

Lake Ashton

Community Development District

Continued Agenda

Thursday,
October 24, 2019
10:30 a.m.

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| Seat 3: Mike Costello – C | |
| Seat 5: Borden Deane – VC | |
| Seat 1: Bob Ference – AS | |
| Seat 2: Robert Plummer – AS | |
| Seat 4: Harry Krumrie - AS | |

Lake Ashton Clubhouse Ballroom
4141 Ashton Club Drive
Lake Wales, FL 33859

1. Roll Call and Pledge of Allegiance
2. Public Comments on Specific Items on the Agenda (*speakers will fill out a card and submit it to the District Manager prior to beginning of the meeting*)
3. Unfinished Business
 - A. Consideration of Draft Interlocal Agreement Between Lake Ashton CDD and Lake Ashton II CDD Regarding the Acquisition, Operation and Maintenance of the Golf Club
4. Public Comments
5. Adjournment

Prepared by and after recorded return to:

**INTERLOCAL AGREEMENT OF
LAKE ASHTON COMMUNITY DEVELOPMENT DISTRICT AND
LAKE ASHTON II COMMUNITY DEVELOPMENT DISTRICT REGARDING
THE ACQUISITION, OPERATION AND MAINTENANCE
OF THE GOLF CLUB**

THIS INTERLOCAL AGREEMENT OF LAKE ASHTON COMMUNITY DEVELOPMENT DISTRICT AND LAKE ASHTON II COMMUNITY DEVELOPMENT DISTRICT REGARDING THE ACQUISITION, OPERATION AND MAINTENANCE OF THE GOLF CLUB is made by and between **LAKE ASHTON COMMUNITY DEVELOPMENT DISTRICT**, a Florida community development district ("Lake Ashton I") and **LAKE ASHTON II COMMUNITY DEVELOPMENT DISTRICT**, a Florida community development district ("Lake Ashton II") (collectively referred to herein as the "Districts") (this agreement hereinafter referred to as the "Interlocal Agreement").

RECITALS

WHEREAS, Lake Ashton I and Lake Ashton II are special purpose units of local government located in the City of Lake Wales ("Lake Wales") and the City of Winter Haven ("Winter Haven"), respectively, both in Polk County, Florida, and were established for the purpose of planning, financing, constructing, installing, and/or acquiring certain improvements, facilities and services in conjunction with the development of the lands located within the Districts, all of which lands are located within the Lake Ashton residential golf development (hereinafter, "the Lake Ashton Community");

WHEREAS, the Districts were created by and established, and expanded from time to time, pursuant to Chapter 190, Florida Statutes, and the respective ordinances of local jurisdictions (collectively, the "Act");

WHEREAS, both Districts were granted special powers under subsection 190.012(2)(a) of the Act to "plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for parks and facilities, for indoor and outdoor recreational, cultural, and educational uses" pursuant to Lake Wales Ordinance 2000-11 (and amended by Ordinances 2001-01, 2002-06, 2005-11) and the Polk County Board of County Commissioners Ordinance 2005-006 (and amended by Ordinance 2005-042);

WHEREAS, Lake Ashton Golf Club, Ltd., Lake Ashton Golf Club II, Ltd. and Ashton Golf-Eagle's Nest, LLC. (collectively the "Seller") are affiliated with the original developer(s) of Lake Ashton and are, collectively, the current owners of real property and assets which include golf courses, a golf clubhouse, a storage warehouse, driving range, golf cart pathways, walking paths, ancillary bridges, storm water ponds, and certain other features and amenities within the Lake Ashton Community (together, and as further described herein, the "Golf Club"), and the Seller has approached the Districts expressing a desire for one or both of the Districts to acquire the Golf Club, as is more specifically described in the attached Exhibit A;

WHEREAS, Lake Ashton I does not desire to operate and maintain the Golf Club at this time but desires to acquire the portion of real property associated with the Golf Club within the boundary of Lake Ashton I (the "Lake Ashton I Golf Club Property");

WHEREAS, Lake Ashton II is comfortable acquiring and owning the portion of the real property within the boundary of Lake Ashton II and undertaking the financial risk of operating and maintaining the Golf Club and has entered into a Purchase and Sale Contract ("PSA") with the Seller for the purchase of all or a portion of the Golf Club;

WHEREAS, the golf cart pathways, walking paths and ancillary bridges which are components of the Golf Club ("Pathways") are used by residents for purposes other than golf, as are the storm water ponds which are components of the Golf Club ("Ponds");

WHEREAS, due to the cost and type of real property and assets constituting the Golf Club, the Districts find it is not equitable, fair or efficient for each District to separately operate and maintain the portion of the Golf Club within their respective boundaries to reserve use for only its landowners, and to allocate the corresponding costs of the operation and maintenance of that portion of the Golf Club to only its landowners;

WHEREAS, the Districts desire for all landowners within the Districts to be able to use the Golf Club on an equal basis following the acquisition;

WHEREAS, the Act and Section 163.01, Florida Statutes, as amended (the "Interlocal Cooperation Act"), permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;

WHEREAS, under the Interlocal Cooperation Act, the Districts may enter into an interlocal agreement in order to, among other things, facilitate and provide for the ownership, operation and maintenance of the Golf Club, and ensure that all landowners within the Districts shall have equal use of the Golf Club;

WHEREAS, the Districts wish to enter into an agreement to jointly exercise their powers under the Interlocal Cooperation Act in a cost effective, equitable and rational manner, to provide for the acquisition, ownership, operation and maintenance of the Golf Club to benefit the lands within the Lake Ashton Community;

WHEREAS, the Districts find it mutually beneficial and in the best interests of their

landowners, current and future residents and the public at large, that the Districts cooperate to avoid conflicting, disjointed, duplicative, or multiple acquisition and operational efforts as the Districts implement their powers for the lands within and outside their respective boundaries;

WHEREAS, section 190.012(1)(g) permits the Lake Ashton II CDD to “finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructure” for any project within or without its boundaries “when the project is the subject of an agreement between the [Lake Ashton II CDD] and a government entity and is consistent with the local government comprehensive plan of the local government within which the project is to be located.”;

WHEREAS, Lake Ashton I and Lake Ashton II are both governmental entities as referenced in section 190.012(1)(g), Florida Statutes;

WHEREAS, the continued existence, operation, maintenance of the Golf Club within the Lake Ashton Community is consistent with the comprehensive plans of the City of Winter Haven, the City of Lake Wales, and Polk County, Florida;

WHEREAS, to promote public safety, access and enjoyment within the community, the Districts desire to provide for non-exclusive, perpetual easements over the Pathways to the landowners of the Districts and permitted users of the Golf Club;

WHEREAS, the Districts find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law;

WHEREAS, the Districts hereby desire to enter into this Interlocal Agreement, which shall be filed as required by law with the Circuit Clerk of Polk County, Florida;

NOW, THEREFORE, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Districts, the Districts agree as follows:

SECTION 1. RECITALS AND AUTHORITY; REFERENCE GUIDE TO DEFINITIONS. The foregoing recitals are true and correct and by this reference are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including but not limited to Chapters 163, 189, and

190, *Florida Statutes*, and the Florida Constitution. A reference guide to the defined terms established herein is attached hereto as Exhibit B.

SECTION 2. ACQUISITION AND OWNERSHIP OF GOLF CLUB.

At such date as Lake Ashton II acquires the Golf Club real property (“Golf Club Closing Date”), Lake Ashton II shall either immediately convey by special warranty deed the Lake Ashton I Golf Club Property to Lake Ashton or assign its right to acquire the Lake Ashton I Golf Club Property to Lake Ashton I in exchange for a sum of two-hundred and fifty thousand (\$250,000) dollars payable to Lake Ashton II. Lake Ashton I shall grant limited consent to Lake Ashton II’s temporary ownership of real property within Lake Ashton I only insofar as needed to effectuate such conveyance of the Lake Ashton I Golf Club Property to Lake Ashton I.

SECTION 3. OPERATION, MAINTENANCE, MANAGEMENT, REPAIR AND REPLACEMENT OF THE GOLF CLUB.

Other than as stipulated herein and absent an amendment to this Interlocal Agreement, Lake Ashton I shall no financial or other responsibility for the operation or maintenance of the Golf Club. Within sixty (60) days of the execution of this Interlocal Agreement, the Districts plan to enter into a management agreement relating to the operation, maintenance, management, repair and replacement of the Golf Club (the “Golf Club Management Agreement”), which is intended to include, but not necessarily be limited to, management of golf course operations by Lake Ashton II on both Lake Ashton II owned-property and Lake Ashton I Golf Club Property. The Districts intend that this Golf Club Management Agreement would permit the operation and maintenance of the Golf Club as a cohesive whole by Lake Ashton II. If the Districts fail to enter into a Golf Club Management Agreement within sixty (60) days of the execution of this Interlocal Agreement, the provisions of this Interlocal Agreement related to joint operation and management of the Golf Club, including any intentions, consents or approvals by Lake Ashton I thereto, shall be terminated.

SECTION 4. EQUAL USE, RATES AND ACCESS.

Notwithstanding any other Interlocal Agreement between the Districts, any course of prior dealings, or sharing arrangements for other (i.e. non- Golf Club) improvements or amenities of one or both of the Districts, Lake Ashton I and Lake Ashton II hereby agree that landowners and residents within their collective boundaries shall have rights of access and use the Golf Club on an equal basis. Any such usage shall be subject to the rules, regulations, and policies applicable to the Golf Club. Lake Ashton I shall not have the authority to permit or enter into an agreement with another entity granting usage rights for use of any portion of the Golf Club not owned by Lake Ashton I. Nothing herein shall be interpreted to provide a right to any person to use the Golf Club without charge. Except for as provided for in the PSA and as specifically set forth herein, all users of the Golf Club are required to pay the fees imposed by the “Lake Ashton I Non-Resident Golf User Rules.” Unless subsequently agreed to in amendment to this Interlocal Agreement or through an identical rule adopted by both Districts in accordance with Florida law, the Golf Club shall not be considered a component of any other amenities owned by the Districts or subject to the rules, rates and policies applicable to such other amenities. Any rates, fees or charges adopted for membership shall be equal for both residents of Lake Ashton I and Lake Ashton II.

SECTION 5. PRESERVATION OF PONDS AND PATHWAYS

Notwithstanding anything herein to the contrary, the Districts shall agree to mutually allow access to the Pathways for residents and guests of both Districts and to take all actions necessary, including, but not limited to, execution of appropriate easement(s), agreement(s), rules or policies, to ensure mutual access for residents and guests of both Districts within sixty (60) days of acquisition of the Golf Club. The Districts shall also take all actions necessary, including, but not limited to, execution of the appropriate easement(s), agreement(s), rules or policies, to ensure access to the Ponds as may be required for permit compliance and ongoing maintenance by each District. The Districts shall maintain their own pond and Pathways within the boundaries of each respective district.

SECTION 6. CONSENTS.

6.1 Subject to the limitations expressed herein and as may be imposed by a subsequent Golf Club Management Agreement, Lake Ashton I consents to the operation, maintenance, management, repair and replacement of the Lake Ashton I Golf Club Property as part of the Golf Club by Lake Ashton II. At all such times, the Lake Ashton I Golf Club property shall be utilized solely for uses consistent with golf and golf-related activities. If the Lake Ashton I Golf Club property is utilized for any purpose other than golf or if the property is not actively used for golf purposes, this limited consent shall be revoked.

6.2 Lake Ashton I and Lake Ashton II shall perform all actions so required and execute all documents reasonably requested by either District to effectuate Lake Ashton I's conveyance of the Lake Ashton I Golf Property to Lake Ashton I.

6.3 To the extent required by Florida law, Lake Ashton I and Lake Ashton II will cooperate in the establishment of equal fees for the use of the portion of the Golf Club located within its boundaries in such a manner to ensure its residents and landowners and the residents and landowners of Lake Ashton I and Lake Ashton II can utilize the Golf Club on an equal fee basis.

6.4 Lake Ashton II shall prepare, execute and record a non-exclusive, perpetual easement in favor of Lake Ashton I, its residents and landowners, and users of the Golf Club over the Pathways. This easement shall be recorded immediately after the deed conveying the any portion of the Golf Club to Lake Ashton II.

SECTION 7. NO WAIVER OF IMMUNITY. Nothing in this Interlocal Agreement shall be deemed as a waiver of sovereign immunity or limits of liability of either District, including their supervisors, officers, agents and employees and independent contractors, beyond any statutory limited waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 8. DEFAULT; CURE; MEDIATION.

8.1. Default; Cure. A default by either of the Districts under this Interlocal Agreement shall entitle the other District to all remedies available at law or in equity, which may include, but not be limited to, damages, injunctive relief and specific performance. Except as otherwise noted herein, each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party not less than fourteen (14) days from the date of receipt of such notice to cure monetary defaults and thirty (30) days to cure other defaults.

8.2. Mediation. In the event the Districts are unable to resolve a dispute regarding this Interlocal Agreement, the Districts shall submit their dispute to mediation. The Districts agree to cooperate in the selection of a mediator, and agree to share equally in mediation expenses, including the fees of the mediator. However, each District shall be responsible for the fees of its counsel.

SECTION 9. TERMINATION. This Interlocal Agreement shall be terminated automatically, without further action of the Districts, if any of the following conditions are met: (1) Lake Ashton II does not, or is unable to, acquire all of the Golf Club as of the Golf Club Closing Date; (2) Lake Ashton I is not conveyed the Lake Ashton I Golf Club Property within five (5) business days of the Golf Club closing date; (3) any portion of the Golf Club is transferred, sold or otherwise conveyed to an entity other than Lake Ashton I or Lake Ashton II. The Districts shall have the option of terminating this Interlocal Agreement by entering into a written Termination Agreement approved by both Districts which shall be filed with the Clerk of the Circuit Court of Polk County, Florida. Lake Ashton II may also terminate this Interlocal Agreement at any time if it decides not to, or is unable to, purchase all of the Golf Club.

SECTION 10. CONTROLLING LAW; VENUE. This Interlocal Agreement shall be construed and governed in accordance with the laws of the State of Florida. Venue shall be in Polk County, Florida.

SECTION 11. SEVERABILITY. In the event any term or provision of this Interlocal Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be construed or deleted as such authority determines, and the remainder of this Interlocal Agreement shall be construed to be in full force and effect.

SECTION 12. AMENDMENT. This Interlocal Agreement shall not be modified or amended except by written agreement of the Districts, which amendment shall be approved by each of the Districts' Board of Supervisors in an open public meeting, duly executed by an authorized representative of the parties hereto and filed with the Clerk of the Circuit Court of Polk County, Florida.

SECTION 13. TIME OF THE ESSENCE. The Districts each agree that time is of the essence in respect to this Interlocal Agreement.

SECTION 14. NOTICE. Each of the Districts shall furnish to the other such notice ("Notice"), as may be required from time to time, pursuant to this Interlocal Agreement, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To LAKE ASHTON I: **LAKE ASHTON CDD**
c/o GMS Central Florida
135 Central Boulevard, Suite 320
Orlando, Florida 32801
Attention: Jillian Burns
jburns@gmscfl.com

With a copy to: **LATHAM, LUNA, EDEN & BEAUDINE, LLP**
111 N. Magnolia Avenue, Suite 1400
Orlando, Florida 32801
Attention: Jan A. Carpenter, Esq.
jcarpenter@lathamluna.com

To LAKE ASHTON II: **LAKE ASHTON II CDD**
c/o GMS Central Florida
135 Central Boulevard, Suite 320
Orlando, Florida 32801
Attention: Jillian Burns
jburns@gmscfl.com

With a copy to: **HOPPING GREEN & SAMS**
PA 119 S. Monroe Street, Suite
300
Tallahassee, Florida 32301
Attention: Michael C. Eckert
michaele@hgslaw.com

Except as otherwise provided in this Interlocal Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Interlocal Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein. A courtesy copy of any Notice shall also be sent to the persons listed in this section by electronic mail, but such courtesy shall not operate as an official Notice under this Interlocal Agreement.

SECTION 15. EXECUTION IN COUNTERPARTS. This Interlocal Agreement may be executed in several counterparts, each which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 16. EFFECTIVE DATE. This Interlocal Agreement and the rights conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Polk County, Florida, in accordance with the requirements of section 163.01(11), *Florida Statutes*.

**SIGNATURE PAGE TO
INTERLOCAL AGREEMENT OF
LAKE ASHTON COMMUNITY DEVELOPMENT DISTRICT AND
LAKE ASHTON II COMMUNITY DEVELOPMENT DISTRICT REGARDING
THE ACQUISITION, OPERATION AND MAINTENANCE
OF THE GOLF CLUB**

IN WITNESS WHEREOF, the undersigned have executed this Interlocal Agreement as of the _____ day of _____, 2019.

Witness:

**LAKE ASHTON COMMUNITY
DEVELOPMENT DISTRICT**

Name: _____

By: _____
Title: _____

Witness:

Name: _____

Attest: _____
By: _____
Title: _____

Witness:

**LAKE ASHTON II COMMUNITY
DEVELOPMENT DISTRICT**

Name: _____

By: _____
Title: _____

Witness:

Name: _____

Attest: _____
By: _____
Title: _____