

ASSOCIATION  
OF  
POINCIANA VILLAGES, INC.



POINCIANA SUBDIVISION DECLARATION  
Polk and Osceola Counties

***This document is a compilation of restrictions recorded in the Public Records of both Osceola and Polk Counties. If there is any discrepancy between this compilation and the recorded restrictions the terms of the recorded restrictions will control.***

POINCIANA SUBDIVISION DECLARATION  
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POINCIANA SUBDIVISION DECLARATION

ASSOCIATION OF POINCIANA VILLAGES, INC. (the "APV"), a Florida not-for-profit association hereby makes this Poinciana Subdivision Declaration ("Declaration") respecting the real property described in Exhibit A (the "Poinciana Subdivision"). Avatar Properties Inc. ("Avatar") joins in this Declaration to show its consent to the same.

RECITALS:

A. Avatar in its own name or under its former name, GAC Properties, Inc., recorded (1) the various deeds of restrictions described on Exhibit B attached hereto and made a part hereof in the Public Records of Polk County, Florida (collectively, the "Original Polk Deeds of Restriction") and (2) the various deeds of restrictions described on Exhibit B attached hereto and made a part hereof in the Public Records of Osceola County, Florida (collectively, the "Original Osceola Deeds of Restriction").

B. The Original Polk Deeds of Restriction and the Original Osceola Deeds of Restriction (collectively, the "Original Deeds of Restriction") were restated and consolidated by that certain Restated Declaration of Restrictions (the "Restated Declaration") recorded in Polk County in Official Records Book 4510 at Page 1454 and in Osceola County in Official Records Book 1767 at Page 297. The Restated Declaration replaced entirely the Original Deeds of Restriction.

C. The Restated Declaration governs the community known as Poinciana Subdivision, which is legally described on Exhibit A attached hereto and made a part hereof.

D. Pursuant to Section 5 of the Restated Declaration, the APV, by majority vote of the entire Board of Directors, has decided to amend and restate the Restated Declaration in its entirety by this Declaration.

NOW THEREFORE, the APV does establish the following restrictions for the Poinciana Subdivision:

- 1 Recitals.  
All of the foregoing Recitals are true and correct.
- 2 No Further Force or Effect.  
The Original Deeds of Restriction and the Restated Declaration are of no further force or effect as the same are replaced entirely by this Declaration.
- 3 Definitions.  
In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

"APV" shall mean Association of Poinciana Villages, Inc.

"Articles" shall mean the APV's Amended and Articles of Incorporation attached hereto as Exhibit C.

"Assessments" shall mean any assessments made in accordance with this Declaration and as further defined in Section 9 hereof.

"Avatar" shall mean Avatar Properties Inc., a Florida corporation, its successors, and assigns.

"APV Board" shall mean the Board of Directors of the APV.

"Bulk Land" shall mean any tract of land (whether or not subdivided) which has none of the following: (i) improvements; (ii) overall community drainage; and (iii) water and sewer availability. By way of example, if a Lot has either water and sewer availability or overall drainage, it is not Bulk Land. Bulk Land is not subject to any APV regular assessment.

"By-Laws" shall mean the APV's By-Laws attached hereto as Exhibit D.

"Common Areas" shall mean all real property interests and personalty within Poinciana Subdivision designated as Common Areas from time to time by Plat or recorded amendment to this Declaration and provided for, owned, leased by, or dedicated to, the common use and enjoyment of the Owners within Poinciana Subdivision.

"County" shall mean Polk or Osceola County, as applicable.

"Criteria" shall mean the Design Control Board Criteria of the APV.

"DCB" shall mean the Design Control Board of the DCB.

"Flag Lot" shall refer to any of the various types of Flag Lots described in Section 13.5 hereof.

"Lender" shall mean any federally insured savings and loan association or bank, insured by the Federal Savings and Loan Insurance Corporation, or Federal Deposit and Insurance Corporation, Mortgage Bankers, licensed Mortgage Brokers (or person or entity holding mortgage through efforts of a licensed Mortgage Broker), Avatar and Parkway Mortgage Company, Inc. and their successors and assigns, holding a first mortgage on a Lot.

"Lot" shall mean any lot shown on a plat.

"Owner" shall mean the owner of a lot.

"Poinciana Subdivision" shall mean the real property described on Exhibit A attached hereto including future property subject to plats incorporating this Declaration.

"Utility Availability Fee" shall have the meaning set forth in Section 10 herein.

"Village" shall mean each subdivision of Poinciana Subdivision. Currently Poinciana Subdivision is divided into ten (10) Villages. The Villages are described on Exhibit E attached hereto and made a part hereof.

"Village Association" shall mean the homeowners association governing each Village.

4 Florida and Local Law.

All restrictive covenants, listed and/or contained herein are subject, in all instances, to compliance with State of Florida applicable County health ordinances, restrictions and regulations, zoning regulations or other established pertinent restrictions, and in particular when the said State and County requirements exceed the requirements of the restrictions contained herein. The laws of the State of Florida and applicable County as well as the rules and regulations of their administrative agencies now or hereafter in effect with regard to sewage disposal, water supply and sanitation are hereby incorporated herein and made a part hereof.

5 Term.

These restrictive covenants, easements, reservations and requirements upon the lands within the Poinciana Subdivision and any amendments and additions thereto, shall run with the land and remain in full force and effect until January 1, 2012, at which time they shall be automatically extended for successive periods of ten (10) years unless by majority vote of the entire APV Board on January 1, 2012, or at the end of each successive ten (10) year period thereafter, the APV Board agrees to change said covenants, easements, reservations and requirements upon said lands in whole or in part for the best interests of the Poinciana Subdivision, at which time modifications thereto shall be evidenced by recording in the office of the Clerk of the Circuit Court an Amendment to the Deed of Restrictions reflecting such modifications. Notwithstanding the foregoing, the APV Board hereby declares that from and after January 1, 2012 the APV Board may amend this Declaration at any time upon a majority vote of the APV Board. Nothing in this Section shall be construed to prohibit the APV Board from amending this Declaration at any time upon a vote of two-thirds (2/3) of the APV Board. All amendments shall be recorded in both the public records of Polk County and Osceola County.

6 Enforcement.

Enforcement of this Declaration, other documents that govern the Association and its Owners and residents, and any rules and regulations promulgated by the APV, including, but not limited to, the Criteria, shall be by judicial proceedings in law or equity brought by the Association or any Owner against any person or persons causing or allowing, attempting, suffering or permitting the violation of any covenant of this Declaration, other governing documents and/or rules and regulations. Enforcement of this Declaration, other governing documents and/or rules and regulations may be either to restrain violation(s) or to recover damages, or both. The prevailing party shall be entitled to recover, in addition to cost and disbursements allowed by law, such sums as the Court may adjudge to be reasonable for the service of the prevailing party's attorney(s), paralegal(s), and other supporting personnel and resources at all judicial levels. In the event the Association is the prevailing party, it may assess the amount of a judgment in its favor against an Owner, or Owners, as an Assessment against their individual Lot(s), and the assessed amount shall be immediately due and payable to the Association. In the event of a violation of any of the provisions of this Declaration, other governing documents and/or APV's rules and regulations, other than the nonpayment of any assessment or other monetary obligation, the APV shall

attempt to notify the Owner by written notice addressed to the owner's most recent mailing address on file with the APV. If such violation is not cured within a reasonable time, as determined in the discretion of the APV board of Directors, the APV may at its option:

Commence an action to enforce the performance on the part of the violator or enjoin the violation or breach or for such other equitable relief as may be necessary under the circumstances, including injunctive relief:

Commence and action to recover damages; and or

Commence as provided by the Florida State Statutes.

In particular, any construction, alteration, other work done or failure to perform required maintenance or cleaning in violation of this Declaration, any rules and regulations, the Criteria or Guidelines is subject to enforcement action. Upon written request from the APV or Declarant, Owners shall, at their own cost and expense and within a reasonable time frame identified In the request, cure the violation or restore the Lot and/or home on such Lot to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the APV, Declarant, or their designees shall have the right, but not the obligation to enter the Lot, remove the violation, and restore the Lot. All costs, together with the interest at the rate the maximum rate then allowed by Florida law, may be assessed against the Lot and collected in accordance with Section 9.4.2 of this Declaration.

Any approvals granted under this Declaration are conditioned upon completion of all elements of the approved work in strict accordance with the written approval provided by the DCB, as such approval may be approved in writing by the DCB. In the event that any person fails to commence and diligently pursue to completion all approved work by the Design Control Board Criteria deadline, Declarant or the APV may enter upon the Lot and summarily rebate and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner in accordance with Section 9.4.2 of this Declaration, which shall be due within a reasonable time frame after it is assessed. Such entry and abatement or removal shall not be deemed a trespass or make Declarant or APV, or the directors, officers, employees, agents or contractors of either, liable for any damages or trespass on account thereof. The remedies recited in this Section shall be cumulative of all other legal and equitable remedies now or hereafter provided by law or the APV's governing documents and all such remedies may be exercised and pursued singly, sequentially or in any combination. The failure of the Declaration, the APV, or any Owner to enforce any Criteria, covenant, restriction, obligation, right, power, privilege or reservation contained in the Documents, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration, the Criteria, rule and regulations and/or Guidelines may be excluded from the Community by Declarant or the APV. In such event, neither Declarant nor the APV, or their officers and directors, shall be held



liable to any person for exercising the rights granted by this Declaration, the Criteria, rules and regulations and/or Guidelines, including, but not limited to, this paragraph.

The APV shall be primarily responsible for enforcing the Declaration, the Criteria, rules and regulations and/or Guidelines; however, Declarant, for so long as it owns any portion of the Community or has the unilateral right to annex property thereto, may, but shall not be obligated to, exercise the enforcement rights set forth above. In addition to the foregoing, the APV and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Declaration, the Criteria, rules and regulations and/or Guidelines. If the APV or Declarant prevails, they shall be entitled to recover all costs including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

7 Severability.

These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof, and each covenant shall be independent to such extent.

8 Reservation of Rights.

Avatar reserves the right to create one or more additional Villages upon property owned by Avatar or its assignees or designees. Such Villages shall be subject to such use restrictions and setbacks as deemed appropriate by Avatar or its assignees or designees and recorded in the Public Records of the applicable County. Without limiting the foregoing, any property made subject to a new Village shall not be subject to the use restrictions set forth in this Declaration except and to the extent so designated by document recorded in the Public Records of the applicable County. The APV and Avatar or its assignee or designee agree to negotiate in good faith to what extent, if any, the APV will provide services to such property and be subject to Assessment by the APV based on the impact of such development.

9 APV.

9.1 Establishment of APV.

As an additional covenant and condition to the ownership to lands in Poinciana Subdivision, as now platted, and as to lands in any subsequent plats of Poinciana Subdivision filed by Avatar, Avatar has established the APV, a master owners association, which has under its umbrella the various Village Associations. The APV, this Declaration and the APV Articles affect all properties within the Poinciana Subdivision and all present and future Owners agree to be bound by this Declaration and the APV Articles, for themselves and as a charge and duty of each lot owned, or to be owned by them.

9.2 Rights of APV.

APV shall have the right to own and take title to common areas not previously dedicated and accepted by the public such as roads, streets and other ways, greenways, drainage ways, retardation areas, open space and the like, and to designate improvements to be constructed on any of such lands which it may own at such time, or subsequently acquire. The APV shall have the right to assess the costs of construction of such improvements to the Owners of all Lots in Poinciana Subdivision and subsequent annexations and plats thereto. Except for streets and roadways dedicated to the Public, the APV or an improvement district, shall always assume the responsibility for maintenance of "Greenways" and "Retardation Areas", as set forth on the respective Plats of Poinciana Subdivision filed with the applicable County, and pursuant thereto, shall have the right to reimbursement therefor in

accordance with the provisions hereof, to make Assessments on all of the Lots in the Poinciana Subdivision to cover the costs thereof, all as further provided below.

#### 9.2.1 Tenant/Occupant:

Because the APV is in contractual privity with the Owner rather than the Tenant/Occupant, the Owner is responsible for all violations occurring on the Owner's Lot. It is the Owner's responsibility to cause compliance with the provisions of this Declaration and the Criteria. However, the APV may, but shall not be required, to hold a Tenant/Occupant responsible, jointly or severally, if the Tenant/Occupant is causing the violation. To the extent practicable and economically feasible, the APV shall endeavor, but not be required, to identify those Lots occupied by Tenants/Occupants with the goal of informing the Tenant/Occupants of the various obligations and performance standards set forth herein. Also, it is incumbent upon all Owners to inform the APV, in writing, within thirty (30) days, of the date of the lease or initial rental, of the identity of the Tenant/Occupant. The APV shall utilize the various media readily available and under its control (APV publications, website, assessment billings, etc.) to disseminate such information as a proactive effort to prevent violations on rented lots. However, nothing herein or hereby or any actions of the APV shall relieve the Owner of the ultimate responsibility to correct all violations pertaining to the Owner's Lot.

#### 9.3 Assessments.

Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including any purchaser at a judicial sale, shall hereafter be deemed to have covenanted and agreed to pay to the APV at the time and in the manner required by the APV Board, assessments or charges and any special assessments as are fixed, established and collected from time to time by the APV (collectively, the "Assessments"). The Assessments levied by the APV shall be used for, among other things, the purpose of promoting the recreation, health, safety and welfare of the residents of Poinciana Subdivision, and in particular for the improvement and maintenance of the Common Areas and any easement in favor of the APV. The Assessments levied by the APV Board shall be used exclusively for the purposes set forth in this Declaration, the Articles and the By-Laws and for the benefit of the Owners as an entire community, the improvements, maintenance, repair and replacement of properties, services and activities and facilities devoted to this purpose and applicable to the use and enjoyment of the Common Areas.

#### 9.4 Allocation of Assessments.

All Assessments shall be fairly apportioned over all the Lots in the Poinciana Subdivision. The APV Board shall determine the total amount of Assessments required, including operational items such as insurance, repairs, maintenance and other operating expenses, as well as charges to cover any deficiencies from prior years, capital improvements and reserves approved by the APV Board. The total annual Assessments required and any supplemental requirements shall be allocated between, assessed to and paid in accordance with the following:

Subject to the following, all Owners (other than Bulk Land Owners or Owners subject to special assessment agreement with the APV) shall be assessed equally for costs and expenses of the APV related to any uniform overall community function, activity, service, facility or improvement of the APV which is for the specific benefit of all Villages.

Assessments covering special costs and expenses of the APV for any function, activity, services, facility or improvements used by a portion of a Village or one or more Villages but not by all Villages shall be assessed to those Owners directly receiving the benefit thereof but not to Owners not receiving such benefit. The APV Board shall determine, using reasonable judgment, the amount assessed and what Owners are subject to such special Assessments.

9.5 Reserved for future use

9.6 Surplus Assessments

Any surplus Assessments collected by the APV may be allocated towards the next year's Assessments. Under no circumstances shall the APV be required to pay surplus Assessments to Owners.

9.7 Establishment of Assessments

Assessments shall be established in accordance with the following procedures:

Assessments shall be established by the adoption of a twelve (12) month operating budget by the APV Board. The budget shall be in the form required by Section 720.303(6) of the Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than ten (10) days in advance of the due date of the first installment thereof. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of the APV.

The APV may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, use fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by the APV.

9.8 Claim of Lien

Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title to a Lot, shall be deemed to have covenanted and agreed that the Assessments, and/or other charges and fees set forth herein, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees at all levels of proceedings including appeals, collections and bankruptcy, shall be a charge and continuing lien in favor of the APV encumbering the Lot and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien is effective from and after recording a Claim of Lien in the Public Records stating the legal description of the Lot, name of the Owner, and the amounts due as of that date, but shall relate back to the date that this Declaration is recorded. If such Assessments are not paid, the Claim of Lien may be foreclosed after 90 days after same is outstanding, in the same manner as provided under Florida law for the foreclosure of mortgages.

9.9 Timing of Assessment Payment

All Assessments shall be paid by Lot Owners as established annually by the APV Board and shall be due and payable to the APV in advance on or before the first day of each calendar year. The APV Board, in its discretion, may allow payments of Assessments on a monthly or other basis

9.10 Non-Payment of Assessments

If any Assessment is not paid within fifteen (15) days (or such other period of time established by the APV Board) after the due date, a late fee of \$25.00 per month (or such lesser or

greater amount established by the APV Board from time to time), together with interest in an amount equal to the maximum rate allowable by law (or such lesser rate established by the APV Board), per annum, beginning from the due date until paid in full, may be levied. The late fee shall compensate the APV for administrative costs, loss of use of money, and accounting expenses. The APV may, at any time thereafter, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot and improvements thereon, or both. The APV shall not be required to bring such an action if it believes that the best interests of the APV would not be served by doing so. There shall be added to the Assessment all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees and paraprofessional fees, at all levels of proceedings, including appeals, collection and bankruptcy. No Owner may waive or otherwise escape liability for Assessments provided for herein by non-use of, or the waiver of the right to use the Common Areas or by abandonment of a Lot.

#### 9.11 Subordination of Lien

The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Lot if the mortgage is recorded in the Public Records prior to the Claim of Lien. The lien for Assessments shall not be affected by any sale or transfer of a Lot, except in the event of a sale or transfer of a Lot pursuant to a foreclosure (or by deed in lieu of foreclosure or otherwise) of a bona fide first mortgage held by a Lender, in which event, the acquirer of title, its successors and assigns, shall not be liable for such sums secured by a lien for Assessments encumbering the Lot or chargeable to the former Owner of the Lot, which became due prior to such sale or transfer. However, any such unpaid Assessments for which such acquirer of title is not liable may be reallocated and assessed to all Owners (including such acquirer of title) as a part of the operating costs of the APV included within Assessments. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure or otherwise) shall not relieve the Owner from liability for, nor the Lot from the lien of any Assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.

#### 9.12 Exemption

The APV Board shall have the right to exempt any portion of Poinciana Subdivision subject to this Declaration from the Assessments. The APV Board has exempted all Lots owned by Avatar from Assessments until such Lots are conveyed to a individual purchaser of a Lot. This Section shall not be amended by any party or entity without the prior written approval of Avatar. The following property is also exempt:

Any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use.

Common Areas.

Land and improvements owned by governmental entities pursuant to Florida law.

#### 10 Utility Fees

With respect to the real property described on Exhibit F and all of Poinciana Subdivision in Polk County other than Village Ten, commencing one year after the date a Lot buyer agrees to purchase a

Lot, the Owner will be responsible for payment of a utility availability fee to Avatar ("Utility Availability Fee"). This Utility Availability Fee is to help Avatar defray the costs and expenses involved in making utility service available to the Lot. The Utility Availability Fee is presently estimated at \$9.00 per month per Lot, subject to adjustment in relation to actual costs and expenses and the Utility Availability Fee shall continue until the utility facilities have been turned over to a utility company. The extent of the utility maintenance program and the amounts expended shall be within the sole discretion of Avatar. This Utility Availability Fee shall constitute a lien against the assessed Lot, and if unpaid, may be collected and enforced by any legal remedies available to Avatar with the Lot Owner being liable for reasonable costs, including attorney's fees. The Lot Owner's responsibility for the Utility Availability Fee shall survive delivery of the deed.

11 Fines, Suspension of Voting, Etc.

11.1 Reserved for future use

11.2 Reserved for future use

11.3 Expenses

All fines and expenses incurred in connection with the violation or breach of this Declaration, other documents governing the Association and its Owners, or in the commencement of any action brought by or against any Owner or the Association regarding the Declaration or Association governing documents, including reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, shall be assessed against the Owner, as an Assessment against the individual Lot, and shall be immediately due and payable without further notice.

11.4 No Waiver

The failure to enforce any right, provision, covenant or condition in this Declaration, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

11.5 Rights Cumulative

All rights, remedies, and privileges granted to the APV and/or the DCB pursuant to any terms, provisions, covenants or conditions of this Declaration, or Criteria shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights or privileges as may be granted or as it might have by law.

11.6 Reserved for future use

11.6.1 Suspension of Voting Rights

The APV may suspend the voting rights of any Owner for the nonpayment of regular annual Assessments as provided by law.

11.6.1.1 Director, Committee Member or Officer delinquencies

A director, committee member or officer more than ninety (90) days delinquent in the payment of any monetary obligation due the APV shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

11.6.1.2 Director and Officers offenses

A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his/her term of office, if any.

11.6.2 Suspension of Use Rights

Further, the APV may suspend the rights of an Owner to use Common Areas of the APV so long as such suspension does not impair vehicular and pedestrian ingress and egress from the applicable Lot, including the right to park.

11.6.3 Fines

Each fine shall be an Assessment against the applicable Lot and enforceable pursuant to the provisions of this Declaration and the By-Laws. Each day of an Owner's failure to comply with this Declaration, the Rules and Regulations, the Criteria, or other rules and regulations promulgated by the APV shall be treated as a separate violation and, be subject to a separate fine. Fines shall be in such reasonable and uniform amounts as the APV shall determine.

11.6.4 Imposition of Suspensions and fines

Suspensions and fines shall be imposed in the manner provided in Section 720.305 of the Florida Statutes, as amended from time to time. The APV Board shall have the authority to promulgate additional procedures from time to time.

12 Uniform General Requirements.

The following requirements are applicable to Villages One through Nine.

12.1 Easements.

Easements and rights-of-way are hereby expressly reserved for the creation, construction and maintenance of utilities, such as gas, water, telephone, telegraph, electricity, sewers, storm drains, public, or quasi-public, as well as for any public or quasi-public utility or function deemed necessary and/or expedient for the public health and welfare. Avatar reserves the exclusive use of such easements and rights-of-way for purposes of cable television, including, but not limited to, the exclusive right to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across Such easements and rights-of-way for cable television systems. Overhead service wires are permitted across corners of rear yards where side Lot lines do not join in the rear at a common corner.

12.1.1 Additional Temporary Easements.

In addition to the above, there shall be an additional temporary construction easement abutting the exterior sides of each easement herein granted. Said temporary construction easement shall be for the purpose of providing access during the construction of utility improvements and shall terminate upon the completion of improvements. Said easement shall be of unlimited width, except that same shall approach no closer than five (5) feet to any structure existing at time of construction.

12.2 Reserved for future use.

12.3 Avatar's Approval Rights.

Avatar or its designated agent shall have a right to review and approve all plans and specifications submitted to the DCB. The failure of Avatar or its designated agent to give notice of its disapproval of plans and specifications submitted to the DCB within thirty (30) days after receipt thereof shall be deemed to constitute the approval thereof.

12.4 Signs.

No signs of any kind shall be exhibited in any way on or above the property of Poinciana Subdivision, including any and all signs to be painted on any side or face of structure, without written approval from Avatar or its duly authorized agent and the DCB. Avatar reserves the right to approve the erection of certain signs on a temporary basis which would vary from the usual norm of other signs. All other signs shall be in conformance with the Poinciana Signage Requirements of the DCB.

12.5 Pets and Animals.

No husbandry of either animals or fowls shall be conducted or maintained in Poinciana Subdivision; provided, however, that dogs, cats and other household pets, not to exceed two (2) per household, may be kept on the Lots subject to such rules and regulations as may be adopted by the APV Board, so long as they are not kept, bred or maintained for commercial purposes.

12.6 Reserved for future use.

12.7 Vehicles:

No house trailer, mobile or motor home (except in Village Nine and other areas designated for mobile homes), camper, recreation vehicle, boat, boat trailer, bus, inoperable vehicle, commercial vehicle, implement of husbandry, or the like shall be allowed on the residential Lots, driveways or Common Areas. No Lot shall be used as a junk yard or auto graveyard. No other vehicle shall be used for living purposes, except as allowed in areas subsequently zoned for mobile homes. No parking is permitted on the lawn or unpaved area of any Lot. Notwithstanding the foregoing, the APV may issue a three (3) day permit, on a case by case basis, for leisure styled vehicles such as boats, campers, recreation vehicles and the like. Any such permits may be issued once every seven (7) days starting from the date it was first issued. For the purposes of this Declaration and any rules and regulations promulgated by the APV, the following definitions shall apply:

#### 12.7.1 Inoperable Vehicle

"Inoperable Vehicle" shall mean and refer to a house trailer, mobile or motor home (except in Village Nine and other areas designated for mobile homes), camper, recreation vehicle, boat, boat trailer, bus, inoperable vehicle, commercial vehicle, truck, implement of husbandry, or the like of any type or kind (i.e. recreational vehicle, watercraft, trailer, etc.) that (i) appears disabled, wrecked or abandoned; (ii) does not have license plates, bears expired license plates or other registrations; (iii) cannot be lawfully driven or operated on public roadways; (iv) is incapable of operation and/or incapable of self propulsion (i.e. missing or deflated tires, missing wheels, or missing engine components).

#### 12.7.2 Commercial Vehicle

"Commercial Vehicle" shall mean and refer to any type or kind of truck, van, service van, utility trailer, tractor, truck tractor, semi-trailer, road roller, flatbed trucks or box trucks of any size, dumpster, pole trailer, caterpillar, bulldozer, crane, backhoe, commercial van or other vehicle of the like of any type or kind (i) with an axle carrying capacity of one (1) ton or greater; and/or (ii) bearing commercial markings, signs, logos, displays, tool racks, saddle racks, or other elements of a commercial nature or otherwise indicates a commercial use regardless if such vehicle has a cover or "topper" for the cargo-carrying area. However, "pick-up trucks" or "sport utility vehicles" with a cargo capacity of one (1) ton or less that do not otherwise satisfy the definition of a Commercial Vehicles (as herein defined) are permitted to be parked on the Lot in accordance with this Declaration and/or any rules and regulations promulgated by the APV.

#### 12.7.3 Vehicle Covers

Vehicles may be covered with a cover fitted to the specific vehicle. Tarps, drapes or other covers not fitted to the vehicle are not allowed.

### 12.8 Parking.

#### 12.8.1 Permitted Vehicle Parking

All permitted vehicles shall be parked in the Owner's garage or on the Owner's driveway with rear or front car bumper facing garage or carport except where a Lot has a home with a circular driveway or in the case of a home built upon a rear Flag Lot as defined in Paragraph 13.5 hereof (Amended 2113107) (Amended 8/12108). No permitted vehicle is permitted on the lawn, landscaped or unpaved area(s) of any Lot.

#### 12.8.2 Trailers, Mobile or Motor Homes

No house trailer, mobile or motor home (except in Village Nine and other areas designated for mobile homes), camper, recreation vehicle, recreational vehicle (RV) including all terrain vehicle (ATV or ATC), dune buggy, boat, jet skis, wave runner, boat trailer, bus, inoperable vehicle, commercial vehicle, implement of husbandry or the like of any type or kind shall be parked on any Lot unless inside a garage and concealed from public view.

#### 12.8.3 Commercial Vehicles

Commercial Vehicles are prohibited on the Lots, driveways or Common Areas; however, a Commercial Vehicle may be parked during actual continuous use, delivery, construction,



repair, or development of structures or property, or the temporary servicing of or delivery to Lots, homes, and only for the duration of such activity.

#### 12.8.4 Non-resident/visitor parking

While parking on the properties within the Poinciana Subdivision, non-residents and visitors shall follow all parking rules and regulations.

#### 12.8.5 Public Service Vehicle

Nothing in this Section, this Declaration or any rules and regulations promulgated by the APV shall be construed to apply to any public service vehicle, including, but not limited, police, fire or emergency service vehicle.

#### 12.9 No Repairs.

No house trailer, mobile or motor home (except in Village Nine and other areas designated for mobile homes), camper, recreation vehicle, boat, boat trailer, bus, inoperable vehicle, commercial vehicle, truck, implement of husbandry, or the like of any type or kind may be disassembled, serviced or repaired on a Lot or Common Area in such a manner as to be visible from an adjacent Lot or street except in an emergency situation. Minor repair and adjustment, washing or polishing of any vehicle is permitted at the Lot subject to applicable Florida law.

##### 12.9.1 Emergency Repairs

All emergency repairs must be completed within twenty-four (24) hours from the time the vehicle or equipment becomes disabled and if not completed within twenty-four (24) hours, the disabled vehicle or equipment must be removed from the Property or parked in accordance with this Section. Any vehicle or equipment parked or stored in violation of this Declaration or the rules and regulations promulgated by the APV for a period of twenty-four (24) hours or for forty-eight (48) nonconsecutive hours in any seven (7) day period may be towed by the APV from a Lot at the sole cost and expense of the Owner of such vehicle or equipment.

By accepting title to the Lot, the Owner provides to the APV the irrevocable right to tow or remove vehicles parked on the Common Areas of the APV in violation of any provision of this Declaration, the APV's governing documents or any rules or regulations promulgated by the APV. Regardless of where a vehicle is parked, each Owner by acceptance of title to a Lot irrevocably grants the APV and its designated towing service the right to enter a Lot and tow vehicles in violation of any provision of this Declaration, the APV's governing documents or any rules or regulations promulgated by the APV.

Owners are responsible for notifying their invitees, guests, tenants and lessees of the parking restrictions in this Declaration, the APV's governing documents and/or any rule and regulations promulgated by the APV. Neither the APV nor the APV's towing company shall be liable to the owner of any towed vehicle for trespass, conversion or otherwise, or guilty of any criminal act, by reason of such towing or removal, neither its removal, nor failure of the owner of such vehicle to receive any of the notices described herein, shall be grounds for relief of any kind. An Affidavit of the person posting

any notice required under this Declaration stating that such notice was properly posted on the a vehicle parked in violation shall be conclusive evidence of proper posting.

12.9.2 Parking Rules

The APV Board may from time to time promulgate rules which restrict, limit or prohibit the use of any driveway or parking area on the Lots. Such rules, if promulgated, shall have the same force and effect as if promulgated and initially made a part of this Declaration.

12.10 Greenways and Waterways.

The owners and occupants of land in the Poinciana Subdivision who have continuous ownership shall have an easement in common for the use of parks, greenways, retardation areas and canal waterways. No structures shall be constructed, dug, or excavated into any of the greenways, retardation areas, or canals until plans for same have been approved in writing by Avatar, or its duly authorized agent and the DCB. Likewise, no vehicle or structure shall be placed in the waterways adjacent to or within the Poinciana Subdivision which will impede navigation or restrict freedom of movement of other vehicles. No boat, houseboat, or other vessel shall be used as a place of abode or dwelling within the Poinciana Subdivision.

12.11 Irrigation.

All buildings shall be connected at the Owner's expense with central water and sewer utilities within ninety (90) days after date of availability. Incidental utility or service structures, and detached garages, shall not be required to make such utility connections. However, wells may be maintained for outside use, including watering of lawns, swimming pools, etc., subject to approval of duly constituted public health authorities and/or public utility. The source of irrigation water shall not be obtained from any APV owned common area.

12.12 Trash Containers for Commercial, Institutional, Multiple Family

All trash container areas and yards for commercial, institutional and multiple family buildings will be screened visually and in a manner which will dampen associated noise. This should be accomplished either with dense shrubbery such as hedges or with wood fences or landscaped masonry walls.

12.13 Real Estate Offices.

No property shall be used for a real estate office, except only upon the written approval of Avatar.

12.14 Commercial Use.

No residential Lot shall be used for commercial purposes of any kind that result in noise, increased traffic, nuisance or otherwise disrupt the residential character of a neighborhood; provided, however, the APV may grant a special exception, upon the application duly made. No Lot granted a special exception for commercial use shall be used exclusively for commercial purposes. A combination of residential and commercial usage is required. Signage shall be in accordance with Section 12.4 of this Declaration.

12.15 Districts.

Avatar or the APV Board may form or cause to be formed one or several general or special improvement or service districts for the purpose of providing for the construction of street lighting, fire districts, pedestrian ways, common parking areas, and for the care and maintenance of common open spaces, parks, greenways, drainage ways, pedestrian ways and beautification. These districts shall arrange for and defray costs of said care and maintenance by equitable Assessments on Owners. Such districts may cease to exist if at any time any municipality, County, or other public body or improvement district shall assume said care and maintenance.

12.16 Membership in Village Association.

At such time as a deed is delivered to the Owner of a Lot, the Owner of the Lot shall automatically become a member of the Village Association for the Village in which the Lot is located if such association has previously been created by Avatar for such purpose. The jurisdictional boundaries of the Village Association may include any areas in Poinciana Subdivision or annexations thereto specifically designated by Avatar.

12.17 Subdivision of Land.

No Lots, tracts, or parcel's set forth in the recorded plat or subsequent recorded plats of Poinciana Subdivision can be divided or re-subdivided unless all the divided portions thereof are added to the adjacent Lots, tracts, or parcels to create larger adjacent contiguous ownerships, except with the written consent of Avatar. Consent shall not be unreasonably withheld. It is further provided that no Lots, tracts, or parcels be subdivided so as to create a violation of any of the restrictions herein established. In the event a Lot is increased in size by the addition of a portion of the adjacent Lot, any encroachment on the utility easements in the interior of the increased Lot is hereby waived and such easement is hereby deemed removed to the perimeter of said increased Lot and original easement heretofore reserved is hereby vacated. The Owner of combined Lots must pay the Assessments due on each Lot unless the structure built on the combined Lots straddles the interior Lot boundaries.

13 Residential Dwellings.

In addition and supplemental to the foregoing restrictions, the DCB Criteria and the following restrictions, reservations and easements shall apply to and govern the erection and maintenance of single, duplex and multiple dwellings in Villages One through Nine. These restrictions do not apply to Village Ten.

13.1 Garbage and Trash.

No trash, garbage, construction debris or other waste material or refuse shall be placed or stored on any part of the property except in covered or sealed containers approved by the DCB. After construction is complete on a lot, all such containers must be stored within each residence or concealed by means of a wall or enclosure approved by the DCB.

13.2 Reserved for future use.

13.3 No Outside Storage.

The Lot and improvements shall be maintained in good, clean and attractive condition. No outside storage is allowed. This includes placing items outside of the dwelling unit and/or enclosed

accessory structure for more than 24 hours, whether such storage is intended to be permanent or temporary. Items that may not be stored outside include, but are not limited to: tires, auto parts, concrete blocks, bricks and pavers, wood and other construction materials, appliances, exercise equipment (unless permanently installed and approved by the DCB), tools, utility trailers and indoor furniture or other items normally kept inside and are subject to damage by exposure to weather.

#### 13.4 Garages.

There shall not be erected or maintained on the property of that part of the Poinciana Subdivision which is designated herein exclusively for single family residential purposes, any structure of any kind other than a one-family dwelling and suitable accessory building, such as garage or carport. No garage or accessory buildings shall be used as living quarters. All garages must be built on rear half of Lot unless attached to the house.

#### 13.5 Flag Lot.

A Flag Lot has the basic formation set forth on Exhibit G hereof ("Typical Hag Lots") or as set forth on Exhibit H hereof ("Non-Typical Flag Lots"), each of which has parcels marked "A," "B" and "C." The front Lot line is that portion of the Lot which abuts the greenway, golf course, open space or waterway or, with respect to rear Flag Lots, the portion of the Lot which abuts the driveway. When more than one side of the Lot abuts a greenway, the front Lot line is defined as the Lot line abutting the major greenway.

##### 13.5.1 Tenants In Common.

The Owners of the two residential Flag Lots fronting (contiguous to) the street lying on either side of the said driveway tract, together with the Owners of the rear two Flag Lots served access by the driveway tract for ingress and egress shall be tenants in common, each as to an undivided one-fourth ('A) interest, all to the entire of said driveway tract. Said respective ownership interest of an undivided one-fourth ('A) interest in the driveway parcel shall constitute an appurtenant additional interest to the rights of ownership of the respective residential Lot adjacent to or lying to the rear of the subject driveway parcel, and the title to said appurtenance shall follow and be concurrent to the ownership of the respective residential Lot. Any person hereinafter acquiring title to any such residential Lot agrees that the title to such Lot and the said appurtenant undivided one-fourth ( $\frac{1}{4}$ ) interest in the driveway parcel is perpetually unified and made concurrent, to the result that such unity of title shall forever be a covenant running with the land and that the benefits and burdens of such ownership of said appurtenance shall be attributable to and a charge and lien upon the ownership of the fee simple title of the respective residential Lot, including an assumption by the Owner thereof of the responsibility for maintenance and payment of ad valorem taxes, all in addition to the rights of possession, all as hereinafter set forth. As to the Owner of a residential Lot adjacent to parcel "A" or "B", respectively, such Owner shall become obligated to maintain the grass and all landscaping planted along the border of said parcel "A" or "B" lying adjacent to such Owner's respective Lot and to the driveway parcel "C". The Owner assuming the above said duties of maintenance as to parcel "A" or parcel "B" shall have as to that specific parcel exclusive rights to possession and enjoyment to the exclusion of all other persons, which rights of use, possession and enjoyment, except as needed by rear Lot Owners for parcel "C" maintenance, shall include the right fully to occupy same in all manner and respect as the rights are attributed to the Owner's residential Lot adjacent thereto. Said Owner also agrees to pay an undivided one-fourth (') of all Assessments and/or ad valorem taxes imposed on the driveway parcel by any governmental authority.

#### 13.5.2 Sharing of Expense.

The Owners of either of the rear Flag Lots shall have the full and undiminished right to use and occupancy of the driveway (parcel "C") and all rights of ingress and egress to his respective Lot over and across said driveways, to the exclusion of all other persons, excepting only the owner of the other adjacent rear Lot also served by the same said driveway parcel "C". It shall be a covenant running with the land that each of said rear Flag Lot Owners have the concurrent obligation for the maintenance of the surface and appearance of said driveway (parcel "C") and also shall pay an undivided one-fourth ( $\frac{1}{4}$ ) of all taxes or assessments made by any governmental authority thereon.

#### 13.5.3 Reserved for future use.

#### 13.5.4 Exceptions.

None of the provisions of this Section 13.5 shall apply to the Owner of a Flag Lot or the Owner of either of the two residential Lots fronting (contiguous to) the street lying on either side of the said driveway tract unless the deed from Avatar shall also include in the lands conveyed thereby the appurtenant undivided one-fourth ('A) interest in the driveway parcel. Nothing herein contained, however, shall prevent at any time in the future, the owners of Flag Lots or the fronting residential Lots contiguous to the Flag Lot stems from voluntarily agreeing to be bound by the provisions of this Section 13.5, other than this subsection, by filing in the Public Records of the applicable County an instrument in writing agreeing to privity of title as between all four of any such Lots, each as to an undivided one-fourth (LA) interest in said driveway parcel as then made unified. After the filing of such instrument in the Public Records of the applicable County, the covenants running with the lands, as recited in this Section 13.5, shall thereafter apply.

### 14 Commercial.

The following restrictions, reservations and easements shall apply to and govern the erection and maintenance of Commercial Buildings in Villages One through Nine, all of which are limited and restricted to those sections and areas of Poinciana Subdivision as are zoned for that purpose. Setback requirements for Commercial Buildings are set forth in the DCB Criteria. In addition, all Commercial Buildings must meet all applicable regulations of the applicable County.

#### 14.1 Parking.

The front and rear setback areas may be utilized for parking. No vehicular parking shall be allowed on the front building setback portion of any Lot unless provisions are established, to the satisfaction of Avatar and the County to prevent the vehicles departing such premises from backing onto the traveled portions of adjacent streets. In all such departures, the vehicles must use only Avatar and the County approved exits.

#### 14.2 Required Paving and Construction.

As part of the construction of each building erected in a commercial area of Poinciana Subdivision, there shall be included a sidewalk in accordance with the applicable County Code and/or Regulations. Likewise, as part of the construction of each building, there shall be constructed concrete curbing and gutters, and storm sewers, plus that portion of the unpaved street fronting on each such building, lying between the side curb and gutter and the street, as paved by Avatar, shall be paved. All of the construction required by this Section shall be at the expense of the Lot Owner and shall be paid for by the Lot Owner at the prevailing rate, concurrently with the erection of a building or buildings. It is

further understood that Lot Owners who erect buildings on only a fractional portion of a Lot must provide the herein above-detailed curbs, sidewalks, gutters and paving for the entire Lot. All structures erected must be of a permanent building material and must include adequate toilet facilities for Owners and/or occupants and their employees. No building shall be used or occupied as living quarters except for bonafide hotels and motels.

14.3 Use Restrictions for Areas Zoned Commercial.

The use restrictions for areas zoned Commercial shall be as follows: retail businesses or services; parking lots and parking garages; hotels, offices, banks, theaters; wholesaling; dry cleaning plants; newspaper offices, printing establishments; public buildings; gasoline service stations; funeral parlors; auto sales and repair service; bus and truck terminals; tourist courts, motel and apartment motels, baking establishments; radio or television studios and transmission towers; recreation and entertainment facilities; or any other business the operation of which is not noxious, offensive, or injurious to the properties or the occupants thereof in districts of higher restrictive classifications by reason of the emission of odor, dust, dirt, smoke, gas, fumes, cinders, noise, refuse matter, vapor, vibration, radioactive or other similar substance or conditions; provided, however, that site development plans accompany the user application for building permits and use and plans are approved by Avatar, the DCB and the applicable County. The use restrictions shall be at least as restrictive as the restrictions imposed on areas zoned or subsequently zoned Commercial under the applicable County Zoning Code. Further, no gasoline stations or service stations shall be permitted in areas designated Commercial unless approved in writing by Avatar.

14.4 Party Walls.

When and where the use of a party wall is not in conflict with the laws and regulations governing fire protection, party walls are permissible in a Commercial Building by the mutual consent of all parties concerned.

14.5 Modification or Waiver.

The above restrictions shall refer in general to all Commercial property in Poinciana Subdivision. These restrictions may be modified and waived where a developer can demonstrate an adequate or more desirable solution to the satisfaction of the applicable County, Avatar and the APV. Without limiting any other provision hereof, the DCB must approve all Commercial building site plans