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MEMORANDUM

TO: Board of Supervisors
Poinciana Community Development District
Board of Supervisors
Poinciana West Community Development District

FROM: Michael C. Eckert

DATE: October 5, 2018

RE: Past Negotiations of Asset Sale and Purchase Agreement

At the last joint board meeting, several supervisors inquired about creating a list of major benefits that the Poinciana Community Development District and the Poinciana West Community Development District (collectively the "Districts") received through the extensive negotiations of the Asset Sale and Purchase Agreement ("PSA") with Avatar Properties, Inc. ("Avatar"). It is my understanding that supervisors were concerned because some people have been spreading misinformation in the community that the Districts simply accepted Avatar Properties Inc.'s ("Avatar") offer to sell the amenities without negotiation. Nothing could be further from the truth. In fact, there were twenty-two (22) versions of the PSA before the Districts approved it. Those twenty-two (22) versions reflect the back and forth negotiations between the Districts and Avatar. Below is a summary list of just some of the major benefits the negotiations yielded for the Districts and their residents. Note that this list does not include the countless language changes designed to protect the Districts which were implemented through negotiations.

Purchase Price

- The purchase price was negotiated in an amount to ensure that construction of new performing arts center and wellness center would be accomplished without materially raising amounts residents currently pay.

- The purchase price initially sought by Avatar was reduced as a result of the Districts' insistence on creating an operating reserve for the amenity budget and creating a capital reserve for the amenities being purchased and the new amenities proposed to be constructed. Prior to 2018, there were no such reserves in the club budget and no plans to create such.

- Avatar proposed the Districts agree to a price certain and assume the liability for any increases in the bond interest rates. The Districts instead required Avatar to bear the risk of interest rate increases. As a result, if interest rates rise, the purchase price will be required to be reduced or the transaction will not close. Depending on the amount of the interest rate increase, this may result in a reduction of the purchase price by several million dollars.

- Avatar proposed the Districts pay a traditional portion of the closing costs. The Districts instead required that Avatar pay all closing costs. This amount is estimated at $600,000 and reduces Avatar's payment from the proceeds of the transaction.

Assessment Structure

- Under the Club Plan, Avatar does not pay operations and maintenance fees relative to the properties that it owns. Avatar similarly did not want to pay amenity operations and maintenance assessments ("Amenity O&M Assessments") on its lands. This structure was not acceptable to the Districts. Negotiations resulted in Avatar agreeing to pay its full Amenity O&M Assessments relative to its lands which is a significant amount annually. These assessments were estimated at $1,650,000 in 2017 for that year, but are anticipated to decline each year as more homes are sold by Avatar.

- If requested by the Districts, Avatar is now required to pay all of its Amenity O&M Assessments in advance. Avatar is also required to pay its amenity debt service assessments ("Amenity Debt Assessments") in advance, if requested by the Districts.

- Through negotiations, the Districts can require Avatar to post a surety bond or letter of credit equal to 18 months of Operation and Maintenance Assessments ("O&M Assessments") on its lands and lots. In 2017, this amount was estimated at $2.5 million.

Financial and Existing Debt Matters

- The Districts insisted that Avatar enter into a funding agreement instead of the Districts assessing the residents to pay the costs for the attorney fees, engineering fees and inspection costs associated with the inspection of the amenities, special assessment process, bond validation process and bond sale process. The Districts are only required to repay such monies advanced by Avatar if: 1) bonds are actually issued, 2) the bonds are issued before April 20, 2021, 3) bond counsel states bond funds can be used for such reimbursement, *and* 4) bond funds are sufficient to be able to make such reimbursement.

- Avatar proposed to sell the amenities subject to existing liens, including the outstanding debt assessment liens of the Districts on the amenity facilities. The Districts insisted that

Avatar pay off the existing 2017 PWCDD debt assessments and 2012 PCDD debt assessments in the approximate amount of $400,000 prior to or at closing. This ensures the Districts are not required to repay bondholders these amounts from resident assessments.

Construction, Management, Operation, and Maintenance of the Amenities

- Avatar initially proposed it would decide what new amenities would be built. The Districts now have the power to determine the details of the new amenities.

- Avatar proposed a 5% construction management fee which was estimated at $550,000. The Districts have negotiated this structure to an employee leasing arrangement, with a cost not to exceed $50,000. As a result, an additional $500,000 will be available to be spent from the bond proceeds on the construction of the new amenities.

- Avatar proposed that the Districts agree to assume all existing contracts related to the amenities and that the Districts pay all costs associated with terminating contracts the Districts did not want. The Districts refused. The Districts now have the right to reject an assignment of a contract and Avatar is required to pay any associated termination fees.

- Avatar requested veto power over the management company the Districts hire to run the amenities. Negotiations resulted in the establishment of minimum qualifications for the manager, with no veto power for Avatar.

- Avatar proposed a requirement that the Districts hire Avatar to manage all the amenities, including the restaurants. The Districts rejected this proposal and will have control over the manager of the amenities being acquired.

- Avatar proposed that it would have control over the rules and regulations adopted by the Districts for the operation of the amenities. The Districts refused, and the Districts will retain control of the operation of the amenities, including the rules and regulations.

- Under the Club Plan, Avatar can issue as many non-resident memberships as it wants, unlimited in duration and not limited to age. The Districts negotiated the number of passes not to exceed 1,000 passes in the aggregate. The Districts also negotiated additional limitations including: 1) the passes can only be used by Avatar's residential home buyers in Avatar's neighboring community for up to one (1) year after the pass is issued to the home buyer, 2) at least 90% of the passes will be transferred to Avatar's home buyers who are age fifty-five (55) years and older, and 3) all passes, regardless of whether they have been assigned to home buyers by Avatar, expire five (5) years after the sale of the first home in the neighboring community.

- The Districts insisted that Avatar bring all facilities being acquired up to ADA standards at Avatar's cost prior to closing to prevent the Districts from paying this cost through resident Amenity O&M Assessments.

- The Districts negotiated with Avatar to include protections in the PSA designed to prevent the Districts from being charged an unreasonable amount for reclaimed water service relative to the amenities.

Miscellaneous Negotiations

- Avatar initially proposed a structure that allowed Avatar to lease the Sales Center and Administration Building ("Sales Center") to itself or others it selected in perpetuity for little or no compensation being paid to the Districts and under lease terms controlled by Avatar. Avatar also initially proposed that the Sales Center would not be conveyed until ten (10) years after closing. The Boards believed this proposed structure would give the Districts all the burdens of ownership, with none of the benefits. The Districts rejected this approach. As a result of negotiations, at the election of the Districts, the Sales Center can be conveyed to the Districts for a purchase price of one dollar ($1.00) upon the earlier of February 1, 2025 or when Avatar owns less than 200 lots in Solivita. In addition, Avatar shall only have the ability to lease the Sales Center for 18 or 36 months following conveyance, depending on the number of lots owned by Avatar at the time. Further, Avatar must pay off the existing 2017 PWCDD debt assessments and 2012 PCDD debt assessments on the Sales Center, which are currently a lien against that property, prior to or at closing. This ensures the Districts are not required to repay bondholders these amounts from resident assessments.

- Avatar proposed to only carve out the amenities from the Club Plan through an amendment to the Club Plan. The Districts insisted Club Plan be officially terminated, which is now a requirement of the PSA.

- The Districts have negotiated thirteen (13) extensions of the inspection period to make sure that the inspection period lasts until a date near the closing on the amenities. During the inspection period, the Districts can choose not to proceed with the transaction if the condition of the assets being acquired is unacceptable. The extension of the inspection period is a benefit to the Districts.

Other Protections for the Districts

- Although the obligation of Avatar to pay Amenity Debt Assessments was not subject to contentious negotiation, the Districts made sure this requirement was affirmatively stated in the PSA. This amount was estimated in 2017 to be a total of $6,730,000 to be paid by Avatar.

- Additionally, the Districts ensured that they had protections in the PSA that they are not required to close on the amenity transaction if the Districts do not sell the amenity bonds.