

# Florida Department of State

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### COR AMND/RESTATE/CORRECT OR O/D RESIGN ADVENIR@TOWN CENTRE GP, INC.

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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ADVENIR@TOWN CENTRE GP, INC.**

Original Articles of Incorporation filed with  
the Florida Department of State on March 25, 2011  
[Document Number P11000029762]

2011 MAR 30 PM 2:19  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

On March 29, 2011, the Board of Directors of ADVENIR@TOWN CENTRE GP, INC. duly adopted the following amended and restated articles of incorporation pursuant to the provisions of Sections 607.1005 and 607.1007 of the Florida Business Corporation Act:

**ARTICLE I**

**Name**

The name of the corporation is Advenir@Town Centre GP, Inc. (hereinafter called the "Corporation").

**ARTICLE II**

**Principal Office**

The address of the principal office and the mailing address of the Corporation is 17501 Biscayne Blvd., Suite 300, Aventura, Florida 33160.

**ARTICLE III**

**Capital Stock**

The capital stock authorized, the par value thereof, and the characteristics of such stock shall be as follows:

<b><u>Number of Shares Authorized</u></b>	<b><u>Par Value Per Share</u></b>	<b><u>Class of Stock</u></b>
1,000	\$01	common

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**ARTICLE IV****Initial Registered Office**

The street address of the Corporation's initial registered office in the State of Florida is 17501 Biscayne Blvd., Suite 470, Aventura, Florida, and its initial registered agent at such office is Torres Law, P.A.

**ARTICLE V****Board of Directors**

The Board of Directors of the Corporation shall consist of no more than three directors, with the exact number to be fixed from time to time in the manner provided in the Corporation's bylaws. There shall be three initial directors: Stephen L. Vecchitto and two Independent Directors, each of whom shall serve as a director until their successor is duly elected and qualified.

**ARTICLE VI****Incorporator**

The name of the Incorporator is Osvaldo F. Torres, and the address of the Incorporator is 17501 Biscayne Blvd., Suite 300, Aventura, Florida 33160.

**ARTICLE VII****Indemnification**

This Corporation shall indemnify and shall advance expenses on behalf of its officers and directors to the fullest extent not prohibited by any law in existence either now or hereafter. Any indemnification by the Corporation in favor of any officer or director or other indemnified party shall be fully subordinate to the Loan and shall not constitute a claim against the Corporation in the event that insufficient funds exist to pay all its obligations to its creditors.

**ARTICLE VIII****Special Purpose Entity**

**Section 8.1. Certain Definitions.** All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Documents (as defined below) or as follows:

(a) "*Affiliate*" means any Person or entity directly or indirectly through one or more intermediaries, that controls, is controlled by, or is under common control with a specified Person. For the purposes hereof, the terms "control", "controlled", or "controls" with respect to a specified Person includes, without limitation (a) the ownership, control or power to vote 10% or more of (i) the outstanding shares of any class of voting securities or (ii) beneficial interests,

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of any such Person, as the case may be, directly or indirectly, or acting through one or more Persons, (b) the control in any manner over the Managing Member or the election of more than one director or trustee (or persons exercising similar functions) of such Person, or (c) the power to exercise directly or indirectly, control over the management or policies of such Person.

(b) "*Bankruptcy*" means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if one hundred twenty (120) days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

(c) "*Borrower*" means Advenir@Town Center, LLC, a Florida limited liability company and the managing member of which is the Corporation.

(d) "*Borrower's Operating Agreement*" means the Operating Agreement of the Borrower dated as of July 24, 2006, as amended by Amendment No.1 to Operating Agreement dated as of March 31, 2011.

(e) "*Indebtedness*" shall have the meaning ascribed thereto in the Loan Documents.

(f) "*Independent Director*" means an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of the Corporation and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director and is not, and has never been, and will not while serving as Independent Director be, any of the following:

- (i) a member, partner, equityholder, manager, director, officer or employee of the Corporation, the Shareholder, or any of their respective equityholders or Affiliates (other than as an Independent Director of the Corporation or an Affiliate of the Corporation that is not in the direct chain of ownership of the Corporation and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional Independent

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Directors or managers in the ordinary course of its business);

- (ii) a creditor, supplier or service provider (including provider of professional services) to the Corporation, the Shareholder or any of their respective equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional Independent Directors and other corporate services to the Corporation, the Shareholder or any of its Affiliates in the ordinary course of its business);
- (iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or
- (iv) a Person that controls (whether directly, indirectly or otherwise) any of (a), (b) or (c) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (a) by reason of being the Independent Director of a Special Purpose Entity affiliated with the Corporation shall be qualified to serve as an Independent Director of the Corporation, provided that the fees that such individual earns from serving as an Independent Director of Affiliates of the Corporation in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

(g) "Lender" means Deutsche Bank Berkshire Mortgage, Inc. ("Deutsche") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") to the extent that the Note is sold, transferred and delivered to Freddie Mac along with an assignment of the Security Instrument together with their successors and assigns.

(h) "Loan Documents" means (i) that certain mortgage loan made on March 31, 2011 by Lender to the Borrower in the original principal amount of \$31,000,000 (the "Loan"); (ii) the Multifamily Note (the "Note"), of even date with the Loan, made by Borrower; (iii) the Multifamily Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing - CME (the "Security Instrument"), of even date with the Loan; and (iv) all other documents, certificates and instruments executed and/or delivered in connection with the Loan.

(i) "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

(j) "Single Purpose Entity" means a Person which, at all times since its formation and thereafter:

- (i) shall not engage in any business or activity, other than being the sole managing member of Borrower and owning at least 0.5% of the equity interests in Borrower and activities incidental thereto;
- (ii) shall not acquire or own any assets other than the equity interest in the Borrower and personal property related thereto;

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- (iii) shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and shall do all things necessary to observe organizational formalities;
- (iv) shall not merge or consolidate with any other Person;
- (v) shall not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable; issue additional partnership, membership or other equity interests, as applicable; or seek to accomplish any of the foregoing;
- (vi) shall not, without the prior unanimous written consent of one hundred percent (100%) of the board of directors of the Corporation (including both Independent Directors): (A) file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Borrower or the Corporation be adjudicated bankrupt or insolvent, (B) institute proceedings under any applicable insolvency law, (C) seek any relief under any law relating to relief from debts or the protection of debtors, (D) consent to the filing or institution of bankruptcy or insolvency proceedings against the Borrower or the Corporation, (E) file a petition seeking, or consent to, reorganization or relief with respect to the Borrower or the Corporation under any applicable federal or state law relating to bankruptcy or insolvency, (F) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for the Borrower or a substantial part of its property or for the Corporation or a substantial part of its property, (G) make any assignment for the benefit of creditors of the Borrower or the Corporation, (H) admit in writing the Borrower's or the Corporation's inability to pay its debts generally as they become due, or (I) take action in furtherance of any of the foregoing;
- (vii) shall not amend or restate its organizational documents if such change would modify the requirements set forth in the Special Purpose Provisions (as defined in the Borrower's Operating Agreement) or these Articles of Incorporation, as applicable, unless the Lender consents in writing and, after securitization of the Loan, written confirmation from each rating agency that rates securities backed in whole or in part by the Loan ("Securities") or securities backed in whole or in part by such Securities that such amendment, alteration or change shall not result in any qualification, withdrawal or downgrade of any such rating;
- (viii) shall not own any subsidiary or make any investment in any Person other than the Borrower;

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- (ix) shall not commingle its assets with the assets of any other Person and shall hold all of its assets in its own name;
- (x) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation) other than (A) customary unsecured payables incurred in the ordinary course of owning the Borrower, provided the same are not evidenced by a promissory note, do not exceed, in the aggregate at any time a maximum amount of \$10,000 and are paid within sixty (60) days of the date incurred and (B) except in its capacity as the managing member of Borrower (if applicable);
- (xi) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and shall not list its assets as assets on the financial statement of any other Person; provided, however, that the Borrower's assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Borrower from such Affiliate and to indicate that the Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (B) such assets shall also be listed on the Borrower's own separate balance sheet;
- (xii) except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, shall only enter into any contract or agreement with any general partner, member, shareholder, principal, Borrower or Affiliate of Borrower or any guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties;
- (xiii) shall not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (xiv) except in its capacity as managing member of Borrower (if applicable), shall not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Note) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person;
- (xv) shall not make or permit to remain outstanding any loans or advances to any other Person and shall not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment grade securities);

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- (xvi) shall file its own tax returns separate from those of any other Person, except to the extent that the Corporation is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and shall pay any taxes required to be paid under applicable law;
- (xvii) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, shall correct any known misunderstanding regarding its separate identity and shall not identify itself or any of its Affiliates as a division or department of any other Person;
- (xviii) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and shall pay its debts and liabilities from its own assets as the same shall become due;
- (xix) shall allocate fairly and reasonably shared expenses with Affiliates (including, without limitation, shared office space) and use separate stationery, invoices and checks bearing its own name;
- (xx) shall pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds;
- (xxi) shall not acquire obligations or securities of its partners, members, shareholders, or Affiliates, as applicable;
- (xxii) shall not permit any Affiliate or constituent party independent access to its bank accounts; and
- (xxiii) shall maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds.

(k) "*Shareholder*" means Stephen L. Vecchitto as the 100% owner of all of the outstanding shares of common stock of the Corporation.

(l) "*SPE Equity Owner*" means the Corporation.

#### **Section 8.2 Special Purpose Provisions**

(a) Until the Indebtedness is paid in full, this Corporation shall remain a Single Purpose Entity.

(b) This Corporation shall cause Borrower to comply with the Special Purpose Provisions contained in the Borrower's Operating Agreement (as defined therein).



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(c) As long as any indebtedness is outstanding, the Corporation shall at all times have at least two (2) Independent Directors who will be appointed by the Shareholder. Notwithstanding anything contained in these Articles of Incorporation to the contrary, the Independent Directors shall not participate in the management or operation of the Corporation other than as required by Article VIII, Section 8.2(d) below. To the fullest extent permitted by law, the Independent Directors shall consider only the interests of the Borrower and its creditors in acting or otherwise voting on matters referred to in Article VIII, Section 8.1(j)(vi) above. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor shall have accepted his or her appointment as an Independent Director by a written instrument. In the event of a vacancy in the position of Independent Director, the Shareholder shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in these Articles of Incorporation. Except as provided in the third sentence of this Article VIII, Section 8.2(c), in exercising their rights and performing their duties under these Articles of Incorporation, each Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the Florida Business Corporation Act of the State of Florida. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Corporation.

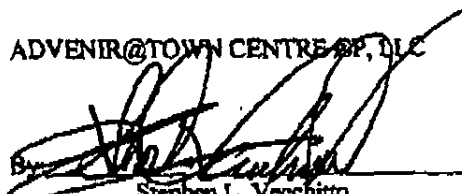
#### ARTICLE IX

##### Conflict

In the event of a conflict between these Articles of Incorporation and the Bylaws of the Corporation, these Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned, pursuant to the Florida Business Corporation Act of the State of Florida, has signed these Amended and Restated Articles of Incorporation this March 29, 2011.

ADVENIR@TOWN CENTRE BP, LLC

By   
Stephen L. Vecchitto  
President


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**ACCEPTANCE OF APPOINTMENT OF REGISTERED AGENT**

The undersigned, having been named the Registered Agent of Advenir@Town Centre GP, Inc., hereby accepts such designation and is familiar with, and accepts, the obligations of such position, as provided in Florida Statutes Section 607.0505.

March 29, 2011

  
\_\_\_\_\_  
Torres Law, P.A.  
Registered Agent