repairs are complete. The District Engineer will notify the  
131 Florida Department of Transportation (FDOT) that the repairs are complete and in compliance.

132 Mr. Robinson voiced his opinion that the recently installed guard rails are not attractive  
133 and asked if they can be upgraded to be more compatible with the community aesthetic. Ms.  
134 Womack will ask the District Engineer abouts FDOT standards and apprise the Board at the next  
135 meeting.

136 This item will be kept on the agenda, under District Engineer.

137 **C. Stormwater Camera Inspection**

138 Mr. Dean stated the funds that were allocated for stormwater camera inspection in Fiscal  
139 Year 2023 were not yet utilized; the contractor deferred the project because of the wet weather  
140 earlier in the season. As the rains have eased, the Board should revisit and pursue this project.  
141 Ms. Womack will obtain a proposal for stormwater scoping and present it at the next meeting.

142 This item will be kept on the agenda, under District Ecologist.

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144 **EIGHTH ORDER OF BUSINESS**

**District Counsel: Discussion, Consideration,  
Update**

145

146

147 **A. Stormwater Facility Management Services Agreement (CDD approved, awaiting POA**  
148 **approval)**

149 **B. POA Maintenance Agreement (CDD approved, awaiting POA approval)**

- 150 • **Landscape Standards**

151 **C. Wild Heron Way Ownership - Hwy 98 to Covington Bridge**

152 Mr. Burke stated that responses regarding Items A, B and C are pending.

153 **D. Possible Land Swap with the POA for Gate Installation at Wild Heron Way and Pinfish**

154 Mr. Burke stated he has an idea about what might be done in that location but did not  
155 have a response from the Board, that he could draft a document or take direction. Mr. Holt stated  
156 that this item likely should be included in the St. Joe discussion later in the meeting.

157 Mr. Burke stated, for the record, that Mr. Robinson is attending via telephone due to  
158 medical purposes. Typically, if a Supervisor attends via telephone solely for convenience, his or  
159 her vote does not count but, as Mr. Robinson is attending due to exceptional circumstances, his  
160 vote will count.

161

162 **NINTH ORDER OF BUSINESS**

|                              |                   |                    |
|------------------------------|-------------------|--------------------|
| <b>District</b>              | <b>Ecologist:</b> | <b>Discussion,</b> |
| <b>Consideration, Update</b> |                   |                    |

163

164

165 **A. Conservation Easement Signage**

166 Ms. Womack stated she contacted New Leaf about providing a proposal for hourly  
167 services for installation of the conservation signage, as New Leaf has difficulty providing a lump  
168 sum amount. Per New Leaf, with good direction, a map and a walk-through, the project can be  
169 completed in a timely manner. Once the proposal is transmitted, Ms. Womack will email it to the  
170 Board before the next meeting.

171 Ms. Womack responded to questions regarding the maximum distance between signs,  
172 conservation easement boundary and whether signage will be posted on the golf course property  
173 as well as CDD property.

174 **B. DEP Conservation Easement Swap**

175 Ms. Womack stated she received notification from the U.S. Army Corp of Engineers  
176 (USACE) and the Department of Environmental Protection (DEP) processor that they are



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**TWELFTH ORDER OF BUSINESS**

**Staff Reports**

- A. Ecologist/Operations: Cypress Environmental of Bay County, LLC**
- B. District Counsel: Burke Blue**
- C. District Engineer: McNeil Carroll Engineering, Inc.**
- D. District Manager: Wrathell, Hunt and Associates, LLC**
  - **NEXT MEETING DATE: October 2, 2023 at 2:00 P.M. (Central Time)**
  - **QUORUM CHECK**

There were no reports from Staff.

**THIRTEENTH ORDER OF BUSINESS**

**Board Member Comments**

- **Gate Access**  
Ms. Sanchez stated a few items must be considered that were not included on the agenda.
- **Ratification of Change Order with CWR - \$16,559.24**  
**This item was an addition to the agenda.**  
Mr. Holt explained that there is a large, unsightly drop-off near the roundabout that needs immediate repair and, since this is a safety issue, he and Mr. Carroll think it necessary to proceed with the project and approved a CWR quote in between meetings. The project is currently in progress and should be followed by the bridge repair work.

**On MOTION by Mr. Balduf and seconded by Mr. Self, with all in favor, the CWR Change Order to repair a roundabout, in the amount of \$16,559.24, plus an additional not-to-exceed amount of \$8,000 to repair the bridge, was ratified.**

Mr. Dean stated, going forward, it is important to be very specific on Requests for Proposals (RFP) for road construction, with regard to ribbons, milling and testing.

- **Discussion: Gate Access/Locking Gate**  
**This item was an addition to the agenda.**

242 Mr. Holt stated he met with Ms. Mallory and discussed gate access, funding assistance for  
243 the roads, bridge maintenance costs and a pending agreement with St. Joe. Currently, the  
244 owner's gate is wide open and there is unfettered access into the community and the CDD has  
245 no control over the back gate.

246 Mr. Dean stated, although the CDD and POA recognize that the Shark's Tooth Golf Club is  
247 a private amenity within the community and gate access is necessary, The Board does not want  
248 the general public having unencumbered access. He questioned the public status of the road and  
249 asked Management to provide information as to how the tax-exempt bond funds were  
250 expended. He thinks the road could be public but with restricted access and discussed a previous  
251 agreement with St. Joe, the POA, the increase in golf membership, number of vehicles that  
252 currently access the gate and imposing an impact fee on St. Joe.

253 Mr. Dean motioned to lock the back gate to secure the area and bring St. Joe to the  
254 negotiation table. Mr. Self seconded the motion and stated the reason is for the safety of the  
255 residents of Wild Heron.

256 The Board and Staff discussed the legal issues that would ensue with locking the back  
257 gate, tax-exempt bonds, the CDD controlling gate access, St. Joe, a POA fence, a maintenance  
258 easement, safety issues and security concerns.

259 **The meeting recessed and reconvened.**

260 Mr. Burke stated that Mr. Dean's motion to close the back gate, which was built by the  
261 CDD but is on St. Joe property, is inappropriate because the CDD does not have the authority to  
262 enter upon the property and close it off; however, the CDD has the authority to have a gate  
263 constructed at the end of Wild Heron Way.

264 Mr. Holt voiced his opinion that the Board should send an official letter to St. Joe outlining  
265 safety and security concerns and the need to reach a consensus about the back gate.

266 Mr. Dean suggested allowing the public to speak about gate access. Ms. Sanchez stated  
267 all public comments should be limited to three minutes.

268 Resident David Fleet voiced his belief that the public purpose that made the tax-exempt  
269 bonds tax exempt has nothing to do with the public amenity or public road; rather, it involves  
270 environmental protection and wetlands and a deal made between an environmental lawyer for

271 the State of Florida, St. Joe, the CDD and the POA. He discussed what he believes to be the  
272 backstory of the boundary fence, the back gate, the POA, the road from Wild Heron Way and  
273 Pinfish and an irrigation agreement with St. Joe. He stated his opinion that CDDs can close roads  
274 even if there is a public amenity or public purpose. He urged the Board to lock the back gate.

275 Resident Sherri Mallory feels that the most reasonable approach is to restrict access at  
276 the end of Wild Heron Way, pending a second opinion about the perimeter boundary and the  
277 argument made by Mr. Fleet. She thinks the CDD has a strong argument that it can restrict  
278 roadway access and, ultimately, the access point needs to be at the end of Wild Heron Way.

279 Resident Steven Undercoffer discussed a broken gate behind his home allowing vehicles  
280 to cut through Wild Heron instead of going around under 98 and gasoline tanker trucks cutting  
281 across the CDD field. He believes that, when fiduciary responsibility and physical security are  
282 compromised, the CDD will have major issues.

283 Resident Eddie Levick urged the Board to hire an attorney in Jacksonville, Miami or Tampa  
284 instead of the panhandle.

285 Mr. Holt asked for a show of hands of residents who support the CDD's efforts to control  
286 gate access and stated, if there is a strong consensus, St. Joe will be more amenable to negotiate  
287 with the CDD.

288

289 **On MOTION by Mr. Dean and seconded by Mr. Self, with Mr. Dean and Mr. Self**  
290 **in favor, and Mr. Holt, Mr. Balduf and Mr. Robinson dissenting, locking the back**  
291 **gate, was not approved. (Motion failed 2-3)**

292

293

294 Ms. Cerbone asked Mr. Burke to define the scope for a second attorney and stated part  
295 of the discussion will be an initial not-to-exceed amount of \$600 per hour.

296 Mr. Burke stated he intends on seeking an attorney who only does CDD work, for the  
297 purpose of obtaining a second opinion regarding the CDD Board's ability to restrict and/or deny  
298 access on a public CDD road and whether the CDD can install a fence to prevent access in.

299 Resident Becky Ferris stated she plans to make a public records request for forms and  
300 documents that the Developer had to submit to the IRS to be approved for tax-exempt

301 government bonds and asked if the CDD has records of post issuance compliance monitoring. Mr.  
302 Burke will provide the documents to Ms. Ferris.

303

**On MOTION by Mr. Balduf and seconded by Mr. Holt, with Mr. Balduf, Mr. Holt, Mr. Dean and Mr. Robinson in favor, and Mr. Self dissenting, hiring another attorney for a second opinion regarding gate access, in a not-to-exceed amount of \$15,000, was approved (Motion passed 4-1).**

308

309

310 **▪ Discussion/Consideration: Possible Land Swap with POA for Gate Installation at Wild  
311 Heron Way and Pinfish**

312 **This item was an addition to the agenda.**

313 Regarding the possible land swap with the POA for gate installation at Wild Heron Way  
314 and Pinfish, Mr. Burke stated the answer should rest upon the opinion of outside Counsel. The  
315 CDD has a right-of-way (ROW), which cannot be swapped; it must be abandoned as a piece of  
316 property. If the second opinion allows the CDD to deny access to the public road, then a gate can  
317 be installed and there would be no need for a land swap.

318

319 **FOURTEENTH ORDER OF BUSINESS** **Public Comment**

320

321 Ms. Mallory discussed the front gate that was deeded to the POA, the back gate, width of  
322 the ROW, the land swap, a fence on Wild Heron Way, an easement and installing a gate to restrict  
323 access into the property.

324 Mr. Holt asked how the CDD should commence re-evaluating St. Joe’s expansion of the  
325 golf course and the impact it will have on the CDD’s tax rate over 20 years. Mr. Burke stated the  
326 CDD must engage an expert; he believes District Management can provide that service. He stated,  
327 when the golf course was constructed, the idea was that there would be 300 golf members and  
328 this was going to service one golf club but, since the golf facility is currently servicing something  
329 outside of the CDD, the Board could perform a re-assessment because the benefit that is  
330 conferred upon the CDD property is currently greater than what it was when compared to the  
331 original bond assessments.



332 Discussion ensued regarding a change in assessments, whether to commence a re-  
333 assessment process, impact fees, a future clubhouse, ongoing construction and a not-to-exceed  
334 amount for the preparation of an impact report.

335 Ms. Cerbone stated that Mr. Carroll’s input is key because he would provide District  
336 Management with a District Engineer’s Report that addresses the impact and dollar amount of  
337 the impact. Management cannot commence an Assessment Methodology without that data. Ms.  
338 Cerbone stated the Board could put forth a motion and a second to have the District Engineer  
339 commence an Engineer’s Report addressing the impact fees.

340

**On MOTION by Mr. Holf and seconded by Mr. Dean, with all in favor, authorizing Mr. Carroll to prepare an Engineer’s Report, in a not-to-exceed amount of \$10,000, addressing the impact of additional St. Joe activity, and for District Management to produce an Assessment Methodology thereafter, was approved.**

346

347

348 Ms. Ferris stated she understood, from Mr. Burke, that the CDD cannot sell its ROW but  
349 she believes that a manual on the FDOT website, with a section about acquisition of ROWs from  
350 government agencies, contradicts that. Mr. Burke referenced Florida Statute 336.

351 Ms. Mallory stated while the CDD is hiring Mr. Carroll to research the St. Joe re-  
352 assessment, she suggested the CDD also consider imposing special assessments on property  
353 owners that have access to Wild Heron Way, from the gate to 98, which would include  
354 approximately 1,000 units slated for development by St. Joe.

355 Mr. Burke stated a rule was previously adopted addressing exactly that.

356

**FIFTEENTH ORDER OF BUSINESS**

**Adjournment**

358

359

**On MOTION by Mr. Holt and seconded by Mr. Dean, with all in favor, the meeting adjourned at 4:56 p.m., Central Time.**

362

363

364

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

365  
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Secretary/Assistant Secretary

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Chair/Vice

**LAKE POWELL  
RESIDENTIAL GOLF  
COMMUNITY DEVELOPMENT DISTRICT**

**STAFF  
REPORTS**

**LAKE POWELL RESIDENTIAL GOLF COMMUNITY DEVELOPMENT DISTRICT**

**BOARD OF SUPERVISORS FISCAL YEAR 2023/2024 MEETING SCHEDULE**

**LOCATION**

*Shark's Tooth Clubhouse, 2003 Wild Heron Way, Panama City Beach, Florida 32413*  
<sup>1</sup>TBD

| <b>DATE</b>                         | <b>POTENTIAL DISCUSSION/FOCUS</b>         | <b>TIME</b>                   |
|-------------------------------------|---|-------------------------------|
| <b>October 2, 2023</b>              | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>December 4, 2023</b>             | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>February 5, 2024<sup>1</sup></b> | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>March 4, 2024<sup>1</sup></b>    | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>April 1, 2024<sup>1</sup></b>    | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>May 6, 2024<sup>1</sup></b>      | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>June 3, 2024<sup>1</sup></b>     | <b>Regular Meeting</b>                    | <b>2:00 PM (Central Time)</b> |
| <b>August 5, 2024<sup>1</sup></b>   | <b>Public Hearing and Regular Meeting</b> | <b>2:00 PM (Central Time)</b> |