

Poinciana
Community Development District
Poinciana West
Community Development District

Joint Meeting Agenda Package

July 9, 2018

AGENDA

Poinciana Community Development District
Poinciana West Community Development District

135 W. Central Blvd., Suite 320, Orlando, Florida 32801
Phone: 407-841-5524 – Fax: 407-839-1526

July 2, 2018

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

Dear Board Members:

A joint meeting of the Boards of Supervisors of Poinciana Community Development District and the Poinciana West Community Development District will be held on **Monday, July 9, 2018 at 2:30 PM at the Starlight Ballroom, 384 Village Drive, Poinciana, Florida**. Following is the advance agenda for the meeting:

1. Roll Call
 - A. Poinciana CDD
 - B. Poinciana West CDD
2. Pledge of Allegiance
3. Public Comment Period on Agenda Items
4. Ratification of Poinciana CDD Eleventh & Twelfth Amendments to the Asset Sale and Purchase Agreement
5. Consideration of Client Disclosure and Consent
 - A. Poinciana CDD
 - B. Poinciana West CDD
6. Supervisor's Requests
 - A. Poinciana CDD
 - B. Poinciana West CDD
7. General Audience Comments
8. Other Business
 - A. Poinciana CDD
 - B. Poinciana West CDD
9. Staff Reports
 - A. Attorney
 - B. Engineer
 - C. District Manager - report on funding agreements
 - D. Field Manager
10. Next Meeting Date
11. Adjournment
 - A. Poinciana CDD
 - B. Poinciana West CDD

The second order of business is the reciting of the Pledge of Allegiance.

The third order of business is the Public Comment Period where the public has an opportunity to be heard on propositions coming before the Board as reflected on the agenda, and any other items.

The fourth order of business is the ratification of the Poinciana CDD Eleventh and Twelfth Amendments to the Asset Sale and Purchase Agreement. Copies of both amendments are enclosed for your review.

The fifth order of business is the consideration of the Client Disclosure and Consent. The consent documents for each District are enclosed for your review.

The balance of the agenda will be discussed at the meeting. In the meantime, if you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "G. S. Flint". The signature is fluid and cursive, with a long horizontal stroke at the end.

George S. Flint
District Manager

CC: Michael Eckert, District Counsel
Kathleen Leo, District Engineer
Alan Scheerer, Field Manager
Darrin Mossing, GMS

Enclosures

SECTION IV

**ELEVENTH AMENDMENT
TO ASSET SALE AND PURCHASE AGREEMENT**

This Eleventh Amendment to Asset Sale and Purchase Agreement ("Amendment") is entered into as of April 29, 2018 (the "Amendment Effective Date"), by and between AVATAR PROPERTIES INC., a Florida corporation ("Seller") and POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a special purpose unit of local government established under Chapter 190, Florida Statutes ("Buyer").

RECITALS

A. Seller and Buyer entered into that certain *Asset Sale and Purchase Agreement* (the "Original Agreement") with an Effective Date of December 5, 2016, as amended by that certain *First Amendment to Asset Sale and Purchase Agreement* with an effective date of February 24, 2017, that certain *Second Amendment to Asset Sale and Purchase Agreement* with an effective date of March 15, 2017, that certain *Third Amendment to Asset Sale and Purchase Agreement* with an effective date of April 19, 2017, that certain *Fourth Amendment to Asset Sale and Purchase Agreement* with an effective date of May 17, 2017, that certain *Fifth Amendment to Asset Sale and Purchase Agreement* with an effective date of June 21, 2017, that certain *Sixth Amendment to Asset Sale and Purchase Agreement* with an effective date of July 26, 2017, that certain *Seventh Amendment to Asset Sale and Purchase Agreement* with an effective date of September 20, 2017, that certain *Eighth Amendment to Purchase and Sale Agreement* with an effective date of October 18, 2017, that certain *Ninth Amendment to Purchase and Sale Agreement* with an effective date of January 29, 2018, and that certain *Tenth Amendment to Purchase and Sale Agreement* with an effective date of March 21, 2018 (collectively, the "Agreement"), with respect to the sale of the Purchased Assets, as defined in the Agreement from Seller to Buyer.

B. Seller and Buyer wish to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, for and in consideration of the foregoing, the promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. Inspection Completion Date. The definition of Inspection Completion Date in Section 1.1(xlix) of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

““Inspection Completion Date” means 5:00 p.m., Eastern time on June 15, 2018.”

2. Bond Validation Date. Simultaneously with the Amendment Effective Date, Seller hereby elects to extend the Validation Date to June 15, 2018.

3. Ratification. Except as modified hereby, all terms and conditions of the Agreement are hereby ratified and confirmed and remain in full force and effect. In the event of any conflict between any term set forth in the Agreement and this Amendment, the terms of this Amendment shall control.

4. Counterparts/ Facsimile. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document. Execution and delivery of this Amendment may be accomplished via electronic transmission.

IN WITNESS WHEREOF, Seller and Buyer have each caused this Amendment to be duly executed on their respective behalves by their respective duly authorized officers.

SELLER:

AVATAR PROPERTIES INC.,
a Florida corporation

By: 
Name: S. GARY SHOLLATA
Title: EVPE GENERAL COUNSEL

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BUYER:

**POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**, a
special purpose unit of local government
established pursuant to Chapter 190,
Florida Statutes

Attest:



Secretary

By  4/27/18
Printed Name: Robert Zimbaradi
Title: CHAIRMAN - PEDD

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**TWELFTH AMENDMENT
TO ASSET SALE AND PURCHASE AGREEMENT**

This Twelfth Amendment to Asset Sale and Purchase Agreement ("Amendment") is entered into as of June 13, 2018 (the "Amendment Effective Date"), by and between AVATAR PROPERTIES INC., a Florida corporation ("Seller") and POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a special purpose unit of local government established under Chapter 190, Florida Statutes ("Buyer").

RECITALS

A. Seller and Buyer entered into that certain *Asset Sale and Purchase Agreement* (the "Original Agreement") with an Effective Date of December 5, 2016, as amended by that certain *First Amendment to Asset Sale and Purchase Agreement* with an effective date of February 24, 2017, that certain *Second Amendment to Asset Sale and Purchase Agreement* with an effective date of March 15, 2017, that certain *Third Amendment to Asset Sale and Purchase Agreement* with an effective date of April 19, 2017, that certain *Fourth Amendment to Asset Sale and Purchase Agreement* with an effective date of May 17, 2017, that certain *Fifth Amendment to Asset Sale and Purchase Agreement* with an effective date of June 21, 2017, that certain *Sixth Amendment to Asset Sale and Purchase Agreement* with an effective date of July 26, 2017, that certain *Seventh Amendment to Asset Sale and Purchase Agreement* with an effective date of September 20, 2017, that certain *Eighth Amendment to Asset Sale and Purchase Agreement* with an effective date of October 18, 2017, that certain *Ninth Amendment to Asset Sale and Purchase Agreement* with an effective date of January 29, 2018, that certain *Tenth Amendment to Asset Sale and Purchase Agreement* with an effective date of March 21, 2018, and that certain *Eleventh Amendment to Asset Sale and Purchase Agreement* with an effective date of April 29, 2018 (collectively, the "Agreement"), with respect to the sale of the Purchased Assets, as defined in the Agreement from Seller to Buyer.

B. Seller and Buyer wish to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, for and in consideration of the foregoing, the promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. Inspection Completion Date. The definition of Inspection Completion Date in Section 1.1(xlix) of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

““Inspection Completion Date” means 5:00 p.m., Eastern time on August 1, 2018.”

2. Bond Validation Date. Simultaneously with the Amendment Effective Date, Seller hereby elects to extend the Validation Date to August 1, 2018.


3. Ratification. Except as modified hereby, all terms and conditions of the Agreement are hereby ratified and confirmed and remain in full force and effect. In the event of any conflict between any term set forth in the Agreement and this Amendment, the terms of this Amendment shall control.

4. Counterparts/ Facsimile. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document. Execution and delivery of this Amendment may be accomplished via electronic transmission.

IN WITNESS WHEREOF, Seller and Buyer have each caused this Amendment to be duly executed on their respective behalves by their respective duly authorized officers.

SELLER:

AVATAR PROPERTIES INC.,
a Florida corporation


By: 
Name: S. GARY SHULLARD
Title: CEO & GENERAL COUNSEL


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BUYER:

**POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**, a
special purpose unit of local government
established pursuant to Chapter 190,
Florida Statutes

Attest:


Secretary

By:  6/14/2018
Printed Name: Robert Zimbardi
Title: CHAIRMAN PCDD

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SECTION V

SECTION A

CLIENT DISCLOSURE AND CONSENT
(PCDD)

Hopping Green & Sams PA (“HGS”) presently serves as legal counsel for the Poinciana Community Development District (the “District”). In agreement with and cooperation between the District and the Poinciana West Community Development District (“PWCDD”), the District has entered into an agreement to purchase certain amenities from Avatar Properties, Inc. (“Avatar”). It has recently been announced that Taylor Morrison Home Corp. (“TM”) has entered into a contract to acquire the stock of AV Homes, Inc. (“AV”) which owns or controls Avatar. If TM’s purchase of AV’s stock occurs, TM or its affiliates or subsidiaries may own or control the amenities which are the subject of the purchase and TM or its affiliates or subsidiaries would be burdened by and a beneficiary of the purchase of the amenities by the District.

HGS currently represents Taylor Morrison of Florida, Inc. (“TM Florida”) on matters not related to the purchase of AV’s stock, the District, the PWCDD or Solivita. TM is the parent company of TM Florida. As a result of HGS’s existing representation of the District and of TM Florida on matters unrelated to the purchase of AV’s stock, the District, the PWCDD or Solivita, HGS is confronted with an actual and/or potential conflict of interest under Florida Rule of Professional Conduct 4-1.7 of the Rules Regulating the Florida Bar.

There are four primary areas of legal service currently being provided to the District by HGS which should be considered in terms of conflict. They are: 1) legal services related to agreements or interactions between the District and Avatar, or in the future TM, TM Florida or their affiliates or subsidiaries, not related to the amenities, 2) legal services related to bond validation, 3) legal services related to bond financing and

special assessments, and 4) legal services related to the contract for the purchase of the amenities and ancillary documents and agreements.

1. Legal Services Related to Agreements or Interactions Between the District and Avatar, or in the Future TM, TM Florida or their affiliates or subsidiaries, Not Related to the Amenities.

In any community development district that is still being developed, there needs to be interaction and agreements between the community development district and the developer from time to time. These interactions relate to real estate transfers, maintenance issues, special assessments, etc. If TM actually acquires the stock of AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by these agreements and interactions.

2. Legal Services Related to Bond Validation

The District has filed a bond validation complaint. One of the purposes of the bond validation proceedings is to facilitate the acquisition of amenities now owned by Avatar. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by the bond validation proceeding.

3. Legal Services Related to Bond Financing and Special Assessments

The District and the PWCDD have begun the process of bond financing and imposing special assessments. One of the purposes of the bond financing and imposition of special assessments is to facilitate the acquisition of amenities now owned by Avatar. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or

subsidiaries will be benefitted and burdened by the bond financing and special assessment activities.

4. Legal Services Related to the Contract for the Purchase of the Amenities and Ancillary Documents and Agreements

There is currently an agreement between the District and Avatar for the sale and purchase of the amenities. That transaction contemplates many ancillary documents and agreements between the District and Avatar. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by these ancillary documents and agreements.

HGS has not represented and will not represent TM, TM Florida or their affiliates or subsidiaries in relation to matters involving the purchase of AV's stock, the District, the PWCDD or Solivita. In addition, the lawyers at HGS who currently represent TM Florida will not be working on matters for the District or PWCDD, and the lawyers who work with the District and PWCDD will not be working on matters for TM Florida. HGS lawyers who perform work for TM Florida will not discuss TM Florida matters with the lawyers working for the District and PWCDD, and HGS lawyers who perform work for the District and PWCDD will not discuss District and PWCDD matters with the lawyers working for TM Florida.

HGS believes that it can still provide competent and diligent representation of the District with respect to the items #1-4 stated above. The District is however free to retain legal counsel other than HGS for any or all of the items listed above, or for any needed legal services.

Given the controversial nature of the amenity transaction to date, HGS does not desire to continue to handle Item #4 and recommends it is in the District's best interest to hire a separate legal counsel to handle Item #4. HGS's continuing role related to Item #4 would be to assist the District's new legal counsel with acquiring historical background information to enable the new counsel to represent the District's interest. This recommendation will also allow another attorney to review the amenity transaction well in advance of any closing on the transaction, which is beneficial to the Board and the community.

After discussion with HGS and receiving the advice of independent counsel not affiliated with HGS regarding the actual and/or potential conflicts of interest described above, the District has determined that there is no conflict of interest that would adversely affect the responsibilities of HGS to the District for Items #1-4 due to HGS's continued representation of TM Florida. Accordingly, the District hereby waives any actual or potential conflict of interest for Items #1-4 which may be presented by HGS's continued representation of TM Florida on matters unrelated to TM's purchase of AV's stock, the District, the PWCDD, or Solivita, as more specifically discussed with the District at its June 20, 2018 and July 9, 2018 meetings of its Board of Supervisors.

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As evidence of this disclosure and the consent of the District to HGS's continued representation of TM Florida as discussed herein, the signature of a person authorized to give this consent appears below.

Poinciana Community Development District

Robert Zimbardi, Chairman

Board of Supervisors

Date: _____

SECTION B

CLIENT DISCLOSURE AND CONSENT
(PWCDD)

Hopping Green & Sams PA (“HGS”) presently serves as legal counsel for the Poinciana West Community Development District (the “District”). In agreement with and cooperation between the District and the Poinciana Community Development District (“PCDD”), the PCDD has entered into an agreement to purchase certain amenities from Avatar Properties, Inc. (“Avatar”). It has recently been announced that Taylor Morrison Home Corp. (“TM”) has entered into a contract to acquire the stock of AV Homes, Inc. (“AV”) which owns or controls Avatar. If TM’s purchase of AV’s stock occurs, TM or its affiliates or subsidiaries may own or control the amenities which are the subject of the purchase and TM or its affiliates or subsidiaries would be burdened by and a beneficiary of the purchase of the amenities by the PCDD.

HGS currently represents Taylor Morrison of Florida, Inc. (“TM Florida”) on matters not related to the purchase of AV’s stock, the District, the PCDD or Solivita. TM is the parent company of TM Florida. As a result of HGS’s existing representation of the District and of TM Florida on matters unrelated to the purchase of AV’s stock, the District, the PCDD or Solivita, HGS is confronted with an actual and/or potential conflict of interest under Florida Rule of Professional Conduct 4-1.7 of the Rules Regulating the Florida Bar.

There are four primary areas of legal service currently being provided to the District by HGS which should be considered in terms of conflict. They are: 1) legal services related to agreements or interactions between the District and Avatar, or in the future TM, TM Florida or their affiliates or subsidiaries, not related to the amenities, 2) legal services related to bond validation, 3) legal services related to bond financing and

special assessments, and 4) legal services related to the contract for the purchase of the amenities and ancillary documents and agreements.

1. Legal Services Related to Agreements or Interactions Between the District and Avatar or, in the Future TM, TM Florida or Their Affiliates or Subsidiaries, Not Related to the Amenities.

In any community development district that is still being developed, there needs to be interaction and agreements between the community development district and the developer from time to time. These interactions relate to real estate transfers, maintenance issues, special assessments, etc. If TM actually acquires the stock of AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by these agreements and interactions.

2. Legal Services Related to Bond Validation

The District has filed a bond validation complaint. One of the purposes of the bond validation proceedings is to facilitate the acquisition of amenities now owned by Avatar. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by the bond validation proceeding.

3. Legal Services Related to Bond Financing and Special Assessments

The PCDD and the District have begun the process of bond financing and imposing special assessments. One of the purposes of the bond financing and imposition of special assessments is to facilitate the acquisition of amenities now owned by Avatar. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or

subsidiaries will be benefitted and burdened by the bond financing and special assessment activities.

4. Legal Services Related to the Contract for the Purchase of the Amenities and Ancillary Documents and Agreements

There is currently an agreement between the PCDD and Avatar for the sale and purchase of the amenities, which agreement has been approved by the District. That transaction contemplates many ancillary documents and agreements between the PCDD and Avatar which impact the District. If TM actually acquires AV, it can be argued that TM, TM Florida or their affiliates or subsidiaries will be benefitted and burdened by these ancillary documents and agreements.

HGS has not represented and will not represent TM, TM Florida or their affiliates or subsidiaries in relation to matters involving the purchase of AV's stock, the District, the PCDD or Solivita. In addition, the lawyers at HGS who currently represent TM Florida will not be working on matters for the District or PCDD, and the lawyers who work with the District and PCDD will not be working on matters for TM Florida. HGS lawyers who perform work for TM Florida will not discuss TM Florida matters with the lawyers working for the District and PCDD, and HGS lawyers who perform work for the District and PCDD will not discuss District and PCDD matters with the lawyers working for TM Florida.

HGS believes that it can still provide competent and diligent representation of the District with respect to the items #1-4 stated above. The District is however free to retain legal counsel other than HGS for any or all of the items listed above, or for any needed legal services.

Given the controversial nature of the amenity transaction to date, HGS does not desire to continue to handle Item #4 and recommends it is in the District's best interest to hire a separate legal counsel to handle Item #4. HGS's continuing role related to Item #4 would be to assist the District's new legal counsel with acquiring historical background information to enable the new counsel to represent the District's interest. This recommendation will also allow another attorney to review the amenity transaction well in advance of any closing on the transaction, which is beneficial to the Board and the community.

After discussion with HGS, having the opportunity to retain independent counsel not affiliated with HGS, and actually receiving advice from independent counsel hired by the PCDD not affiliated with HGS regarding the actual and/or potential conflicts of interest described above, the District has determined that there is no conflict of interest that would adversely affect the responsibilities of HGS to the District for Items #1-4 due to HGS's continued representation of TM Florida. Accordingly, the District hereby waives any actual or potential conflict of interest for Items #1-4 which may be presented by HGS's continued representation of TM Florida on matters unrelated to TM's purchase of AV's stock, the District, the PCDD, or Solivita, as more specifically discussed with the District at its June 20, 2018 and July 9, 2018 meetings of its Board of Supervisors.

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As evidence of this disclosure and the consent of the District to HGS's continued representation of TM Florida as discussed herein, the signature of a person authorized to give this consent appears below.

Poinciana West Community Development District

Charles W. Case, III, Chairman

Board of Supervisors

Date: _____