IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government organized and existing under the laws of the State of Florida, and POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government organized and existing under the laws of the State of Florida,

Plaintiffs,

Case No.: 2016-CA-004023

Section: 04

v.

THE STATE OF FLA., and THE TAXPAYERS, PROPERTY OWNERS and CITIZENS OF POINCIANA COMMUNITY DEVELOPMENT DISTRICT and POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT, including NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, and OTHERS HAVING OR CLAIMING ANY RIGHTS, TITLE, OR INTEREST OR PROPERTY TO BE AFFECTED BY THE ISSUANCE OF THE BONDS HEREIN DESCRIBED, OR TO BE AFFECTED IN ANY WAY THEREIN,

Defendants.
_____/

FINAL JUDGMENT NOT VALIDATING AND NOT CONFIRMING BOND ISSUANCE HEREIN DESCRIBED FOR FAILING TO PROPERLY APPORTION THE SPECIAL ASSESSMENT AMONG THE REAL PROPERTIES SPECIALLY BENEFITTED

THIS CAUSE is before the Court on Plaintiffs, POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government organized and existing under the laws of the State of Florida (hereafter "District One"), and POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose

government organized and existing under the laws of the State of Florida (hereafter "District Two"), *Complaint Seeking Validation of POINCIANA COMMUNITY DEVELOPMENT DISTRICT Special Assessment Bonds in an Aggregate Principal Amount Not to Exceed $102,000,000.00,* filed November 22, 2016. The Court, having reviewed the Complaint, pleadings, applicable statutory and case law, and having heard and considered the arguments of the Parties at an evidentiary hearing on July 14th and 18th-21st, 2017, following an *Order to Show Cause*, filed May 4, 2017, and otherwise being fully informed in the matter, finds as follows:

Factual Findings

Avatar Properties, Inc. (hereafter "Developer"), is the developer of the Solivita residential community, Poinciana, Polk County, Florida, for individuals fifty-five years and older. Solivita residents, via payment of membership fees and other expenses, have access to a wide range of community amenities (built between the years 2001 and 2009); including golf courses, dining facilities, pools, and fitness facilities (hereafter "Existing Amenities").

There are between 5,590 and 5,595 real properties, a mixture of owner-occupied residences and undeveloped lots still owned by the Developer (hereafter "Homeowners"). These Homeowners were subject to bond issuance and associated special assessments at issue in the instant action.

Under the AMENDED AND RESTATED SOLIVITA CLUB PLAN (hereafter "Club Plan"), each Homeowner has access to the Existing Amenities by paying monthly "Club Membership Fee[s]" (hereafter "Club Fee(s)") in perpetuity (as a covenant running with the land) in accord with the "Club Membership Fee Schedule applicable to a particular Home...." (hereafter "Club Fee Scheme"). Depending in which "phase" that one buys a real property in

Solivita, that homeowner is obligated to pay a different monthly amount as his or her Club Fee than that of his or her neighbors, a fee that increases one dollar per year for several years. For the year 2016, different Homeowners who purchased their homes in different phases were obligated to pay $65.00, $74.00, $75.00, $84.00, or $85.00 per month.[1] *See* Joint Ex. 48 (the Club Plan); Defs.' Ex. 19 (a copy of the SOLIVITA DECLARATION).

District One and District Two were lawfully established local units of special purpose governments under Fla. Stat. ch. 190 (2017), established November 1, 1999 and October 6, 2006 respectively. The Districts have the power to levy ad valorem taxes and non-ad valorem special assessments and exercise special powers related to recreation. *See* Joint Exs. 5 (copy of Fla. Admin. Code. r. 42AA-1.001 (adopted Nov. 1, 1999)), 7 (Final Judgment, validating District One, filed March 13, 2000 under trial case no. 2000-CA-000040), 9 (District One's Resolution No. 2016-066), 12 (District One's Resolution No. 2000-19), 15 (District One's Resolution No. 2008-14), 17 (Ordinance No. 2006-052, enacted by the Board of County Commissioners, Polk County, Fla.), 20 (Final Judgment, validating District Two, filed Feb. 21, 2007 under trial case no. 2007-CA-000154), 21 (Ordinance No. 2016-034, enacted by the Board of County Commissioners, Polk County, Fla.), 24 (District Two's Resolution No. 2007-18).

[1]Overall, the Club Fee Scheme's different Club Fee categories were as follows: 1) $62.00 per month in 2013 increased to $79.00 per month in 2030 thereafter, 2) $71.00 per month in 2013 increased to $90.00 in 2032 thereafter, 3) $71.00 per month in 2013 increased to $92.00 in 2034 thereafter, 4) $82.00 per month in 2013 increased to $112.00 in 2043 thereafter, 5) $72.00 per month in 2013 increased to $91.00 in 2032 thereafter, 6) $82.00 per month in 2013 increased to $102.00 in 2033 thereafter, 7) $82.00 per month in 2013 increased to $103.00 in 2034 thereafter, 8) $81.00 per month in 2013 increased to $105.00 in 2037 thereafter, 9) $81.00 per month in 2013 increased to $111.00 in 2043 thereafter, 10) $82.00 per month in 2013 increased to $103.00 in 2034 thereafter, 11) $82.00 per month in 2013 increased to $104.00 in 2035 thereafter, and 12) $82.00 per month in 2013 increased to $108.00 in 2039 thereafter.

Each District is overseen by a five-member Board of Supervisors (hereafter "Board(s)") who, over time, transition from being appointed by the Developer to being elected by the Homeowners of each District. At the time the instant circumstances, Robert Zimbardi was the Chairman of the Board for District One, and Charles Case was the Chairman of the Board for District Two. Both Mr. Zimbardi and Mr. Case testified at this bond validation hearing. *See* Joint Composite Exs. 16 (copies of Oath of Office by board members of District One's Board), 25 (copies of Oath of Office by board members of District Two's Board).

In accord with Fla. Stat. ch. 75 (2017), the Districts came before this Court to validate bond issuance, not to exceed $102 million dollars, issued in one or more series, proceeds from the sale of which to finance the purchase of the Existing Amenities and construction of new, additional Amenities (hereafter "Prospective Amenities"), to be payed and secured by the Districts' levying special assessments against specially benefited homeowners.

First introduced at the November 18, 2015 joint meeting of the Districts' Boards, in accord with chapter 190 and Fla. Stat. ch. 170 (2017), the Districts first approved and engaged in the complex, extended process to 1) purchase the Existing Amenities from the Developer and plan to construct the Prospective Amenities under the Developer's direction, including a performance arts building and spa and health and fitness center; and 2) bond issuance and levy special assessments to finance the entire venture (hereafter "Negotiations"). The Homeowners (at maximum) were to pay their respective special assessment amounts over thirty years via installment payments. *See* Defs.' Ex. 128 (minutes of the Nov. 18, 2015 joint meeting of the Districts' Boards); Joint Exs. 27 (minutes of the Nov. 16, 2016 joint meeting of the Districts' Boards), 28 (District One's Resolution No. 2017-02 and attached MASTER TRUST

INDENTURE), 33 (minutes of the Feb. 10, 2017 joint meeting of the Districts' Boards), 34 (District One's Resolution No. 2017-04), 35 (District Two's Resolution No. 2017-06), 36 (District One's Resolution No. 2017-05), 37 (District Two's Resolution No. 2017-07).

Throughout Negotiations, it has been the Districts' Boards' intention that the Homeowners will not be specially assessed an amount that exceeds the amount of their respective individual fixed 2016 Club Fee multiplied by the thirty-year bond term. *See* Trial Tr. (excerpt portions of Charlie Case) 39:14-40:1, July 19, 2017 (Chairman Case testified. "Q. Do you know why the fees vary?" A. I do not. But I do know that when we started the--the process, we had guaranteed the residents that nobody would pay a dime more than they're paying today if this agreement should go forward. And, if anything, they would pay less. Q. You're talking about the club membership fee component—A. I am. Q. --would not-- A. For anybody. Q. –increase— A. Right."); *see also* Joint Ex. 12 at page 2 (The minutes of the July 28, 2016 joint meeting of the Districts' Boards reflect discussion of the Valuation Report and "[t]he fee per unit will be based on everyone's 2016 club membership fees with the intent being to not exceed the current amount of such fees.").

As a step in Negotiations, in the November 30, 2016 joint meeting of the Districts' Boards, the Districts entered into an interlocal agreement in accord with Fla. Stat. sec. 163.01 (2017). *See* Joint Exs. 30 at page 5 (minutes of Nov. 30, 2016 joint meeting of the Districts' Boards), 31 (INTERLOCAL AGREEMENT BETWEEN [the Districts] REGARDING MUTUAL COOPERATION FOR THE FINANCING, OPERATION AND MAINTENANCE OF CERTAIN AMENITIES TO BE ACQUIRED, RECONSTRUCTED, AND CONSTRUCTED).

Consequently, the Districts and the Developer entered into an ASSET SALE AND PURCHASE AGREEMENT (hereafter "Agreement"). The Agreement provided for a $73.7 million dollar purchase price and that the "Buyer shall pay the Purchase Price in cash at Closing...Seller and Buyer further agree and acknowledge that the Purchase Price and Bonds shall be reduced by the Equalization Amount." *See* Pls.' Ex. 15 (minutes of the Dec. 13, 2016 joint meeting of the Districts' Boards); Joint Ex. 52 at pages 8, 13, & 17 (The Agreement which further provided that the Club Plan and the SOLIVITA DECLARATION are to be amended to reflect a change in owner of the Amenities.), 53 through 56 (four amendments to the Agreement); Pls.' Ex. 3 (fifth amendment of the Agreement).

As a step in Negotiations, the Districts entered into an agreement with the Developer by which the Developer agreed to defray the cost of the Districts' "due diligence" (i.e. hiring of consultants and completion of supporting studies and reports). *See* Pls.' Ex. 9 at pages 2-3 (minutes of the April 20, 2016 joint meeting of the Districts' Boards); Defs.' Ex. 26 (BOND FINANCING TEAM FUNDING AGREEMENT BETWEEN [District One and the Developer]).

As a step in Negotiations, the Boards hired the consultant Environmental Financial Group to do the SOLIVITA RECREATIONAL AMENITY ASSET VALUATION STUDY and SUPPLEMENTAL REPORT (hereafter "Valuation Report"). Having considered two other bidding consultants, the Boards considered in Environmental Financial Group's favor "[t]he fact they are independent and do not work with anyone here makes it valid for us to take them seriously." The Boards further noted that all three bidding consultants recommended an "income business approach to do the valuation." *See* Pls.' Ex. 8 at 11-13 (minutes of the March 30, 2016 joint meeting of the Districts' Boards); *see also* Trial Tr. (excerpt portions of Charlie Case)

29:18-29:21, July 19, 2017 (Chairman Case testified. "Q. And the boards chose EFG [Environmental Financial Group] because they considered EFG independent, correct? A. Yes"); Trial Tr. (excerpt portions of Robert Zimbardi) 10:13-10:14, July 20, 2017 (Chairman Zimbardi testified. "A...[S]o we wanted an independent evaluation and so we went with EFG.").

The Valuation Report provided that Environmental Financial Group was "instructed by the Boards to utilize income-based valuation methods to capitalize net available 2016 Club Fee Revenue into an acquisition value." The "maximum acquisition valuation" was determined to be $73.7 million dollars, before accounting for the Assessment Equalization Payment (discussed below). The Valuation Report supported issuance of a maximum of $102 million dollars in bonds, considering all factors including an approximate cost of $11.2 million dollars to construct the Prospective Amenities. The Valuation Report further concluded that "[t]he residents' willingness to pay a fixed capital fee each year over a thirty-year bond term defines the maximum affordable assess acquisition value. This is an income-based approach using the leverage created by a fixed and dedicated revenue stream, thus creating a practical indicator of asset value." The Valuation Report found the value "unique to Solivita" and "not reflective of what might be available...on the open market." *See* Joint Exs. 50 at pages 4-5 (the Valuation Report), 51 at page 1 and page 1 of the section titled "Sources and Uses of Funds" (a copy of the SUPPLEMENTAL REPORT). To reach the "maximum asset acquisition value," per the Valuation Report, calculation was based on "fixed"' 2016 Club Fee amounts, ranging between $65.00 and $85.00, for 5,590 subject real properties, tabulated over the thirty year life of the subject bonds. *See id.* at pages 6, 17-18.

The consultant, Fishkind & Associates, Inc., has been the Districts' assessment methodology consultant since the Districts' creation. Fishkind & Associates, Inc., did the MASTER ASSESSMENT METHODOLOGY [for Districts One and Two] RECREATION FACILITIES ACQUISITION report (hereafter "Assessment Methodology Report"). *See* Joint Ex. 27 at page 7 (minutes of the Nov. 16, 2016 joint meeting of the Districts' Boards); Pls.' Exs. 18 (FINANCIAL ADVISORY AGREEMENT between District One and Fishkind & Associates, Inc.), 19 (FINANCIAL CONSULTING PROPOSAL by Fishkind & Associates, Inc., to complete the Assessment Methodology Report); *see also* Joint Exs. 45 & 46 (The Assessment Methodology Report was incorporated into District One's Resolution No. 2017-08 and District Two's Resolution No. 2017-10).

Working from the Valuation Report's conclusions, the Assessment Methodology Report listed the varied special benefits that the Homeowners will receive; including but not limited to residents' ownership and control of the Amenities, the Prospective Amenities, certain tax benefits, and elimination of perpetual Club Fees. By adding together the $73.7 million dollar purchase price of the Existing Amenities and the $11.2 million dollar construction cost of the Prospective Amenities, totally approximately $84,885.543.00; treating each real property as a single dwelling, and dividing that amount by total subject real properties, each real property was found to have a "**benefit** per unit" of $15,171.68. *See* Joint Ex. 45 at pages 6 & 8 of the Assessment Methodology Report.

Without more, the "preadjusted allocation [per] unit" was $17,371.65 for all the Homeowners to be specially assessed. However, to execute the Districts' Boards' intent to retain the fixed 2016 amounts of the Club Fee Scheme when the special assessments are levied, the

Assessment Methodology Report incorporated the "Assessment Equalization Payment" of $3,935,533.00, defined as a "contribution of infrastructure reflected in a deduction from the purchase price." Applying the Assessment Equalization Payment against the "preadjusted allocation [per] unit," Homeowners who paid different Club Fee amounts in 2016 were to be specially assessed at different rates as follows:

Club Fee Scheme At Fixed 2016 Club Fee Amounts	"series 2017 bond principal [per] unit"	"est. [Estimated] net annual assmt. [assessment per] unit"
$65.00	$13,323.23	$726.22
$74.00	$15,147.87	$825.67
$75.00	$15,350.54	$836.72
$84.00	$17,169.37	$935.86
$85.00	$17,371.85	$946.89

See Joint Ex. 45 at pages 4, 10 and page titled "Exhibit 'A' Assessment Roll" of the Assessment Methodology Report.

At some point in Negotiations, involved parties discussed two options to retain the Club Fee scheme while transitioning from a privately contracted scenario to that of publicly owned Amenities. Either the Developer will be paid approximately $4 million dollars more and, after actual payment, the Developer will voluntarily pay down some homeowners' actual special assessment amounts to reconstitute the Club Fee Scheme post-bond issuance. Alternatively, pre-

bond issuance, said purchase price will be reduced by an approximate $4 million dollar contribution/credit of infrastructure (i.e. the Assessment Equalization Payment) allowing the Homeowners to be specially assessed at different rates to retain the Club Fee Scheme without otherwise impacting assessment mathematics. *See* Defs.' Exs. 157-100 & 157-103 (email communications between relevant parties discussing the two pre- and post-bonds issuance approaches). Ultimately the Districts' Boards approved the second, pre-bond issuance approach, because, by applying the Assessment Equalization Payment, homeowners and the Districts avoided additional costs and red tape.

At the March 15, 2017 joint meeting of the Districts' Boards, Resolution No. 2017-08 and Resolution No. 2017-10 were ratified, finalizing the assessment and levying of said special assessments pending the outcome of bond validation. *See* Joint Exs. 44 (The minutes of the March 15, 2017 joint meeting of the Districts' Boards, also reflecting the Districts' Boards' public affirmation of the special benefits.), 45 (District One's Resolution No. 2017-08), 46 (District Two's Resolution No. 2017-10).

Legal Considerations for Bond Validation

Bond validation must legally satisfy a three-prong test. This Court's inquiry is "sharply limited...only to determining if a public body has the authority to issue the subject bonds [first prong] and if the purpose of the bonds is legal [second prong] and ensuring that the bond issue complies with all legal requirements [third prong]." *Warner Cable Communications v. City of Niceville*, 520 So. 2d 245, 246 (Fla. 1988); *see also Donovan v. Okaloosa County*, 82 So. 3d 801 (Fla. 2012) (Where a public body has "'not exercised its taxing power or pledged its credit, the obligation must merely serve a public purpose...[but if having done so]...the purpose of the

obligation must serve a paramount purpose and any benefits to a private party must be incidental...'Where only a public purpose is required, however, 'it is immaterial if the primary beneficiary of a project be a private party, if in the public interest, even though indirect, is present and sufficiently strong.'" Further, "[t]his Court applies the competent, substantial evidence standard of review to the trial court's findings of fact and de novo review to the conclusions of law."); *Keys Citizen for Responsible Government, Inc. v. Florida Keys Aqueduct Authority,* 795 So. 2d 940, 944 (Fla. 2001) (Bond validation proceedings is not the vehicle through which the Court rules on "collateral issues...directly to the power to issue the securities and the validity of the proceedings related thereto."); *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District,* 48 So. 3d 811 (Fla. 2010) (The ultimate "economic feasibility of a revenue project" is likewise beyond the scope of bonds validation. Further, "'legislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous.'"); *State. V. Housing Finance Authority of Polk County*, 376 So. 2d 1158 (Fla. 1979).

Specifically, special assessments must additionally satisfy a two-prong test. The Court must find that "the property burdened by the assessment must derive a special benefit from the service provided by the assessment," the first prong, and "the assessment for the services must be properly ["fairly" and "reasonably"] apportioned among the properties receiving the benefit," the second prong. A public's body's legislative determinations of both prongs carry a "presumption of correctness" and are upheld by a trial court unless said determinations are found to be "arbitrary" and "capricious." *See City of Winter Springs v. State*, 776 So. 2d 255, 257-61 (Fla. 2001) (Further, a "court may recognize valid alternative methods of apportionment" but, unless found to be arbitrary, "a court should not substitute its judgment for that of the local legislative

body." Where "reasonable people may differ" or there is a "mere disagreement of experts as to the choice of methodology" or even just "an unpopular decision," the public body's legislative determinations must be upheld unless found to be arbitrary.); *see also Morris v. City of Cape Coral*, 163, So. 3d 1174 (Fla. 2015) (To derive a special benefit, "'the test is whether there is a "logical relationship" between the services provided and the benefit to real property.'").

Defendants' Arguments

Defendants have challenged bonds validation principally on the grounds of lack of public purpose, lack of compliance with Florida law, and special assessments are not properly apportioned among the specially benefitted Homeowners, in addition to lesser arguments.

Underpinning Defendants' main challenges are two arguments. First, Defendants argued that the Developer improperly controlled, coerced, and/or unduly influenced relevant individuals and entities involved in Negotiations to maximize the Developer's profits therefrom (hereafter "Control Argument"). Second, Defendants argued that the income based methodology and reliance on the Club Fee Scheme was not proper.

Per Defendants' Control Argument, the Developer's interlocking relationships with entities and individuals, throughout Negotiations, unduly influenced the Districts' Boards' ultimate approval of the Developer's approximate predetermined purchase price of the Existing Amenities to maximize the Developer's profits therefrom. For example, Defendants argued that the Developer threatened to sell the Existing Amenities to an unidentified third party rather than retaining ownership or selling to the Districts. *See* Trial Tr. (excerpt portions of Robert Zimbardi) 15:5-15:8, July 20, 2017 (Chairman Zimbardi testified. "Threat is—is your

terminology. It was another option that was available to them. And yes, we did consider, you know, the ramifications of a third party owning facilities."). Another example is the Developer's executive vice president of development at the time, Tony Iorio, served on District Two's Board until his resignation was accepted at the March 30, 2016 joint meeting of the Districts' Boards. *See* Pls.' Ex. 8 at page 3 (acceptance of Tony Iorio's said resignation). In support of Defendants' Control Argument, Defendants also entered into evidence email intercommunications between the individuals and entities involved in Negotiations[2]

Based on their Control Argument, Defendants argued the bond issuance lacked public purpose because the private Developer and their intent to obtain maximum profits from the purchase of Existing Amenities was an impermissible primary private beneficiary and private purpose, overwhelming any *de minims* public purpose. *See Orange County Industrial Development Authority v. State*, 427 SO. 2d 174 (Fla. 1983) (Under the paramount public purpose standard, the court invalidated a local public body's industrial development revenue bond issuance to expand a private local news facility because such was a paramount private purpose.).

Defendants argued that Plaintiffs failed to determine the fair value of the Existing and Prospective Amenities in accord with Fla. Stat. sec. 190.016(1)(c) (2017) ("The price or prices

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[2]*See* Defs.' Ex. 14, 28-29, 31B, 34-40, 42, 45, 47-48, 57-58, 62, 65, 68-69, 70, 79, 81-85, 89-90, 97-100, 102, 106-107, 111, 122, 127, 153-5-153-7, 153-7, 153-11, 153-16, 153-19, 154-22, 154-24-154-25, 154-27-154-31, 154-33, 154-36-154-37, 154-40-154-42, 154-44, 154-50, 155-53, 155-55, 155-57-155-58, 155-62, 155-64, 156-68, 156-70, 156-74, 156-77-156-78, 156-84-156-87, 156-89, 157-98, 157-100, 157-103, 158-111, 158-117, 158-119, 158-121, 158-123-158-125, 159-134-159-135, 159-138, 162-150, 171-1, 172-173, 175-176, 179, 181, 183, 194, 205, 209, 211, 232-233, 247, 260-262, 270, 273, 278, 284, 305, 311-313, 326-327, 331-332, 336-1.

for any bonds sold, exchanged, or delivered may be: (a) The money paid for the bonds; (b) The principal amount, plus accrued interest to the date of redemption or exchange, or outstanding obligations exchanged for refunding bonds; and (c) In the case of special assessment or revenue bonds, the amount of any indebtedness to contractors or other persons paid with such bonds, or the fair value of any properties exchanged for the bonds, as determined by the board."). Defendants argued reliance on the income based approach, per the Valuation Report, to determine a $73.7 million dollar purchase price for Existing Amenities did not account for the actual real property value of the Existing Amenities. Consequently, the Districts' Boards failed to comply with the legal requirement to determine the fair value of the Existing Amenities in compliance with subsection 190.016(1)(c). In contrast, Defendants' expert, Michael McElveen, a state certified general real estate appraiser of Urban Economics, Inc., testified that he appraised the "market value" of the Existing Amenities at $19.25 million dollars as of on or about April 11, 2017. *See also* Defs. Ex. 184 at page titled OPINION OF MARKET VALUE and pages 1-3 (Per the APPRAISAL OF SOLIVITA COMMON AREA FEATURES LOCATED WITHIN POINCIANA AND POINCIANA WEST, POLK COUNTY, FLORIDA, market value was defined as "'[t]he most probable price, as of a specific date, in cash,...for which the specific property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale...' the market value estimate by the Cost Approach is performed in two steps. The first step is to estimate the market value of the fee simple interest of the land and the second step is to estimate the market value of the improvements.").

Conclusions of Law

The First Prong of Bond Validation

As to the first prong for bond validation, the Court finds that Plaintiffs demonstrated that both Districts One and Two respectively had the legal authority under chapter 190 to issue the bonds and levy special assessments for the financing thereof. Defendants did not contest this first prong of bond validation.

The Second Prong of Bond Validation

As to the second prong for bond validation, the Court finds that Plaintiffs demonstrated a public purpose for bond issuance to finance the purchase and construction of Existing and Prospective Amenities in accordance with Fla. Stat. sec. 190.012 (2017) which provides for the Districts' financing, establishing, and maintaining parks and facilities for recreational, cultural, and educational purposes. *See also* Joint Exs. 34 & 35 (District One's Resolution No. 2017-04 and District Two's Resolution No. 2017-06, both which provide "acquisition of certain amenity facilities for recreational, cultural and education purposes...." Both said resolutions attached an earlier version of the Assessment Methodology Report that listed the subject special benefits.); Trial Tr. (excerpt portions of Charlie Case) 12:13-12:22, July 19, 2017 (Chairman Case testified. "Q...[W]hat were the primary benefits you saw that would be achieved by this transaction. A. Again, it was the—the ownership and control of the facilities, the addition of additional amenities to the point of $11.2 million. We thought there'd be increased property values and it would have better services to the residents."). The Court finds no patently erroneous declaration of public purpose for the purchase and construction of the Existing and Prospective Amenities, that said public purpose is sufficiently present and strong, and, consequently, the Districts' Boards' legislative determination of public purpose is presumed correct.

Having found said public purpose sufficiently strong and present, the Court finds no harm that the private Developer is a primary beneficiary by selling the Existing Amenities to the Districts for $73.7 million dollars. The public purpose for purchasing and constructing the Existing and Prospective Amenities is not overwhelmed by the Districts' Boards' acquiesce to the Developer's firm stance on its targeted purchase price, privately benefiting the Developer. The Court does not find circumstances of the instant action a matter of paramount public purpose as the Districts have not pledged its credit or exercised its ad valorem taxing power.

The Court does not find that the Developer improperly controlled, unduly influenced, or coerced the Districts' Boards and other involved parties, such as the consultants, during Negotiations, to secure their predetermined purchase price to maximize their profits. Beyond the expectant negotiated give-and-take and intimate cooperation and communication between individuals and entities involved in a complex real estate purchase and bonds issuance process; at best, it appears to the Court that the Developer may have engaged in tactics of persuasion on its behalf to maximize profits. However, the Court finds this does not evidence improper control, undue influence, or coercion. *See* Trial Tr. (excerpt portions of Charlie Case) 12:23-13:14, July 19, 2017 (Chairman Case testified. "Q. During the due diligence and negotiations periods, did AV[the Developer] do anything that you would consider to be inappropriate? A. No. Q. Did it try to overpower your will and forcing you to accept this deal? A. No. Q. Did it use any influence that you would consider to be inappropriate? A. No...Q. Are you aware of any facts that would lead you to believe that AV conspired with the districts in this transaction? A. Absolutely not."); Trial Tr. (excerpt portions of Robert Zimbardi) 11:11-11:13, July 20, 2017 (Chairman Zimbardi testified. "Q. What is your response to the allegation that AV and Tony Iorio exerted undue influence on the boards? A. I have not experienced that.").

The Court found the following cases instructive regarding undue influence, duress, and threatening an otherwise legally permissible action. *See Lutgert v. Lutgert,* 338 So. 2d 1111 (Fla. 2d DCA 1976); *Franklin v. Wallack*, 576 So. 2d 1371 (Fla. 5th DCA 1991); *Spillers v. Five Points Guaranty Bank*, 335 So. 2d 851 (Fla. 1st DCA 1976).

The Third Prong of Bond Validation

As to the third prong of bond validation, the Court finds that Plaintiffs complied with all legal requirements to issue the bonds and levy special assessments, including statutorily requisite notification and holding of public hearings and passage of resolutions under chapter 190, Fla. Stat. sec. 163.01 (2017) (providing for interlocal agreements), and Fla. Stat. sec. 170.08 (2017) (public equalization hearing(s) as part of the process levying special assessments).

First, having found insufficient evidence for Defendants' Control Argument, any argument that the Districts' Boards' approval of the purchase and construction of the Existing and Prospective Amenities was not legal, being arbitrary and capricious, based on the Control Argument must likewise fail.

Second, the Court finds that the circumstances of the instant action do not fall under subsection 190.016(1)(c) which applies in situations where property is exchanged for the literal bonds; in such situations the legal concept of fair value, or (as argued by Defendants) the market value of the Existing Amenities, may become applicable. In the instant action, the Court finds that bonds are being issued for the purpose of being sold to bond purchaser(s) for monetary funds which is then used to pay the Developer for purchase and construction of Existing and Prospective Amenities, in addition to associated costs. *See also* Joint Ex. 52 at page 16 (In the

Agreement, "Buyer shall have sold the bonds and received funds from such sales in amount[s] as are necessary to acquire the purchased assets....").

Third, the Court finds Defendants' objection of Plaintiffs' using an income based valuation methodology, rather than an alternative valuation methodology such as market value based on cost approach, is not sufficient, in and of itself, to invalidate bond issuance. This particular objection fails because, while alternative valuation methodologies may render a more favorable outcome to Defendants; the income based approach utilized by the Districts, via their consultants' expertise, was not arbitrary or capricious. For the Court, the dispute of valuation methodologies allowed for reasonable people's differing opinions thereon. Further, the Court finds said dispute merely a disagreement between Plaintiffs' expert, Scott Harder of Environmental Financial Group, who testified as to the use of an income based valuation methodology in the instant circumstances, and Defendants' expert, Michael McElveen, who testified as to the use of market value based on cost approach in the instant circumstances. Consequently, the Court must defer to the presumed validity of the Districts' chosen income based valuation methodology.

Further, the Court notes that a developer is entitled to seek payment for its income stream stemming from membership-type fees when negotiating a real property purchase by a local governing body. *See Palm Beach County v. Cove Club Investors, LTD*, 734 So. 2d 379 (Fla. 1999) (Where the county purchased a mobile home lot within a mobile home community with amenities, said community's owner was entitled to be paid for its loss of income from said lot's owner's obligation to pay recreational fees for use of said amenities.).

<u>As to Lesser Arguments</u>

As to Defendants' lesser arguments, the Court first finds that ruling upon the legality of the underlying Club Plan or the Club Fee Scheme, as privately contracted between the Developer and Solivita homeowners, under Fla. Stat. ch. 720 (2017) to be collateral to bond validation. Consequently, the Court shall not rule on any argument based thereon within the context of bond validation.[3]

The Court further finds that that a licensed appraiser under Fla. Stat. ch. 475 (2017) is not a legal requirement in the Districts' Boards' choice of consultant and valuation methodology in the instant circumstances.

The Court rejects Defendants' lesser argument that the Districts failed to comply with Fla. Stat. sec. 190.021(2) (2017). The Court finds subsection 190.021(2) legally inapplicable in the instant action because the type of special assessments at issue in the instant action are not "benefit special assessments," the subject of subsection 190.021(2).

The Court finds the lesser argument that the Districts failed to provide for competitive bidding for contracted services under Fla. Stat. sec. 190.033(1) (2017) to be collateral to bonds validation. There is neither record evidence nor testimony that the Districts have entered into such contracts that would be subject to competitive bidding under subsection 190.033(1) at this time.

The First Prong Especially for Special Assessments

[3]Defendants had argued that Districts' Boards' approval of said $73.7 million dollar purchase price of Existing Amenities, via an income based approach, based upon an illegal Club Plan and Club Fee Scheme was, itself, arbitrary and capricious.

As to the first prong especially for special assessments, the Court finds that Plaintiffs demonstrated that the Homeowners burdened with the subject special assessments did receive special benefits via purchasing Existing Amenities and construction of Prospective Amenities. The Court finds a logical relationship between said acquisition and the special benefits therefrom. The Court finds no evidence that the Districts' determination of what the special benefits are was arbitrary or capricious. Defendants did not contest this first prong especially for special assessments.

The Second Prong Especially for Special Assessments

As to the second prong especially for special assessments, the Court does find that Plaintiffs **failed** to properly, fairly, and reasonably apportion the subject special assessments levied among the Homeowners specially benefiting from the purchase and construction of the Existing Amenities and Prospective Amenities. The Court finds Plaintiffs' apportionment of the subject special assessments was arbitrary and capricious.

First, the Court distinguishes the use of the Assessment Equalization Payment pre-bond issuance and the Developer's post-bond issuance pay down of some Homeowners' actual special assessment amounts. Plaintiffs argued that the assessment methodology showed all real properties were prospectively to be equally assessed prior to applying the Assessment Equalization Payment. The Court does not find said "preadjusted allocation [per] unit" of $17,371.65, a mere temporary component of a complex mathematical calculation, satisfies the second prong of fairly apportioned special assessments. The specially benefited Homeowners are to be **actually** assessed at different rates to effectuate the Districts' Boards' intent to retain the Club Fee Scheme at fixed 2016 Club Fee amounts; it is this relationship the Court must evaluate.

Local governing bodies are bound by Florida law to demonstrate apportionment of special assessments amongst specially benefited real properties is not arbitrary and capricious but is proper, fair, and reasonable. Even where methodologies differ, Florida courts have approved scenarios where different specially benefited real properties have been specially assessed at different rates. However, the key to such court approval is that the local governing body demonstrated that certain individual real properties received a **higher valued** or an **additional** type of special benefit for which there was a correlating higher cost and, consequently, justified a staggered scheme of different amounts specially assessed to different real properties. *See Donovan v. Okaloosa County*, 82 So. 3d 801 (Fla. 2012) (In part, the county adopted two separate categories for special assessments, storm damage reduction and recreation. The county determined that the storm damage reduction benefit was specially assessed against only beachfront real properties because only beachfront properties were specially benefited therefrom. In contrast, all subject real properties were specially assessed their pro rata share for the expense of the recreation special benefit. Competent and substantial evidence supported the fairness and reasonableness of the apportionment of special assessments, based on reasonable and objective factors.).

The Court finds that the Florida Supreme Court summarized this key consideration best in *South Trail Fire Control District v. State*, 273 So. 2d 380 (Fla. 1973). "The manner of the assessment is immaterial and may vary within the district, as long as the amount of the assessment for each tract is not in excess of the proportional benefits as compared to other assessments on other tracts." *Id.* at 384.

The Court further finds the footnoted, referenced Florida cases instrumental.[4]

[4]*Morris v. City of Cape Coral*, 163 So. 3d 1174 (Fla. 2015) (It was not arbitrary to specially assess at different rates, a "two-tier" approach, for all real properties, both developed and undeveloped, and for developed real properties for firefighting services. All real property generally benefited from firefighting services, but developed real properties had an added benefit of protection against structural damage.); *City of Winter Springs v. State*, 776 So. 2d 255 (Fla. 2001) (The subject real properties to be assessed were a mixture of single family homes, multifamily buildings, and a few commercial properties. The city first determined that the average single family home was 2200 square feet. Using this base value, an "equivalent residential unit value of 1," the city then proportioned the amount of the special assessment for each individual property based on square footage. (For example, a 4400 square foot multifamily unit will be specially assessed twice the amount of a 2200 square foot single family home.)); *Citizens Advocating Responsible Environmental Solutions, Inc. v. City of Marco Island*, 959 So. 2d 203 (Fla. 2007) (Expansion of a wastewater treatment and collection system only specially benefited new users. The city would not have so expanded if not for the influx of new users of the existing wastewater treatment and collection system. It was not arbitrary or inequitable to specially assess only new users their pro rata share of the total costs of said expansion, distinguishing new users from existing users.); *Harrison v. Wilson*, 693 So. 2d 945 (Fla. 1997) (The county sought to address illegal dumping in unincorporated areas of the county. The special assessment for solid waste disposal was levied only against residential properties in unincorporated areas of the county but not against residential properties within municipalities or commercial properties in unincorporated areas. These latter categories of properties paid for this service through on-site tipping fees which were equal to the cost of solid waste disposal for those properties. The amount of the special assessment levied against residential properties in unincorporated properties reflected the actual cost of the service and was equally distributed amongst those specially benefited. The court found the special assessments were not arbitrary.); *Sarasota County v. Sarasota Church*, 667 So. 2d 180 (Fla. 1995) (The county specially assessed residential and commercial real properties at different rates and did not assess undeveloped real properties at all for services based on each real property's projected stormwater discharge due to each real property's "horizontal impervious area" and land use. This apportionment method was not arbitrary and was reasonably related to the special benefit each real property received via treatment of polluted stormwater runoff.); *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (The city properly apportioned special assessments amongst the specially benefited real properties based on the ad valorem real property values. Over time, a real property that better benefited from the special benefit should experience an increased property value and, consequently, pay a higher special assessment than a neighboring property that, over time, did not benefit as well, resulting in a lower property value.); *South Trail Fire Control District, Sarasota County v. State of Fla.*, 273 So. 2d 380 (Fla. 1973) (Special assessment rates were properly apportioned among different real property categories for firefighting services.); *Charlotte County v. Fiske*, 350 So. 2d 578 (Fla. 2d DCA 1977) ("Thirdly, the entire cost of the services to the residential units is equally distributed among such units. It necessarily follows, therefore, that since all residential units bear equal pro rata shares of the costs for equal pro rata shares of the service, the proportionate 'benefits' equal the apportioned costs."); *Desiderio Corp. v. City of Boynton Beach*, 39 So. 3d 487 (Fla. 4th DCA 2010) (Special assessment rates were properly apportioned among different real property categories for firefighting services.); *Workman Enterprise, Inc. v. Hernando County*, 790 So. 2d 598 (Fla. 5th DCA 2001) (Special assessment rates were properly apportioned among different real property categories for firefighting services.).

The Court finds no testimony or record evidence of higher valued or additional special benefits which the Districts intended to retain (or add) of which there was a correlating higher cost and, consequently, justified the Homeowners being specially assessed at different rates. For example, there was no testimony or record evidence showing that Homeowners who pay higher Club Fees have access to greater number of Amenities or access to Amenities at earlier or later time periods. The **only** basis for the Club Fee Scheme, the **sole** basis upon which the Districts' Boards approved to specially assess the Homeowners at different rates, is the Developer's original **subjective** decision to implement the Club Fee Scheme. *See* Trial Tr. (excerpt portions of Charlie Case) 40:20-41:25, July 19, 2017 (Chairman Case testified. "Q. But did any of the consultants engaged by the districts explain to the boards the reason why the club memberships were set at the rates that they were set? A. Not that I recall. Q. So that wasn't part of the boards' consideration? A. The key part of the consideration of the board was that they wouldn't go up. Q. Okay, the basis for the fees was not a part of the consideration, correct? A. Not that I'm—I said the fees wouldn't go up, not the basis part...Q. So the board—the boards wanted to cap the amount of fees. They didn't want the amount of fees to go up. A. That's correct. Q. But the boards did not consider what those fees were based on. A. We did not, to my knowledge."); Trial Tr. (excerpt portions of Robert Zimbardi) 27:13-27:25, July 20, 2017 (Chairman Zimbardi testified. "Q. Do you know how it was determined that different properties would pay different club fees? A. No. Q. Did anyone ever explain to you the club membership fees or—to you or to any of the boards of supervisors? A. Not to me. Q. That wasn't part of what the board considered in entering this transaction as to the basis for the club fees, correct? A. I don't remember that coming up at any of the meetings.").

Consequently, the Court finds **no** reasonable, fair, and proportional relationship between the **final** different special assessment amounts to be **actually** levied against the Homeowners and the special benefits attributed to the Homeowners. All specially benefited Homeowners have access to all Existing Amenities and Prospective Amenities. In fact, the Assessment Methodology Report noted that all subject real properties, both those owned by current owners and undeveloped lots, had an **equal** "benefit per unit" of $15,171.68. However, after accounting for the Assessment Equalization Payment, the Homeowners are actually to be specially assessed at different rates **solely** to retain a **subjective** Club Fee Scheme.

To the extent that the Court referenced or cited witnesses' trial testimony or trial exhibits entered into evidence, the Court finds such to be credible. *See Fla. Highway Patrol v. In Re Forfeiture of $29,980.00*, 802 So. 2d 1171 (Fla. 3d DCA 2001) (A trial court may find a witness' testimony credible or not as the trial court's function is to evaluate and weigh testimony and evidence to arrive at its findings.).

ACCORDINGLY, based upon the above findings of fact and conclusions of law, it is **ORDERED AND ADJUDGED** that Plaintiffs, POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government organized and existing under the laws of the State of Florida, and POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government organized and existing under the laws of the State of Florida, *Complaint Seeking Validation of POINCIANA COMMUNITY DEVELOPMENT DISTRICT Special Assessment Bonds in an Aggregate Principal Amount Not to Exceed $102,000,000.00* is hereby **DENIED** because Plaintiffs failed to properly apportion the special assessment among the real properties specially benefitted. The

POINCIANA COMMUNITY DEVELOPMENT DISTRICT Special Assessment Bonds, of the District, to have been issued in one or more series in an aggregate principal amount not to exceed $102,000,000.00, and the proceedings therefore, including the Bond Resolution(s) and the Trust Indenture, be, and the same hereby are, **NOT** validated and **NOT** confirmed and declared to **NOT** be fully authorized by and in compliance with law.

DONE AND ORDERED in Bartow, Polk County, Florida, on this AUG 31 2017 day of _____, 2017.

/s/ Randall G. McDonald

RANDALL MCDONALD, Circuit Judge

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