

**This Instrument Prepared by
and after Recording Return to:**

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**DECLARATION
FOR
AVENIR WEST RECREATION CENTER**

DECLARATION FOR AVENIR WEST RECREATION CENTER

THIS DECLARATION FOR AVENIR WEST RECREATION CENTER ("Declaration") is made this 8th day of December, 2022, by AVENIR DEVELOPMENT, LLC, a Florida limited liability company ("Declarant"), and is joined in by AVENIR WEST RECREATION ASSOCIATION, INC., a Florida corporation not-for-profit ("Association").

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant intends to add real property within the Avenir West Community (as hereinafter defined) ("Additional Property"), which Additional Property may become subject to the provisions of this Declaration upon the recording of a "Supplemental Declaration" (as hereinafter defined); and

WHEREAS, the Association will develop recreational facilities to be known as Avenir West Recreation Center (as hereinafter defined) upon that certain real property more particularly described on Exhibit "B" attached hereto and made part hereof ("Recreation Center Property"); and

WHEREAS, in order to develop and maintain Avenir West Recreation Center as part of a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. EXPLANATION OF TERMINOLOGY

The following words and phrases used in this Declaration (unless the context should clearly reflect another meaning) shall have the following meanings:

1.1. "ADDITIONAL PROPERTY" shall mean any real property (other than the Property) that may be submitted by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by Declarant and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this

Declaration unless and until such property is added by a Supplemental Declaration executed by Declarant. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "Property" as used herein shall also mean a portion (or all) of the Additional Property.

1.2. "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration for Avenir West Recreational Center" and each of which shall be properly adopted pursuant to the terms of the Recreation Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

1.3. "ARTICLES" shall mean the Articles of Incorporation of the Association filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, as such Articles may be amended from time to time.

1.4. "ASSESSMENT" shall mean assessments for which all the Owners are obligated to pay to the Association and includes "Individual Assessments" and "Special Assessments" (as such terms are defined in Section 7 hereof).

1.5. "ASSOCIATION" shall mean AVENIR WEST RECREATION ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, existing pursuant to the Articles of Incorporation, filed in the Office of the Secretary of State of the State of Florida, as amended by any amendments thereto, and which Association is responsible for the maintenance, preservation and control of Avenir West Recreational Center as provided in this Declaration.

1.6. "AVENIR" shall mean the name given to the planned community being developed by Master Declarant in the County in accordance with the Master Declaration, of which the Property is a portion thereof.

1.7. "AVENIR WEST COMMUNITY" shall mean that portion of Avenir located west of Coconut Boulevard other than the private golf course community as shown on the Master Plan for Avenir (a/k/a Panther National) and the "Age Restricted" parcel (i.e., 55+ neighborhood, a/k/a Pod 16). Declarant shall have the right to designate portions of Avenir West Community that will not be subject to the terms of this Declaration if such portions of the Avenir West Community will not use the Avenir West Recreation Center, as determined by Declarant in its sole and absolute discretion.

1.8. "AVENIR WEST RECREATION CENTER" shall mean that planned recreation facility to be constructed upon the Recreation Center Property. Avenir West Recreation Center is initially intended to be comprised of those certain recreational facilities and amenities, subject to additions and deletions made by Declarant from time to time, but subject to change in accordance with this Declaration.

1.9. "BOARD" shall mean the governing body of the Association.

1.10. "BUILDER" shall mean any builder of a Home that Declarant conveys a Lot to for the purpose of such Builder designing, constructing and/or building a Home for sale to an end user.

1.11. "BYLAWS" shall mean the Bylaws of the Association, which have been or will be adopted by the Board, a copy of which are attached hereto as Exhibit "D" and incorporated herein by this reference, as such Bylaws may be amended from time to time.

1.12. "CITY" shall mean the City of Palm Beach Gardens, Florida.

1.13. "COMPLETED HOME" shall mean a Home that has been completed and for which Home a certificate of occupancy has been issued by the appropriate governmental agency.

1.14. "COMPLETED HOME OWNER" shall mean the Owner of a Completed Home.

1.15. "CONTRIBUTING HOME" shall mean any Home conveyed by Declarant or Builder to an Owner which has been issued a certificate of occupancy for the Home constructed thereon by the appropriate governmental agency, except if conveyed to an Institutional Mortgagee by foreclosure or a deed in lieu of foreclosure, upon which an affirmative covenant to pay Assessments, as more particularly set forth herein, is imposed.

1.16. "CONTRIBUTING HOME OWNER" shall mean the Owner of a Contributing Home.

1.17. "COUNTY" shall mean Palm Beach County, Florida.

1.18. "DECLARANT" shall mean Avenir Development, LLC, a Florida limited liability company, and any successor or assign thereof to which Avenir Development, LLC, a Florida limited liability company, specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home, be deemed a successor or assign of Declarant under the Recreation Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

1.19. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded in the Public Records of the County.

1.20. "DIRECTOR" shall mean a member of the Board.

1.21. "HOA ACT" shall mean the homeowners' association act, Chapter 720, Florida Statutes, as amended through the date of recording this Declaration amongst the Public Records of the County.

1.22. "HOME" shall mean a residential dwelling unit in the Avenir West Community intended as an abode for one (1) family, including single family detached residences. The term Home shall include the Lot. In the event all or any portion of the Additional Property is submitted to this Declaration by a Supplemental Declaration, the number of Homes within the Avenir West Community shall increase.

1.23. "IMMEDIATE FAMILY MEMBERS" shall mean the spouse of the Owner and all unmarried children twenty-two (22) years and younger of either the Owner or the Owner's spouse. If an Owner is unmarried, the Owner may designate one other person who is living with such Owner in the Home in addition to children of the Owner as an additional adult Immediate Family Member. Children of such additional adult Immediate Family Member shall also be deemed Immediate Family Members. No unmarried child or other person shall qualify as an Immediate Family Member unless such person is living with the Owner within the Home. In no event shall the Owner and all Immediate Family Members exceed a number equal to two times the number of bedrooms in the Home.

1.24. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Avenir West Community, including, but not limited to, buildings, walkways, sidewalks, parking areas, berms, fountains, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, hedges, plantings, poles, swings, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site walls, gazebos, benches, mailboxes, decorative street lights and signs.

1.25. "INCOMPLETE HOME" shall mean a Home that has not been completed and for which no certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency.

1.26. "INCOMPLETE HOME OWNER" shall mean the Owner of an Incomplete Home.

1.27. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within the Avenir West Community.

1.28. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot within the Avenir West Community, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions

as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration ("VA"), the Federal Housing Administration ("FHA") or the U.S. Department of Housing and Urban Development ("HUD") or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

1.29. "INTEREST" shall mean the maximum nonusurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

1.30. "LEGAL FEES" shall mean (i) all fees for attorney and paralegal services incurred in connection with negotiations, mediation, arbitration, litigation or preparation for same (whether or not such an action is actually begun) through and including all trial and appellate levels and post-judgment or collection proceedings; and (ii) all costs incurred with respect to the matters set forth in (i), above.

1.31. "LOT" shall mean any parcel of land within the Avenir West Community as shown on the Plat, any additional plat, or on any replat, if any, upon which a Home is permitted to be constructed, together with the Improvements thereon. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Neighborhood Documents.

1.32. "MASTER ASSOCIATION" shall mean Avenir Master Property Owners Association, Inc., a Florida corporation not for profit, organized to administer the Master Declaration.

1.33. "MASTER DECLARANT" shall mean Avenir Development, LLC, a Florida limited liability company, and all of such entity's successors and assigns.

1.34. "MASTER DECLARATION" shall mean the Master Declaration of Covenants, Conditions and Restrictions for Avenir recorded in the Public Records of the County, and all amendments and supplements thereto.

1.35. "MASTER DOCUMENTS" shall mean the Master Declaration, the Amended and Restated Articles of Incorporation and By-Laws of the Master Association, the Design Guidelines (adopted or to be adopted pursuant to Article IV of the Master Declaration), the Use Restrictions, attached as Exhibit "B" to the Master Declaration, any rules and regulations promulgated by the Master Association and all of the instruments and documents referred to therein and executed in connection therewith, and any amendments to any of the documents thereto.

1.36. "MASTER PLAN" shall mean the Avenir Planned Community Development Master Plan approved by the City, as it may be amended from time to time, which includes all of the property described in Exhibit "A" to the Master Declaration, which is being developed by Master Declarant.

1.37. "MEMBERS" shall mean and refer to all of the Owners of a Lot or Home within the Property.

1.38. "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at the Owner's expense, in the manner set forth in Section 9.1 herein.

1.39. "OPERATING EXPENSES" shall mean all costs (as such term is used in its broadest sense) of owning, operating, managing, maintaining, insuring the Avenir West Recreation Center, including, but not limited to, trash collection, utility charges, maintenance, management fees, reserves, repairs, refurbishments, payroll and payroll costs, insurance, working capital, ad valorem or other taxes (excluding income taxes of Declarant), assessments, costs, expenses, levies and charges of any nature which may be levied, imposed or assessed against, or in connection with, the Recreation Center. By way of example, and not of limitation, Operating Expenses shall include all legal expenses of the Declarant with respect to the Avenir West Recreation Center.

1.40. "OWNER" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Home within the Avenir West Community, and includes Declarant and any Builder for as long as Declarant or Builder, as the case may be, owns fee simple title to a Lot or Home, but excluding therefrom those having such interest as security for the performance of an obligation.

1.41. "PLAT" shall mean the plat of AVENIR – POD 15, recorded in the Public Records of the County. In the event an additional plat is recorded in the Public Records of the County with respect to the Additional Property made subject to this Declaration pursuant to a Supplemental Declaration, then the term "Plat" as used herein shall also mean the additional plat. Further, where the context so requires, the term "Plat(s)" shall also mean and refer to any plat recorded with respect to any portion of Avenir. Not all of the property shown on the Plat may be subject to this Declaration.

1.42. "POD 15 PLAT" shall mean the plat of AVENIR – POD 15, according to the plat thereof, as recorded in Plat Book 134, Page 179 of the Public Records of Palm Beach County, Florida.

1.43. "POD 15 ASSOCIATION" shall mean the Pod 15 Neighborhood Association, Inc., a Florida corporation not for profit, its successors or assigns, which governs the Lots and Homes within the Pod 15 Plat.

1.44. "PROPERTY" shall mean that certain real property described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and/or the Association; provided, however, Declarant reserves the right to add property and withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

1.45. "PUBLIC RECORDS" shall mean the Public Records of the County.

1.46. "RECREATION CENTER FACILITIES" shall have the meaning set forth in Section 4.3 hereof.

1.47. "RECREATION CENTER PROPERTY" shall mean that certain real property described in Exhibit "B" and such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and/or the Association.

1.48. "RECREATION DOCUMENTS" shall mean, in the aggregate, this Declaration and the Articles, Bylaws, any rules and regulations of the Association which may be promulgated, all of the instruments and documents referred to therein and executed in connection therewith, and all amendments to the foregoing.

1.49. "RULES AND REGULATIONS" shall have the meaning set forth in Section 4.6 hereof.

1.50. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any, to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration, (b) withdraw any portion(s) of the Property from the effect of this Declaration, (c) designate portion(s) of the Property or Additional Property as common area hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to add additional covenants, restrictions, reservations, regulations, burdens, liens, and easements upon the Property or any portion thereof; remove any existing covenant, restriction, reservation, regulation, burden, lien or easements from the Property or any portion thereof; declare certain properties to be or not to be common area; and/or add properties to or withdraw properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

1.51. "TURNOVER" or "TURNOVER DATE" shall mean the date upon which Members, including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.D.2 of the Articles.

2. DESCRIPTION OF AVENIR WEST RECREATION CENTER

2.1. General Plan of Development

The Recreation Center Property consists of, or will consist of, the Avenir West Recreation Center and its Recreational Center Facilities, as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Recreation Center Property initially declared hereunder is described in Exhibit "B" attached hereto and is planned to contain a clubhouse, fitness center, swimming pools, tennis courts, pickle ball courts and a sport court, all in accordance with, but subject to, the terms of this Declaration. Notwithstanding the foregoing, Declarant hereby reserves the right to modify its plan of development of Avenir West Recreation Center (including, without

limitation, the right to modify the site plan of Avenir; the right to add or change the recreational facilities and amenities, to be constructed within Avenir West Recreation Center); and/or the right to add land to Recreation Center Property or to withdraw land from Recreation Center Property. Therefore, in the event Declarant modifies its plan of development of Avenir West Recreation Center and/or adds land to Recreation Center Property or withdraws land from Recreation Center Property, it is hereby acknowledged by each Owner that the recreational facilities and amenities within Avenir West Recreation Center may change. Declarant's general plan of development further contemplates that the facilities to be constructed within Avenir West Recreation Center shall be whatever types of structures Declarant may choose which are in conformance with this Declaration.

Additional Property will become a part of the Property if, and only if, Declarant in its sole discretion adds Additional Property to the Property by recording a Supplemental Declaration to such effect. Declarant hereby reserves an easement for ingress and egress and for utilities and drainage over, under and across the Property for the benefit of any Additional Property; provided, however, no such easement may be granted upon any portion of the Property that lies directly beneath a Home.

Declarant expressly reserves the right as to the Recreation Center Property to (i) commence construction and development of the Recreation Center Property if and when Declarant desires; (ii) develop the Recreation Center Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Recreation Center Property (including, without limitation, the right to modify the master plan of Avenir West Recreation Center, and the right to add or change the recreational facilities and amenities to be constructed within Avenir West Recreation Center) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Avenir West Recreation Center according to the present plan of development nor as obligating Declarant to declare any Additional Property to be Property.

The Master Declaration sets forth Master Declarant's plan for development of Avenir. Master Declarant's plans to develop Avenir as a mixed used master planned community, in accordance with the Master Declaration, and subject to change however in the discretion of the Master Declarant as provided in the Master Declaration.

Notwithstanding the foregoing, given the proximity of the Recreation Center Property to the Lots and Homes within the Pod 15 Plat, no modification of the general scheme of development of the Avenir West Recreation Center shall materially and adversely affect the Lots and Homes within the Pod 15 Plat without the prior written consent of the Pod 15 Association. The provisions of this paragraph shall not be amended without the written consent of the Pod 15 Association.

3. ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY

3.1. Additions

Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property or

any other real property to the Property governed by this Declaration, and may declare all or part of such Additional Property or other property (including any Improvements thereon) to be Lots or common area. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property or any other real property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property or other property (including without limitation, different voting rights and different Assessments and/or charges for the Additional Property so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added). Nothing contained in this Section 3.1 shall be construed to require the joinder by or consent of the Owners or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

3.2. Designation of Common Area

Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be common area.

3.3. Disclaimer of Implication

Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property (including any Additional Property) shall in any way be deemed to constitute a portion of the Property or be affected by the covenants, restrictions, reservations, regulations, burdens, liens, and easements expressly binding the Property as provided by the terms of this Declaration.

3.4. Absence of Obligation

Nothing in this Declaration shall be construed to require Declarant to add any Additional Property to the Property encumbered by this Declaration or to require Declarant to declare any portion of any properties added to the Property to be common area, nor shall anything in this Declaration be construed to require Declarant to declare any portion or portions of the existing Property as common area, except to the extent herein specifically provided.

3.5. Withdrawal

Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder by or consent of the Owners of Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional

Mortgagees holding mortgages on Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, or the Association.

4. OWNERS' PROPERTY RIGHTS

4.1. Owners' Easements of Enjoyment

Every Owner and family member, guest, lessee, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the Recreation Center Property, except as may otherwise be specifically provided elsewhere in this Declaration, in common with all other Owners, their family members, guests, lessees, agents and invitees, located outside another Owner's Home which easement shall be appurtenant to, and shall pass with title to each Owner's Lot. This right shall be subject to the following conditions and limitations:

4.1.1. The right and duty of the Association to reasonably limit the number of guests, invitees or tenants of an Owner using the Avenir West Recreation Center.

4.1.2. The right and duty of the Association to levy Assessments against each Contributing Home for the purpose of operating, maintaining, repairing and replacing the Avenir West Recreation Center and facilities thereon, all in compliance with the provisions of this Declaration, the Master Declaration and the restrictions on portions of the Property from time to time recorded by Declarant.

4.1.3. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Avenir West Recreation Center.

4.1.4. The right of the Association to establish, amend and/or abolish from time to time uniform rules and regulations pertaining to the Avenir West Recreation Center for the purposes of enhancing the aesthetic uniformity of the Property.

4.1.5. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, to borrow money for the purpose of constructing, re-constructing, or improving the Avenir West Recreation Center and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property or pledge Assessments as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

4.1.6. The right of the Association to dedicate, release, alienate or transfer all or any part of the Recreation Center Property to any public agency, authority, or utility for such purposes and subject the Recreation Center Property to such conditions as may be agreed to by the Association. No such dedication, release, alienation or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation, or transfer.

4.1.7. The right of the Association to without any vote of the Owners to grant easements and rights-of-way or strips of land, where necessary or desirable, for utilities, water and

sewer facilities, cable television, and other services over the Recreation Center Property to serve the Avenir West Recreation Center and other portions of the Recreation Center Property, without vote of the Owners.

4.1.8. The right of Declarant, Declarant's affiliates and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Avenir West Recreation Center within the Recreation Center Property and the facilities thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration. Moreover, all Builders shall be afforded access rights with respect to the Avenir West Recreation Center for purposes of touring their prospective buyers through the Avenir West Recreation Center during the sales process and permitting guest use of the Avenir West Recreation Center, all subject to such reasonable rules and regulations as may be promulgated by the Association. Additionally, all Builders shall be treated equally with respect to such access and use rights of the Avenir West Recreation Center; provided, however, no Builder may display signs, pamphlets, or other such marketing materials within the Avenir West Recreation Center or on any portion of the Recreation Center Property nor use any portion of the Avenir West Recreation Center for a "sales office".

4.1.9. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any Improvement or portion thereof upon the Recreation Center Property, in accordance with the original design, finish, or standard of construction of such Improvement.

4.1.10. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Recreation Center Property, except as may be prohibited under applicable government permits.

4.1.11. The right, however not the duty, of the Association by action of the Board to seek the vacation of publicly dedicated streets, if any, upon the Recreation Center Property.

4.1.12. The easements provided elsewhere in this Declaration, designated on the Plat or any additional plat, if any, including, but not limited to, those set forth in this Section 4.

4.1.13. The right of the Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Recreation Center Property as may be necessary or convenient for the Association and/or the Declarant to carry on its respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's development and construction of Avenir West Recreation Center and its facilities therein).

4.1.14. All Owners are subject to the Master Documents and therefore, have all the rights granted under the Master Documents and are subject to all burdens which result therefrom including, without limitation, the obligation to pay Assessments (Regular Assessment, Benefited Assessment or Special Assessment) thereunder. To the extent of any conflict between the Recreation Documents and the Master Documents, the Master Documents shall control to the extent of such conflict.

4.1.15. Plat Easement(s). The Plat and/or additional plat, if any, may contain additional easements not discussed herein, granted in favor of the Association or others, for the specific purposes as described therein.

4.2. Assignments

The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any city, county or state government or agency thereof, or any water management district, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Recreation Center Property or portions thereof which may be necessary or desirable by Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Recreation Center Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

4.3. Recreational Center Facilities

4.3.1 Property Comprising the Avenir West Recreation Center. Declarant and its affiliates presently own all of the real property comprising the Avenir West Community. Declarant intends to construct certain recreation facilities within the Recreation Center Property which will be and shall remain the property of Declarant, subject only to the provisions hereof.

4.3.2 Construction of the Recreation Center Facilities. Declarant intends to construct, or cause to be constructed, the Recreation Center Facilities. The Recreation Center Facilities are intended to consist of a clubhouse, fitness center, swimming pool, tennis courts, pickle ball courts and a sport court.

4.3.3 Rights of Declarant. Declarant shall have the following rights, which may be assigned or delegated, in whole or in part, by Declarant:

(a) develop and construct the Avenir West Recreation Center and related improvements within the Avenir West Community, and make any additions, alterations, improvements, or changes thereto;

(b) place, erect, and/or construct portable, temporary, or accessory buildings or structures upon the Recreation Center Property for construction, storage, or other purposes;

(c) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish on the Recreation Center Property in connection with the development or construction of the Avenir West Recreation Center or any improvements located within Avenir;

(d) post, display, inscribe or affix to the exterior of the Avenir West Recreation Center and the Recreation Center Property, signs and other materials used in developing, constructing, or promoting activities within portions of Avenir;

(e) excavate fill from any lakes or waterways within and/or contiguous to the Avenir West Recreation Center by dredge or dragline, store fill within the Recreation Center Property, and remove and/or sell excess fill; and grow or store plants and trees within, or contiguous to, the Recreation Center Property and use and/or sell excess plants and trees; and

(f) all activities which, in the sole opinion of Declarant, are necessary for the development and sale of the Avenir West Recreation Center or any lands or improvements therein.

4.3.4 Changes. Declarant reserves the absolute right to, from time to time, alter or change the Avenir West Recreation Center, including construction of additional Recreation Center Facilities and/or the removal or modification thereof. THE RECREATION CENTER FACILITIES ARE SUBJECT TO CHANGE AT ANY TIME.

4.4 Persons Entitled to Use the Avenir West Recreation Center.

4.4.1 Rights of Owners. Each Owner and his or her Immediate Family Members shall have such non-exclusive rights and privileges as shall from time to time be granted by Declarant. If a Home is owned by a corporation, trust or other legal entity, or is owned by more than one family, then the Owner(s) collectively shall designate the Owner with respect to such Home.

4.4.2 Recallable Memberships. Declarant shall have the right to issue "recallable" memberships to use the Avenir West Recreation Center to residents of the Avenir Community living east of Coconut Boulevard; provided, however, that the number of "recallable" memberships outstanding at any one time shall be limited so that the total number of users of the Avenir West Recreation Center, inclusive of "recallable" memberships, shall never exceed the anticipated number of residents within the Avenir West Community once fully developed and constructed.

4.5 Subordination. This Declaration and the rights of Owners to use the Avenir West Recreation Center is and shall be subject and subordinate to: (a) any ground lease, mortgage, deed of trust, or other encumbrance and any renewals, modifications and extensions thereof, now or hereafter placed on the Avenir West Recreation Center by Declarant; and (b) easements, restrictions, limitations, conditions of record, and other conditions of governmental authorities. This provision shall be self-operative.

4.6 Rules. Declarant shall have the right at all times to adopt rules and regulations (the "Rules and Regulations") governing the use of the Avenir West Recreation Center. Each Owner, Immediate Family Member, and other person entitled to use the Avenir West Recreation Center shall comply with the provisions of all Rules and Regulations promulgated concerning the use of the Avenir West Recreation Center.

The following Rules and Regulations have been adopted by Declarant:

4.6.1 Children. Children under fourteen (14) years of age are permitted to use the Recreation Center Facilities only if accompanied or supervised by an adult Owner or adult Immediate Family Member; provided, however, children under fourteen (14) years of age shall not be permitted in the fitness center under any circumstances.

4.6.2 Responsibility for Personal Property and Persons. Each Owner assumes sole responsibility for the health, safety and welfare of such Owner, his or her Immediate Family Members, and guests, and the personal property of all of the foregoing.

4.6.3 Cars and Personal Property. The Avenir West Recreation Center is not responsible for any loss or damage to any private property used or stored on the Recreation Center Facilities. Without limiting the foregoing, any person parking a car within the Parking Areas assumes all risk of loss with respect to his or her car and personal property in the Parking Areas. Further, any person entering the Recreation Center Facilities assumes all risk of loss with respect to his or her equipment, jewelry or other possessions stored in any lockers, on bicycles, or within cars and wallets, books and clothing.

4.6.4 Activities. Any Owner, Immediate Family Member, guest or other person who, in any manner, makes use of, or accepts the use of, any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Avenir West Recreation Association, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Avenir West Recreation Association, either on or off the Avenir West Recreation Center, shall do so at their own risk. Every Owner shall be liable for any property damage and/or personal injury at the Avenir West Recreation Center, or at any activity or function operated, organized, arranged or sponsored by the Avenir West Recreation Association, caused by any Owner, Immediate Family Member, or guest.

4.6.5 Property Belonging to the Avenir West Recreation Center. Property or furniture belonging to the Avenir West Recreation Center shall not be removed from the room in which it is placed or from the Recreation Center Facilities.

4.6.6 Indemnification of Declarant. In addition, each Owner, Immediate Family Member, and guest agrees to indemnify and hold harmless Declarant and Association, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to such Owner's revocable license, including, without limitation, use of the Avenir West Recreation Center by Owners, Immediate Family Members, and their guests, or the interpretation of this Declaration, and/or these Rules and Regulations and/or from any act or omission of the Avenir West Recreation Center or of any of the Indemnified Parties.

4.6.7 Attorneys' Fees. Should any Owner and/or Immediate Family Member bring suit against Declarant or Association or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, the Owner and/or Immediate Family Member shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorney's fees and paraprofessional fees at trial and upon appeal.

4.6.8 Unrecorded Rules. Declarant may adopt additional Rules and Regulations from time to time. Such Rules and Regulations may not be recorded; therefore, each Owner and lessee should request a copy of unrecorded Rules and Regulations from the Avenir West Recreation Center and become familiar with the same. Such Rules and Regulations are in addition to the provisions of this Section.

4.6.9 Waiver of Rules and Regulations. Declarant may waive the application of any Rules and Regulations to one or more Owners or lessees in Declarant's sole and absolute discretion. By way of example, and not of limitation, Declarant may waive a rule due to unusual hardship. A waiver may be revoked at any time upon notice to affected lessees and Owners.

4.7 Violation of the Rules and Regulations.

4.7.1 Basis For Suspension. The revocable license of an Owner may be suspended or a fine imposed by Declarant if, in the judgment of Declarant:

(a) such person engages in conduct which is improper or likely to endanger the safety, harmony or good reputation of the Owners, the Recreation Center Facilities or the Avenir Community;

(b) such person exhibits unsatisfactory deportment or appearance;

(c) such person is not an Owner, lessee or a holder of a recallable membership;

(d) the Owner, lessee or holder of a recallable member violates one or more of these Rules and Regulations;

(e) an Immediate Family Member, guest or other person for whom an Owner is responsible violates one or more of these Rules and Regulations;

(f) an Owner fails to pay Assessments in a proper and timely manner; or

(g) an Owner, Immediate Family Member, and/or guest has injured or harmed any person within the Recreation Center Facilities, or harmed, destroyed or stolen any personal property within the Recreation Center Facilities, whether belonging to a third party or to Declarant.

DECLARANT MAKES NO REPRESENTATION AS TO THE RECREATIONAL FACILITIES, OR AS TO THE TIMING OF COMPLETION OF THE RECREATIONAL FACILITIES OR THEIR PARTICULAR AMENITIES. DECLARANT MAY ALSO PRESENT RENDERINGS OF THE RECREATIONAL FACILITIES AND SUCH RENDERINGS ARE NOT A GUARANTEE OF HOW THE RECREATIONAL FACILITIES WILL APPEAR UPON COMPLETION. DECLARANT RESERVES THE RIGHT TO CHANGE ANY PLANS FOR THE RECREATIONAL FACILITIES AT ANY TIME AS DECLARANT DEEMS APPROPRIATE IN ITS SOLE AND ABSOLUTE DISCRETION.

5. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD; DURATION OF THE ASSOCIATION

5.1. Membership and Voting Rights

Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Recreation Documents. The voting rights of the Members shall be as set forth in the Articles.

5.2. Board

The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

5.3. Duration of Association

The duration of the Association shall be perpetual, as set forth in the Articles.

5.4. Relationship to the Master Association

5.4.1. The Master Association.

Avenir West Recreation Center is a component of the larger mixed use master planned community known as Avenir. Every Owner, by acceptance of a deed to a Lot and Completed Home, acknowledges that, in addition to being subject to and bound by the Recreation Documents, he or she is subject to and bound by the Master Documents and subject to Assessment by the Master Association in accordance with the terms of the Master Declaration. Each Owner covenants and agrees to pay all Assessments levied against such Owner's Home by the Master Association and/or by the Association on behalf of the Master Association.

5.4.2. Supremacy of the Master Documents.

In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to the Recreation Documents, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Documents. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Documents. The Association shall take no action in derogation of the rights of the Master Association.

5.4.3. Cumulative Effect; Conflict.

The provisions of the Recreation Documents shall be cumulative with the provisions of the Master Documents; however, in the event of conflict between or among the provisions of the Recreation Documents and the Master Documents, the latter shall be superior. The foregoing priorities shall not prevent enforcement by the Association of provisions or rules in the Recreation Documents which are stricter than those of the Master Documents.

6. COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS; COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT;

CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES

6.1. Affirmative Covenant to Pay Assessments

6.1.1. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Recreation Documents; and (ii) maintain, operate and preserve the Recreation Center Property for the use, safety, welfare and benefit of the Owners and their family members, guests, invitees and lessees, there is hereby imposed upon each Contributing Home and each Contributing Home Owner the affirmative covenant and obligation to pay to the Association commencing from and after the first conveyance of a Lot or Home from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Assessments and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot and Completed Home within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Recreation Documents. Notwithstanding the foregoing, Assessments shall not commence until after the issuance of the Certificate of Occupancy or equivalent Certificate of Completion for the Avenir West Recreation Center by the appropriate governmental authority.

6.1.2. The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Recreation Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Recreation Center Property as a whole, or against any and all personal property or Improvements thereon; (2) all charges levied for utilities providing services for the Recreation Center Property as a whole, or to the Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, telecommunications services home monitoring, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Recreation Center Property and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Recreation Center Property and all Improvements located thereon; (5) any sums necessary to reimburse the Association for any costs or expenses incurred in connection with maintaining the Recreation Center Property; (6) administrative and operational expenses; and, (7) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. Reserves for future maintenance, repair and replacements are specifically excluded from Operating Expenses. The Board may, if it so determines, include reserves in the Association's annual budget. In addition, any expense which is required by this Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Recreation Center Property which is the Association's responsibility to maintain or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Recreation Center Property to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent

such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and legal fees and costs (including, without limitation, attorneys and paralegal fees and court costs) incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which the Owners are obligated to pay pursuant to the Recreation Documents or the enforcement of the use and occupancy restrictions contained in the Recreation Documents, and except legal fees incurred for lawsuits not approved pursuant to Section 12.12 below.

The Operating Expenses with respect to the Recreation Center Property are payable by each Owner of a Contributing Home notwithstanding the fact that Declarant may not have as yet conveyed title to the Recreation Center Property to the Association.

6.2. Establishment of Liens

Each Assessment against a Contributing Home, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Contributing Home. Any and all Assessments made by the Association in accordance with the provisions of the Recreation Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Contributing Home against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains title to a Home as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall be liable for Assessments pertaining to such Lot or chargeable to the former Owner except and to the extent limited by the HOA Act.

6.3. Collection of Assessments

In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

6.3.1. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

6.3.2. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Owner(s) and such advance by the Association shall not waive the default.

6.3.3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 6.3.2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

6.3.4. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

6.3.5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of the past due amount, whichever is greater, by the Association to defray additional collection costs. This amount is subject to change in the Board's sole discretion.

6.3.6. To suspend the right of the Owner(s) in default to vote on any matter on which the Owners have the right to vote if such Owner is delinquent in payment of Assessments or other monetary obligation due the Association for more than ninety (90) days and until such monetary obligations are paid in full.

6.3.7. To suspend the right of the Owner(s), along with their family members, guests, invitees and tenants to use certain common and recreational areas located within the Recreation Center Property if such Owner is delinquent in payment of Assessments or any other monetary obligation due the Association for more than ninety (90) days and until such monetary obligations are paid in full.

Suspensions imposed by the Association pursuant to subsections 6.3.6 and 6.3.7 above must be approved by the Board in the manner required by the HOA Act.

6.4. Collection by Declarant

In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

6.5. Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement

Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which

are in default and which may or have become a charge against any Home(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

7. METHOD OF DETERMINING ASSESSMENTS AND ALLOCATION OF ASSESSMENTS

7.1. Determining Amount of Assessments

The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be divided by the estimated total number of Lots that will ultimately be subject to this Declaration, with the quotient thus arrived at being the "Individual Assessment" levied against each Contributing Home. Notwithstanding anything herein or in the Recreation Documents to the contrary, any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense which is properly the subject of a Special Assessment and not the subject of a regular Individual Assessment.

7.2. Assessment Payments

Following the issuance of the Certificate of Occupancy or equivalent Certificate of Completion for the Avenir West Recreation Center by the appropriate governmental authority, the Individual Assessments shall be payable quarterly, in advance, on the first day of the fiscal quarter. Notwithstanding the foregoing, the Board has the right to change the method and frequency of the payments of Individual Assessments. The Individual Assessments, and the quarterly payments thereof, as well as all Assessments provided for herein and all installments thereof may be adjusted from time to time by the Board to reflect changes in the number and status of Contributing Homes (thus apportioning all Operating Expenses among all Contributing Homes in existence at the time an Individual Assessment installment is due) or due to changes in the Budget or in the event that the Board determines that an Assessments or any installment thereof is either less than or more than the amount actually required.

7.3. Special Assessments

"Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Recreation Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for

capital improvements which include the costs (whether in whole or in part) of constructing (other than the initial construction costs) or acquiring Improvements for, or on, the Avenir West Recreation Center or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least thirty percent (30%) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws; provided, however, the Board acting alone and without the consent of Members may levy Special Assessments for the following: i) in the event of a casualty loss to repair and replace any portion of the Recreation Center Property which is not insurable (e.g., landscaping, fencing, *etc.*), not insured, under insured, or where insurance coverage was denied by the insurance carrier after the casualty loss; ii) to obtain funds to cover insurance deductibles in the event of a casualty loss; or iii) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to, the Recreation Center Property.

7.4. Liability of Owners for Individual Assessments

By the acceptance of a deed or other instrument of conveyance of a Completed Home in the Property, each Owner thereof acknowledges that such Completed Home becomes a Contributing Home upon such conveyance and the Owners thereof are jointly and severally liable for their own Individual Assessments and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Contributing Homes for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Assessment or any portion thereof, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Recreation Documents.

Notwithstanding anything contained herein to the contrary, Builders acquiring a Lot from Declarant, and such Builders' permitted successors and assigns, shall have the right, at Builder's election, to either (i) pay Assessments in the same manner as any other Contributing Home Owner (but without the obligation to pay for any increase in assessments due to the nonpayment by any other Contributing Home Owner), or (ii) pay Assessments in the same manner as would have been paid by Declarant if Declarant were the Owner of such Lot (i.e., such Builders,

and their permitted successors and assigns, shall fund the prorated amount of the budget deficit applicable to such Lot). For clarity, if a Builder elects not to pay Assessments on Builder's Lots, such Builder shall be obligated to pay their Proportionate Share (as such term is herein defined) of the budget deficit, with such "Proportionate Share" being the ratio of the number of Lots owned or held by such Builder as compared to the total number of Lots approved for development within the Avenir West Community.¹ For clarity, in either event, Builders are not obligated to make any voluntary contributions or pay reserves.

7.5. Waiver of Use

No Owner, other than Declarant, may exempt himself, herself or itself from personal liability for Assessments duly levied by the Association. No Owner may release the Owner's Home from the liens and charges hereof either by waiver of the use and enjoyment of the Recreation Center Property and the facilities thereon or by abandonment of such Owner's Home.

7.6. Declarant Subsidy

Declarant has the right (at its sole election) to subsidize the Budget of the Association as provided below by making voluntary contributions in amounts determined by Declarant in Declarant's sole discretion. During the period of time that Declarant is offering Lots or Homes for sale in the Avenir West Community, Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Budget of the Association by making voluntary contributions in amounts determined by Declarant. The amount of any such voluntary contributions may vary from time to time or may be discontinued and/or recommenced by Declarant from time to time. The determination to subsidize the Budget of the Association, the amount of any such voluntary contribution, the discontinuance and/or commencement of any such voluntary contributions shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions. Each Owner shall be solely responsible to review the Budget of the Association then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Association. Declarant's rights under this Section 7.6 do not constitute a guarantee of Assessments of Operating Expenses under and as described in Section 720.308(2) of the HOA Act.

7.7. Declarant's Right to Loan or Advance Funds.

Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting its financial obligations. Notwithstanding anything to the contrary contained in this Section, if Declarant loans, advances or otherwise makes payments to the Association, other than as a voluntary subsidy per Section 7.6 above, then any such sums shall be repaid to Declarant prior to the Turnover Date.

8. MAINTENANCE AND REPAIR OBLIGATIONS

¹ For example, if a Builder owns 100 Lots and there are 1,500 Lots approved for development in the Avenir West Community, such Builder shall pay 6.667% of the budget deficit of the Association (i.e., 100 Lots / 1,500 Lots = 6.667%).

The Association has the responsibility for the maintenance of the Recreation Center Property, including the interior maintenance of structures on the Recreation Center Property. The Association may enter into agreements with others for the Association's management and/or maintenance of all or part of the Recreation Center Property to be maintained by such entity (regardless of whether the subject property is within the Recreation Center Property) for purposes of carrying out all or a portion of the maintenance responsibilities of such entity, the expenses of which may be designated an Operating Expense, if the Association's Board determines such is in the interest of the Owners. Privately owned property shall be the maintenance responsibility of the Owner thereof, unless the responsibility is assumed by another by agreement approved or acknowledged by the Association. Open space owned by or dedicated to the Association shall be maintained by the Association and will not be diminished or destroyed in a manner which materially alters its use or enjoyment as open space.

8.1. By the Association.

8.1.1. The Association, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all landscaping and grassed areas encompassed within the Recreation Center Property as well as all of the Improvements and facilities located over, through and upon the Recreation Center Property (except public utilities). Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Recreation Center Property as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any portion of the Recreation Center Property, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

8.1.2. The Association shall operate, maintain, repair and replace the irrigation system constructed over, through and upon the Recreation Center Property (or any portions thereof) as it shall deem appropriate. The Association shall be responsible for the costs of operation and maintenance of such irrigation system in connection with the Recreation Center Property, including any monthly fees and other costs of water and/or electric usage and the cost of repair or replacement to all or any part thereof. There is hereby reserved in favor of the Association the right to enter upon the Recreation Center Property and any and all Lots for the purpose of operating, maintaining, repairing and replacing the irrigation system over, through, upon and within the Recreation Center Property.

8.1.3. The Association shall be responsible for the maintenance, repair and replacement of all private streets, drives, roads and roadways, if any, located upon the Recreation Center Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Recreation Center Property for such purpose. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all City, County, district or municipal properties which are located within or in a reasonable proximity of the Recreation Center Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Recreation Center Property, including the right to enhance the landscaping in any public right of way.

8.1.4. The Association shall be responsible for the maintenance, repair and replacement of any common lighting located in Avenir West Recreation Center; provided, however, the Association shall not be responsible for the maintenance, repair and replacement of any lighting provided by the municipal electric service.

8.1.5. The Association, at its expense, shall maintain, repair and replace any perimeter walls, if any, constructed over, through and upon the Recreation Center Property (or any portions thereof). In the event there is an aluminum fence installed by Declarant at the rear of any Lot, said fence will be responsibility of the Owner of the Lot on which the fence is enclosing to maintain, repair, and replace. There is hereby reserved in favor of the Association the right to enter upon the Property and any and all Lots for the purpose of fulfilling its maintenance, repair and replacement responsibilities under this Section.

8.1.6. Neither the Association nor any Owner shall alter the slopes, contours, or cross sections of the lakes, lake banks and littoral zones or chemically, mechanically, or manually remove, damage or destroy any plants in any of the littoral zones, except upon the written approval from the Avenir Community Development District which is a special purpose government unit organized in accordance with the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended, and which may acquire, fund, construct, operate and maintain certain infrastructure and community services within and outside Avenir ("CDD") or applicable governmental authority.

8.1.7. Any property designated as open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation or wetland area on any plat, permit, or other document recorded in the Public Records of the County shall be preserved and maintained by the owner of such property in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation area, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

8.1.8. All expenses incurred by the Association in connection with the services, operation, maintenance, repair and replacement described in Sections 8.1.1 through 8.1.7 above, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Sections 8.1.1 through 8.1.7 of this Section 8 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible therefor, and the Association shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.

9. OCCUPANCY AND USE RESTRICTIONS

All of the Recreation Center Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association, except as provided in Section 9.10 below with respect to Declarant and Lots and Homes owned by Declarant, and by the Master Association:

9.1. Enforcement. Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Recreation Documents or with any rules and regulations promulgated by the Association shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

In addition to all other remedies, if an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due the Association, the Association may suspend, until such monetary obligation is paid, any or all of the rights of any or all of an Owner or an Owner's tenants, guests or invitees to use the Recreation Center Facilities; may suspend the voting rights of an Owner if such Owner is delinquent in payment of regular annual assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Recreation Documents, provided the following procedures are adhered to:

9.1.1. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without at least fourteen (14) days' notice to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the Association imposes a fine or suspension, the Association must provide written notice of such fine or suspension by mail or hand delivery to the Owner and, if applicable, to any Owner's tenant, guest or invitee. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

9.1.2. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

9.1.3. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

9.1.4. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration. Unless otherwise permitted by applicable law, a fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

9.1.5. Failure to Pay Assessments. Notice and Hearing as provided in this Section shall not be required with respect to the imposition of suspension of voting rights or fines upon any Owner because of such Owner's failure to pay Assessments or other monetary obligations or charges which are due for more than ninety (90) days.

9.1.6. Suspension of use rights to the Avenir West Recreation Center shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park, nor to provide access to utility services provided to the Lot and/or Home.

9.1.7. In addition to all other remedies, the Association may levy Benefited Assessments, to cover costs which the Association incurs to bring a Lot into compliance with the Recreation Documents, including Legal Fees, or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

9.1.8. For purposes of this Section 9, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted occupants of a Home. All the Recreation Center Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 9.10 hereof.

9.2. Boats, Recreational Vehicles and Commercial Vehicles. No trailer, camper, or other vehicle, other than four wheel passenger automobiles and other four wheel passenger vehicles determined acceptable by the Association, shall be permitted on any portion of Recreation Center Property, except for trucks furnishing goods and services during the daylight hours, except for police and emergency service vehicles, and except as the Association may designate for such use by appropriate rules and regulations. In addition, the Board shall adopt rules and regulations from time to time regulating and limiting the size, weight, type and place and manner of operation of vehicles on Recreation Center Property.

9.3. Vehicular Parking. No person, firm or corporation shall park or cause to be parked any vehicle on any portion of the Recreation Center Property other than in specifically designated parking areas located on the Recreation Center Property, as approved by the Association. The foregoing, however, shall not: (i) prohibit routine deliveries by tradesmen, or the use of trucks or commercial vans in making service calls and short term visits; (ii) apply to a situation where a vehicle becomes disabled and, as a result of an emergency, is required to be parked within Recreation Center Property until it can be towed away; and (iii) apply to vehicles used in connection with construction, development or sales activities permitted under this Declaration.

9.4. Except for use of golf carts within the Recreation Center Property which such use shall be subject to reasonable rules and regulations adopted by the Board from time to time, all other powered vehicles capable of exceeding five (5) miles per hour are prohibited from use on Recreation Center Property unless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used on Recreation Center Property may only be driven by a licensed driver, and must be registered and insured in accordance with Florida law. Specifically exempted from this regulation are electric personal assistive mobility devices as defined under Florida Statutes, Section 316.003(83); and any other bona-fide "assistive technology devices" as defined in Florida Statutes, Section 427.802(1); and any special mobile equipment as defined under Florida Statutes, Section 316.003(48) provided that such equipment may not be operated in a manner that creates a traffic hazard, or which poses a threat of harm to the user of such equipment.

9.5. No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four wheel passenger automobiles) upon any portion of the Recreation Center Property except within a closed garage and totally isolated from public view; provided, however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales or management at Avenir West Recreation Center. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Recreation Center Property. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Recreation Center Property which is deemed to be a nuisance by the Association or Declarant.

9.6. Weapons. The use and discharge of weapons within Recreation Center Property is prohibited. The term "weapons" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

9.7. Board's Rule Making Power. The foregoing use restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of Avenir West Recreation Center as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of the Avenir West Community without discriminating on the basis of whether a Home is occupied by an Owner or his or her lessee; and (iii) for so long as Declarant holds any Homes or Lots within the Avenir West Community for sale in the ordinary course of its business, have the prior written approval of Declarant. Declarant has the right to approve any rule or modification thereof.

9.8. Compliance with Documents. Each Owner and their family members, guests, and invitees shall be bound by and abide by the Recreation Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Avenir West Recreation Center. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Recreation Center Property rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as an Individual Assessment.

9.9. No Implied Waiver. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Recreation Document (including the rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant or the Association or of any other party having an interest in the Recreation Center Property of its right to object to same and to seek compliance in accordance with the provisions of the Recreation Documents.

9.10. Declarant Exemption. Declarant intends to construct, or cause the construction of, Improvements upon the Recreation Center Property and may undertake the work of constructing, or causing the construction of, other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Lots by Declarant and Declarant's affiliates are essential

to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners nor the Association shall do anything whatsoever to interfere with any of Declarant's or Declarant's affiliates' activities relating to the constructing of Recreation Center Facilities and Improvements upon the Recreation Center Property, the constructing of other buildings upon adjacent land or any other property being developed or marketed by the Declarant or its affiliates, or the sale, rental and/or other transfer of Lots by Declarant or its affiliates. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the common area as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of the Avenir West Community and the Homes therein. Any gate system installed, if any, shall remain open during construction and sales hours to allow Declarant, affiliates of Declarant or Builders, along with their respective employees, contractors and sub contractors access to the Property.

In general, the restrictions and limitations set forth in this Section 9 shall not apply to Declarant or to Lots and Homes owned by Declarant or any affiliate of Declarant. Declarant or any affiliate of Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's or such affiliate's plans for development, construction, sale, lease, or use of the Recreation Center Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Section 9 in addition to whatever remedies at law to which it might be entitled.

10. DAMAGE OR DESTRUCTION TO RECREATION CENTER PROPERTY

Damage to or destruction of all or any portion of the Recreation Center Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

10.1. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Recreation Center Property, then the Association shall cause such Recreation Center Property to be repaired and reconstructed substantially as it previously existed.

10.2. If insurance proceeds are insufficient to effect total restoration of the Recreation Center Property, and the cost of restoration would require a Special Assessment against each Lot in an amount of Five Thousand Dollars (\$5,000.00) or less (such amount is based on the value of the dollar in the year this Declaration is recorded and shall be increased each year thereafter based upon increases in the Consumer Price Index), then the Association shall cause the Recreation Center Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Sections 6 and 7 herein.

10.3. If the insurance proceeds are insufficient to effect total restoration of the Recreation Center Property and the cost of restoration of the Recreation Center Property would require a Special Assessment against each Lot in an amount greater than Five Thousand Dollars (\$5,000.00) (such amount is based on the value of the dollar in the year this Declaration is recorded and shall

be increased each year thereafter based upon increases in the Consumer Price Index), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (i) to rebuild and restore either: (a) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (b) in a manner less expensive, and in the event of (a) or (b) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Lots; or (ii) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Recreation Center Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior written approval of Declarant (which approval shall be given, conditioned or withheld in Declarant's sole and absolute discretion) as long as Declarant owns any portion of Avenir.

10.4. Each Owner shall be liable to the Association for any damage to the Recreation Center Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, invitees and guests, both minors and adults.

10.5 In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Owners by means of a *pro rata* distribution in accordance with the collection of such Special Assessments.

11. INSURANCE AND CONDEMNATION

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

11.1. Casualty Insurance. Property and casualty insurance (including as applicable, windstorm coverage) in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Recreation Center Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Recreation Center Property in developments similar to Avenir in construction, location and use.

11.2. Fidelity Coverage. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

11.3. Directors' Coverage. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

11.4. Other Insurance. The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Recreation Center Property and any improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

11.5. Cancellation or Modification. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

11.6. Flood Insurance. If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Recreation Center Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

11.7. Condemnation. In the event the Association receives any award or payment arising from the taking of the Recreation Center Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

11.8. Public Liability Coverage. A comprehensive policy of public liability insurance naming the Association and, until Declarant no longer owns any Lot within the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Recreation Center Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

11.9. Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

12. GENERAL PROVISIONS

12.1. Conflict With Other Recreation Documents.

In the event of any conflict between the provisions hereof and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

12.2. Notices

Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 550 Biltmore Way, Suite 1110, Coral Gables, Florida 33134, Attention: Association President, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 550 Biltmore Way, Suite 1110, Coral Gables, Florida 33134, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

12.3. Enforcement

The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Recreation Center Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees.

12.4. Interpretation

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the

maintenance of Recreation Center Facilities and the Recreation Center Property. Section, subsection, paragraph, captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

12.5. Severability

In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

12.6. Certain Rights of Declarant

Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself, and Declarant and its nominees shall have, the right to enter into the Recreation Center Property to make repairs to the Recreation Center Property and to carry on construction activity for the benefit of the Recreation Center Property. Declarant, and its nominees, may exercise the foregoing rights without notifying the Association. Any such construction office, service office, signs and any other items pertaining to such construction or service efforts shall not be considered a part of the Recreation Center Property and shall remain the property of Declarant. In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Recreation Center Property (including, without limitation, all drainage easements) to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Avenir West Recreation Center and all Improvements therein for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape

materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements. This Section 12.6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Recreation Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 12.6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Recreation Center Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Recreation Center Property as a result of the foreclosure of any mortgage encumbering any portion of the Recreation Center Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 12.6, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Recreation Documents.

Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers shall have access to the Recreation Center Property at all times and the Association shall not impede any such access. Any gate system installed shall remain open during construction and sales hours to allow Declarant, its successors, assigns, employees, contractors, sub contractors, Builders and their potential purchasers access to the Recreation Center Property.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests from time to time of all or any portion of the Recreation Center Property in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is necessary. If Declarant conducts any such tests or inspections, it shall pay all costs thereof, restore the affected portion of the Recreation Center Property to its condition immediately prior to the inspections and tests. Declarant shall have such rights of entry on, over, under, across and through the Recreation Center Property as may be reasonably necessary to exercise the rights described in this Section 12.6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right, it is acknowledged by the Association and all the Owners that Declarant is performing any such inspection for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

ALL OWNERS, OCCUPANTS AND USERS OF AVENIR WEST RECREATION CENTER ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO AVENIR WEST RECREATION CENTER. BY THE ACCEPTANCE OF THEIR DEED OR TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF AVENIR WEST RECREATION CENTER, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR

12.8.3. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

12.8.4. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Recreation Documents without the specific written approval of such party affected thereby. Finally, notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 12.6 and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

12.8.5. A true copy of any Amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment to this Declaration which sets forth any amendment or modification to this Declaration.

12.8.6. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners, file any amendment(s) to this Declaration which may be required by an Institutional Mortgagee for the purpose of satisfying said Institutional Mortgagee's development criteria or such other criteria as may be established by such Institutional Mortgagee's secondary mortgage market purchasers, including, without limitation, the FNMA and the FHLMC; provided, however, any such filed amendment(s) must be in accordance with any applicable rules, regulations and other requirements promulgated by HUD.

12.8.7. Any proposed amendment to this Declaration which would affect the surface water management system shall be submitted to the CDD, the applicable water management district or appropriate government engineers, as applicable, for a determination of whether the proposed amendment necessitates a modification of the surface water management permit.

12.8.8. Notwithstanding anything contained herein to the contrary, any proposed amendment to this Declaration which would amend the limitations on the users of the Recreation Center shall require the express consent or joinder of the Pod 15 Association; provided, however, the foregoing shall not apply to Supplemental Declarations merely adding additional property to this Declaration so long as such additional property is located within the Avenir West Community.

12.9. Delegation

The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

12.10. Term

CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO AVENIR WEST RECREATION CENTER WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS WHATSOEVER ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, (iv) ANY PURCHASE OR USE OF ANY PORTION OF AVENIR WEST RECREATION CENTER HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING, AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF RECREATION CENTER PROPERTY.

12.7. Disputes as to Use

In the event there is any dispute as to whether the use of the Recreation Center Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Recreation Center Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

12.8. Amendment and Modification

The process of amending or modifying this Declaration shall be as follows:

12.8.1. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Avenir West Recreation Center; provided, however, that the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

12.8.2. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by the Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Recreation Center Property in the manner described herein. This provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.

12.11. Rights of Mortgagees

12.11.1. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Recreation Documents and the books, records and financial statements of the Association to the Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association. A mortgagee shall be entitled to receive timely written notice of any proposed action that requires the consent of a specified percentage of mortgagees. To be entitled to receive notices under this Section, the mortgagee (or mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the address of the Lot on which it has (or insures or guaranties) the mortgage.

12.11.2. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

(a) Any condemnation, loss or casualty loss which affects any material portion of the Recreation Center Property;

(b) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(c) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and

(d) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform such Owner's obligations under the Recreation Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

12.11.3. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

12.12. Approval of Association Lawsuits by Owners

Notwithstanding anything contained herein to the contrary, in order to prevent the Board from incurring expenses not contemplated by the Recreation Documents, for which the Owners will be responsible, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which the Owners are obligated to pay pursuant to the Recreation Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Recreation Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Recreation Center Property or to the Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or
- (e) filing a compulsory counterclaim.

12.13. Compliance With Provisions

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property. Declarant

shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

12.14. Security

The Association may, but shall not be obligated to, maintain or support certain activities within the Recreation Center Property designed to make the Recreation Center Property safer than it otherwise might be. NOTWITHSTANDING THE FOREGOING, NEITHER DECLARANT, THE ASSOCIATION, THE MASTER DECLARANT, THE MASTER ASSOCIATION, NOR THE CDD MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE, IF ANY. ALL OWNERS AGREE TO HOLD DECLARANT, THE ASSOCIATION, THE MASTER DECLARANT, THE MASTER ASSOCIATION AND THE CDD HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT, THE MASTER DECLARANT, NOR ANY SUCCESSOR MASTER DECLARANT, NOR THE MASTER ASSOCIATION, NOR THE CDD SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY AND NEITHER THE ASSOCIATION, THE MASTER ASSOCIATION, THE CDD, DECLARANT, NOR ANY SUCCESSOR DECLARANT, MASTER DECLARANT, NOR ANY SUCCESSOR MASTER DECLARANT GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE ASSOCIATION, THE MASTER ASSOCIATION, THE CDD, DECLARANT, NOR ANY SUCCESSOR DECLARANT, MASTER DECLARATION, NOR ANY SUCCESSOR MASTER DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

12.15. Covenant Running With The Land

All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Declarant and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, lessees, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot and Completed Home, or the entering into a lease of or occupancy of a Home, shall constitute an

adoption and ratification by such Owner, lessee, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

12.16. No Public Right or Dedication

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Property to the public, or for any public use.

12.17. No Representations or Warranties

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE RECREATION CENTER PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

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WITNESSES AS TO ASSOCIATION:

ASSOCIATION:

AVENIR WEST RECREATION

ASSOCIATION, INC., a Florida corporation not
for profit

Michele Ray
Signature
Print Name Michele Ray

Clara L. Diaz
Signature
Print Name Clara L. Diaz

By: Manuel M. Mato
Manuel M. Mato, President

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 6th day of December, 2022, by Manuel M. Mato, as President of
AVENIR WEST RECREATION ASSOCIATION, INC., a Florida corporation not for profit, on
behalf of such company. The above-named individual is ☒ personally known to me or ☐ has
produced _____ as identification.

(Notary Seal)

Clara L. Diaz
Notary Public
Print Name: _____
State of Florida
My Commission No: _____
My Commission expires: _____

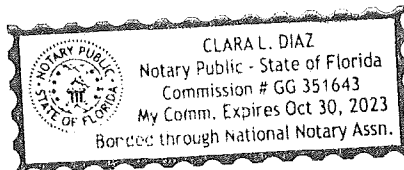


EXHIBIT "A"

Legal Description of Property

Lot 1 through Lot 562, inclusive, AVENIR - POD15, according to the plat thereof, as recorded in Plat Book 134, Page 179, of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

Legal Description of Recreation Center Property

Parcel A, AVENIR – POD 15, according to the Plat thereof, as recorded in Plat Book 134, Page 179 of the Public Records of Palm Beach County, Florida.

EXHIBIT "C"

Articles of Incorporation of
Avenir West Recreation Association, Inc.

See Attached.

**ARTICLES OF INCORPORATION
OF
AVENIR WEST RECREATION ASSOCIATION, INC.
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings, or if not defined below as defined in the Declaration:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Assessments" and "Special Assessments" (as such terms are defined in the Declaration).
3. "Association" means AVENIR WEST RECREATION ASSOCIATION, Inc., a Florida corporation not for profit, its successors and assigns, existing pursuant to the Articles of Incorporation, filed in the Office of the Secretary of State of the State of Florida, as amended by any amendments thereto, and which Association is responsible for the maintenance, preservation and control of Avenir West Recreation Center as provided in the Declaration.
4. "Avenir" means that planned community being developed by Master Declarant in the County in accordance with the Master Declaration, of which the Property is a portion thereof.
5. "Avenir West Recreation Center" means that planned recreation facility to be constructed upon the Recreation Center Property. Avenir West Recreation Center is initially intended to be comprised of those certain recreational facilities and amenities, subject to additions and deletions made by Declarant from time to time, but subject to change in accordance with the Declaration.
6. "Board" means the Board of Directors of the Association.
7. "Builder" means any builder of a Home that acquires a Lot for the purpose of constructing and/or building a Home thereon for sale to an end user.
8. "Bylaws" means the Bylaws of the Association and any amendments thereto.
9. "County" means Palm Beach County, Florida.

10. "Declarant" means Avenir Development, LLC, a Florida limited liability company, and any successor or assign thereof to which Avenir Development, LLC, a Florida limited liability company, specifically assigns all or part of the rights of Declarant under the Declaration by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.

11. "Declaration" means the Declaration for Avenir West Recreation Center, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.

12. "Director" means a member of the Board.

13. "Home" means a residential dwelling unit in Avenir West Community intended for use and occupancy as a single family residence. The term Home shall include the Lot.

14. "Lot" means any parcel of land within Avenir West Community as shown on the Plat, any additional plat, or on any replat, if any, upon which a Home is permitted to be constructed, together with the Improvements thereon. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in the Recreation Documents.

15. "Master Association" means Avenir Master Property Owners Association, Inc., a Florida corporation not for profit, organized to administer the Master Declaration.

16. "Master Declaration" means the Master Declaration of Covenants, Conditions and Restrictions for Avenir recorded in the Public Records of the County, and all amendments and supplements thereto.

17. "Master Documents" means the Master Declaration, the Amended and Restated Articles of Incorporation and By-Laws of the Master Association, the Design Guidelines (adopted or to be adopted pursuant to Article IV of the Master Declaration), the Use Restrictions, attached as Exhibit "B" to the Master Declaration, any rules and regulations promulgated by the Master Association and all of the instruments and documents referred to therein and executed in connection therewith, and any amendments to any of the documents thereto.

18. "Members" means all of the Owners of a Lot or Home within the Property.

19. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Home within Avenir West Community, and includes Declarant and any Builder for as long as Declarant or Builder, as the case may be, owns fee simple title to a Lot or Home, but excluding therefrom those having such interest as security for the performance of an obligation.

20. "Plat" means the plat of AVENIR – POD 15 recorded or to be recorded in the Public Records of the County. In the event an additional plat is recorded in the Public Records of the County with respect to the Additional Property made subject to the Declaration pursuant to a Supplemental Declaration, then the term "Plat" as used herein shall also mean the additional plat. Further, where the context so requires, the term "Plat(s)" shall also mean and refer to any plat recorded with respect to any portion of Avenir.

21. "Recreation Center Property" means that certain real property described in Exhibit "B" of the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Declaration and/or the Association.

22. "Recreation Documents" means in the aggregate the Declaration, the Articles and the Bylaws, the Plat, and any additional plat, any rules and regulations of the Association which may be promulgated, all of the instruments and documents referred to therein and executed in connection therewith, and all amendments to the foregoing.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Articles.

ARTICLE II NAME

The name of this corporation shall be AVENIR WEST RECREATION ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 550 Biltmore Way, Suite 1110, Coral Gables, Florida, 33134.

ARTICLE III PURPOSES

The purpose for which the Association is organized is to take title to, construct, operate, administer, manage, insure and maintain the Recreation Center Property in accordance with the terms of, and purposes set forth in, the Recreation Documents and to carry out the covenants and enforce the provisions of the Recreation Documents.

ARTICLE IV POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Recreation Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Recreation Documents.

2. To make, establish, amend, abolish (in whole or in part) and enforce reasonable rules and regulations governing the use of the Recreation Center Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To enforce by legal means the obligations of the Members and the provisions of the Recreation Documents.

5. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Recreation Center Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Recreation Center Property and to delegate to such professional manager certain powers and duties of the Association.

6. To enter into the Declaration and any amendments thereto and instruments referred to therein.

7. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain the Recreation Center Property in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at the Property.

8. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Recreation Center Property in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

9. Notwithstanding anything contained herein to the contrary, following the Turnover Date, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the

engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Recreation Documents;
- (c) the enforcement of any applicable use and occupancy restrictions contained in the Recreation Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Recreation Center Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or
- (e) filing a compulsory counterclaim.

The costs of any legal proceedings initiated by the Association, which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment(s) and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations

ARTICLE V MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Lot or Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Lots until each such Lot is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Lots owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Lot is acquired by conveyance from a party other than Declarant or a Builder by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby

acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have two (2) classes of voting membership:

1. Class "A" Members shall be all Members, with the exception of Declarant while Declarant is a Class "B" Member, each of whom shall be entitled to one (1) vote for each Lot owned.

2. Class "B" Member shall be Declarant, who shall be entitled to three (3) times the total number of votes of all Class "A" Members plus one (1) vote. Class "B" membership shall cease and be converted to Class "A" membership upon the earlier to occur of the following events ("Turnover Date"):

(a) three (3) months after the conveyance of ninety percent (90%) of the Lots in all phases of the Avenir West Community to Owners other than Builders, as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County;

(b) upon the Class "B" Member abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Recreation Documents. There is a rebuttable presumption that Declarant has abandoned and deserted the Property if Declarant has unpaid Assessments or guaranteed amounts under Section 720.308 of the HOA Act for a period of more than two (2) years;

(c) upon the Class "B" Member filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code;

(d) upon the Class "B" Member losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment;

(e) upon a receiver for the Class "B" Member being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Association or the Members; or

(f) when, in its discretion, the Class "B" Member so determines.

On the Turnover Date, Class "A" Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.

Notwithstanding the foregoing, Class "A" Members are entitled to elect at least one (1) member of the Board when fifty percent (50%) of the Lots have been conveyed to Members other than Declarant.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Recreation Documents.

F. No Member may assign, hypothecate or transfer in any manner his/her membership in the Association except as an appurtenance to his/her Lot.

G. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot, but such Member shall remain jointly and severally liable for any unpaid amounts owed under the Recreation Documents.

H. There shall be only one (1) vote for each Lot, except for the Class "B" Member as set forth herein. If there is more than one (1) Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one (1) person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than one (1) natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Representative"), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Lot is owned by a legally married couple they may, but shall not be required to, designate a Voting Representative. In the event a certificate designating a Voting Representative is not filed by a legally married couple, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Lot vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the

contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

ARTICLE VI TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

ARTICLE VII INCORPORATOR

The name and address of the Incorporator of these Articles are: Rosa Eckstein Schechter, Esq., 550 Biltmore Way, Suite 1110, Coral Gables, Florida 33134.

ARTICLE VIII OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two (2) or more offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Manuel M. Mato
Vice President	Rosa Eckstein Schechter
Secretary/Treasurer	David Serviansky

ARTICLE X
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be an odd number not less than three (3) nor more than the number of neighborhoods subject to this Declaration at such time plus one (1) Director. For example, if there are six (6) neighborhoods subject to this Declaration at such time, then there shall be seven (7) Directors. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. From and after the Turnover Date, each neighborhood (e.g., Pod 15) that is subject to the Declaration shall elect a Director to represent such neighborhood on the Board; provided, however, if the Board contains more Directors than there are neighborhoods, then any such additional Directors shall be elected by all Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Manuel M. Mato	550 Biltmore Way, Suite 1110 Coral Gables, Florida, 33134
Rosa Eckstein Schechter	550 Biltmore Way, Suite 1110 Coral Gables, Florida, 33134
David Serviansky	550 Biltmore Way, Suite 1110 Coral Gables, Florida, 33134

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Declarant has reserved the right in the Declaration to modify the plan of development of the Recreation Center Property (including, without limitation, the right to modify the site plan of Avenir; the right to add or change the recreational facilities and amenities, to be constructed within Avenir West Recreation Center); and/or the right to add land to the Recreation Center Property or to withdraw land from the Recreation Center Property.

D. Upon the Turnover Date, the Members other than Declarant ("Purchaser Members") shall be entitled to elect not less than a majority of the Board. The election of not less than a majority of the Board by the Purchaser Members shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

E. The Initial Election Meeting shall be called by the Association, through the Board, as provided in Paragraph D hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days prior notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Purchaser Members and the remaining number of Directors designated by Declarant.

F. At the Initial Election Meeting, Purchaser Members, who shall include all Members other than Declarant, the number of which may change from time to time, shall elect all of the Directors; provided, however, until the Declarant's Resignation Event, if there is an "at large" member of the Board (i.e., a Director not elected by a particular neighborhood), Declarant shall be entitled to (but not obligated to) designate such one (1) "at large" Director (same constituting the "Initial Elected Board"). Declarant reserves and shall have the right, until the Declarant's Resignation Event, to name the successor, if any, to any Director it has so designated.

G. The Board shall continue to be so designated and elected, as described in Paragraph F above, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws), until the Annual Members' Meeting following the Declarant's Resignation Event or until a Purchaser Member-elected Director is removed in the manner hereinafter provided.

A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members.

H. Upon the earlier to occur of the following events ("Declarant's Resignation Event"), Declarant shall cause all of its designated Directors to resign:

1. When Declarant no longer holds at least five percent (5%) of the Lots in all phases of the Avenir West Community combined for sale in the ordinary course of business and all Lots sold by Declarant have been conveyed as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or

2. When Declarant causes the voluntary resignation of all of the Directors designated by Declarant and does not designate replacement Directors.

Upon Declarant's Resignation Event, the Directors elected by Purchaser Members shall elect a successor Director to fill the vacancy caused by the resignation or removal of Declarant's designated Director. This successor Director shall serve until the next Annual

Members' Meeting and until his successor is elected and qualified. In the event Declarant's Resignation Event occurs prior to the Initial Election Meeting, the Initial Election Meeting shall be called in the manner set forth in Paragraph E of this Article X, and all of the Directors shall be elected by the Purchaser Members at such meeting.

I. At each Annual Members' Meeting held subsequent to Declarant's Resignation Event, all of the Directors shall be elected by the Members. Such Directors shall each serve for a term of office established at one (1) year.

J. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's criminal conduct, willful misconduct or gross negligence.

ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he/she becomes involved by reason of his/her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he/she is or is adjudged guilty of willful misfeasance, gross negligence, criminal conduct or malfeasance in the performance of his/her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

ARTICLE XII
BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by Declarant of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one (1) meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the voting interests.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home or Lot; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

F. Notwithstanding the foregoing provisions of this Article XIII to the contrary, no amendment to these Articles shall be adopted which shall abridge, prejudice, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X hereof, nor shall any such amendment be adopted or become effective without the prior written consent of Declarant so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV
REGISTERED OFFICE AND REGISTERED AGENT

The name and street address of the initial registered office of the Association is Rosa Eckstein Schechter, Esq., 550 Biltmore Way, Suite 1110, Coral Gables, Florida, 33134.

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XV of these Articles of Incorporation, and acknowledges that she is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

By: _____

Rosa Eckstein Schechter

IN WITNESS WHEREOF, the Incorporator has hereunto affixed her signature, this 6
day of December, 2022.

Rosa Eckstein Schechter, Incorporator

EXHIBIT "D"

Bylaws of Avenir West Recreation Association, Inc.

See Attached.

**BYLAWS
OF
AVENIR WEST RECREATION ASSOCIATION, INC.**

Section 1. Identification of Association

These are the Bylaws of AVENIR WEST RECREATION ASSOCIATION, INC. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 550 Biltmore Way, Suite 1110, Coral Gables, Florida 33134, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration for Avenir West Recreation Center ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at the office of the Association or at such other place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from

Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed or hand delivered to the said address or electronically transmitted to the location furnished by the Member for that purpose not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member (or by the person entitled to vote for such Member) by signing a document setting forth the waiver of such notice. Additionally, the attendance of any Member (or person authorized to vote for such Member), either in person or by proxy, shall constitute such Member's waiver of notice of such Meeting, and waiver of any and all objections to the place of the Meeting, the date and time of the Meeting, or the manner in which it has been called or convened, except when Member's (or Member's authorized representative's) attendance is for the express purpose of objecting at the beginning of the Meeting to the transaction of business because the Meeting is not lawfully called.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Recreation Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast thirty percent (30%) of the total number of votes of the class. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is

required by express provision of the Recreation Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. Not less than sixty (60) days before any Annual Members' Meeting or special Meeting at which elections of Directors are to occur (an "Election Meeting"), the Association shall mail, deliver or electronically transmit, whether by separate Association mailing or included in another Association mailing, delivery or transmission, including regularly published newsletters, to each Member entitled to a vote, a first notice of the date of the Election Meeting. Any Member or other eligible person desiring to be a candidate for the Board must give written notice to the Association not less than forty (40) days before the Election Meeting. Nominations from the floor shall not be permitted. Together with an agenda, the Association shall mail, deliver or electronically transmit a second notice of the Election Meeting to all Members entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ by 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the Election Meeting, to be included with the mailing, delivery or electronic transmission of the ballot, with the costs of mailing, delivery or electronic transmission and copying to be borne by the Association. The Association shall not be liable for the contents of any information sheets prepared and supplied by the candidates. Elections shall be decided by a plurality of those ballots cast, regardless of whether a quorum is attained; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of Members of the Board. Members may not vote for Directors by Proxy. Voting by secret ballots by Members shall be conducted in accordance with Section 720.306(8)(b) of the HOA Act. In the event any Member returns their ballot in the outer envelope, and such outer envelope conforms to the requirements of Section 720.306(8)(b) of the HOA Act, however the Member fails to return the ballot in an inner envelope, then in such event, the ballot shall be counted as if the ballot was returned in an inner envelope so as to enfranchise each and every vote possible. Any Member who fails to return the inner ballot envelope voluntarily waives his/her right to anonymity. Furthermore, at any Election Meeting, the "Chairperson" (as hereinafter defined in Section 7.2) shall appoint an "Election Committee" consisting of at least three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution. No candidate for election, or spouse or immediate family member thereof, shall be appointed to the Election Committee.

3.8. If a quorum is not in attendance at a Meeting (other than with respect to an Election Meeting for which a quorum is not required), the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by absentee ballot. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

3.12 Notwithstanding any other requirement set forth herein, in accordance with Sections 617.0721 and 617.0820, Florida Statutes, as both are amended from time to time, so long as Members are provided an opportunity to observe and participate in a meeting as otherwise set forth herein and as required by the HOA Act, any such meeting, including, but not limited to, Board meetings, Annual Members' Meetings and elections, may, at the discretion of the Board, be held in full or in part on an electronic platform, such as, by way of example only and not limitation, Zoom. At any such meeting in which an election of one (1) or more Directors is to take place, the Board may require absentee ballots only, to be cast in accordance with Section 720.306, Florida Statutes. Except for Declarant representatives, non-Members are not permitted to attend Board and Members' Meetings, except by invitation of the Board.

Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with Section 720.303(2) of the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places at the office of the Association or at such other place in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held at the office of the Association or at such other place in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Directors states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. The Board shall have the power to appoint an "Executive Committee(s)" of the Board consisting of not less than three (3) Directors. An Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to,

5.1.1. all powers and duties set forth in the Recreation Documents; and

5.1.2. all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not

delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five Dollars (\$25) or five percent (5%) of the past due amount, whichever is greater, by the Association for such late Assessment. This amount is subject to change in the Board's sole discretion. In addition, any party who fails to pay any Assessment within ten (10) days of the due date shall be charged interest thereon from the date due until paid at 18% per annum. Lot Owners shall be responsible to pay all Legal Fees incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessment and foreclose the Association's lien has been commenced.

Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He/she shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he/she may, in his/her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute. The President shall also be the "voting member" to the Master Association board of directors and will cast the votes of the Owners on all Master Association matters requiring a vote of the Owners. In the absence of the President, the Directors shall designate any one of their number to serve as the "voting member" of the Master Association. The Association shall designate its "voting member" in writing to the Master Association prior to any vote taken therein.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform

such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated as "First Vice President", "Second Vice President", etc., and shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he/she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of the Recreation Center Property.

Section 8. Resignations; Vacancy; Removal

8.1 Any Director or officer may resign his/her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Homes owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

8.2 Except when contrary to the HOA Act, when a vacancy occurs on the Board, the vacancy shall be filled by the remaining members of the Board at any meeting by electing a person who shall serve the remaining portion of the unexpired term, provided that (i) all vacancies in directorships to which Directors are appointed by Declarant pursuant to the provisions of the Recreation Documents shall be filled only by the Declarant and without the necessity of any meeting, and (ii) all vacancies in directorships of Directors that are elected by a particular neighborhood shall be replaced by a vote of the membership of such particular neighborhood in the manner elsewhere provided herein for the election of Directors.

8.3 Any Director elected by the Members other than the Declarant may be removed by: (a) a vote of a majority of voting interests of all of the Members (other than the Declarant) at a special meeting of Members called for that purpose, (b) written agreement signed by a majority of all such Members' voting interests, or (c) written ballot without a Meeting in accordance with the HOA Act. The vacancy of the Board so created shall be filled in accordance with the procedures specified in the HOA Act.

Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times and in accordance with, but subject to the limitations of, the HOA Act. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within the Avenir West Community which shall designate the name and address of the Owner thereof, the amount of Individual Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November or December of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Assessment applicable to his/her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his/her last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating

Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

9.4. Individual Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his/her last known address shown on the records of the Association.

Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of the Recreation Center Property; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Recreation Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Recreation Center Property, same shall be conspicuously posted and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Recreation Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership of a Lot in the Avenir West Community. The Association shall maintain such information. The Association shall also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2 After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Home; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

Section 14. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

Section 15. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

Section 16. Notice and Hearing Procedure.

In those instances which specifically provide an Owner the right of Notice and a Hearing, the following procedures and provisions shall apply:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration. A fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

E. Failure to Pay Assessments. Notice and Hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or imposition of suspension of voting rights upon any Owner because of such Owner's failure to pay Assessments or other monetary obligations or charges which are due for more than ninety (90) days.

Section 17. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

The foregoing Bylaws of Avenir West Recreation Association, Inc. were adopted by the Board of Directors as of the date of filing the Articles of Incorporation for the Association.