



Rizzetta & Company

Catalina at Winkler Preserve Community Development District

Board of Supervisors' Meeting November 7, 2023

District Office:
9530 Marketplace Road, Suite 206
Fort Myers, Florida 33912
(239) 936-0913

www.catalinacdd.org

CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

Rizzetta & Company, Inc., 9530 Marketplace Road, Suite 206, Fort Myers, Florida 33912

Board of Supervisors	Keith Sherman Joseph Molon Butch Johnston Dick Bonito Douglas Thompson	Chairman Vice Chairman Assistant Secretary Assistant Secretary Assistant Secretary
District Manager	Belinda Blandon	Rizzetta & Company, Inc.
District Counsel	Lauren Gentry	Kilinski I VanWyk PLLC
District Engineer	Carl Barraco	Barraco and Associates, Inc.

All cellular phones must be placed on mute while in the meeting room.

The Audience Comment portion of the agenda is where individuals may make comments on matters that concern the District. Individuals are limited to a total of three (3) minutes to make comments during this time.

Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting/hearing/workshop is asked to advise the District Office at least forty-eight (48) hours before the meeting/hearing/workshop by contacting the District Manager at (239) 936-0913. If you are hearing or speech impaired, please contact the Florida Relay Service by dialing 7-1-1, or 1-800-955-8771 (TTY) 1-800-955-8770 (Voice), who can aid you in contacting the District Office.

A person who decides to appeal any decision made at the meeting/hearing/workshop with respect to any matter considered at the meeting/hearing/workshop is advised that person will need a record of the proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

District Office · Ft. Myers, Florida · (239) 936-0913

Mailing Address · 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614

www.catalinacdd.org

October 30, 2023

Board of Supervisors
**Catalina at Winkler Preserve
Community Development District**

AGENDA

Dear Board Members:

The regular meeting of the Board of Supervisors of Catalina at Winkler Preserve Community Development District will be held on **Tuesday, November 7, 2023 at 2:30 p.m.** at the office of Rizzetta & Company, Inc., located at 9530 Marketplace Road, Suite 206, Fort Myers, FL 33912. The following is the agenda for this meeting:

- 1. CALL TO ORDER/ROLL CALL**
- 2. PUBLIC COMMENT**
- 3. BUSINESS ADMINISTRATION**
 - A. Consideration of the Minutes of the Board of Supervisors' Meeting held on August 08, 2023..... Tab 1
 - B. Ratification of the Operations and Maintenance Expenditures for July, August, and September 2023..... Tab 2
- 4. BUSINESS ITEMS**
 - A. Consideration of EarthBalance Proposal for 2023 Quarterly Preserve Maintenance..... Tab 3
- 5. STAFF REPORTS**
 - A. District Counsel
 - B. District Engineer
 - C. District Manager Tab 4
- 6. SUPERVISOR REQUESTS AND COMMENTS**
- 7. ADJOURNMENT**

We look forward to seeing you at the meeting. In the meantime, if you have any questions, please do not hesitate to call us at (239) 936-0913.

Very truly yours,
Belinda Blandon
Belinda Blandon
District Manager

Cc: Lauren Gentry, Kilinski | VanWyk PLLC

Tab 1

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MINUTES OF MEETING

**CATALINA AT WINKLER PRESERVE
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of Catalina at Winkler Preserve Community Development District was held on **Tuesday, August 08, 2023 at 2:30 p.m.** at the office of Rizzetta & Company, Inc., located at 9530 Marketplace Road, Suite 206, Fort Myers, Florida 33912.

Present and constituting a quorum:

Keith Sherman	Board Supervisor, Chairman
Joe Molon	Board Supervisor, Vice Chairman
Butch Johnston	Board Supervisor, Assistant Secretary
Richard "Dick" Bonito	Board Supervisor, Assistant Secretary
Douglas Thompson	Board Supervisor, Assistant Secretary

Also present were:

Belinda Blandon	District Manager, Rizzetta & Company, Inc.
Lauren Gentry	District Counsel, Kilinski I VanWyk PLLC (via Teams)
Molly Maggiano	District Counsel, Kilinski I VanWyk PLLC
Wes Kayne Representative	District Engineer, Barraco & Associates, Inc. Solitude Lake Management

Audience

FIRST ORDER OF BUSINESS **Call to Order**

Ms. Blandon called the meeting to order and conducted roll call.

SECOND ORDER OF BUSINESS **Public Comment**

Ms. Knecht spoke about her backyard. She stated that several trees at the back of her yard sit in the water as a result of loss of approximately four feet of her parcel, which she believes was caused by remediation work undertaken by the CDD several years ago. Ms. Knecht provided an overview of her comments to the Board in a letter during the meeting, which is attached to the minutes.

THIRD ORDER OF BUSINESS **Consideration of the Minutes of the
Board of Supervisors' Meeting held
on May 09, 2023**

Ms. Blandon presented the minutes of the Board of Supervisors' Meeting held on May 09, 2023, and asked if there were any questions, comments, or changes to the

48 minutes as presented. There were none.
49

50 On a Motion by Mr. Johnston, seconded by Mr. Sherman, with all in favor, the Board
51 Approved the Minutes of the Board of Supervisors' Meeting held on May 09, 2023, for
52 the Catalina at Winkler Preserve Community Development District.

53
54 **FOURTH ORDER OF BUSINESS** **Consideration of the Operations and**
55 **Maintenance Expenditures for April,**
56 **May, and June 2023**
57

58 Ms. Blandon provided an overview of the operations and maintenance
59 expenditures for the month of March 2023 totaling \$9,327.69; the expenditures for the
60 period of May 1-31, 2023, totaling \$18,455.84; and the expenditures for the period for
61 June 1-30, 2023, totaling \$7,119.98. She asked if there were any questions. Mr.
62 Thompson asked about the expenditure for the month of June. There was a brief
63 discussion about the costs of the Solitude tests.
64

65 On a Motion by Mr. Thompson, seconded by Mr. Johnston, with all in favor, the Board
66 Approved the Operations and Maintenance Expenditures for the Month of April 2023
67 (\$9,327.69), May 2023 (\$18,455.84), and June 2023 (\$7,119.98), for the Catalina at
68 Winkler Preserve Community Development District.

69
70 **FIFTH ORDER OF BUSINESS** **Public Hearing to Consider the**
71 **Adoption of the Fiscal Year 2023/2024**
72 **Budget(s)**
73

74 Ms. Blandon provided an overview of the public hearing process and asked for a
75 motion to open the public hearing to consider the adoption of the fiscal year 2023/2024
76 budget.
77

78 On a Motion by Mr. Sherman, seconded by Mr. Johnston, with all in favor, the Board
79 Opened the Public Hearing to Consider the Adoption of the Fiscal Year 2023/2024
80 Budget, the Catalina at Winkler Preserve Community Development District.

81
82 Ms. Blandon opened the floor to the public for public comment. Ms. Knecht made
83 the comment that she hopes the budget will accommodate remedial repair of her
84 backyard.
85

86 On a Motion by Mr. Johnston, seconded by Mr. Bonito, with all in favor, the Board Closed
87 the Public Hearing to Consider the Adoption of the Fiscal Year 2023/2024 Budget, the
88 Catalina at Winkler Preserve Community Development District.

89
90 **SIXTH ORDER OF BUSINESS** **Presentation of the Proposed Budget**
91 **for Fiscal Year 2023/2024**
92

93 Ms. Blandon presented the Proposed Budget. She asked if there were any

94 questions. There were none.

95
96 **SEVENTH ORDER OF BUSINESS**

**Consideration of Resolution 2023-04,
Annual Appropriations and Adopting
the Final Budget for Fiscal Year
2023/2024**

97
98
99
100
101 Ms. Bandon provided an overview of the proposed final budget for fiscal year
102 2023/2024 advising that the total general fund budget is \$150,350 and the total reserve
103 fund budget is \$30,661. She asked if there were any questions. Mr. Sherman spoke
104 about the cost of the maintenance of the lakes. They spoke about recirculating the
105 Reserved Study to the Board.
106

107 On a Motion by Mr. Sherman, seconded by Mr. Thompson, with all in favor, the Board
108 Adopted Consideration of Resolution 2023-04, Annual Appropriations and Adopting the
109 Final Budget for Fiscal Year 2023/2024, for the Catalina at Winkler Preserve Community
110 Development District.

111
112 **EIGHTH ORDER OF BUSINESS**

**Consideration of Resolution 2023-05,
Fiscal Year 2023/2024 Assessments**

113
114
115 Ms. Bandon provided an overview of Resolution 2023-05, relating to the
116 assessments for fiscal year 2023/2024 and asked if there were any questions. There
117 were no questions.
118

119 On a Motion by Mr. Thompson, seconded by Mr. Molon, with all in favor, the Board
120 Adopted Consideration of Resolution 2023-05, Fiscal Year 2023/2024 Assessments, for
121 the Catalina at Winkler Preserve Community Development District.

122
123 **NINTH ORDER OF BUSINESS**

**Consideration of Resolution 2023-06,
Redesignating the Secretary of the
District**

124
125
126
127 Ms. Bandon provided an overview of the resolution and asked if there were any
128 questions. There were no questions.
129

130 On a Motion by Mr. Johnston, seconded by Mr. Thompson, with all in favor, the Board
131 Adopted Resolution 2023-06, Redesignating Scott Brizendine as Secretary of the
132 District, for the Catalina at Winkler Preserve Community Development District.

133
134 **TENTH ORDER OF BUSINESS**

**Consideration of Resolution 2023-07,
Adopting a Meeting Schedule for
Fiscal Year 2023/2024**

135
136
137
138 Ms. Bandon provided an overview of the resolution advising that the schedule
139 being presented is consistent with the current year schedule. She asked if there were

140 any questions. There were comments about one of the scheduled days being an
141 elections day, a discussion ensued. It was decided to leave the schedule in place.
142

143 On a Motion by Mr. Bonito, seconded by Mr. Thompson, with all in favor, the Board
144 Adopted Consideration of Resolution 2023-07, Adopting a Meeting Schedule for Fiscal
145 Year 2023/2024, for the Catalina at Winkler Preserve Community Development District.

146
147 **ELEVENTH ORDER OF BUSINESS**

**Ratification of Acceptance of Audit for
Fiscal Year End September 30, 2022 as
Prepared by Berger, Toombs, Elam,
Gaines & Frank**

148
149
150
151
152 Ms. Bandon provided an overview of the audit for Fiscal Year End September
153 30, 2022 as prepared by Berger, Toombs, Elam, Gaines and Frank. She asked if there
154 were any questions. There were none.
155

156 On a Motion by Mr. Sherman, seconded by Mr. Molon, with all in favor, the Board
157 Adopted Ratification of Acceptance of Audit for Fiscal Year End September 30,2022 as
158 Prepared by Berger, Toombs, Elam, Gaines, & Frank, for the Catalina at Winkler
159 Preserve Community Development District.

160
161 **TWELFTH ORDER OF BUSINESS**

**Discussion of Claims Related to 17012
Clemente Court**

162
163
164 Ms. Gentry provided an overview of correspondence received from legal counsel
165 for the parcel owner at 17012 Clemente Court relative to claims that remediation work
166 previously undertaken by the District caused damage and loss of a portion of her parcel.
167 Ms. Gentry requested that Mr. Kayne address the claims from an engineering perspective.
168 Mr. Kayne provided the Board with an overview of the scope of the remediation work and
169 location of the work previously completed by the District. Mr. Kayne further advised the
170 Board that, in his professional opinion, the issues the parcel owner is experiencing were
171 not caused by the District and are outside the scope of the District's responsibilities to
172 repair. The Board determined there was no action to be taken by the District and directed
173 District Counsel to coordinate with the District Engineer to prepare a response to the letter
174 received from the parcel owner's counsel.
175

176 **THIRTEENTH ORDER OF BUSINESS**

Staff Reports

177
178 Ms. Bandon introduced the Solitude representative, and she gave an
179 overview of the Salinity test results provided to the Board. Board
180 discussion ensued.
181

182 A. District Counsel

183 Ms. Gentry and Ms. Maggiano advised they had nothing to report.
184

185 B. District Engineer

186 Mr. Kayne advised that he has a new hire, Frank Savage will be working

187 with the district and providing NPDES reports.
188

189 Mr. Sherman asked about the drainage and Mr. Kayne stated he would
190 double check the drain boxes to confirm they are flowing before September.
191

192 Mr. Sherman asked Mr. Kayne to survey the lakes and Mr. Kayne stated he
193 would complete that survey.
194

195 C. District Manager

196 Ms. Bandon advised that the next meeting of the Catalina at Winkler
197 Preserve CDD is scheduled for Tuesday, November 07, 2023, at 2:30
198 p.m.
199

200 Ms. Bandon also advised that the district is slightly overbudget due to
201 hurricane expenses. She asked if there were any questions. Mr. Sherman
202 inquired about a landscaping company to do small work around the CDD
203 community. Ms. Bandon requested that Mr. Kayne send Ms. Bandon a
204 map of the area and quantities for proposals for the repairs.
205

206 **FOURTEENTH ORDER OF BUSINESS**

Supervisor Requests and Comments

207
208 Ms. Bandon opened the floor to Supervisor requests and comments.
209

210 Mr. Johnston advised the Board that he is resigning as he has moved.
211

212 On a Motion by Mr. Thompson, seconded by Mr. Molon, with all in favor, the Board
213 Acceptance the Resignation of Mr. Floyd Johnston, for the Catalina at Winkler Preserve
214 Community Development District.

215
216 **FIFTEENTH ORDER OF BUSINESS**

Adjournment

217
218 Ms. Bandon stated there are no other agenda items to come before the Board and
219 asked for a motion to adjourn the meeting.
220

221 On a Motion by Mr. Bonito seconded by Mr. Sherman, with all in favor, with all in favor,
222 the Board adjourned the meeting at 3:13 p.m., for the Catalina at Winkler Preserve
223 Community Development District.

224
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230 _____
Secretary/Assistant Secretary

Chairman/Vice Chairman

Tab 2

CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

District Office · Ft. Myers, Florida · (239) 936-0913
Mailing Address - 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614
www.catalinacdd.org

Operation and Maintenance Expenditures July 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from July 1, 2023 through July 31, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: **\$4,936.22**

Approval of Expenditures:

_____ Chairperson

_____ Vice Chairperson

_____ Assistant Secretary

Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

July 1, 2023 Through July 31, 2023

<u>Vendor Name</u>	<u>Check Number</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Amount</u>
Florida Power & Light Company	100100	09846-68343 06/23	17043 Tremont St #Aerator 06/23	\$ 119.10
Florida Power & Light Company	100100	11246-08348 06/23	17213 Wrigley Cir #Aerator 06/23	\$ 499.03
Kilinski / Van Wyk, PLLC	100103	6911	Legal Service 06/23	\$ 54.00
Rizzetta & Company, Inc.	100101	INV0000081359	District Management Fees 07/23	<u>\$ 4,264.09</u>
Report Total				<u>\$ 4,936.22</u>

CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

District Office · Ft. Myers, Florida · (239) 936-0913
Mailing Address - 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614
www.catalinacdd.org

Operation and Maintenance Expenditures August 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from August 1, 2023 through August 31, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: **\$8,610.00**

Approval of Expenditures:

_____ Chairperson

_____ Vice Chairperson

_____ Assistant Secretary

Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

August 1, 2023 Through August 31, 2023

<u>Vendor Name</u>	<u>Check Number</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Amount</u>
Disclosure Services, LLC	100105	001	Amortization Schedule S2017 5-1-23 Prepay \$10,000 07/23	\$ 100.00
Douglas B Thompson	100108	DT080823	Board of Supervisors Meeting 08/08/23	\$ 200.00
Florida Power & Light Company	ACH	09846-68343 07/23 AUTOPAY	17043 Tremont St #Aerator 07/23	\$ 111.16
Floyd Johnston	100109	FJ080823	Board of Supervisors Meeting 08/08/23	\$ 200.00
Jay Keith Sherman	100110	KS080823	Board of Supervisors Meeting 08/08/23	\$ 200.00
Joseph Molon	100111	JM080823	Board of Supervisors Meeting 08/08/23	\$ 200.00
Kilinski / Van Wyk, PLLC	100115	7129	Legal Service 07/23	\$ 753.00
News-Press Media Group	100112	5793326	Legal Advertising 07/24/23-07/31/23	\$ 592.40
Richard Bonito	100113	RB080823	Board of Supervisors Meeting 08/08/23	\$ 200.00
Rizzetta & Company, Inc.	100104	INV0000082222 08/23	District Management Fees 08/23	\$ 4,264.09
Solitude Lake Management, LLC	100107	PSI002184	Aerator Maintenance 08/01/23 - 10/31/23	\$ 264.00
Solitude Lake Management, LLC	100107	PSI003011	Lake & Pond Monthly- Fountain Maint 08/01/23 - 10/31/23	\$ 129.00
Solitude Lake Management, LLC	100114	PSI-86420	Lake & Pond Management Services 06/23	\$ 465.45

Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

August 1, 2023 Through August 31, 2023

<u>Vendor Name</u>	<u>Check Number</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Amount</u>
Solitude Lake Management, LLC	100114	PSI-87580	Lake & Pond Management Services 07/23	\$ 465.45
Solitude Lake Management, LLC	100114	PSI-97318	Lake & Pond Management Services 08/23	<u>\$ 465.45</u>
Report Total				<u>\$ 8,610.00</u>

CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

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Mailing Address - 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614
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Operation and Maintenance Expenditures September 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from September 1, 2023 through September 30, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: **\$16,999.75**

Approval of Expenditures:

_____ Chairperson

_____ Vice Chairperson

_____ Assistant Secretary

Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

September 1, 2023 Through September 30, 2023

<u>Vendor Name</u>	<u>Check Number</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Amount</u>
ADA Site Compliance, LLC	100122	2929	ADA Website Compliance 09/23	\$ 900.00
Barraco and Associates, Inc.	100118	26526	Engineering Services 08/23	\$ 3,769.67
Egis Insurance Advisors, LLC	100121	19817	Policy #100123605 10/01/2023- 10/01/2024	\$ 5,945.00
Florida Power & Light Company	100117	09846-68343 08/23	17043 Tremont St #Aerator 08/23	\$ 117.79
Kilinski / Van Wyk, PLLC	100119	7349	Legal Service 08/23	\$ 1,537.75
Rizzetta & Company, Inc.	100116	INV0000083206	District Management Fees 09/23	\$ 4,264.09
Solitude Lake Management, LLC	100123	PSI005842	Lake & Pond Management Services 09/23	\$ <u>465.45</u>
Report Total				\$ <u>16,999.75</u>

Tab 3



Price Quote

PROJECT NAME: Catalina at Winkler Preserve CDD 2023 Maintenance

ATTENTION: Belinda Blandon, Senior District Manager
Catalina at Winkler Preserve CDD
c/o Rizzetta & Company
9530 Marketplace Road, Suite 206
Fort Myers, FL 33912
bblandon@rizzetta.com

PRICE QUOTED:

Description	No. of Events	Price Per Event	Total Price
Maintenance	4	\$2,495.00	\$9,980.00

SCOPE OF WORK:

Maintenance

EarthBalance® will supply the labor and materials necessary for one year of quarterly ongoing nuisance and exotic plant species maintenance within approximately 21 acres of preserve at Catalina at Winkler Preserve Community Development District located in Fort Myers, Florida. This Task will include a treatment of all listed Category I and II Florida Invasive Species Council’s (FISC) 2019 “List of Invasive Plant Species”. All target species within the treatment area will be killed-in-place with an appropriate dye-laced herbicide approved for use by the State of Florida. This Task does not include any removal or disposal of vegetative debris by **EarthBalance®**. All work will be directed by a qualified project manager licensed to apply herbicides by the State of Florida.

EarthBalance® will perform the services described above for a fixed fee of **\$9,980.00**.



Price Quote (continued)

PROJECT NAME: Catalina at Winkler Preserve CDD 2023 Maintenance

CONDITIONS:

This quote shall remain valid for a period not to exceed thirty (30) days beyond the submittal date of **September 27, 2023**. If not accepted within this period, **EarthBalance®** reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement and the attached terms and conditions shall be effective upon its full execution.

QUOTED BY: James Barron
Project Manager
EarthBalance®
2570 Commerce Parkway
North Port, FL 34289
jbarron@earthbalance.com

IN WITNESS WHEREOF, this Agreement is executed on the dates hereinafter stated.

EARTHBALANCE®

CLIENT

By: _____

By: _____

Printed: _____

Printed: _____

Title: Vice President

Title: _____

Date: _____, 2023

Date: _____, 2023

PLEASE INDICATE IF THE CLIENT IS ALSO THE OWNER OF THE PROPERTY ON WHICH THE SERVICES/WORK WILL BE PERFORMED:

_____ **OWNER**

_____ **NOT THE OWNER**

IF THE CLIENT IS NOT THE PROPERTY OWNER, PLEASE PRINT THE NAME AND CONTACT INFORMATION FOR THE PROPERTY OWNER:

Name: _____

Address: _____

Phone Number: _____



PRICE QUOTE TERMS AND CONDITIONS

1. **Services.** EarthBalance® hereby agrees to provide all supervision, labor, materials, equipment, and other facilities to complete the Work as described in the attached Price Quote ("Scope of Work" or "Work"). EarthBalance® agrees to use its best efforts in completing the Work. The Work shall be accomplished in a workmanlike and professional manner using the degree of skill and care ordinarily exercised by a reputable member of EarthBalance's® profession practicing in the same or similar locality. No other warranty, express or implied, is made or intended, unless provided in the Scope of Work.

This agreement is limited to tasks identified in the attached Price Quote and does not include additional or repeat Work resulting from changes to the project or the information upon which this agreement is based. Modification to the final work products performed at the request of the Client that is not the result of the Contractor's errors or omissions shall be billed to the Client as additional services.

2. **Time.** This quote shall remain valid for a period not to exceed thirty (30) days beyond the date of submittal. If not accepted within this period, EarthBalance® reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement shall be effective upon its full execution.

3. **Duty to Cooperate.** Client agrees to cooperate with EarthBalance® in all respects in connection with EarthBalance's® efforts to discharge the Scope of Work. Client shall make Client's property available to EarthBalance®, shall timely comply with EarthBalance's® requests for information, and shall execute all documents reasonably required by EarthBalance® in discharging the Scope of Work. Client agrees to inform EarthBalance® of any known job site hazards including, but not limited to, hazardous substances, buried debris, ordnance or explosives, sinkholes, wildlife hazards, etc.

4. **Payment.** Client agrees to pay a fee for the Work performed based upon the information contained in attached Price Quote. As soon as may be practicable at the beginning of each month, EarthBalance® shall invoice Client for all work performed in the prior month and any other sums due EarthBalance®. Client shall pay the invoice amount within thirty (30) days after the invoice date. EarthBalance® may cease performing work under the attached Price Quote if any payment due hereunder is not paid within thirty (30) days of the invoice date. EarthBalance® accepts cash, check, credit card, ACH or Wire Transfer as payment. A convenience fee of 5% will be added to all credit card payments.

Client agrees that EarthBalance® may place a lien upon the Property for Work performed under the attached Price Quote and that EarthBalance® may record and enforce the lien for Work performed in accordance with the provisions of Florida's Construction Lien Law. In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. In addition, if EarthBalance® places this executed Price Quote in the hands of an attorney for the collection of any sums due hereunder, Client agrees to reimburse EarthBalance® for its reasonable attorney's fees and costs relating thereto.

5. **Termination and Default.** This agreement may be terminated by either party giving the other party thirty (30) days written notice of intent to terminate. Upon a notice of termination without cause, Client shall pay EarthBalance® for all labor and materials procured to the date of termination, including a reasonable profit not to exceed 10% of completed work that complies with the Contract Documents. This shall include all cost incurred in preparing to fulfill the contractual obligations and any re-stocking fees along with all other damages associated with termination. In addition, upon default by Client, monetary or otherwise, this agreement may be terminated by EarthBalance® with seven (7) days written notice of intent to terminate if the default remains uncured after such notice period and EarthBalance® shall be entitled to recover all damages both actual and consequential, incurred as a result of said default. EarthBalance's® liability to Client or any related party for any claim related to or arising out of (i) this agreement or (ii) EarthBalance's® Work shall be limited to two times the amount of fees paid by Client hereunder.

6. **Force Majeure Event.** EarthBalance® shall not be liable to Client for damages resulting from delay in or termination of EarthBalance's® Work because of fire or casualty, riots, strikes, picketing, boycotts, lockouts, labor disturbances, shortages of materials, epidemics, pandemics, war, terrorism or combined action of the workmen or others, governmental delays, or any acts of God including, but not limited to, severe snowstorms, earthquakes, hurricanes, floods, or any other cause or condition beyond its control making it inadvisable in EarthBalance's® determination to proceed with the Work (collectively, a "Force Majeure Event"). EarthBalance® shall have no obligation to resume Work discontinued under this Section. If EarthBalance® elects not to resume the Work, Client's sole and exclusive remedy shall be payment on a pro-rata basis for the percentage of Work that has actually been completed as of the date of its receipt of EarthBalance's® notice of the Force Majeure Event.

7. **Warranties.** Unless otherwise provided: **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** All warranties/guarantees provided by EarthBalance®, if any, shall be deemed null and void if Client fails to strictly adhere to the payment terms contained in the Agreement. All warranties and guarantees, if any, provided under the Agreement are solely for the original Client and are non-transferable, unless otherwise agreed to by Client and EarthBalance® in writing. Any express warranty provided, if any, by EarthBalance® is the sole and exclusive remedy for alleged defects, in lieu of all other remedies, implied or statutory. Warranties to be issued upon completion and full payment of this Agreement.

Tab 4