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MEMORANDUM

TO: On Top of the World Condominium Association, Inc.
Board of Administration

FROM: Barrie S. Buenaventura
Association Counsel

DATE: May 21, 2024

RE: Proposed Amended and Restated Management and Maintenance Services Agreement

Agenda Item 6 of the May 22, 2024, Board of Administration meeting is consideration of a proposed Amended and Restated Management and Maintenance Services Agreement (“Restated Agreement”) recently received from Parkway Maintenance & Management Pinellas, LLC (“Parkway”). To assist the Board with its review and consideration of the proposed revisions, I have described each of the substantive changes below and, where applicable, provided a recommendation for the Board’s consideration. In many cases, I have suggested that you authorize me to negotiate revised language to address my identified concerns. If the Board agrees with these recommendations, I will begin such negotiations with Parkway’s counsel after the Board meeting and strive to have a revised draft Restated Agreement for the Board’s consideration and approval at the June 6, 2024, Board meeting.

Recital B: The proposed changes update the statutory reference. This is not a significant change.

Recital C: The proposed changes identify the corporate entities that own the amenities and utilities facilities within the community. This is not a significant change.

Recital D: The proposed changes are an acknowledgement by the Association that Parkway is not in default or breach of the Restated Agreement or prior management agreements that were in effect before the current management agreement.

Recommendation: Delete this proposed change.

Recital E: The proposed changes update the statutory reference. This is not a significant change.

Section 3: The proposed changes extend the Initial Term of the Restated Agreement through 5 years from the date the Restated Agreement is signed. The Initial Term of the current management agreement, also 5 years, will expire on December 16, 2026, unless the management agreement is terminated or renewed. The proposed changes also create the defined term of Agreement Year which is used in Section 4.6.

Section 4.2: The proposed changes increase the number of personnel stated to be assigned to performing services under the Restated Agreement. Section 718.3025(1)(d), F.S., requires condominium management agreements to specify the number of personnel to be employed by the management company for the purpose of providing service to the association. It is my understanding that this proposed change reflects current circumstances.

Section 4.6: The proposed changes, when read literally, allow Parkway to increase the Maintenance Services Fees at any time during an Agreement Year (calendar year) up to 3% without approval from or notification to the Association. Based on conversations with Parkway's counsel, this is not Parkway's intention.

Recommendation: Authorize Association counsel to negotiate revised language to clarify that Parkway may increase its Maintenance Services Fees only once per year in connection with developing the proposed budget for the next fiscal year and that Parkway must notify the Association of the proposed increase by a date certain, regardless of the extent of the proposed increase.

The proposed changes also set forth a process for Parkway to notify the Association by February 1 annually if the Maintenance Services Fees are proposed to increase by more than 3% for the next fiscal year. Under the proposed changes, the Association has only 30 days to consider and object to the proposed increase and the parties then have only 30 days to come to a mutually agreeable resolution. If no resolution is reached during that time period, the maintenance services in dispute would be deemed deleted from the Restated Agreement.

The proposed changes are of concern because (a) they are based on a very tight timeframe, particularly given the Association's requirements and preferences for notice of Board meetings; (b) they provide for an automatic deletion of the disputed services as of the start of the fiscal year if the parties are unable to reach resolution; and (c) Parkway has had difficulty obtaining bids from other service providers in the past.

Recommendation: Authorize Association counsel to negotiate revised language to provide the Association additional time to review and negotiate the proposed increase with Parkway and clarify that Parkway is responsible for managing the bid solicitation process, analyzing bids received, negotiating contracts, and identifying the recommended awardee, consistent with the terms of Section 4.8 of the Agreement.

Section 4.7: The proposed changes specify that third-party service providers are not Parkway subcontractors.

Recommendation: Authorize counsel to negotiate language to clarify that Parkway is responsible for managing the bid solicitation process, analyzing bids received, negotiating contracts, and identifying the recommended awardee, consistent with the terms of Section 4.8 of the Agreement.

Section 4.10: The proposed changes clarify that Parkway will hold one or more meetings or workshops to review the proposed budget and will charge for those services as Special Project Labor.

Appendix A of the Agreement contains a line item for Parkway's attendance at meetings of the Association, the Board, committees, etc., that is separate from Special Project Labor.

Recommendation: Authorize Association counsel to negotiate language to specify that Parkway's attendance at such meetings would be charged in accordance with the line item pertaining to meeting attendance, rather than as Special Project Labor.

Section 8: The proposed changes allow Parkway to increase the amount of reimbursed expenses by more than 3% in accordance with the process identified in Section 4.6. This does not appear to be a significant change except that the timeframes specified in revised Section 4.6 are very tight and noncompliance could lead to an unintended deletion of services.

Recommendation: Authorize Association counsel to negotiate a process for resolving differences with Parkway regarding a proposed increase of cost reimbursements exceeding 3% that is less complicated and contains less harsh penalties for missing specified timeframes than the process proposed in Section 4.6 of the Restated Agreement.

Section 9: The current Management Agreement provides that Parkway's Management Fee is to remain unchanged during the Initial Term of 5 years. The proposed changes allow Parkway to increase the Management Fee by up to 3% annually in connection with preparing the proposed budget for the next fiscal year. In the event Parkway proposes to increase the Management Fee by more than 3% in any year, the proposed changes establish a process for consideration, objection, and negotiation of the increase in much the same manner as the proposed changes to Section 4.6. In the event the parties are unable to reach agreement, the Agreement will terminate in 90 days.

Recommendation: Authorize Association counsel to negotiate revised language to provide the Association additional time to review and negotiate the proposed increase with Parkway and a longer duration prior to termination in the event the parties are unable to reach agreement.

Section 20: The proposed changes update the contractual history of the parties and how the services were previously provided to the community. The proposed changes also acknowledge that if approved, the Restated Agreement replaces and supersedes any prior management agreements between the parties. This does not appear to be a significant change.

Appendix A: The proposed changes add a cost for electronic record storage, increase the cost of storing and archiving records, and add a line item for non-routine work, requests, and communications to be charged at \$175 per person per hour. The proposed changes also delete from Appendix A fees that are charged to unit owners and should be established by Board action rather than by being included in the Management Agreement.

Recommendation: Request that Parkway explain the nature of the non-routine work specified in the proposed changes and how this will be provided for in the Association's budget.

Addendums A – G: The proposed changes provide greater detail in the description of each of the categories of maintenance services provided by Parkway. It is my understanding that the proposed changes describe the current services performed by Parkway employees.