



DECLARATION OF CONDITIONS, COVENANTS,  
EASEMENTS AND RESTRICTIONS  
FOR ELAN IN THE CITY

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Sharon R. Bock, CLERK & COMPTROLLER

THIS DECLARATION is made this 16 day of JANUARY, 2006, by ELAN IN THE CITY, LLC, a Florida limited liability company, whose address is 4495 Emerald Vista, Suite 2, Lake Worth, FL 33461, which declares hereby that the "Property" described in Article II of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

WHEREAS, ELAN IN THE CITY, LLC, a Florida limited liability company ("Developer"), is the Tenant under that certain Agreement of Lease ("Lease") with West Palm Beach Community Redevelopment Agency, a public body corporate and politic, for a Lease term of 75 years for that certain property described on Exhibit "A" attached hereto;

WHEREAS, Developer intends to construct 41 townhome units on the Property to be used as single-family residences; and

WHEREAS, Developer has determined that the Property should be submitted to these Declarations of Conditions, Covenants, Easements and Restrictions.

NOW, THEREFORE, the Developer hereby declares that the Property is subject to the following terms and conditions.

ARTICLE I.  
DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

1. "Additional Property" means 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 the owner of the Additional Property and need not be joined 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 Supplemental Declaration executed by the fee owner thereof. 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 the Additional Property.
2. "ARB" refers to the Architectural Review Board of the Association.

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3. "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a Townhome from time to time.
4. "Association" means and refers to CONVENTION CENTER TOWN HOMES, POA, INC., a Florida corporation not for profit.

"Board of Directors" means and refers to the board of directors of the Association.
5. "Builder" means and refers to a person or entity which purchases and owns a Townhome, Unit or Lot in order to construct a residence for sale to a third party, and is not constructing such residence for his or its own use.
6. "Building" means a structure containing 2 or more Townhomes.
7. "Common Area" or "Common Areas" means and refers to all real property (including the improvements thereto) and all personal property owned by the Association, to include all property designated as Common Area on the Plat and on any future property designated as Common Area and made subject to this Declaration; together with the landscaping and any improvements thereon, including, without limitation, all structures, recreational facilities, lakes, irrigation facilities, open space, retention areas, masonry walls, walkways, entrance markers, signs, guardhouse, streetlights, if any, and those portions of the Retaining Wall that is not a part of a Townhome; but excluding any public utility installations thereon and the Surface Water Management System.
8. "Common Structural Elements" means those portions of the Townhomes, as more particularly defined in Article VI herein.
9. "Community Wall" means and refers to the wall or similar structure that may be situated on a landscape easement (the "Landscape Buffer Easement") as shown on a portion of the Common Area within the Plat, located on the Property, together with any footings, related equipment, lighting, signage, entryway features, landscaping (including any wiring and irrigation system when the term is used herein) and other appurtenances. Nothing in this Declaration or on the Plat shall require the Developer or the Association to construct a Community Wall.
10. "Declaration" means and refers to this Declaration of Conditions, Covenants, Easements, and Restrictions for ELAN IN THE CITY, as

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recorded in the Public Records of Palm Beach County, Florida, and as the same may be supplemented or amended from time to time.

12. "Developer" means and refers to ELAN IN THE CITY, LLC, a Florida limited liability company, and its successors and assigns if such successors or assigns should acquire more than one Lot from Developer for the purpose of developing Residences on such Lots. The Developer may assign its rights herein to any entity which acquires more than one Lot for development of Residences thereon, while at the same time reserving its status as Developer for Lots owned by Developer. A Unit or Lot purchaser, Unit or Lot Owner or Unit or Lot mortgagee shall not be deemed to be the Developer by the mere act of purchase or mortgage of a Unit or Lot.

13. "Drainage Easements" means and refers to the drainage easements declared and reserved on the Plat.

14. "Entitled to Vote" means and refers to that Owner who shall cast a vote for a Townhome at an Association meeting. If more than one person or legal entity shall own any Townhome, the Owners thereof shall determine among themselves who shall be the Member Entitled to Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Townhome, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary all Owners whether Entitled to Vote or not are assured of all other privileges, rights, and obligations of Association membership and shall be Members of the Association. In no event shall any mortgagee or other party holding any type of security interest in a Townhome or the Residence constructed thereon be Entitled to Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Townhome.

15. "Member" means and refers to all those Owners who are members of the Association as provided in Article III hereof.

16. "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome situated upon the Property.

17. "Plat" means and refers to the Plat of CONVENTION CENTER TOWN HOMES recorded at Plat Book 101, Page 24, of the Public Records of Palm Beach County, Florida, together with all replatting thereof.

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18. "Property" means and refers to all of the property as described in Article II, Section A of this Declaration, which is subject to this Declaration and to the jurisdiction of the Association.

19. "Residence" means and refers to any residential building constructed on a Lot or any structure being a Townhome or within a Townhome which there resides or can reside an Owner, guest or invitee.

20. "Supplemental Declaration" means any instrument executed by Declarant which, when recorded in the Public Records of Palm Beach County, shall: (a) commit Additional Property, if any (provided Declarant is the owner thereof) to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration; (b) withdraw and portion(s) of the Property from the effect of this Declaration; (c) designate portion(s) of Property or Additional Property as Common Property hereunder; and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to impose additional covenants, restrictions, reservations, regulations, burdens, liens, and easements upon the Property or any portion thereof and/or remove any existing covenant, restriction, reservation, regulation, burden, lien or easements from the Property or any portion thereof. 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.

21. "Townhome" or "Unit" or "Lot" means and refers to a portion of the Property, whether developed or undeveloped, intended for development, use or occupancy as an attached residence for a single family and shall mean townhouse units, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in this Declaration covering all or part of the Property. The term shall include all portions of the parcel of property owned as well as any structure thereon. Each Townhome shall be deemed to be a separate Lot.

22. "Tract", "Pod" or "Parcel" means and refers to those certain parcels shown as lettered tracts on the Plat.

ARTICLE II.  
PROPERTY SUBJECT TO THIS DECLARATION

Section A. General Plan of Development. ELAN IN THE CITY comprises the Property encompassing, or which will encompass, Townhomes and Common Property, 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 Property initially declared hereunder is described on Exhibit "A" attached hereto. ELAN IN THE CITY is approved for and is presently intended to comprise of forty-one (41) townhomes in a planned community development. Notwithstanding the foregoing, Declarant has reserved the right to modify the site plan of ELAN IN THE CITY (including, without limitation, the right to modify the site plan of ELAN IN THE CITY, the right to change the Townhome product types and number of Townhomes; all to be constructed within ELAN IN THE CITY), the right to add land to ELAN IN THE CITY, and the right to withdraw land from ELAN IN THE CITY. In the event Declarant modifies its plan of development for ELAN IN THE CITY, adds lands to ELAN IN THE CITY, and/or withdraws land from ELAN IN THE CITY, it is hereby acknowledged by each Owner that the number of Townhomes, the layout of the Townhomes and/or size of Townhomes contemplates that the Townhomes to be constructed within ELAN IN THE CITY shall be whatever types of structures Declarant may choose which are in conformance with this Declaration, and that ELAN IN THE CITY will include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to ELAN IN THE CITY.

Additional Property will become a part of ELAN IN THE CITY if, and only if, Declarant in its sole discretion adds Additional Property to ELAN IN THE CITY 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 Property that lies directly beneath a Townhome.

Declarant expressly reserves the right as to the Property to: (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of ELAN IN THE CITY, the right to change the recreational facilities and amenities, and the right to change the Townhome product types and number of Townhomes; all to be constructed within ELAN IN THE CITY, in such a manner as it, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct ELAN IN THE CITY according to the present plan of development no as obligating Declarant to declare any Additional Property to be Property.

Section B. FHA/VA Approval. Notwithstanding anything herein to the contrary, any annexation of additional property, requires prior FHA/VA approval as long as there is a Class A Membership, if financing therefrom is obtained for the purchase of Townhomes.

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**ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section A. Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Townhome shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section A, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership in the Association shall be appurtenant to each Townhome and may not be separated from ownership of said Townhome. The record title holder to each Townhome shall automatically become a Member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of said Owner's deed to the Association Secretary for placement in the records of the Association. To the extent that said deed shall pass title to a new Owner from an existing Owner, membership in the Association shall be transferred from the existing Owner to the new Owner. In no event shall any mortgagee or other party holding any type of security interest in a Townhome or the Residence constructed thereon be a Member of the Association unless and until any of said parties obtain or receive fee simple title to such Townhome.

**Section B. Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Membership shall be all those Owners as defined in Section A with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A members shall be entitled to one (1) vote for each Townhome in which they hold the interests required for membership by Section A. When more than one (1) person holds such interest or interests in any Townhome, all such persons shall be Members, but the vote for such Townhome shall be exercised only by that one person who is Entitled to Vote. In no event shall more than one vote be cast with respect to any such Townhome.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Townhome owned by the Class B Member. The Class B membership shall cease and terminate upon the earlier of the following: (i) Three (3) months after ninety percent (90%) of the Townhomes in the Community that will ultimately be operated by the Association are deeded to Owners other than a Builder, with a completed Residence thereon, or (ii) on December 31, 2011 (or earlier at Declarant's option, exercisable from time to time, as to any portions of the Common Area). Upon such termination, the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association. Upon termination of the Class B Membership as provided for herein, the Class B Membership shall convert to Class A Membership with voting strength as set forth above for Class A Membership.

**Section C.** When reference is made herein, or in the Articles of Incorporation, Bylaws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members entitled to vote and not of the Members themselves.

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**ARTICLE IV.**  
**PROPERTY RIGHTS IN THE COMMON AREAS: OTHER EASEMENTS**

**Section A. Members Easements.** Each Member, and each tenant, agent and invitee of such Member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Area for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

1. The right and duty of the Association to levy Assessments against each Townhome for the purpose of maintaining the Common Area and facilities in compliance with the provisions of this Declaration, the restrictions on the Plat of portions of the Properties from time to time recorded, and/or with any additional restrictions that may be from time to time recorded;
2. The right of the Association to suspend the Owner's voting rights for any period during which any Assessment against his Townhome remains unpaid; and for period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations;
3. The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Townhomes and Common Area and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration; and
4. The right to the use and enjoyment of the Common Area and facilities thereon shall extend to all permitted user's immediate family who reside with him subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

**Section B. Easements Appurtenant.** The easements provided in Section A shall be appurtenant to and shall pass with the title to each Townhome.

**Section C. Maintenance.** The Association shall at all times maintain in good repair and manage, operate, and insure, and shall replace as required, the Common Area and the Community Wall, if any, together with the paving, underground utilities, drainage system, masonry walls, street lights, lighting fixtures and appurtenances, landscaping, sprinkler systems, entrance markers signs, guardhouse, entry gates, recreation buildings, bike lanes, pool, tennis courts, improvements and other structures installed by the Developer or the Association situated on the Common Area and the Wall Easement, with all such work to be done as ordered by the Board of Directors of the Association. In order to maintain, manage and operate the Common Area, the Community Wall, if any, and the Wall Easement and such appurtenances as are described above, the Association shall have the right and

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authority to enter into such contracts or agreements as the Board of Directors of the Association deems appropriate, including without limitation entering into any agreements providing for the Association's payment of its fair share of the maintenance and repair costs of any adjacent property used for the drainage of storm water from the Properties or for purposes otherwise benefiting the Property as determined by the Board of Directors. Further, Developer may enter into agreements with Palm Beach County, Florida, with respect to any of the foregoing. Maintenance of the aforesaid lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of the Developer's responsibility to Palm Beach County, Florida, of any kind with respect to the Common Area and Community Wall, if any, and shall indemnify and hold the Developer harmless with respect thereto.

**Maintenance and Repair.** The Association shall also maintain, repair, preserve, replace, protect and insure, as applicable, the storm water management and drainage systems serving the Property.

The Owner shall be responsible for the maintenance, replacement, and repair of all walls, gates, paving, structures, shrubbery and sod replacement for lawns and garden areas and improvements located on his Townhome, other than those specifically provided to be maintained by the Association.

All work (other than maintenance, replacement or repair responsibility of the Owner) pursuant to this Section and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area or Townhomes or abandonment of the right to use the Common Area.

**Section D. Utility Easements.** The Association shall have the right to grant permits, licenses, and easements over the Common Area, except for any portion of the Common Area dedicated to Palm Beach County, Florida, for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property. In addition, easements over, upon, under, through and across the Common Area and Lots are reserved to the Association and the Developer, and may be declared from time to time by the Developer during any period that the Developer shall own at least one (1) Townhome, for such further utility, egress, ingress, or drainage easements over and across the Property as may be required from time to time to serve any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Property or not. Regarding any easement declared by the Developer, the joinder of the Association or any Owner or Owner's mortgagee shall not be required.

**Section E. Drainage Easements.** Drainage Easements have been declared and reserved as shown on and created by the Plat. The Association shall be solely responsible for the repair and maintenance of any drainage swale located in any drainage easement as set forth in Section I below.

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Alteration, filling, obstruction or removal of any drainage swale or drainage control facility or structure is expressly prohibited. In the event any Owner alters or obstructs any drainage swale or other drainage facility or structure, the Association may repair, replace, and/or maintain such drainage swales, facilities and structures and assess such Owner for the costs and expenses incurred in order to accomplish any of the foregoing. Each Owner hereby grants an easement and license to the Developer and the Association over, upon and across such Owner's Townhome in order to facilitate and accomplish any of the foregoing. Further, no Owner shall place, erect or construct any wall, fence, or other improvement or otherwise permit anything to occur within any Drainage Easement area which would in any way obstruct or effect the Surface Water or Storm Water Management System (as hereinafter defined), a Drainage Easement or any swale, pipe or drainage control facility or structure located therein or thereon, unless, in the event of construction of any improvements, such improvements have been approved by the Developer or the ARB .

**Section F. Ownership.** As shown on the Plat, the Common Area is hereby dedicated non-exclusively to the joint and several use, in common, of the Owners of all Townhomes that may from time to time constitute part of the Property and such Owners' tenants, guests and invitees. The Common Area shall be conveyed to the Association free and clear of all encumbrances before FHA/VA insures its first mortgage on any Townhome, if applicable. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area (whether or not then conveyed to be conveyed to the Association), and the Community Wall, if any, such maintenance to be performed in a continuous and satisfactory manner. It is intended that all real estate taxes, if any, assessed against that portion of the Common Area owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Townhomes within the Properties. However, in the event that notwithstanding the foregoing, any such taxes are assessed directly against the Common Area, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

All or any portion of the Common Area cannot be mortgaged or conveyed without the consent of at least sixty-six and two-thirds percent (66 2/3%) of the Owners Entitled to Vote (excluding the Developer). If ingress or egress to any Residence is through the Common Area, any conveyance or encumbrance of such Common Area shall be subject to such Owner's easement for ingress and egress.

**Section G. Developer Offices.** Notwithstanding anything herein to the contrary, but subject to approval by Palm Beach County, Florida, if required by its laws and ordinances, Developer shall have the specific right to maintain upon any portion of the Property model homes, sales, administrative, construction or other offices, to include temporary offices and/or construction trailers, without charge, and appropriate easements of access and use are expressly reserved unto the Developer and its successors, assigns, employees and contractors, for this purpose.

Section H. Temporary Construction Easement. During construction, Developer has the right to use the Common Areas for trailers, other construction equipment, storage and other related matters.

Section I. Easements Benefiting Neighboring Subdivisions. The Association shall have the right to grant permits, licenses and easements over the Common Area, except for any portion of the Common Area dedicated to Palm Beach County, Florida, for signage, drainage, storm water retention/detention, and other purposes for the benefit of neighboring subdivisions or other entities, provided that the Common Area concerned is not unreasonably burdened by such additional use and provided that any such neighboring subdivision or entity is required as a provision of such permit, license or easement to indemnify the Association from any loss or claim concerning same and to maintain such easement areas and improvements thereto and thereon to the satisfaction of the Association and/or to compensate the Association for its maintenance, management and operation of same in advance by one (1) annual payment or by quarterly or semi-annual installments and with provisions for reserves, insurance, overhead, capital improvements and special assessments, on a full or prorated basis as appropriate (or alternatively to reimburse such neighboring subdivision or other entity accepting responsibility for such maintenance for the Association's fair share of same), and provided that any necessary governmental approval is first obtained. The Board of Directors shall have the right to authorize an officer of the Association to grant such permits, licenses or easements.

Section J. Surface Water or Storm Water Management System.

1. Definition. "Surface Water or Storm Water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges. Such System is authorized by South Florida Water Management District Permit No. 041216-3 which is maintained in the Association's books and records, a copy of which is attached hereto as Exhibit "B". Modifications to such permit are retained with the corporate records of the Association.

2. Duties of Association. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Storm Water Management System. Maintenance of the Surface Water or Storm Water Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the South Florida Water Management District. Any repair or reconstruction of the Surface Water or Storm Water Management System shall be as permitted or, if modified, as approved by the South Florida Water Management District.

3. Maintenance Assessments. Assessments shall be used for the maintenance and repair of the Surface Water or Storm water Management System including but not limited to work within retention areas, drainage structures and Drainage Easements.

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4. **Easement for Access and Drainage.** The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Storm water Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any of the Property which is a part of the Surface Water or Storm Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Storm Water Management System as required by South Florida Water Management District Permit No. 041216-3. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Storm Water Management System. No person shall alter the drainage flow of the Surface Water or Storm Water Management System, including buffer areas or swales, without the prior written approval of the ARB and the South Florida Water Management District.

5. **Amendment.** Any amendment to this Section I or which otherwise affects the Storm Water Management Systems within the Property or maintenance thereof shall not be effective without the prior written consent of the South Florida Water Management District and any proposed amendment shall be submitted to the District to determine if such amendment requires a permit modification.

6. **Enforcement.** The South Florida Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions of this Section I which relate to the maintenance, operation and repair of the Surface Water or Storm Water Management System.

7. **Swale Maintenance.** Notwithstanding anything herein to the contrary, each Owner, including builders, shall be responsible for the maintenance, operation and repair of any drainage swale, if any, located on the Property as the case may be. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow swales to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the South Florida Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in drainage swales and the alteration of drainage swales is prohibited. Any damage to any drainage swale, whether caused by natural or manmade phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Townhome(s), upon which the drainage swale is located.

**Section K. Maintenance Easement.** Each Owner of a Townhome shall have an easement over such adjacent properties as may reasonably be required for the proper maintenance of his property.

**Section L. Encroachment Easement.** In the event that there is an accidental encroachment onto the Common Areas, there shall be an easement for such encroachment. The following Encroachment Easements are specifically granted:

- (a) Footing Easement - An easement is hereby granted to the owners of Townhomes whose Townhome footings encroach onto the Common Areas.
- (b) Porch Easement - An easement is hereby granted to the owners of Townhomes whose Townhome porches encroach onto the Common Areas.

Section M. Platted Easements. The Property shall also be subject to all easements of record, including all easements shown on the Plat. These easements include, but are not limited to:

- (a) 12 Foot Access Easement - That certain 12 foot Access Easement as shown on the Plat and originally granted on the CityHomes at CityPlace Plat, recorded in Plat Book 95, Pages 106-109 and located between units 36 and 37 is dedicated to the public for the purpose of providing pedestrian access between "M" Street and Florida Avenue and is subject to a maximum elevation of 32.30 (National Geodetic Vertical Datum of 1929). The property subject to this easement may not be gated or walled so as to restrict public access across said easement.
- (b) BellSouth Easement- That certain 10 foot utility easement, as shown on the Plat, as originally granted on the CityPlace Plat No. 2 recorded in Plat Book 90, Pages 33-37 is granted to BellSouth and modified by that certain Agreement dated November 15, 2004 which contain the following terms and conditions: (i) BellSouth waives its right of entry upon Lots 28 through and including Lots 36, as shown on the Plat and maintenance with respect to the BellSouth facilities in the BellSouth easement may be performed within the area of the BellSouth easement but outside of the aforementioned Lots; (ii) the Owners are obligated to keep the Townhomes in good condition and repair at all times; the Association and the Owners shall take whatever action may be necessary to ensure that the construction, maintenance, use and operation of the Townhomes constructed within the BellSouth easement area do not pose a threat, danger or interference with BellSouth's use and operation of BellSouth facilities or an damage to the condition thereof; (iii) the Owners agree to indemnify, defend and hold BellSouth, its successors and assigns harmless from and against all claims, damages, injury, loss, cost, damage, expense, action, threat, demand, suit, proceeding, judgment or liability of any nature whatsoever, including attorneys' fees at the trial and appellate level which may be incurred by, claimed, asserted or recovered against or from BellSouth, its successors or assigns, arising during or from the period of time they own the Townhomes and from or out of and/or in

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any manner connected with (a) Owner's and/or its respective employees', contractors', licensees' and invitees' construction, use, maintenance, operation or repair of the improvements within the BellSouth easement area or (b) a breach of the Agreement by an Owner; (iv) the Association shall maintain all improvements that are also Common Elements or Limited Common Elements; (v) the Association shall take whatever action may be necessary to ensure that the construction, maintenance, use and operation of the improvements constructed within the BellSouth easement area does not pose a threat, danger or interference with BellSouth's use and operation of the BellSouth facilities or any damage to the condition thereof; and (vi) the Association agrees to indemnify, defend and hold BellSouth, its successors and assigns harmless from and against all claims, damages, injury, loss, cost, damage, expense, action, threat, demand, suit, proceeding, judgment or liability of any nature whatsoever, including attorneys' fees at the trial and appellate level which may be incurred by, claimed, asserted or recovered against or from BellSouth, its successors or assigns, arising during or from the period of time they own the Townhomes and from or out of and/or in any manner connected with (a) Association's, any Owner's and/or their respective employees', contractors', licensees' and invitees' construction, use, maintenance, operation or repair of the improvements within the BellSouth easement area or (b) a breach of the Agreement by the Association.

**ARTICLE V.  
COMMUNITY WALL AND LANDSCAPE EASEMENT,**

**Section A. Community Wall and Landscape Easement.** The Developer shall have the right (but not the obligation) to erect and construct a Community Wall within the Landscape Easements and tracts as shown on the Plat.

**Section B. Maintenance of Community Wall and Wall Easement.** The Association shall be responsible for the maintenance of any Community Wall after completion by the Developer. The Developer and the Association shall have the right, but not the obligation, to install and plant such landscaping and related facilities, including without limitation sprinkler systems, within Landscape Easements as they may desire. In the event that the Developer or the Association installs any landscaping and related facilities within a Landscape Easement, the Developer and the Association shall have the right, but not the obligation, to maintain and replace such landscaping and related facilities. No Owner shall do or permit any damage to the Community Wall or any landscaping and related facilities installed or planted by the Developer or the Association within the Landscape Easement and in the event any Owner, Owner's guest, licensees, permittees or invitees causes any

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such damage, the Association may assess such Owner for any appropriate costs and expenses incurred by the Association to repair such damage. No provision of this Section shall impose strict or absolute liability on Owners for damage to Common Area or Townhomes. Nothing contained in this Declaration, however, shall obligate the Developer or the Association to construct a Community Wall or to plant, install or maintain, any landscaping or related amenities upon a Landscape Easement.

Section C. Easement for Maintenance of Community Wall and Landscape Easement. There is hereby created, declared, granted and reserved for the benefit of the Developer and the Association an easement over, upon and across all Landscape Easement areas shown on the Plat (being the wall easement and the landscape easement areas) together with an easement and license to enter upon such Landscape Easement area for the purpose of installing, erecting, constructing, maintaining, repairing, replacing and inspecting the Community Wall, if any, and related amenities and structures and for planting, maintaining and replacing any landscaping located within the Landscape Easement. Further, the Developer hereby declares as for each Townhome encumbered by the Landscape Easement an easement and license over, upon and across such Townhome to the Developer and the Association in order to accomplish the foregoing.

## ARTICLE VI. TOWNHOME PROVISIONS

### Section A. Common Structural Elements.

1. Each Building containing Townhomes shall contain Common Structural Elements which include, but are not limited to, the following:

(a) Utility Lines. All utility lines, ducts, conduits, pipes, fire sprinklers, wires and other utility fixtures and appurtenances which are located on, within or under each Building and which directly or indirectly in any way service more than one (1) Townhome in such Building.

(b) Party Walls. All division walls ("Party Walls") between two (2) Townhomes located upon a Lot line between two (2) Townhomes, provided that the mere fact that such a division wall between two (2) Townhomes is found to be not on a Lot line shall not preclude that division wall from being a Party Wall. The Owners of the Townhomes adjacent to a Party Wall shall own such Party Wall as tenants in common.

(c) Roofing. The entire roof of a Building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures, including, without limitation, the roof covering, roof trim and roof drainage fixtures.

(d) Bearing Walls. Any and all walls or columns necessary to support the Building and/or roof structure.

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(e) Exterior Finish. Any and all siding, finish, trim, exterior sheathings, window framing (but not the glass) and other exterior materials and appurtenances on the exterior of each Building.

(f) Flooring. The entire concrete floor slab or wood floor system if utilized in lieu thereof and all foundational and support structures and appurtenances thereto.

(g) Privacy Walls. The walls (other than Party Walls) or hedges erected or which may be erected along the Lot lines and all foundational and support structures with respect thereto.

(h) Retaining Wall. The wall running along the western boundary of the Property that serves, in part, as the western-most wall of Units 29, 30, 31, 32, 33, 34 & 35 and is also located on a portion of the western boundary of the Common Area.

2. Should the Common Structural Elements or a part thereof extend beyond the Lot, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Common Structural Elements as same shall be constructed and for the maintenance, repair and replacement thereof, are hereby imposed; provided, however, nothing herein shall be deemed to grant any Owner with the authority to install or construct any such Common Structural Elements that extend beyond the Lot.

3. In the event any Common Structural Element or part thereof located within a Townhome requires maintenance, repair or replacement and the necessity for such maintenance, repair or replacement was not due to any act or failure to act on the part of the Owner of the Townhome in question and the cost of such maintenance, repair or replacement would result in an inequitable and unfair burden upon any particular Townhome, the cost of such maintenance, repair or replacement shall be an Expense (as herein defined) shared by all of the Townhomes.

#### Section B. Easements and Covenants.

1. Utility Easements. Each Owner of a Townhome grants to all other Owners owning a Townhome in the same Building, a perpetual utility easement for water, sewer, power, telephone and other utility and service company lines and systems installed beneath or within the Townhome.

Any expense for the necessary access of authorized personnel of the utility or service company to service lines affecting all Townhomes within a Building, and which are located beneath or within the Building shall be shared equally by each of the Owners of Townhomes in the Building affected; provided, however, that where such access by authorized personnel of the utility or service company is required because of the intentional or negligent misuse of the utility or service company line or system by an Owner of a Townhome, his or her lessee, licensee, invitee, or agent, any expense arising therefrom shall be borne solely by such Owner.

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2. **Access Easement.** Perpetual, nonexclusive easements of ingress and egress over, under and across any Lots on which Townhomes are located ("Townhome Lots") within ELAN IN THE CITY are hereby granted in favor of the Association which are necessary or convenient for enabling the Association, its employees, contractors and agents, to maintain the Townhome Lots in accordance with this Article VI.

3. **Structural Cross Easements.** Cross easements of support and use over, upon, across, under, through and into the Common Structural Elements are hereby granted in favor of the Owners of Townhomes or their designees for the continued use, benefit and enjoyment and continued support, service, maintenance, repair and design of all Townhomes and Common Structural Elements.

4. **Party Walls and Shared Roofing.** Any party to said Party Wall, and such party's heirs, successors, and assigns, shall have the right to use same jointly with the other party(ies) to said Party Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original concrete or other material forming said Party Wall.

The cost of maintaining each side of a Party Wall shall be borne by the Owner of the Townhome using said side, except as otherwise provided herein.

No Owner of a Townhome shall paint, refurbish or modify or authorize the painting, refurbishing or modification of the exterior surfaces or the roofing of his or her Townhome without the consent of the Association.

5. **Retaining Wall**

a. A portion of the West boundary of the Community is comprised of a retaining wall ("Retaining Wall"). The Retaining Wall is part of the western-most boundary of Units 29, 30, 31, 32, 33, 34 & 35 ("Retaining Wall Units") and also serves as the western boundary to a portion of the Common Areas. The owners of the Retaining Wall Units shall be responsible for the operation, maintenance and repair of all portions of the Retaining Wall incorporated in and made a part of the Retaining Wall Units, which portion of the Retaining Wall shall at all times be considered a Party Wall (as herein defined), and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding Party Walls (as contained in Article VI herein) and liability for property damage due to negligent or willful acts or omissions shall apply thereto; and, the owners of the Retaining Wall Units shall at all times maintain the Retaining Wall in a structurally sound condition and good repair and appearance. All costs of such maintenance and repair of the Retaining Wall shall be the obligation of the respective owners of a Retaining Wall Unit.

b. The use of the Retaining Wall by the owners of the Retaining Wall Units shall

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be subject to the restrictions hereinafter contained:

1. No owner of any Retaining Wall Unit nor any successor in interest to any such owner shall have the right to alter the structure of the Retaining Wall or to make any material change to the Retaining Wall other than normal and customary wall treatments for a residential home including without limitation painting, wallpaper and similar wall treatments, stucco or other texture finishes on that portion of the Retaining Wall lying within the Retaining Wall Unit, and customary hanging of pictures, shelves, lighting fixtures and similar residential fixtures; provided, however, that such owner shall be responsible for structural repair as necessary of the Retaining Wall lying within their Retaining Wall Unit.
2. In the event of damage to or destruction by fire or other casualty of any Retaining Wall, including the foundation thereof, the owner of the Retaining Wall Unit within which the damaged or destroyed Retaining Wall is located shall be the party responsible to repair or rebuild such Retaining Wall, and the costs thereof shall be shared among the owners of the Retaining Wall Units, provided, however, that any owner which specifically causes damage to the Retaining Wall shall be solely responsible for the costs and expenses of any such repair, unless otherwise provided in the Declaration. All such repairs or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original Retaining Wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such Retaining Wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size, material and quality as the original Retaining Wall.
3. The owner of a Retaining Wall Unit or other interested party shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any such owner, or other interested party, to contribution from any other owner of a Retaining Wall Unit under this section shall be appurtenant to the land and shall pass to such owner's or other person's successors in title.
4. The title held by each owner to the portion of each Retaining Wall within such Retaining Wall Unit is subject to a cross easement in favor of the adjoining owner of a Retaining Wall Unit for joint use of said Retaining Wall.
5. In the event an owner of a Retaining Wall Unit shall fail to maintain or repair the Retaining Wall in a manner required under this Declaration and as determined by the Association from time to time, within 30 days' written

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notice of same, the Association, shall have the right, through its contractors, agents and employees, to enter upon said Retaining Wall Unit and to repair, maintain, and restore the Retaining Wall as required under this Declaration and as determined by the Association. The cost of any such work shall be charged to the owner and the nonpayment of which may lead to foreclosure of the lien by the Association. .

6. **Owner's Obligations for Insurance.** The owner(s) of a Retaining Wall Unit is solely responsible for purchasing policies of insurance on all portions of the Retaining Wall Unit. **Neither the Developer nor the Association have any duty, obligation or responsibility to purchase insurance with regard to any portion of a Retaining Wall Unit.**

7. Any portion of the Retaining Wall that is located on the Common Area shall be the responsibility of the Association and the Association shall obtain a policy of insurance on all portions of the Retaining Wall on the Common Area. The Association shall also assume the CRA's maintenance responsibilities set forth in the Retaining Wall Maintenance Easement (as hereinafter defined) for the Retaining Wall and Retaining Wall footings.

c. In addition to the provisions contained herein regarding the Retaining Wall, the Owners of Retaining Wall Units shall be subject to the terms and conditions of that certain Easement for Retaining Wall Footings and Maintenance of Retaining Wall and Footings recorded at OR 15621, Page 1709, of the public records of Palm Beach County, Florida (the "Retaining Wall Maintenance Easement"), a copy of which is attached hereto as Exhibit "D".

### Section C. Maintenance of Townhomes.

#### 1. BY THE ASSOCIATION

a. The Association shall maintain and care for all landscaping and grassed areas encompassed within each Townhome Lot. In the event an Owner installs a Fence (as hereinafter defined), the Association shall have no further obligation to maintain the landscaping or grassed areas located in the fenced-in area of the Lot and the Owner shall be deemed to have waived all maintenance rights contained herein for the fenced-in area. The Owner shall not be entitled to a reduction in the Operating Expenses as a result of the Association not maintaining the landscaping and grassed areas in the fenced-in area.

b. The Association shall be responsible for the annual pressure cleaning of the Townhome driveways.

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c. The Association shall be responsible for the painting of the exterior of the Townhomes and for maintaining all Common Structural Elements (except as provided herein) of the Townhomes, except for window washing and the replacement of broken glass which shall be the responsibility of each Owner.

d. The Association shall be responsible for the painting of the garage doors but not the mechanisms associated with garages located within the Townhomes and shall not be responsible for any other maintenance repair or replacement of the garages.

BY THE OWNERS

a. As provided in this Declaration, the Owner of each Townhome must keep and maintain his/her Townhome and the Improvements thereon, which are not maintained by the Association, including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within his/her Townhome which, if omitted, would adversely affect ELAN IN THE CITY, the other Owners or the Association and its Members. Additional provisions regarding maintenance of all Homes are contained herein. The Owners' responsibility for maintenance, repair and replacement shall also include, but not be limited to, the porches connected to the Townhomes, the caulking and maintenance of the exterior surface of the walls, doors and windows (including glass frame) of the Townhome. The exterior surface of such walls, doors and windows shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The foregoing shall also include the patching and repairing of all stucco and exterior surface cracks and the walls of such Owner's Townhome.

b. The Owner of each Townhome shall also be responsible for the maintenance, repair and replacement of the driveway of such Owner's Townhome, except only for the periodic pressure cleaning of the driveway which shall be the responsibility of the Association.

c. The Owner of each Townhome shall be responsible for the maintenance, repair and replacement of any mechanisms associated with the garages located within his/her Townhome but shall not be responsible for painting of the garage doors which shall be the responsibility of the Association.

d. An Owner shall not plant any shrubs, trees and/or landscaping on his or her Townhome Lot without the prior written approval of the Association. If an Owner receives such approval and plants any shrubs, trees and/or landscaping on his or her Townhome Lot, such Owner shall be responsible for maintaining such shrubs, trees and/or landscaping.

Section D. Insurance Coverage of Townhomes.

1. Each Owner shall keep insured the interior portions of his or her Townhome and his or her personal property, including, but not limited to, all floors and floor coverings, walls and wall coverings, ceiling and ceiling coverings, fixtures (such as toilets, sinks and showers),

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electrical fixtures, electrical and plumbing components, appliances, air conditioner, or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing and all air conditioning compressors, whether or not located within the Townhome boundaries, etc.

2. In addition to the foregoing, each Owner of a Townhome shall maintain both liability and hazard insurance on his or her entire Townhome in an amount not less than the Townhome's full insurable value. Evidence of the coverage described in this Section D shall be furnished to the Association promptly upon the Board's request. No Owner shall cancel such insurance without at least thirty (30) days prior written notice to the Association. Notwithstanding the foregoing, the Association may, in its sole discretion, obtain hazard insurance for the following structural components of each Townhome and Building, as follows:

- (a) Exterior Building Walls – (i) Mesh, Lath, Sheathing, Glass, Block, Stucco (Painted); (ii) Studs, Insulation; (iii) Unfinished Sheet Rock/Drywall.
- (b) Townhome Interior Walls Including Party Walls – (i) Block, Studs, Insulation; (ii) Unfinished Sheet Rock/Drywall
- (c) Townhome Interior Ceilings and Roof Area – Concrete, Gypcrete, Framing, Plywood, Insulation, Sheet Rock or Drywall.
- (d) Roofing – Unit Interior & Common Areas – All Framing, Structural Supports, Decking, Insulation and Roof Cover.

In the event the Association obtains the foregoing hazard insurance, the Owner shall be relieved of such responsibility only to the extent such insurance is obtained by the Association; and the insurance proceeds for the repair and rebuilding shall be paid to the Association and not the Owner and the cost of such insurance shall be an Association Expense.

3. If an Owner fails to comply with the foregoing provisions of this Section D, the Association may proceed in court to compel compliance to cause an Owner to comply. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Townhome and Lot with the same force and effect as a lien for Operating Expenses.

4. If a failure to comply with the provisions of this Section D relates to the Owner's obligation to maintain and care for the Townhome, landscaping or any other area required to be maintained and cared for by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the property of the Owner for the purpose of performing the maintenance and care referred to, set forth and described in the notice. The determination of whether an Owner is failing to

properly maintain and care for the property for which he or she has the maintenance responsibility shall be determined in the sole discretion of the Association or Declarant. Further, the Association shall be entitled, but not obligated to perform such maintenance and care itself and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and any such Assessment shall constitute a lien upon the applicable Townhome and Lot with the same force and effect as a lien for Operating Expenses.

5. If a Townhome is damaged through a natural disaster, fire or other casualty, the affected Owner shall promptly and properly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Townhome unless otherwise authorized by the Board and approved by applicable governmental authorities. If repairs to Townhome or Common Structural Elements are insured by the Association, the Association shall use insurance proceeds to repair the Townhome or Common Structural Elements. In the event such damage or destruction of a Party Wall or Shared Roofing is caused solely by the neglect or willful misconduct of an Owner of a Townhome, any expense incidental to the repair or reconstruction of such Party Wall or Shared Roofing shall be borne solely by such wrongdoer. If the Owner of the Townhome refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected Building, and the Association shall thereafter have the right to specially assess said Owner for the costs of such repair and re-construction.

ARTICLE VII.  
ASSOCIATION COVENANT  
FOR MAINTENANCE ASSESSMENTS

Section A. Creation of the Lien: Personal Obligations of the Assessments. Except as provided elsewhere herein, the Developer (and each party joining in this Declaration or in any supplemental declaration), for all Townhomes within the Property, hereby covenants and agrees, and each Owner of any Townhome by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual Assessments or charges for the maintenance, management, operation and insurance of the Common Area, the Surface Water or Storm Water Management System, the Off-Site Landscaping, and other properties that may be otherwise used for the benefit of the Property as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, capital improvement Assessments, as provided elsewhere herein and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Townhomes for fines, expenses incurred against particular Townhomes and/or Owners to the exclusion of others and other charges against specific Townhomes or Owners as contemplated in this Declaration. The annual special and other Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a

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continuing lien upon the Townhome against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the Assessment fell due. Except as provided herein with respect to special Assessments which may be imposed on one or more Townhomes and Owners to the exclusion of others, all Assessments imposed by the Association shall be imposed against all Townhomes subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

**Section B. Purpose of Assessments.** The regular Assessments levied by the Association shall be used exclusively for maintenance, repair, renovation, and construction upon the Common Area, the maintenance and repair of the Community Wall and entry features, the maintenance and repair of the Surface Water or Storm Water Management System, and the maintenance and repair of such other properties as may be used for the benefit of the Property, as specifically provided herein, capital improvements, reserves, operating costs of the Association and to promote the health, safety, welfare and aesthetics of the Members of the Association and their families residing with them, their guests and tenants, all as provided for herein.

1. **Reserves for Replacement.** The Association may but is not required to establish or maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area and the Community Wall. If such a reserve fund is established and the Association elects to maintain it, the fund shall be maintained from annual Assessments.

2. **Working Capital.** Upon the closing of the sale or the occupation of a Residence, the buyer (or Owner) of such Residence shall pay to the Association an amount equal to 2 months of the annual assessment of the Association for such Townhome, which amount shall be maintained by the Association as working capital for the use and benefit of the Association. Said amount shall not be considered as advance payment of annual Assessments. Prior to the Turnover Date, the Developer may use the working capital for operating expenses of the Association.

**Section C. Specific Damage.** Owners (on their behalf and on behalf of their children, invitees, tenants and guests) causing damage to any portion of the Common Area, the Community Wall or any landscaping and related facilities installed by the Developer or the Association upon the Landscape Easement as a result of misuse, negligence, failure to maintain or otherwise shall be liable to the Association, and an appropriate special Assessment may be levied therefor against such Owner or Owners. Such special Assessments shall be subject to all of the provisions hereof relating to other Assessments, including, but not limited to, the lien and foreclosure procedures.

**Section D. Exterior Maintenance.** The Owner of each Townhome shall maintain the exterior of the Townhome and the Townhome at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner thirty (30) days' written notice sent to his last known address, or to the address of the subject premises, perform such reasonable maintenance and make such repairs as may be required to

restore the neat and attractive appearance of the Townhome and the exterior of the Residence located thereon. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Townhome and shall constitute a special Assessment against the Townhome on which the work was performed, collectible in a lump sum and secured by the lien against the Townhome as herein provided. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion.

**Section E. Special Assessments.** Funds in excess of Twenty-Five Thousand (\$25,000.00) Dollars in any one case which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Area under the jurisdiction of the Association or other properties used for the benefit of the Properties or such other matters as may be deemed appropriate and which have not previously been collected as reserves or are otherwise available to the Association shall be levied by the Association as special Assessments only upon approval of a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) favorable vote of each class of the Members of the Association voting at a meeting or by ballot as may be provided in the Bylaws of the Association. Notwithstanding the foregoing, in the event damage occurs to the Common Areas as a result of a natural catastrophe such as a hurricane, flood or fire, a majority of the Board of Directors of the Association shall have the sole right to levy Special Assessments to repair the Common Area.

**Section F. Date of Commencement of Annual Assessments: Due Dates.** The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance by either monthly, quarterly, semi-annual, or annual installments, which shall be at the discretion of the Board of Directors. At the time of the closing of the sale of any Townhome upon which a Residence has been constructed by Developer or any Builder, the purchaser thereof shall pay to the Association an amount equal to the annual Assessment multiplied by a fraction, the numerator of which is the number of days remaining in the year of closing (including the date of closing) and the denominator of which is three hundred sixty-five (365). The due date of any special Assessment shall be fixed in the Board resolutions authorizing such assessment.

**Section G. Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Townhome subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Townhomes and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent annually to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to emergency Assessments. Nothing in this Section shall require the Association to prepare or send written notices of Assessment to every Owner more frequently than once per year. Subject to

other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Townhome. Such certification shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services or for other services beneficial to the Association or the proper operation and maintenance of the Properties. The Association shall have all other powers provided elsewhere herein, in its Articles of Incorporation and its Bylaws. A copy of the Articles of Incorporation and Bylaws are attached hereto as Exhibit "C".

**Section H. Effect of Non-Payment of Assessment: the Personal Obligation: the Lien: Remedies of the Association.** If the Assessments (or installments), whether general or special, are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Townhome which shall bind such property. Each Assessment against a Townhome shall also be the personal obligation of the Owner at the time the Assessment fell due.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than Twenty-Five (\$25.00) Dollars may be imposed and all such sums shall bear interest from the dates when due until paid at the highest lawful rate and the Association may bring an action at law against the Owner(s) personally obligated to pay the same or may record a claim of lien against the Townhome on which the assessment and late charges are unpaid or may foreclose the lien against the Townhome on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively. In any such action or actions, the Association shall also have the right to recover its attorneys' fees (including paralegal fees) and costs, whether incurred before trial, at trial and upon all appellate levels.

In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a Townhome as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Townhome or the enjoyment of the Common Area until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid and no sale or other disposition of Townhomes shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section I of this Article.



It shall be the legal right of the Association to enforce payment of the Assessment hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

Section I. Subordination of the Lien. The lien of the assessments provided for in this Article shall be subordinate to tax liens and to the lien of any first mortgage which is now or hereafter placed upon any property subject to Assessment; provided, however that any such mortgagee when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Townhome by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against all Townhomes subject to Assessment by the Association, including the Townhomes as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section J. Collection of Assessments. The Association shall collect the Assessments of the Association. No provision of this Declaration requires mortgagees to collect Assessments.

Section K. Guaranteed Assessments During Guarantee Period. Developer covenants and agrees with the Association and the Owners that, for the period commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date of turnover of the Association as described in Article III hereof ("Turnover Date"); or (ii) December 31, 2011, which date may be automatically extended as described herein ("Guarantee Period"), Developer shall be excused from payment of its share of the operating expenses and Assessments related to its Lots (other than Special Assessments) and, in turn, that the individual Lot Assessment charged to Owners other than Developer will not exceed the dollar amount set forth in the Budget of the Association ("Guaranteed Assessment") and that Developer will pay the difference ("deficit"), if any, between (a) the operating Expenses (other than those operating Expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period, and (b) the amounts assessed as Guaranteed Assessments against Owners during the Guarantee Period, the "Working Capital Fund" set forth in Article VII, Section B. 2 hereof and any other income of the Association during the Guarantee Period. Thus, during the Guarantee Period Owners shall not be obligated to pay Assessments other than the Guaranteed Assessment and Special Assessments and the Owners' respective Working Capital Fund Contribution. The Deficit, if any, to be paid by Developer pursuant to this Section K shall be determined by looking at the Guarantee Period as a whole, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intra period allocations. In that regard, in the event it is determined at the end of the Guarantee Period that there is a Deficit and Developer has previously advanced funds to the Association in excess of the Deficit during the Guarantee Period, Developer shall be entitled to the immediate repayment from the Association of the amount of funds advanced by Developer in excess of the Deficit. The Guarantee Period shall automatically extend year to year until the Turnover Date unless the Developer provides thirty (30) days written notice of termination to the Association prior

to the end of the Guarantee Period (as same may have been previously extended). Developer also reserves the right to increase the amount of the Guaranteed Assessment during any such extended Guarantee Period. Special Assessments are not included in this Guarantee.

**Section L. Funds.** The portion of all regular Assessments collected by the Association for reserves for future expenses, and the entire amount of all special assessments, shall be held by the Association for the Owners of all Townhomes, as their interests may appear, and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions the deposits of which are insured by an agency of the United States.

**Section M. Strict Liability of Owners Not Imposed.** No provision of this Article or this Declaration shall impose strict or absolute liability on Owners for damage to Common Areas or Townhomes.

## ARTICLE VIII. CERTAIN RESTRICTIONS

**Section A. Applicability.** The provisions of this Article VIII shall be applicable to all of the Properties but shall not be applicable to the Developer or property owned by the Developer.

**Section B. Land Use and Building Type.** No Townhome shall be used except for residential purposes. No Building constructed on a Lot shall be used except for residential purposes. No business, commercial, industrial, trade, professional or other non-residential activity or use of any nature or kind shall be conducted on any Lot or in any Unit. No Building shall be erected, altered, placed or permitted to remain on any Lot other than one Residence. Temporary uses by Developer for model homes, sales displays, parking lots, sales offices, construction offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings erected by the Developer (except if such changes are made by the Developer) without the consent of the Architectural Review Board as provided herein.

**Section C. Opening Walls; Removing Fences.** No Owner shall make or permit any opening to be made in any Developer or Association erected wall or fence except as such opening is installed by Developer. No such wall or fence shall be demolished or removed without the prior written consent of the Developer and the Architectural Review Board. Developer shall have the right but shall not be obligated to assign all or any portion of its rights and privileges under this Section to the Association.

**Section D. Easements.** Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities are reserved as shown on the recorded Plat covering the Properties and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities, unless said structure, planting or other material has been so placed by the Developer or the Association or

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has been so placed with the permission of the Architectural Review Board. The area of each Townhome covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Townhome, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company the Association, and Developer and their respective successors and assigns, shall have a perpetual easement for the installation, replacement, connection to, disconnection from and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone and security lines, cables and conduits, under and through the utility and drainage easements, as the case may be, as shown on the Plat. Developer and its designees, successors, and assigns, shall have a perpetual easement for the installation and maintenance of cable, radio, television and security lines within utility easement areas shown on the Plat. All utility lines within the Properties, whether in street, right of way or utility easements, shall be installed and maintained underground.

**Section E. Nuisances.** No noxious, offensive or unlawful activity shall be carried on upon or about the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

**Section F. Temporary and Other Structures.** No structure of a temporary character, or storage shed, utility shed or similar structure, greenhouse, trailer, tent, mobile home, motor home, or recreational vehicle, shall be permitted on the Properties at any time or used at any time as a residence, either temporarily or permanently, except by the Developer during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Residence or on or about any ancillary building, unless approved by the Architectural Review Board, and if approved must be buried or screened and enclosed by a structure approved by the Architectural Review Board.

**Section G. Signs.** No sign of any kind shall be displayed to the public view on the Properties while there exists a Class B Member, except any sign used by the Developer to advertise the company or builder, project, sales or other matters during the construction and sales period. No sign of any kind shall be permitted to be placed inside a home or on the outside walls of the home or on any fences on the Properties, nor on the Common Area, nor on dedicated areas, if any, nor on entryways or any vehicles within the Properties, except such as are placed by the Developer.

**Section H. Oil and Mining Operation.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in the Properties, nor on dedicated areas, nor shall oil wells, tanks, mineral excavation or shafts be permitted upon or in the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

**Section I. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets, and not to exceed a maximum of two (2) domesticated dogs and/or cats (i.e., 1 cat

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and 1 dog or 2 dogs or 2 cats), provided that the combined weight of the cats and/or dogs does not exceed 55 pounds. Caged birds and a fish tank as provided below may be maintained in a Unit provided such pets are: (a) permitted to be so kept by applicable laws and regulations, (b) not left unattended on balconies (except that bird cages and fish tanks will not be permitted in balconies), (c) generally, not a nuisance to residents of other Townhomes or of neighboring buildings and (d) not a pit bull or other breed considered to be dangerous by the Board of Directors; provided that neither the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Developer, each Unit Owner and the Association in such regard. Unless otherwise approved by the Association a Residential Unit Owner or his tenant shall be limited to one (1) fish tank not to exceed 30 gallons. Notwithstanding the foregoing, any installation of a fish tank which exceeds 30 gallons and/or any request to install more than one (1) fish tank must be submitted and approved by the Board of Directors of the Association and be compatible with the structural design of the Building. The Board of Directors of the Association may require the review of same by a structural engineer at the sole expense of the Unit Owner. Any landscaping damage or other damage to the Common Elements caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the right to effect said repairs and charge the Unit Owner therefor. Without limiting the generality of this section, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and/or any applicable rules and regulations) and/or to require any pet to be permanently removed from the Property.

**Section J. Architectural Control.** No building, building addition, wall, fence, drainage swale, athletic or recreational facility or other structure or improvement of any nature or kind (including mailboxes, landscaping and exterior paint and furnish) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping, or composition of the materials used therefor, as may be required by the Architectural Review Board (sometimes referred to herein as the "ARB") have been approved in writing by the Architectural Review Board and all necessary governmental permits are obtained. Each Building, addition, wall, fence, mailbox or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. The Architectural Review Board shall have the right, in its sole and absolute discretion, to refuse approval of plans, specifications and plot plans, or any of them, based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any Building, wall, fence, mailbox or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section.

So long as the Developer owns any Townhomes in the Properties, the ARB shall be appointed by the Developer. Thereafter, the Architectural Review Board shall be a committee

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composed of or appointed by the Board of Directors of the Association. During the period in which the Developer appoints the membership of the ARB, the ARB shall have three (3) members. At such time as the Board of Directors appoints the ARB members, the ARB shall have any number of members, but never less than three (3), as deemed appropriate by the Board of Directors.

The address of the Architectural Review Board shall be the address of the Developer or the Association, depending on which party appoints its membership. The Board of Directors of the Association and the ARB may employ personnel and Consultants to assist the ARB at the expense of the Association. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this Declaration. The Architectural Review Board shall act on submissions to it, or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

The provision herein regarding ARB approval shall not be applicable to Developer or to construction activities conducted by Developer.

Notwithstanding anything herein to the contrary, the ARB, in its sole and absolute discretion, may grant a variance as to any of the restrictions, conditions and requirements set forth in this Article so long as, in the judgment of the ARB, the noncompliance for which the variance is granted is not of a substantial nature and the granting of the variance shall not unreasonably detract from the use and enjoyment of adjoining Townhomes and the Properties. In no event shall the granting of a variance in one instance require the ARB to grant a similar or other type of variance in any other instance, it being understood that the granting of variances from the restrictions, conditions and requirements of this Article shall be in the sole and absolute discretion of the ARB.

The Architectural Review Board and any and all officers, directors, employees, agents and members of the Association shall not, either jointly or severally, be liable, or accountable in damages or otherwise to any Owner or other person or party whomsoever, by reason of or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to provisions of this Section of this Declaration, or for any mistake in judgment, negligence, misfeasance, or nonfeasance related to or in connection with any such decision, approval or disapproval, and each owner by acquiring title to any Townhome or interest therein, shall be deemed to have agreed that he or it shall not be entitled to and shall not bring any action, proceeding or suit against such parties.

Section K. Exterior Appearance and Landscaping. The paint, coating, stain and other exterior finishing colors on all Residences and masonry walls may be maintained as that originally installed, without prior approval of the Architectural Review Board but prior approval of the Architectural Review Board shall be necessary before any such exterior finishing color is changed.

Section L. Commercial Trucks, Trailers, Campers and Boats. With the exception of non-commercial trucks with three-quarter (3/4) ton capacity or less, no trucks or commercial vehicles, or campers, mobile homes, motor homes, house trailers or trailers of every other

description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Properties, not in dedicated areas, unless same shall be parked or stored entirely within and fully enclosed by a garage. This prohibition of parking shall not apply to temporary parking or trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to non-commercial vans for personal use which are in acceptable condition in the sole opinion of the Board of Directors (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or those required by any Builder during construction, on any Townhome. No on-street parking of the foregoing shall be permitted. In the event any provision of this Covenant is breached, the Developer or the Association may have said truck, commercial vehicle, camper, mobile home, motor home, house trailer, other trailer, recreational vehicle, boat, boat trailer, or horse trailer towed from the Properties at the Owner's sole cost and expense, and a special Assessment may be levied therefor against such Owner.

**Section M. Garbage and Trash Disposal.** No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage and trash containers and their storage areas and the like shall be kept within a garage, placed inside an enclosure approved by the Architectural Review Board, or behind opaque walls attached to and made a part of the Townhome, and otherwise in conformity with applicable rules, regulations and approvals. Such containers may not be placed out for collection sooner than the night prior to a scheduled collection day and must be recovered prior to the end of the collection day.

**Section N. Mailboxes.** No mailboxes or similar improvement shall be installed unless the location thereof has been approved by the ARB and the materials therefor and color thereof have been approved by the ARB and are in accordance with such standards for materials and colors as may be adopted by the ARB.

**Section O. No Drying.** To the extent lawful, no clothing, laundry or wash shall be aired or dried or any portion of the Properties which is visible from the adjacent Townhomes.

**Section P. Storm Shutters: Outside Window Covering.** Storm or Hurricane Shutters or other outside window covering of any kind may only be installed within seventy two hours prior to a predicted storm or hurricane and must be removed from a Residence no later than twenty-four (24) hours after any storm or hurricane for which the shutters were closed or attached. Outside window coverings are prohibited if installed merely due to the absence of an Owner.

**Section Q. Waterways.** Motorized boats, jet skis and other motorized boats are not permitted in any waterway within the property.

**Section R. Parking.** The parking of vehicles within the interior street system of the Property is prohibited.

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Section S. Additional Rules and Regulations. In addition to the foregoing, the Association shall have the right, power and authority, subject to the prior written consent and approval of Developer, to promulgate and impose rules and regulations governing and/or restricting the use of the Properties and Townhomes, including without limitation rules and regulations relating to the placement or installation of any type of improvement, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules and regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all the Properties and the Owners thereof and their successors and assigns, as well as all guests and invitees of and all parties claiming by, through or under such Owners.

#### ARTICLE IX. RIGHTS OF DECLARANT

Section A. Declarant's Rights in the Association. This Section A may not be amended without the express written consent of the Declarant.

Prior to and after the turnover of the Association to the Owners and until conveyance of the last Lot to be contained within the Property to a third party end user (as opposed to a builder), the Board shall not undertake any action which shall:

- (1) prohibit or restrict in any manner the sales and marketing program of the Declarant, or any builder or the leasing activities of the Declarant or any builder;
- (2) decrease the level of maintenance services of the Association performed by the initial Board of Directors;
- (3) make any special assessment against or impose any fine upon the Declarant's property within the Property or the Declarant;
- (4) alter or amend this Declaration, the Articles or By-Laws of the Association;
- (5) terminate or waive any rights of the Association under this Declaration;
- (6) convey, lease, mortgage, alienate or pledge any easements or Common Area of the Association;
- (7) accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;
- (8) terminate or cancel any easements, granted hereunder or by the Association;

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(9) terminate or impair in any fashion any easements, powers or rights of the Declarant hereunder;

(10) restrict the Declarant's rights of use, access and enjoyment of any of the Property; or

(11) cause the Association to default on any obligation of it under any contract or this Declaration.

In any such matter, the Declarant's consent shall be exercised by its appointee on the Board or other person designated to so act by the Declarant.

**Section B. Right of Declarant to Disapprove Actions.** This Section B may not be amended without the express, written consent of the Declarant.

From the date of turnover of the Association by the Declarant to the Owners and until the conveyance of all Townhomes within the Property to third party end-users (as opposed to builders), the Declarant shall have a right to disapprove actions of the Board and any committees, as is more fully provided in this Section. This right shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument, or who become a successor Declarant pursuant to a recorded assignment or court order. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until ten (10) days following the Declarant's receipt of notice of the action taken at the meeting held pursuant to the terms and provisions hereof. At any time prior to the expiration of such ten (10) day period, the Declarant may exercise its right to disapprove actions of the Board and any committees and the Association shall not take any action or implement any policy, program or rule or regulation previously approved by the Association.

This right to disapprove shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

**Section C. Recognition by Owners of the Declarant's Rights to Develop and Construct Improvements on the Property.** Each Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of ELAN IN THE CITY may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Property and each portion thereof may be temporarily interfered with by the development and construction work occurring on those portion of the Property owned by the Declarant or its successors and assigns. Each Owner, on such Owner's behalf and on behalf of such Owner's heirs assigns, personal representatives, successors, mortgagees, lienors and



assigns does hereby waive all claims for interference with such quiet enjoyment and use as a result of the development and construction of the balance of the Property. Each Owner on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns agrees that the development, construction and completion of the balance of the Property may interfere with such Owner's original and existing views, light and air and use of the same and each such Owner on such Owner's behalf and on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does hereby release the Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

**Section D. Declarant's Rights in Connection with Development.** The Declarant and its successors or assigns will undertake the work of constructing buildings, dwellings and improvements related thereto. The completion of that work and the sale, resale, rental and other disposal of Townhomes is essential to the establishment and welfare of ELAN IN THE CITY as a community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of completed Townhomes. In order that said work may be completed and ELAN IN THE CITY established as a fully occupied community as rapidly as possible, no Owner or the Association shall do anything to interfere with the Declarant's or any builder's activities. Without limiting the generality of the foregoing, nothing in this Declaration or the Articles or By-Laws or any amendment thereto shall be understood or construed to prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors and their representatives from:

- (1) doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as the Declarant or any builder deems acceptable in the course of development (all models or sketches showing plans for future development of the Property may be modified by the Declarant at any time and from time to time, without notice); or
- (2) erecting, constructing and maintaining on any property owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing ELAN IN THE CITY as a community and disposing of the same by sale, lease or otherwise; or
- (3) conducting on any property owned or controlled by the Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements on the Property and of disposing of Townhomes therein by sale, resale, lease or otherwise; or
- (4) determining in its sole discretion the nature of any type of improvements to be constructed as part of ELAN IN THE CITY subject to the approval of the Architectural Review Committee.

Any or all of the special rights and obligations of the Declarant may be transferred to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that

contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records of Palm Beach County, Florida.

The Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas so long as the Declarant or any builder owns any portion of the Property primarily for development and/or resale; provided no such easement shall materially interfere with the use of the Common Area by the Members.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction, initial sale, resale, and leasing of Townhomes shall continue, it shall be expressly permissible for the Declarant to obtain and carry on upon portions of the Common Area and Townhomes owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction, initial sale, resale of Townhomes, including, but not limited to, business offices, signs, model lots, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use any Lot owned by the Declarant and any clubhouse or activity center which may be owned by the Association, as models, or information or sales offices. The rights of the Declarant under this paragraph may be transferred to other persons in writing and recorded in the Public Records of Palm Beach County, Florida.

Section E. Future Easements and Modifications. The Declarant, until such time as all Townhomes comprising the Property have been sold and conveyed to third party end-users (as opposed to builders), reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines and to plat or replat portions of the Property, for development of ELAN IN THE CITY. The Association and each Owner and mortgagee of a portion of the Property agree to execute and deliver any and all agreements, documents, plats and instruments which are necessary or desirable to accomplish the same.

Section F. Declarant's Rights Incident to Construction. The Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Property; provided, however, that no such rights shall be exercised by Declarant or its successors or assigns in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to a Lot by any Owner or such Owner's family, tenants, employees, guests, or invitees. Seller is hereby granted by Purchaser the right of ingress and egress for itself, its employees, agents and subcontractors, and designees and assigns, over and upon any portion of the Lot as may be reasonably required for the construction of improvements upon an adjacent Property.

Section G. Amendment. This Article may not be amended without the express written consent of the Declarant so long as not all of the Townhomes comprising the Property have been

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sold and conveyed to third party end-users (as opposed to builders) or sooner upon the recording of a written statement by the Declarant in the Public Records of Palm Beach County, Florida that all sales activity has ceased.

## ARTICLE X. MORTGAGEE PROVISIONS

The following provisions are for the benefit of first mortgagees holding mortgages on Townhomes. A first mortgagee is defined as any institutional lender who holds a first mortgage on a Lot and who has notified the Association in writing of its holdings. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

**Section A. Notice to Mortgagee.** A first mortgagee who provides written request to the Association (such request to state the name and address of such mortgagee holder, insurer, or guarantor and the Lot address), will be entitled to timely written notice of:

- (1) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such first mortgagee, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any first mortgagee, upon request, is entitled to written notice from the Association of any default in the performance by such Owner of any obligation under this Declaration or By-Laws of the Association which is not cured within sixty (60) days; or
- (2) any condemnation loss or any casualty loss which affects a material portion of The Property;
- (3) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**Section B. Taxes.** First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section C. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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Section D. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

## ARTICLE XI. ENFORCEMENT

Section A. Compliance by Owners. Every Owner and each and every of his/her Townhomes occupants shall comply with the terms, provisions, restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association and each such Person shall be responsible for all violations and losses to the Common Areas caused by the them or their invitees and guests.

Section B. Enforcement. The Developer, the Association, the Association Board of Directors, the Architectural Review Board and each Owner, or any other party as provided herein shall have the right to enforce this Declaration and the covenants, restrictions and provisions hereof. Enforcement of this Declaration and the covenants, restrictions and provisions hereof may be accomplished by any proceeding at law or in equity, including without limitation, an action for damages and injunctive relief. The Association shall have the right to suspend the voting rights and use of the Common Area of any defaulting Owner. Failure to enforce any covenant, restriction or provision hereof shall not be deemed a waiver to do so thereafter. The defaulting and/or offending Owner shall be responsible for all costs incurred in enforcement of this Declaration, including but not limited to, attorney, paralegal and legal assistant fees, costs and expenses, related fees, costs and expense, court costs and witness and expert fees and costs, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

Section C. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, their guests, invitees, tenants, or employees to comply with any term, provision, covenant, restriction, rule or regulation contained herein or promulgated pursuant to this Declaration, provided the following procedures are adhered to:

1 Notice: The Association shall notify the Owner of the infraction or infractions. Included in the notice shall be the date and time of the next Board of Directors meeting at which time the Owner shall present reasons why a penalty or penalties should not be imposed.

2 Hearing: The noncompliance shall be presented to the Board after which time the Board of Directors shall hear reasons why penalties should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner no later than thirty (30) days after the Board of Directors meeting.

3 Penalties: The Board of Directors may impose special assessments against the Townhome or Townhomes owned by the Owner as follows:

First noncompliance or violation: a fine not in excess of One Hundred (\$100.00) Dollars; however, the fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, except no such fine shall exceed One Thousand (\$1,000.00) Dollars.

4 Payment of Penalties: Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the penalties. Any fines not paid within such thirty (30) day period shall thereafter accrue interest at the highest rate allowed by law until paid.

5 Collection of Fines: Owner's Fines shall be treated as an Assessment otherwise due to the Association, and as such will be a lien against the Owner's Townhome.

6 Application for Penalties: All monies received from fines shall be allocated as directed by the Board of Directors.

7 Nonexclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

## ARTICLE XII. FHA/VA APPROVALS

Notwithstanding anything in this Declaration to the contrary, the dedication of additional Common Area, and the amendment of this Declaration require prior FHA/VA approval as long as there is a Class B Membership, if such financing is utilized in the purchase of Townhomes.

## ARTICLE XIII. GENERAL PROVISIONS

Section A. Municipal Service Taxing Units. Upon acceptance of any deed or other instrument conveying title to any Townhome, each Owner thereof acknowledges that each such Townhome is or may be located in one or more municipal service taxing units (each is an "MSTU") for the purpose of providing street lighting or any other purposes for which an MSTU may be established under Florida law. Each Owner agrees to be subject to and bound by such MSTU's and to pay all fees, charges, surcharges, levies and assessments, in whatsoever nature or form, relating to said districts and/or to the Owner's Townhome. Further, each Owner agrees that it shall cooperate fully with Developer or the Association in connection with any efforts of Developer or the Association to include the Property in any MSTU's, and to execute any documents or instruments which may be required to do so.

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**Section B. Insurance.** The Association shall obtain and maintain in effect casualty and liability insurance in form and amount substantially similar to that specified in the Federal National Mortgage Association Lending Guide, Chapter Three, Part Five, Insurance Requirements, as such requirements shall be amended from time to time, or such similar insurance coverage as may be deemed advisable by the Board of Directors of the Association.

**Section C. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Developer, the Association, the Architectural Review Board and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of seventy-five percent (75%) of all the Townhomes subject hereto has been recorded, agreeing to revoke said covenants and restrictions. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**Section D. Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section E. Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

**Section F. Amendment.** This Declaration may be amended, from time to time upon the consent of not less than sixty-six and two-thirds percent (66 2/3%) of all Townhome Owners entitled to vote. Prior FHA/VA approval of any amendment is required so long as there is a Class B Membership and such financing is utilized in the purchase of Townhomes. Prior South Florida Water Management District approval of any amendment altering Article IV, Section I is required. No amendment that withdraws property from the terms of this Declaration shall be recorded unless approved in writing by the Palm Beach County Attorney's Office.

**Section G. Effective Date.** This Declaration shall become effective upon its recordation in the Public Records of Palm Beach County, Florida.

**Section H. Conflict.** This Declaration shall take precedent over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

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**Section I. Standards for Consent, Approval, Completion, Other Action and Interpretation.** Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer, the Association or the Architectural Review Board, such consent, approval or action may be withheld in the sole and absolute discretion of the party requested to give such consent or approval or take such action and all matters required to be completed or substantially completed by the Developer or the Association shall be deemed completed or substantially completed when so determined, in the discretion, respectively, of the Developer or Association.

**Section J. Easements.** Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners hereby designate the Developer and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

**Section K. Covenants Running With the Land.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION C HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES WITHOUT LIMITING THE GENERALITY OF SECTION F HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

**Section L. Dissolution of Association.** In the event of a permanent dissolution of the Association, the assets of the Association shall be dedicated to an appropriate public agency to be

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used for purposes similar to those for which the Association was created, or such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. Said successor non-profit organization or governmental entity shall pursuant to this Declaration provide for the continued maintenance and upkeep of the Common Area, the Surface Water or Storm Water Management System and such other property as may be contemplated herein.

**ARTICLE XIV.  
ADDITIONS AND WITHDRAWALS FROM THE PROPERTY**

**Section A. Additions.** Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of Palm Beach 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 Townhomes or Common Areas. 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. Nothing contained in this Section A 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.

**Section B. Designation of Additional Common Areas.** The 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(s).

**Section C. 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.

**Section D. Absence of Obligation.** Nothing in this Declaration shall be construed to require the 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 Association Property, nor shall anything in this Declaration be construed to require the Declarant to declare any portion or portions of the existing Property as Association Property, except to the extent herein specifically provided.



Section E. **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 Palm Beach County. Any such Supplemental Declaration must be executed by the 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 Townhomes on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners, institutional mortgagees holding mortgages on Townhomes on the portion of the Property which is not withdrawn by such Supplemental Declaration, or the Association.

**ARTICLE XV  
COMMUNITY SYSTEMS**

Section A. **"Community Systems"** shall mean and refer to any and all cable television, telecommunication, security alarm, irrigation, sprinkler or other lines, pipes, conduits, wires, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances now not known) installed by Developer and/or Declarant or pursuant to any grant of easement or authority by Developer and/or Declarant within the Properties and serving more than one Townhome. Developer and/or Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in his Townhome). If and when any of the aforesaid entities receives such a conveyance, sale, transfer or assignment, such entity shall automatically be deemed vested with such rights of Developer and/or Declarant with regard thereto as are assigned by Developer and/or Declarant in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Common Areas hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Common Areas unless otherwise provided by Developer and/or Declarant. Any conveyance, transfer, sale or assignment made by Developer and/or Declarant pursuant to this Section (A) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed).

Section B. **Notices and Disclaimers as to Community Systems.** Developer, Declarant, the Association, or their successors, assigns or franchisees and any applicable cable telecommunications system operator (an "Operator"), may enter into contracts for the provision of security services through any Community Systems. **DEVELOPER, DECLARANT, THE ASSOCIATION AND THEIR FRANCHISEES, AND ANY OPERATOR, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH**

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SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY SERVICED BY THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DEVELOPER, DECLARANT, THE ASSOCIATION OR ANY SUCCESSOR, ASSIGNEE OR FRANCHISEE OF THE DEVELOPER AND/OR DECLARANT OR ANY OF THE OTHER AFORESAID ENTITIES AND ANY OPERATOR, ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE PREMISES AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or occupant of property receiving security services through the Community Systems agrees that Developer, Declarant, the Association or any successor, assign or franchisee thereof and any Operator assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, natural disaster or other similar causes which are beyond the control of the security service provider. Every owner or occupant of property obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees, and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officer, agents or employees, the liability, if any, of Developer, Declarant, the Association, any franchisee of the foregoing and the Operator or their successors or assigns, for loss, damage, injury or death sustained shall be limited to a sum not exceeding Two Hundred Fifty and No/100 (\$250.00) U.S. Dollars, which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Developer, Declarant, the Association or any franchisee, successor or assign of any of same or any Operator. Further, in no event will Developer, Declarant, the Association, any Operator or any of their franchisees, successors or assigns, be liable for consequential damages, wrongful death, personal injury or commercial loss.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any community system shall be entitled to refund, rebate, discount or offset in applicable fees, for any interruption in community systems services, regardless of whether or not same is cause by reasons within the control of the then provider(s) of such services.

Section C. Certain Reserve Rights of Developer and/or Declarant with Respect to Community

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Systems. Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself, it's designee or affiliate:

1. The title to any Community Systems and a perpetual easement for the placement and location thereof, and without limiting the foregoing the exclusive right to franchise or establish cable television service and fire, medical and burglar alarm or other electronic emergency or surveillance systems or services for all or any part of Properties upon such terms and conditions as Declarant, or its designees or affiliates, may deem appropriate;

2. The exclusive right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Developer and/or Declarant, or its designees or affiliates may in their sole discretion deem appropriate, including, without limitation, companies licensed to provide CATV service in Palm Beach County, Florida, for which service Developer and/or Declarant, or their designees or affiliates shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the Code of Laws and Ordinances of Palm Beach County; and, the exclusive right to offer from time to time security services through the Community Systems and to charge and receive a fee for same; and,

3. Declarant has determined that all Townhomes on the Properties will be provided with basic cable service and/or basic alarm monitoring services and may designate the company providing such services. The basic fee for such services will be paid by the Association and will be include in the assessments. Each Owner by acceptance of a deed to a Townhome, whether set forth therein or not, and the Association agrees to comply with the terms of any agreement between Declarant its designee or affiliate, and any supplier of such services. Each Owner also acknowledges and agrees that Declarant, its designee, or affiliate have formed a venture with, or have an interest in, the entity providing such services or will receive compensation for having granted to such provider the franchise or right to establish or provide such services at the Properties.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed this 16 day of JANUARY, 2006.

Signed, Sealed and Delivered in the presence of:

ELAN IN THE CITY, LLC  
a Florida limited liability company

Michelle Vanderwall  
Print Name: Michelle Vanderwall

By: [Signature]  
Print Name: LAWRENCE B. HANDELC  
Title: Manager

Mary Jones  
Print Name: MARY JONES

STATE OF FLORIDA )  
COUNTY OF PALM BEACH ) SS:

The foregoing instrument was acknowledged before me this 16 day of JANUARY, 2006, by LAWRENCE B. HANDELC, the Manager of ELAN IN THE CITY, LLC, who is personally known to me or who has provided \_\_\_\_\_ as identification.

Stacy J. Robbins  
Notary Public, State of Florida  
Print Name: Stacy J. Robbins

NOTARY PUBLIC-STATE OF FLORIDA  
Stacy J. Robbins  
Commission # DD464812  
Expires: APR. 29, 2006  
Bonded Thru Atlanta Bonding Co., Inc.



**EXHIBIT "A"**

**PROPERTY**

All of CONVENTION CENTER TOWN HOMES, according to the plat thereof, as recorded in Plat Book 101, Page 24, public records of Palm Beach County, Florida.

This is not a certified copy

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**EXHIBIT "B"**

**SFWMD PERMIT # 041216-3**

[ATTACHED]

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**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
 ENVIRONMENTAL RESOURCE  
 STANDARD GENERAL PERMIT NO. 50-04000-P-03**

DATE ISSUED: November 5, 2002

**RECEIVED**

**NOV 07 2002**

Form #0941  
08/95

**PERMITTEE:** CITYPLACE TOWNHOUSE LLC  
 2828 CORAL WAY PENTHOUSE SUITE  
 MIAMI, FL 33145

**PROJECT DESCRIPTION:** Construction and operation of a surface water management system to serve a 1.74-acre project known as Cityhomes at City Place.

**PROJECT LOCATION:** PALM BEACH COUNTY, SEC 21 TWP 43S RGE 43E

**PERMIT DURATION:** See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 020705-10, dated July 5, 2002. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

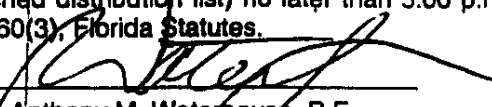
Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 5 ),
3. the attached 11 Special Conditions (See Pages: 5 - 5 of 5 ) and
4. the attached 5 Exhibit(s).

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 5th day of November, 2002, in accordance with Section 120.60(3), Florida Statutes.

BY:   
 Anthony M. Waterhouse, P.E.  
 Director - Surface Water Management  
 Palm Beach Service Center

Certified mail number 7001 2510 0000 2587 3072

Enclosures

Page 1 of 5

CORRESPONDENCE	DISTRIBUTION
WSC	PJG
TMC	WFB
MMD	HWY
ENG	JRM
RDC	PLAN
JIM	JDM
RNC	ENV
PHH	SURV
SMP	DMD
FILED	INSP

97-0072-03

**PERMIT**



**EXHIBIT "C"**

**ARTICLES AND BYLAWS**

This is not a certified copy

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**ARTICLES OF INCORPORATION  
OF  
CONVENTION CENTER TOWN HOMES, POA, INC.**

FILED  
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The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes Chapter 617, hereby adopts the following Articles of Incorporation:

**PREAMBLE**

Blair in the City, LLC, a Florida limited liability company ("Declarant"), owns a leasehold interest in certain property in Palm Beach County, Florida (the "Declaration Property"), and intends to execute and record a Declaration of Covenants, Restrictions and Easements for Blair in the City (the "Declaration") which will affect the Declaration Property. This association is being formed as the association to administer the Declaration, to perform the duties and exercise the powers pursuant to the Declaration and to take and obtain certain Common Property in relation thereto, with the exception of the latter to begin as and when the Declaration is recorded in the Public Records of Palm Beach County, Florida with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the Declaration shall apply to these Articles of Incorporation, and to the Bylaws of the Association.

**ARTICLE I - NAME**

The name of the corporation is Convention Center Town Homes, POA, Inc., hereinafter referred to as the Association.

**ARTICLE II - PURPOSE**

The purpose for which the Association organized are as follows:

1. To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
2. To enforce and exercise the duties of the Association as provided in the Declaration.
3. To promote the health, safety, welfare, comfort, and social and economic benefit of the members of the Association.

**ARTICLE III - POWERS AND DUTIES**

The Association shall have the following powers and duties:

1. All of the common law and statutory powers of a corporation not-for-profit the laws of the State of Florida.

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2. To administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in or contemplated by the Declaration, including but not limited to, the following:

2.1 To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

2.2 To make and collect Assessments against Owners to defray the costs, expenses and losses incurred or to be incurred by the Association, and to use the proceeds thereof in the exercise of the Association's powers and duties.

2.3 To enforce the provisions of the Declaration, these Articles, and the Bylaws.

2.4 To make, establish and enforce reasonable rules and regulations governing the use of Common Property, Lots and other property under the jurisdiction of the Association.

2.5 To grant and modify easements and to dedicate property owned by the Association to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television.

2.6 To borrow money for the purposes of carrying out the powers and duties of the Association.

2.7 To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the Declaration.

2.8 To obtain insurance as provided by the Declaration.

2.9 To employ personnel necessary to perform the obligations, services and duties required or to be performed by the Association and for proper operation of the properties for which the Association is responsible, or to contract with others for the performance of such obligations, services and/or duties.

2.10 To sue and be sued.

ARTICLE IV - MEMBERS

1. The members of the Association shall consist of all of the record owners of Lots and the Declarant. Membership, other than as to Declarant, shall be established or set forth as to each Lot upon the recording of the Declaration. Upon the transfer of ownership of fee title to, or fee interest in, a Lot, whether by conveyance, devise, judicial decree, foreclosure, or otherwise, and upon the recordation amongst the public records in

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the country in which the Declaration Property is located of the deed or other instrument establishing the acquisition and designating the Lot affected thereby, the new Owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior Owner as to the Lot designated shall be terminated, provided, however, that the Association shall not have the responsibility or obligation of recognizing any such change in membership until it has been delivered a true copy of the applicable deed or other instrument, or is otherwise informed of the transfer of ownership of the Lot. Prior to the recording of the Declaration, the incorporator shall be the sole member of the Association.

2. The share of each member in the funds and assets of the Association, and any membership in this Association, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot for which that membership is established.

3. The voting rights and classes of members are set forth in the Declaration and Bylaws.

4. The Bylaws shall provide for an annual meeting of the members of the Association and shall make provision for special meetings.

ARTICLE V - TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE VI - INCORPORATOR

The name and street address of the incorporator is:

Lawrence B. Hawkins  
4495 Emerald Vista  
Lake Worth, Fl 33461

ARTICLE VII - DIRECTORS

1. The property, business and affairs of the Association shall be managed by a Board which shall consist of not less than three (3) directors, and which shall always be an odd number. The Bylaws may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the Board shall consist of three (3) directors. Directors are not required to be members of the Association.

2. All of the duties and powers of the Association existing under the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the members only when specifically required.

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3. Directors shall be elected at a meeting of the members in the manner by and subject to the qualifications set forth in the Bylaws.

4. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws, or by law.

5. The Declarant shall appoint the members of the first Board and their replacements who shall hold office for the periods and as described in the Bylaws. The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected, are as follows:

Lawrence B. Hawkins  
4495 Emerald Vista  
Lake Worth, Fl 33461

Tina M. Hawkins  
4495 Emerald Vista  
Lake Worth, Fl 33461

Stephen C. Thomas  
8415 NW 46<sup>th</sup> Drive  
Coral Springs, Fl 33067

ARTICLE VII - OFFICERS

The officers of the Association shall be a president, vice president, secretary, treasurer and such other officers as the Board may from time to time by resolution create. The officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the Board are as follows.

President:	Lawrence B. Hawkins
Vice President/Secretary/Treasurer	Tina M. Hawkins
Vice President/Assistant Secretary:	Stephen C. Thomas

ARTICLE IX - INDEMNIFICATION

1. The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, owner or agent of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid settlement actual and reasonable incurred by

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him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the Association unless, and only to the extent that, the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized herein.

4. The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

#### ARTICLE X - BYLAWS

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The first Bylaws shall be adopted by the Board and may be altered, amended or rescinded by the Declarant, the Directors and/or members in the manner provided by the Bylaws.

**ARTICLE XI - AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

1. A majority of 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 the annual or a special meeting.
2. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.
3. At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving not less than two-thirds (2/3) of the votes of the entire membership of the Association.
4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.
5. If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these articles be adopted as though the above requirements had been satisfied.
6. No amendment shall make any changes in the qualifications for membership not in the voting rights of members without approval by all of the members and the joinder of all Institutional Mortgagees holding mortgages upon the Lots. No amendment shall be made that is in conflict with the Declaration. Prior to the closing of the sale of all Lots within the Declaration Property, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the Declarant, unless the Declarant shall join in the execution of the amendment to the extent permitted by law.
7. No amendment to these Articles shall be made which discriminates against any Owner(s), or affects less than all of the Owners within the Declaration Property, without the written approval of all the Owners so discriminated against or affected.

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8. Upon approval of an amendment to these Articles, the articles of amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the Declaration Property is located.

**ARTICLE XII - DISSOLUTION**

In the event of dissolution or the final liquidation of the Association, the assets, both real and personal, of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. No such disposition of Association property shall be effective to divest or diminish any right or title of any member vested in him under the recorded Declaration unless made in accordance with the provisions of such Declaration.

**ARTICLE XIII**

**INITIAL REGISTERED OFFICE AND ADDRESS AND NAME OF REGISTERED AGENT AND STREET AND MAILING ADDRESS OF CORPORATION**

The initial registered office and registered agent of the Association shall be:

LAWRENCE B. HAWKINS  
Convention Center Town Homes, POA, Inc.  
4495 Emerald Vista  
Lake Worth, Florida 33461

WHEREFORE, the incorporator, and the initial registered agent, has executed these Articles on the 3<sup>rd</sup> day of November, 2004. By executing these Articles, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.

Lawrence B. Hawkins

STATE OF FLORIDA        )  
                                  ) SS  
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared Lawrence B. Hawkins [M] who is known to me.

((H04000223094 3)))



((H04000223094 3)))

] who has produced \_\_\_\_\_ as identification to be the person described in and who executed the foregoing instrument, [ ] who took [ ] did not take an oath, and acknowledged before me that he executed same on behalf of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this day of November, 2004.

*Martin Ann Gray*  
NOTARY PUBLIC, STATE OF FLORIDA  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



This is not a certified copy

((H04000223094 3)))

**BYLAWS OF  
CONVENTION CENTER TOWN HOMES, POA, INC.**

These Bylaws constitute the code of rules adopted by CONVENTION CENTER TOWN HOMES, POA, INC., a Florida corporation not for profit, for the regulation and management of its affairs.

**I  
DEFINITIONS**

As used in these Bylaws, the following terms shall be construed to mean:

Section A. "Association" means and refers to the corporate entity organized by the Articles of Incorporation of this corporation and known as CONVENTION CENTER TOWN HOMES, POA, INC.

Section B. "Class A Membership" means and refers to the same term as defined in the Declaration.

Section C. "Class B Membership" means and refers to the same term as defined in the Declaration.

Section D. "Declaration" means and refers to the Declaration of Conditions, Covenants, Easements and Restrictions for Plan in the City which was or will be recorded among the Public Records of Palm Beach County, Florida.

Section E. "Developer" means and refers to the same term as defined in the Declaration.

Section F. "Entitled to Vote" means and refers to that Unit or Lot Owner who shall cast a vote for a Unit or Lot at an Association meeting. If more than one person or legal entity shall own any Unit or Lot, the Owners thereof shall determine among themselves who shall be the Member Entitled to Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Unit or Lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all Unit or Lot Owners whether Entitled to Vote or not are assured of all other privileges, rights, and obligations of Association membership and shall be Members of the Association. In no event shall any mortgagee or other party holding any type of security interest in a Unit or Lot or the Residence constructed thereon be Entitled to Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Unit or Lot.

Section G. "Unit or Lot" means and refers to those parcels of land to be shown upon the recorded Plat and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section H. "Member" means and refers to all those Owners who are Members of the Association as provided in the Articles of Incorporation of the Association.

Section I. "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Unit or Lot situated upon the Property.

Section J. "Person" means and refers to any individual or legal entity.

Section K. "Plat" means and refers to that Plat which is or will be recorded in the Public Records of Palm Beach County, Florida, for all of the Property or portions of the Property, and such additional plats of real property recorded in the Public Records of Palm Beach County, Florida which may hereafter be brought within the Jurisdiction of the Association.

Section L. "Property" means and refers to the same term as defined in the Declaration.

Section M. "Residence" means and refers to the same term as defined in the Declaration.

## II CORPORATE OFFICE

Section A. Name and Location. The name of the corporation is CONVENTION CENTER TOWN HOMES, POA, INC. The principal office of the corporation shall be located at 4495 Emerald Vista, Suite 2, Lake Worth, FL 33461, and may be changed by the Board of Directors at any time, and meetings of Members and directors may be held at such places within the State of Florida, County of Palm Beach, as may be designated by the Board of Directors.

## III MEETING OF MEMBERS

Section A. Annual Meetings. The first annual meeting of the Members shall be held one (1) year after the date the Articles of Incorporation of the Association are filed with the Secretary of State, State of Florida, at the hour of 7:30 p.m. In the event the day for the annual meeting of the Members is a Saturday, Sunday or legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section B. Special Meetings. Special meetings of the Members may be called at any time by the president or the Board of Directors.

Section C. Notice of Meetings. Written notice of each meeting of the Member shall be given by the Secretary, by mailing a copy of such notice, postage prepaid, at least ten (10) days, but not more than ninety (90) days, before such meeting to each Member, to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section D. Quorum. The presence, physically or by proxy, at the meeting of one-third (1/3) of the Members Entitled to Vote shall constitute a quorum for any action, except as otherwise provided (1) in the Articles of Incorporation or (2) in the Declaration. If, however, such quorum shall not be present or represented at any meeting, the Members Entitled to Vote shall have the power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section E. Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies must be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit or Lot.

#### IV

### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section A. Number. This Association will be managed by the three (3) initial Persons serving on the Board of Directors. The number of directors may be changed by resolution adopted by the Board of Directors; provided, however, that the number of directors shall not be decreased to less than three (3). The affairs of this Association shall be managed by a Board of Directors, who need not be Members of the Association, if they represent Class B Members.

Section B. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association, except for directors which are appointed by the Developer, who may only be removed by the Developer, accomplished by written notice of such removal delivered to the Secretary of the Association. In the event of death, resignation, incapacity, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section C. Compensation. No director shall receive compensation for any service that he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section D. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### V

### NOMINATION AND ELECTION OF DIRECTORS

Section A. Nomination. At the annual meeting, any Member may nominate a Person to serve on the Board of Directors.

Section B. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as

they are entitled to exercise under the provisions of the Declaration. The Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section C. Developer's Directors. Notwithstanding anything herein to the contrary, so long as Developer or its successor or assignee is the Class B Member, the Developer shall have the right to appoint, reappoint, remove and replace the members of the Board of Directors of the Association at such time and from time to time as may be desired by the Developer, in the sole and absolute discretion of the Developer, upon written notice to the Secretary of the Association.

## VI MEETING OF DIRECTORS

Section A. Regular Meetings. The annual meeting of the Board of Directors shall be held without notice immediately following the annual meeting of the Members at the same place as may be fixed for the annual meeting of the Members.

Section B. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than five (5) days' written notice to each director at his address as shown upon the records of the Association.

Section C. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section A. Powers. The Board of Directors shall have the power to:

1. assess a Unit or Lot Owner for improvement, maintenance and repairs upon the Unit or Lot Owner's Unit or Lot as provided in the Declaration;
2. suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association or take such other action or actions against any member as may be provided in the Declaration for any violation of any of the terms thereof, the Articles of Incorporation or these Bylaws;
3. exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the Bylaws, the Articles of Incorporation, or the Declaration;
4. declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors;

5. place a lien on a Unit or Lot for nonpayment of an assessment, as provided in the Declaration; and

6. employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

**Section B. Duties.** It shall be the duty of the Board of Directors to:

cause to be kept a complete record of all its acts and corporate affairs and to present statements thereof to the Members at: (a) the annual meeting of the Members, or (b) any special meeting of the Members;

2. supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

3. as more fully provided in the Declaration, to:

a. fix the amount of any assessment against each Unit or Lot as provided in the Declaration

b. send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of the payment due date; and

c. foreclose the lien against any property for which assessments are not paid or to bring an action at law against the owner personally obligated to pay the same.

4. issue, or to cause an appropriate officer to issue upon demand by any Persons, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

5. procure and maintain adequate liability and hazard insurance on any property owned by the Association;

6. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

7. cause the Common Area and the Units or Lots to be maintained in the manner set forth in the Declaration.

## VIII OFFICERS AND THEIR DUTIES

Section A. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be directors of the Association, a secretary, and a treasurer.

Section B. Election of Officers. The election of officers shall take place at the meeting of the Board of Directors immediately following each annual meeting of the Members.

Section C. Term. The officers of this Association shall be elected annually by the Board, and each officer shall hold office for one (1) year, unless he shall sooner resign, be removed, or otherwise be disqualified to serve.

Section D. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section E. Vacancies. A vacancy in any office may be filled by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaced.

Section F. Multiple Offices. No officer shall simultaneously hold more than one (1) of any of the other offices. Any Person may hold any two (2) offices simultaneously, except President and any other office.

Section G. Duties. The duties of the officers are as follows:

**President**

The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all legal documents; and co-sign all checks and promissory notes.

**Vice-President**

The vice-president shall act in the place and stead of the president. In the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

**Secretary**

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of the meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

## Treasurer

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget, including a statement of income and expenditures to be presented to the membership at its regular annual meeting.

## IX COMMITTEES

In addition, the Board of Directors shall appoint the Architectural Review Board as provided in the Declaration and such other committees as it deems appropriate in carrying out its purpose and that of the corporation.

## X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## XI CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: CONVENTION CENTER TOWN HOMES, POA, INC., the words Florida and Not For Profit Corporation., and the year of incorporation.

## XII MISCELLANEOUS

Section A. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

## XIII AMENDMENTS AND ADMINISTRATIVE PROVISIONS

Section A. Amendment of the Bylaws. These Bylaws may be amended (1) by majority action of Board of Directors at a regular or special meeting thereof or by an action taken without a meeting, or (2) by a vote of a majority of a quorum of Members who are present physically or by proxy at a regular or special meeting of the Members. The Federal Housing Administration (FHA)



and the Veteran's Administration (VA) have the right to veto any amendment hereto while there is a Class B Membership, if financing therefrom is obtained for the purchase of Lots or Units.

**Section B. Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**Section C. Construction in Accordance with Law.** These Bylaws will be construed in accordance with the laws of the State of Florida.

**Section D. Headings.** The headings used for each Article and Section in these Bylaws are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of these Bylaws.

**Section E. Number and Gender.** Wherever the context shall so require, all words in any gender will be deemed to include all genders. All words in the singular will include the plural, and all words in the plural will include the singular.

**Section F. Severability.** In case any one or more of the provisions contained in these Bylaws shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and these Bylaws shall be construed, as if such invalid, illegal, or unenforceable provision had never been contained herein.

**EXHIBIT "D"**

**EASEMENT FOR RETAINING WALL FOOTINGS  
AND MAINTENANCE OF RETAINING WALL AND FOOTINGS  
RECORDED AT OR 15621, PAGE 1709**

[ATTACHED]

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{N0568701\_2}



08/01/2003 12:08:39 20030452633  
OR BK 15621 PG 1709  
Palm Beach County, Florida

**PREPARED BY AND RETURN TO:**  
LYNDA J. HARRIS, ESQ.  
CARLTON FIELDS, P.A.  
P.O. BOX 150  
WEST PALM BEACH, FLORIDA  
33402

**R2003 0740**

**EASEMENT FOR RETAINING WALL FOOTINGS**

**AND**

**MAINTENANCE OF RETAINING WALL AND FOOTINGS**

**THIS EASEMENT** granted this      day of MAY 28 2003, 2003 by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, having an address at 301 N.Olive Avenue, West Palm Beach, Florida 33401 ("Grantor") in favor of the **WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida pursuant to Section 163.356, Florida Statutes ("CRA") and **CITYPLACE TOWNHOUSE, L.L.C.**, a Delaware Limited Liability Company ("CityPlace Retail") whose mailing address is 9<sup>th</sup> Floor, 62 Madison Avenue, New York, New York 10022 (collectively "Grantee").

**RECITALS:**

A. Grantor is the fee simple owner of that certain parcel of real property located in the City of West Palm Beach, Palm Beach County, Florida more particularly described as Tract 1, CityPlace Plat No. 2, as recorded in Plat Book 90, Page 33 of the Public Records of Palm Beach County, Florida ("Grantor's Parcel").

B. Grantee is the fee simple owner of those certain parcels of real property located in the City of West Palm Beach, Palm Beach County, Florida more particularly described as Tracts 5 and 6, CityPlace Plat No. 2, as recorded in Plat Book 90, Page 33, Public Records of Palm Beach County, Florida ("Grantee's Parcel"), which property is leased to CityPlace Townhouse, L.L.C., a Delaware limited liability company ("CityPlace") as evidenced by that certain Townhouse Lease for CityPlace Townhouses between West Palm Beach Community Redevelopment Agency, as Owner, and CityPlace, as Tenant, dated as of March 8, 1999 ("Townhouse Lease").

C. In accordance with agreements between Grantor and Grantee, the Grantee proposes to cause to be constructed, by and through its agents, a retaining wall on the Grantee's Parcel (the "Retaining Wall") for the protection of the convention center and garage improvements proposed to be developed by Grantor on Grantor's Parcel and the residential townhouses proposed to be developed by CityPlace on Grantee's Parcel from future excavation and construction activities by Grantor during the construction of its proposed improvements.

WPB#542499.06

D. Grantee has requested and Grantor has agreed to grant to Grantee a perpetual, non-exclusive subsurface easement for the location of the Footings under that portion of Grantor's Parcel more particularly described in Exhibit G-1 attached hereto and incorporated herein (the "Easement Area") for the purpose of constructing footings for the Retaining Wall ("Footings") and a perpetual non-exclusive easement for the purpose of maintenance of the Footings and the Retaining Wall upon the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the grants, agreements and covenants contained herein, and for other various valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor grants and conveys to Grantee, its employees, agents, successors and assigns a perpetual, non-exclusive subsurface easement (the "Footings Easement") for the purpose of locating footings for the Retaining Wall ("Footings") within the Easement Area. Grantee shall construct the Footings underground within the confines of the Easement Area at Grantee's sole cost and expense in accordance with all permits and applicable statutes, rules, regulations, codes, and ordinances. Grantee agrees to diligently pursue all work performed hereunder to completion and to exercise the rights granted hereunder in a manner which minimizes the impact upon Grantor's use of the Easement Area and Grantor's adjoining property.
2. Grantor grants and conveys to Grantee, its employees, agents, successors and assigns, a perpetual, non-exclusive easement (the "Maintenance Easement") over, under and across the Easement Area for the purpose of maintaining the Retaining Wall and Footings subsequent to the construction thereof.
3. If the Grantee, its successors or assigns, shall ever abandon the Easements granted hereby or cease to use the same for the purpose for which granted for a period of more than two (2) consecutive years following completion of construction of the Footings and Retaining Wall by Grantee, the Easement described herein shall terminate.
4. Neither Grantor's fee interest nor Grantee's easement interest in the Easement Area shall be subject to liens arising from Grantee's or any other person's use of the Easement Area or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Area to be discharged or bonded off.
5. Grantor hereby reserves to itself all rights and privileges in and to the Easement Area not inconsistent herewith and as may be used and enjoyed without interfering or abridging the rights hereby conveyed. Grantor shall have the right to use the Easement Area for purposes not inconsistent with the Grantee's full enjoyment of the rights hereby granted. If the Grantee, its successors or assigns, shall ever abandon the Easement granted hereby or cease to use the same for the purpose for which granted, the Easement described herein shall terminate.
6. Grantee shall maintain the Footings located within the Easement Area and the Retaining Wall in good condition and repair at all times. Grantee shall take whatever action may be necessary to insure that the construction, maintenance, use and operation of the Retaining Wall

and Footings does not pose a threat, danger or interference with the health, welfare or safety of Grantor, or its commissioners, employees, agents, licensees, customers, successors or assigns.

7. Grantee shall be solely responsible for and shall, at all times, maintain and repair, at its sole cost and expense, any improvements constructed pursuant to this Easement. In addition, Grantee shall promptly repair any damage arising out of Grantee's exercise of the rights granted hereby and restore the Easement Area and any improvements now existing or constructed hereinafter therein, including earth, fill and landscaping, to the condition it was in prior to such damage, using materials of like kind and quality.

8. This Easement shall be an easement appurtenant to Grantee's Parcel and shall inure to the benefit of and shall burden Grantee, and its successors and assigns, and shall run with the title to the Grantee's Parcel.

9. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, Grantee shall indemnify, defend and hold harmless Grantor against any action, claims or damages arising out of exercise of the rights granted hereby or Grantee's negligent or wrongful act or omission in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute an agreement by Grantee to indemnify Grantor for Grantor's negligent, willful or intentional acts or omissions.

10. Grantee shall provide or cause its contractors or agents to provide, maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage liability coverage, and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Easement Area, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. Any contractor or subcontractor performing work within the Easement Area on behalf of Grantee shall, at all times during the performance of such work, maintain in full force and effect General Liability insurance of the same type and amount as Grantee.

Except for Workers Compensation, all insurance policies shall name Grantor as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by Grantor. A Certificate of Insurance evidencing such insurance coverage shall be provided to Grantor prior to the commencement of any work pursuant to this Easement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Agreement. Furthermore, Grantee shall and hereby does hold Grantor harmless from any loss or damage incurred or suffered by Grantor due to Grantee's failure to maintain such insurance. The amount of the insurance required hereby shall be increased every ten (10) years by the increase over such ten (10) year period of the Consumer Price Index.

11. This Agreement contains the entire agreement between the parties respecting the matters herein set forth, and supersedes all prior agreements between the parties respecting such matters. IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be executed on the day and year first above written.

GRANTOR:

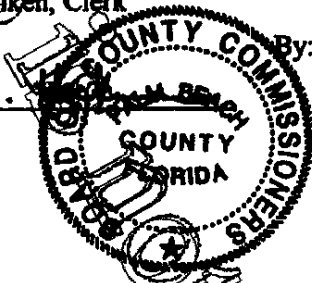
PALM BEACH COUNTY, a political subdivision of the State of Florida

By Its BOARD OF COUNTY COMMISSIONERS

ATTEST

Dorothy H. Wilken, Clerk

Linda C. [Signature]  
Deputy Clerk



By: [Signature]  
Karen T. Marcus, Chair

MAY 28 2003

R2003 0740

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]  
Assistant County Attorney

APPROVED AS TO ITS TERMS AND CONDITIONS:

By: [Signature] Anthony Wolf  
Director

COPIES DESTROYED

GRANTEE:

WEST PALM BEACH COMMUNITY  
REDEVELOPMENT AGENCY

By Joel T. Daves  
Joel T. Daves, Chair

ATTEST:

[Signature]  
Name: [Signature]  
Title: [Signature]

WITNESSES:

[Signature]  
[Signature]

BOOK 15621 PAGE 1713

CRA ATTORNEY  
Approved As To Form  
And Legal Sufficiency  
By: [Signature]  
Date: 10/1/02

**GRANTEE:**

**CITYPLACE TOWNHOUSE, L.L.C.,**  
a Delaware limited liability company




By: **CityPlace Residential Partners,**  
a Florida General Partnership, its Manager

By: TRG City Place, Ltd., a Florida  
limited partnership, its administrative partner

By: TRG City Place, Inc., a Florida corporation, its  
General Partner

By:   
Roberto Rocha, Executive Vice President

**WITNESSES:**

 Elizabeth Bula  
 J. Heredia  
 I. Heredia



STATE OF FLORIDA )  
 )  
COUNTY OF PALM BEACH

ss.:

MAY 28 2003

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by Karen T. Marcus and N/A, respectively Chair and N/A of the Board of County Commissioners of Palm Beach County, Florida, and on behalf of such body. They are personally known to me or have produced Florida (STATE) Drivers' Licenses or N/A (indicate form of identification) (if left blank personal knowledge existed) as identification.

Gloria Madison  
(NOTARY SIGNATURE)

GLORIA MADISON  
(PRINTED NAME)

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(COMMISSION EXPIRATION DATE)

\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

(AFFIX NOTARIAL SEAL)



Gloria Madison  
Commission # 000946  
Expires Oct 28, 2003  
Notary Public  
Atlantic Building Co., Inc.

STATE OF FLORIDA )  
 )  
COUNTY OF PALM BEACH

ss.:

The foregoing instrument was acknowledged before me this 7 day of NOVEMBER 2002, by JOEL T. DAVES and TERESA O. BOUCHER, respectively Chair and ELASTAY of the West Palm Beach Community Redevelopment Agency, and on behalf of such entity. They are personally known to me or have produced Florida (STATE) Drivers' Licenses or \_\_\_\_\_ (indicate form of identification) (if left blank personal knowledge existed) as identification.



Linda K. Schaefer  
MY COMMISSION # 0033147 EXPIRES  
May 5, 2003  
BONDED THROUGH FARM INSURANCE, INC.

Linda K. Schaefer  
(NOTARY SIGNATURE)

LINDA K. SCHAEFER  
(PRINTED NAME)

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(COMMISSION EXPIRATION DATE)

\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

BONDED THROUGH FARM INSURANCE, INC.  
MAY 5, 2003  
MY COMMISSION # 0033147 EXPIRES  
(AFFIX NOTARIAL SEAL)





EXHIBIT G1

DESCRIPTION: (FOOTING EASEMENT)

A PORTION OF TRACT "1", CITYPLACE PLAT NO. 2 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 90, PAGES 33-37 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF TRACT "6" AS SHOWN ON SAID PLAT; THENCE NORTH 01°52'42" EAST ALONG THE NORTHERLY EXTENSION OF THE WEST BOUNDARY OF SAID TRACT "6", A DISTANCE OF 7.00 FEET; THENCE SOUTH 88°08'22" EAST, ALONG A LINE PARALLEL TO AND 7.00 FEET NORTH OF AS MEASURED AT RIGHT ANGLES TO THE SOUTH BOUNDARY OF SAID TRACT "1", A DISTANCE OF 171.00 FEET; THENCE SOUTH 01°51'38" WEST, A DISTANCE OF 1.00 FEET; THENCE SOUTH 88°08'22" EAST, A DISTANCE OF 444.74 FEET; THENCE SOUTH 81°32'10" EAST, A DISTANCE OF 39.38 FEET; THENCE SOUTH 88°12'37" EAST, A DISTANCE OF 274.29 FEET, THE LAST THREE (3) COURSES AND DISTANCES BEING ALONG A LINE PARALLEL TO AND 8.00 FEET NORTH OF AS MEASURED AT RIGHT ANGLES TO SAID SOUTH BOUNDARY OF TRACT "1"; THENCE NORTH 00°51'29" EAST, ALONG A LINE PARALLEL TO AND 8.00 FEET WEST OF AS MEASURED AT RIGHT ANGLES TO THE EAST BOUNDARY OF TRACT "1", A DISTANCE OF 278.41 FEET; THENCE NORTH 50°00'09" EAST, ALONG A LINE PARALLEL TO AND 8.00 FEET NORTHWEST OF AS MEASURED AT RIGHT ANGLES TO THE SOUTHEAST BOUNDARY OF TRACT "7" AS SHOWN ON SAID PLAT, A DISTANCE OF 7.93 FEET TO SAID EAST BOUNDARY; THENCE SOUTH 00°51'29" WEST, ALONG SAID EAST BOUNDARY, A DISTANCE OF 287.59 FEET; THENCE NORTH 88°12'37" WEST, A DISTANCE OF 280.68 FEET; THENCE NORTH 81°32'10" WEST, A DISTANCE OF 39.42 FEET; THENCE NORTH 88°08'22" WEST, A DISTANCE OF 815.40 FEET TO THE POINT OF BEGINNING, THE LAST THREE (3) COURSES AND DISTANCES BEING ALONG SAID SOUTH BOUNDARY.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

THE BEARINGS REFERENCED HEREIN ARE BASED ON A BEARING OF SOUTH 88°08'22" EAST ALONG SAID SOUTH BOUNDARY OF TRACT "1" AS SHOWN ON SAID PLAT.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS DESCRIPTION AND SKETCH CONFORMS TO THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 61G17-6 (FLORIDA ADMINISTRATIVE CODE), AS ADOPTED BY THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN SEPTEMBER, 1981, AS AMENDED, PURSUANT TO CHAPTER 472.027 OF THE FLORIDA STATUTES, AND IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

GRAVEN THOMPSON & ASSOCIATES, INC.  
CERTIFICATE OF AUTHORIZATION NUMBER LB271

*[Signature]*  
A FLORIDA LICENSED SURVEYOR AND  
MAPPER  
JON S. HOLTING  
PROFESSIONAL SURVEYOR AND MAPPER NO. 4488  
STATE OF FLORIDA

SHEET 1 OF 4  
CTA JOB NO. 97-0072.03  
DATE: May 15, 2001  
REVISED: September 11, 2001  
M:\Clerical\JOBS\97-0072.003\Legal\FOOT-3.doc

OCT 12 2001



# CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

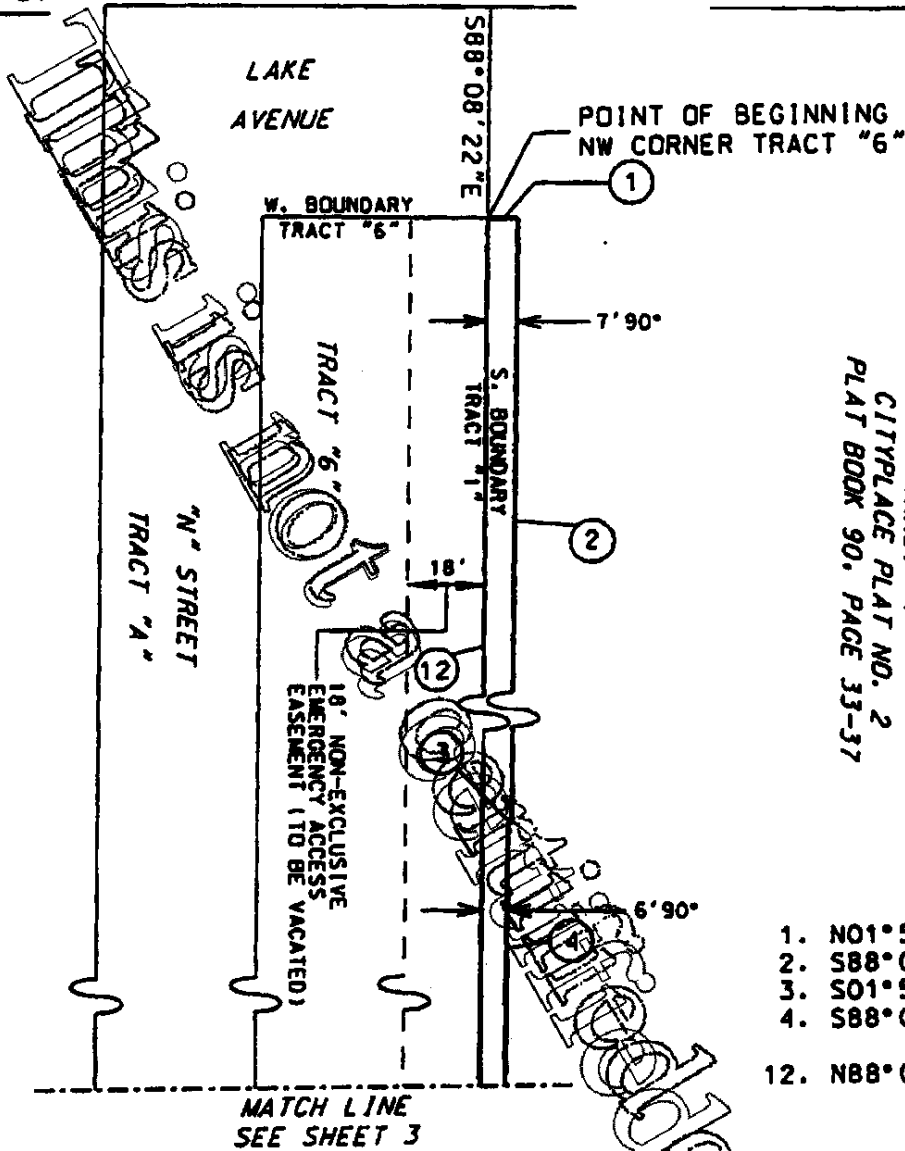
3563 N.W. 33RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
 OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6409

## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

BOOK 15621 PAGE 1718

### EXHIBIT G1



- 1. N01°52'42"E 7.00'
- 2. S88°08'22"E 171.00'
- 3. S01°51'38"W 1.00'
- 4. S88°08'22"E 444.74'
- 12. N88°08'22"W 615.40'

MATCH LINE  
SEE SHEET 3

R = RADIUS  
D = DELTA  
A = ARC LENGTH

FOR: RELATED COMPANES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 2 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D	NOTE	
				NOTE: The undersigned and CRAVEN THOMPSON & ASSOCIATES, Inc. make no representations or warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this information is not intended to reflect or set forth all such matters, such information shall be obtained and confirmed by others through appropriate title verification. NOTE: Lands shown hereon were not abstracted for right-of-way and/or easements of record.	
JOB NO. 97-0072.D3	DRAWN BY: JVN		CHECKED BY: TS	SCALE 1"=40'	DATED: 05-15-01



# CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
 OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6408

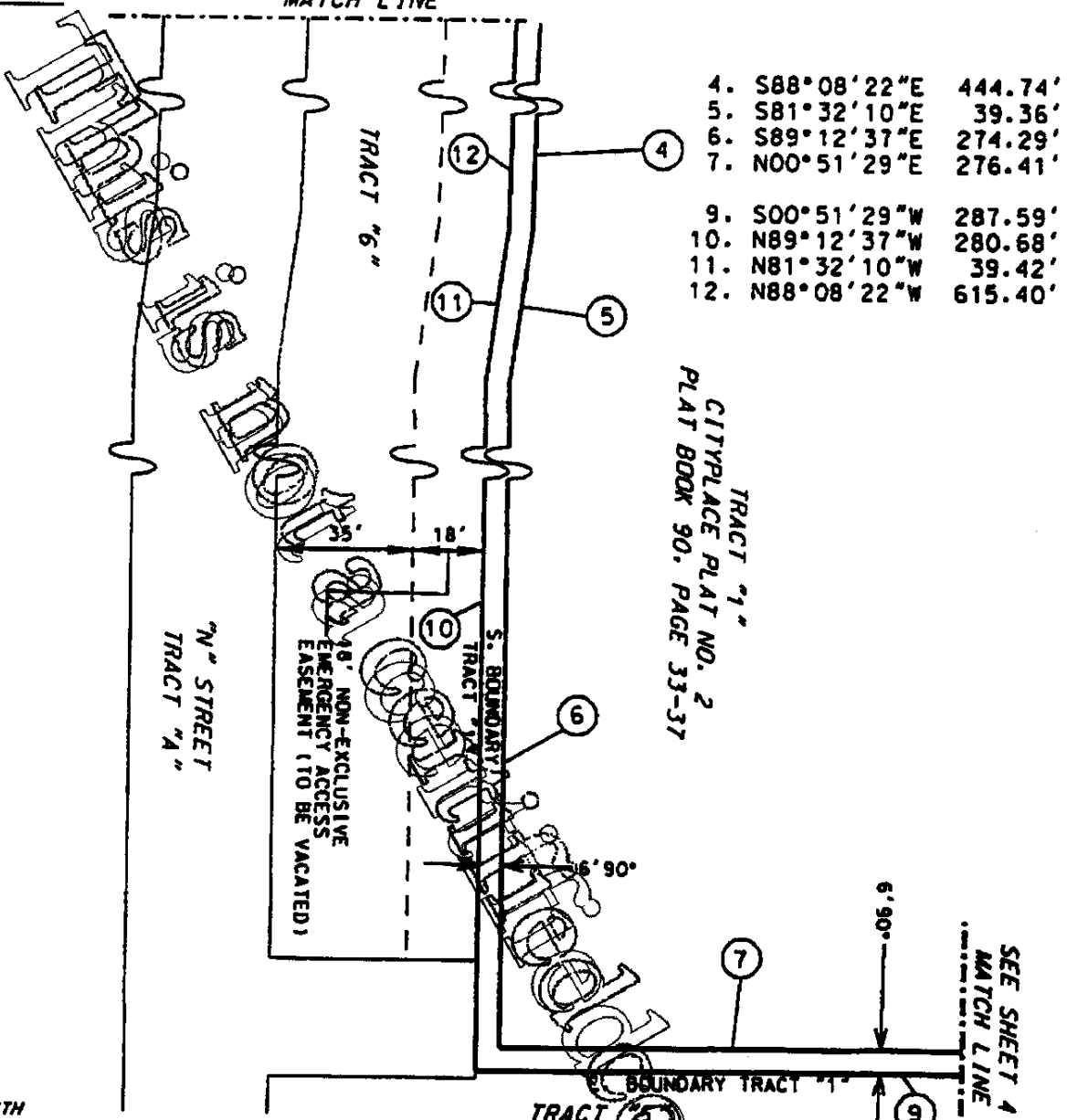
## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

EXHIBIT G1

SEE SHEET 2  
 MATCH LINE

BOOK 15621 PAGE 1719



- 4. S88°08'22"E 444.74'
- 5. S81°32'10"E 39.36'
- 6. S89°12'37"E 274.29'
- 7. N00°51'29"E 276.41'
- 9. S00°51'29"W 287.59'
- 10. N89°12'37"W 280.68'
- 11. N81°32'10"W 39.42'
- 12. N88°08'22"W 615.40'

R = RADIUS  
 D = DELTA  
 A = ARC LENGTH

FOR: RELATED COMPANES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 3 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D

NOTE: The undersigned and CRAVEN THOMPSON & ASSOCIATES, Inc. make no representations or warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back, reservations, agreements and other similar matters, and further, this information is not intended to reflect or set forth all such matters, such information should be obtained and confirmed by others through appropriate title verification.

NOTE: Lands shown hereon were not abstracted for right-of-way and/or easements of record.

JOB NO. 97-0072.03	DRAWN BY: JVN	CHECKED BY: TS	SCALE 1"=40'	DATED: 05-15-01
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# CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

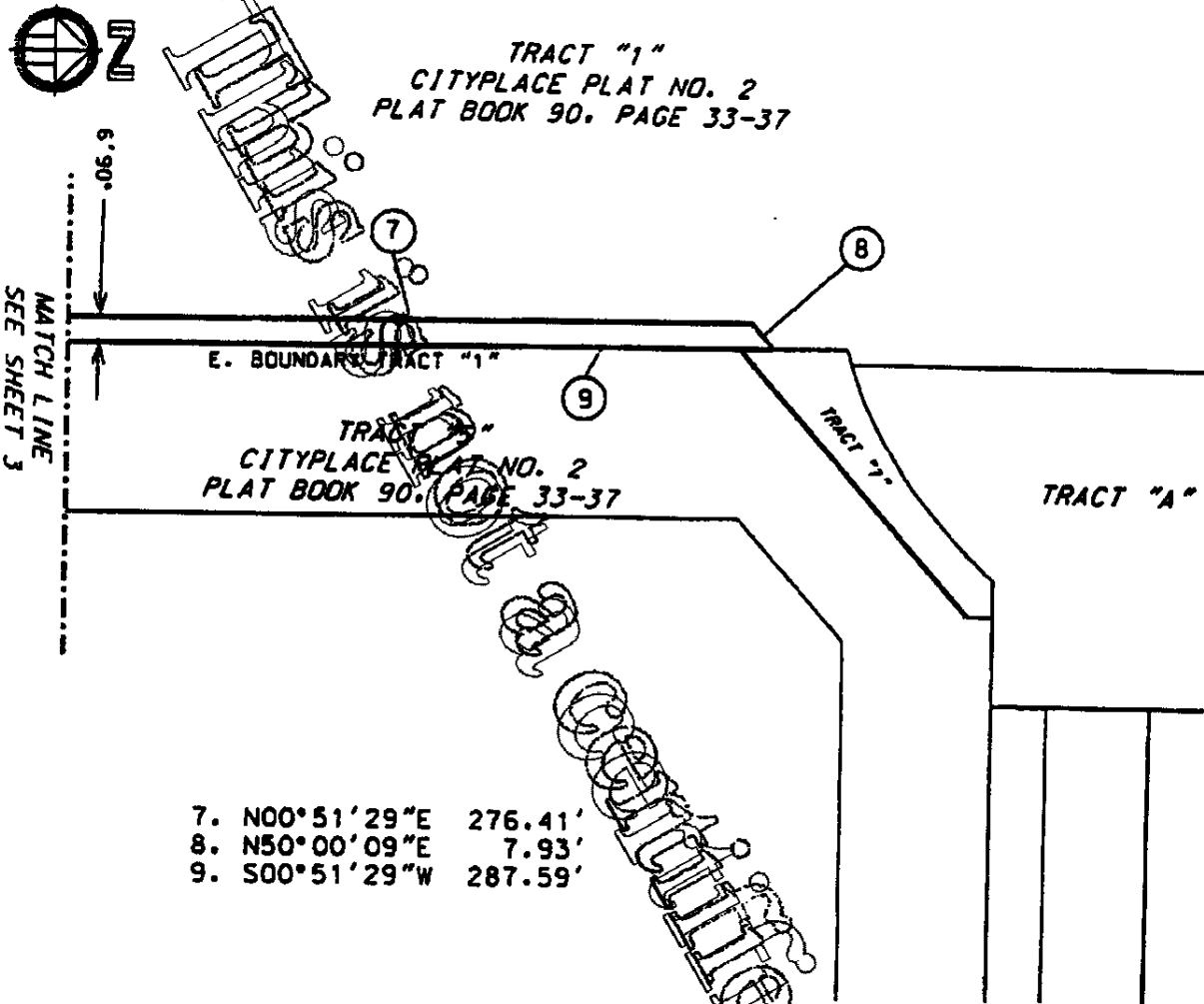
3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
 OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6409

## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

EXHIBIT G1

BOOK 15621 PAGE 1720  
 Dorothy H. Wilken, Clerk



- 7. N00°51'29"E 276.41'
- 8. N50°00'09"E 7.93'
- 9. S00°51'29"W 287.59'

R = RADIUS  
 D = DELTA  
 A = ARC LENGTH

FOR: RELATED COMPANES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 4 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D	NOTE
				NOTE: The undersigned and CRAVEN THOMPSON & ASSOCIATES, Inc. make no representations or warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back, etc. reservations, agreements and other similar matters, and further, this sketch is not intended to reflect or set forth all such matters, such information should be obtained and confirmed by others through appropriate title verification. NOTE: Lands shown hereon were not abstracted for right-of-way and/or easements of record.

JOB NO. 97-0072.03

DRAWN BY: JVN

CHECKED BY: TS

SCALE 1"=40'

DATED: 05-15-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
CONVENTION CENTER TOWN HOMES, POA, INC.**

A meeting of the Board of Directors of CONVENTION CENTER TOWN HOMES, POA, INC. was held on the 14<sup>th</sup> day of April, 2017.

On call, a quorum was found to be present.

On motion duly made and seconded, the following Resolution was passed:

RESOLVED, that

1. A new owner must own a residence for twelve (12) months before leasing;
2. The residence must be listed with the City of West Palm Beach as rental property, and owner must adhere to all municipal laws and rules for leasing, and owner must supply copy of rental license to the Property Manager;
3. Property may be leased for a minimum of ninety (90) days, and not more than twice in a 12-month period;
4. A property owner planning to sell or lease their residence must report the proposed transaction to the Property Manager before listing the property;
5. Violation of leasing rules may subject owner to fines as stated in Article XI, and/or other legal action.

**CONVENTION CENTER TOWN HOMES,  
POA, INC.**

By: *Antuan Macik*  
President



CFN 20050115562  
 OR BK 18192 PG 0696  
 RECORDED 03/01/2005 10:27:24  
 Palm Beach County, Florida  
 Sharon R. Bock, CLERK & COMPTROLLER  
 Pgs 0696 - 702; (7pgs)

PREPARED BY AND RETURN TO:  
 Lynda J. Harris  
 Carlton Fields, P.A.  
 P.O.Box 150  
 West Palm Beach, Florida 33402

**DECLARATION OF COVENANTS  
 AND RESTRICTIONS  
 (RETAINING WALL UNITS)**

This Declaration of Covenants and Restrictions ("Declaration"), is hereby made this 25<sup>th</sup> day of February, 2005, by ELAN IN THE CITY, LLC, a Florida limited liability company, with an address of 4495 Emerald Vista, Suite#2, Lake Worth, Florida, Attn: Larry Hawkins, President ("Developer")

**WHEREAS**, the West Palm Beach Community Redevelopment Agency, a body corporate and politic, pursuant to Chapter 163, Florida Statutes, with a mailing address of 200 Second Street, West Palm Beach, Florida 33401 ("CRA"), and CityPlace Townhouse, LLC, a Florida limited liability company ("CityPlace"), entered into that certain Lease Agreement dated as of March 15, 1999, as subsequently modified by First Amendment dated September 15, 2003, Second Amendment dated November 8, 2004, and Assignment and Assumption Agreement between CityPlace and Developer (collectively the "Townhouse Lease"), providing for the lease of all of the property in the plat set forth below to Developer, as successor of CityPlace for residential development thereon; and

**WHEREAS**, CityPlace constructed a retaining wall ("Retaining Wall") along a portion of the northern boundary and easterly boundary of the Property; and

**WHEREAS**, Developer intends to develop townhouse units on the following described portion of the Property (the "Retaining Wall Units"):

Lots 29,30,31,32,33,34 and 35 of the plat of CONVENTION CENTER TOWN HOMES, according to the plat thereof, recorded in Plat Book 101, Pages 24-27 of the Public Records of Palm Beach County, Florida.



which incorporate a portion of the Retaining Wall as the rear wall of the respective Retaining Wall Units; and

**WHEREAS**, that certain Easement for Retaining Wall Footings and Maintenance of Retaining Wall and Footings agreement dated May 28, 2003, recorded June 1, 2003 in Official Records Book 15621, Page 1709 of the Public Records of Palm Beach County ("Easement") provides for, among other things, the maintenance of the Retaining Wall by CityPlace and its successors and assigns; and

**WHEREAS**, Developer desires to restrict the use of and set forth the rights and maintenance obligations of the owners of the Retaining Wall Units and the rights and obligations of the Developer as of the date of this Declaration and subsequently, the rights and obligations of the Convention Center Town Homes, POA, Inc. ("Association") upon the recording of a Declaration of Covenants, Restrictions and Easements for Elan in the City which will be administered by the Association ("HOA Declaration") as to the use, access and maintenance of that portion lying within the Retaining Wall Units, upon the terms, provisions and conditions contained herein.

**NOW, THEREFORE**, Developer declares that the for the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Developer agrees to covenant and restrict the Retaining Wall Units as follows:

1. **Recitals.** The recitals set forth hereinabove are true and correct and are incorporated herein.
2. **Term.** The covenants and restrictions of this Declaration shall run with and bind the Retaining Wall Units, and shall inure to the benefit of and be enforceable by (i) the Developer until recording of the HOA Declaration; and thereafter as may be provided in the HOA Declaration; and (ii) the Association upon the recording of the HOA Declaration; (iii) the owner of any Retaining Wall Unit, and their successors and assigns; and (iv) the CRA, for a term of thirty (30) years from the

date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then owners of all the Retaining Wall Units, subject to and in accordance with the HOA Declaration, agreeing to change or terminate said covenants and restrictions in whole or in part; executed by the president or the vice-president and secretary of the Association certifying to such amendment or termination; with attached approval by the City of West Palm Beach, which approval may be withheld in its sole and absolute discretion, is recorded in the public records of Palm Beach County, Florida.

Each owner of a Retaining Wall Unit, by virtue of taking title to such unit, hereby agrees that the deed of conveyance of the Retaining Wall Unit to a third party shall specifically state that such unit is subject to the terms of this instrument and shall state the recording book and page information for this instrument as recorded in the public records of Palm Beach County, Florida. The intent of this provision is to defeat any potential argument or claim that Chapter 712, Florida Statutes, has extinguished the application of this instrument to each of the Retaining Wall Units.

3. **Covenants and Restrictions**

3.1 Pursuant to the Easement only, the Developer shall continue, and upon recording of and pursuant to the HOA Declaration and pursuant to the Easement only, the Association, shall be solely responsible for the maintenance and repair of all portions of the Retaining Wall except for that portion incorporated in and made a part of the Retaining Wall Units; and pursuant to the Easement only, the Developer shall continue, and upon recording of the HOA Declaration and pursuant thereto and except as otherwise provided below, pursuant to the Easement only, the Association, shall take all actions required to maintain the Retaining Wall in a structurally sound condition and good repair and appearance. Neither the Developer nor the Association, nor any successor in interest, shall have the right to alter the structure of the Retaining Wall or to make any material change to the Retaining

Wall other than normal and customary maintenance and repair thereof. All costs of such maintenance and repair shall be the obligation of the Developer and subsequent to the recording of the HOA Declaration and pursuant thereto, the obligation of the Association. It is the intent to not modify or expand any obligations of the Developer or the Association with respect to those portions of the Retaining Wall not incorporated in and made a part of the Retaining Walls Units.

3.2 The owners of the Retaining Wall Units shall be responsible for the operation, maintenance and repair of all portions of the Retaining Wall incorporated in and made a part of the Retaining Wall Units and as such portion may be set forth and defined in the HOA Declaration, which portion of the Retaining Wall shall at all times be considered a party wall (the "Party Wall"), and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto; and, the owners of the Retaining Wall Units shall at all times maintain the Party Wall in a structurally sound condition and good repair and appearance. All costs of such maintenance and repair of the Party Wall shall be the obligation of the respective owners of a Retaining Wall Unit.

3.3 The use of the Party Wall by the owners of the Retaining Wall Units shall be subject to the restrictions hereinafter contained:

A. No owner of any Retaining Wall Unit nor any successor in interest to any such owner shall have the right to alter the structure of the Retaining Wall or to make any material change to the Retaining Wall other than normal and customary wall treatments for a residential home including without limitation painting, wallpaper and similar wall treatments, stucco or other texture finishes on that portion of the Retaining Wall lying within the Retaining Wall Unit, and customary hanging of pictures, shelves, lighting fixtures and similar residential fixtures; provided, however, that such owner shall be responsible for structural repair as necessary of the Party Wall lying within their Retaining Wall Unit.

B. In the event of damage to or destruction by fire or other casualty of any Party Wall, including the foundation thereof, the owner of the Retaining Wall Unit within which the damaged or destroyed Party Wall is located shall be the party responsible to repair or rebuild such Party Wall, and the costs thereof shall be shared among the owners of the Retaining Wall Units as set forth in the HOA Declaration; provided, however, that any owner which specifically causes damage

to a Party Wall shall be solely responsible for the costs and expenses of any such repair, unless otherwise provided in the Declaration. All such repairs or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original Party Wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such Party Wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size, material and quality as the original Party Wall, as determined by the Developer until recording of the HOA Declaration and thereafter as may be provided in the HOA Declaration, or the Association upon the recording of the HOA Declaration.

C. The foregoing provisions of this subsection 3.3 notwithstanding, the owner of a Retaining Wall Unit or other interested party shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any such owner, or other interested party, to contribution from any other owner of a Retaining Wall Unit under this section shall be appurtenant to the land and shall pass to such owner's or other person's successors in title.

D. The title held by each owner to the portion of each Party Wall within such Retaining Wall Unit is subject to a cross easement in favor of the adjoining owner of a Retaining Wall Unit for joint use of said Party Wall.

E. In the event an owner of a Retaining Wall Unit shall fail to maintain or repair the Party Wall in a manner required under this Declaration and as determined by the Association from time to time, within 30 days' written notice of same, the Association, shall have the right, through its contractors, agents and employees, to enter upon said Retaining Wall Unit and to repair, maintain, and restore the Party Wall as required under this Declaration and as determined by the Association. The cost of any such work shall be charged to the owner and the nonpayment of which may lead to foreclosure of the lien by the Association.

F. **Owner's Obligations for Insurance.** The owner(s) of a Retaining Wall Unit is solely responsible for purchasing policies of insurance on all portions of the Retaining Wall Unit. **Neither the Developer nor the Association have any duty, obligation or responsibility to purchase insurance with regard to any portion of a Retaining Wall Unit.**

4. **Modification.** Any modification or amendment to this Declaration shall only be effective upon written consent of the City of West Palm Beach.

5. **Governing Law & Venue.** This Declaration shall be governed by and construed and enforced in accordance with, the laws of the State of Florida. Venue in any action, suit, or proceeding in connection with this Declaration shall be in a State Court of Competent Jurisdiction located in Palm Beach County, Florida.

6. **Severability.** If any provision of this Declaration or the application thereof to any person or

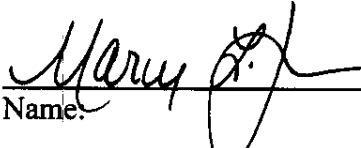
entity or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Declaration, and the application of such provision to persons or entities or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

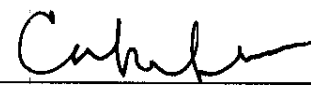
7. **No Third-Party Beneficiaries.** Nothing in this Declaration shall confer upon any person or entity, other than the Developer, the Association and the owners of the Retaining Wall Units, their respective successors and assigns, and the CRA, any rights or remedies under or by reason of this Declaration.

8. **Remedies.** The parties acknowledge that the CRA and any other party hereto has no adequate remedy at law in the event of violation of the terms of this Declaration, and as a result, agree that in such event, the CRA and any other party hereto shall be entitled to the equitable remedies of specific performance and/or injunctive relief.

IN WITNESS WHEREOF, Developer has executed this Declaration to be effective as of the day and year first above written.

WITNESSES:

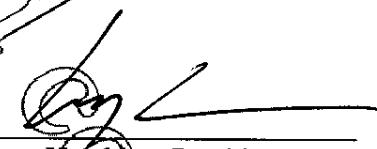
  
Name: \_\_\_\_\_

  
Name: \_\_\_\_\_

DEVELOPER:

**ELAN IN THE CITY, LLC, a  
Florida limited liability company**

By: GrayHawk Development Corporation,  
Its Managing Member

By:   
Larry Hawkins, President

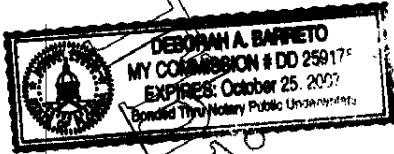
STATE OF FLORIDA  
COUNTY OF PALM BEACH

WPB#590279.1

-6-

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 2005, by Larry Hawkins, President of GrayHawk Development Corporation, Managing Member of Elan in the City, LLC, a Florida limited liability company, on behalf of the corporation and the company, who is personally known to me or who provided \_\_\_\_\_ as identification.

(NOTARY SEAL)



*Deborah A. Barreto*

Notary Public, State of Florida  
My Commission Expires:



**PREPARED BY AND RETURN TO:**  
LYNDA J. HARRIS, ESQ.  
CARLTON FIELDS, P.A.  
P.O. BOX 150  
WEST PALM BEACH, FLORIDA  
33402

R2003 0740

**EASEMENT FOR RETAINING WALL FOOTINGS**

**AND**

**MAINTENANCE OF RETAINING WALL AND FOOTINGS**

**THIS EASEMENT** granted this \_\_\_\_ day of MAY 20 2003, 2003 by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, having an address at 301 N.Olive Avenue, West Palm Beach, Florida 33401 ("Grantor") in favor of the **WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida pursuant to Section 163.356, Florida Statutes ("CRA") and **CITYPLACE TOWNHOUSE, L.L.C.**, a Delaware Limited Liability Company ("CityPlace Retail") whose mailing address is 9<sup>th</sup> Floor, 625 Madison Avenue, New York, New York 10022 (collectively "Grantee").

**RECITALS:**

A. Grantor is the fee simple owner of that certain parcel of real property located in the City of West Palm Beach, Palm Beach County, Florida more particularly described as Tract 1, CityPlace Plat No. 2, as recorded in Plat Book 90, Page 33 of the Public Records of Palm Beach County, Florida ("Grantor's Parcel").

B. Grantee is the fee simple owner of those certain parcels of real property located in the City of West Palm Beach, Palm Beach County, Florida more particularly described as Tracts 5 and 6, CityPlace Plat No. 2, as recorded in Plat Book 90, Page 33, Public Records of Palm Beach County, Florida ("Grantee's Parcel"), which property is leased to CityPlace Townhouse, L.L.C., a Delaware limited liability company ("CityPlace") as evidenced by that certain Townhouse Lease for CityPlace Townhouses between West Palm Beach Community Redevelopment Agency, as Owner, and CityPlace, as Tenant, dated as of March 8, 1999 ("Townhouse Lease").

C. In accordance with agreements between Grantor and Grantee, the Grantee proposes to cause to be constructed, by and through its agents, a retaining wall on the Grantee's Parcel (the "Retaining Wall") for the protection of the convention center and garage improvements proposed to be developed by Grantor on Grantor's Parcel and the residential townhouses proposed to be developed by CityPlace on Grantee's Parcel from future excavation and construction activities by Grantor during the construction of its proposed improvements.

D. Grantee has requested and Grantor has agreed to grant to Grantee a perpetual, non-exclusive subsurface easement for the location of the Footings under that portion of Grantor's Parcel more particularly described in Exhibit G-1 attached hereto and incorporated herein (the "Easement Area") for the purpose of constructing footings for the Retaining Wall ("Footings") and a perpetual non-exclusive easement for the purpose of maintenance of the Footings and the Retaining Wall upon the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the grants, agreements and covenants contained herein, and for other various valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor grants and conveys to Grantee, its employees, agents, successors and assigns a perpetual, non-exclusive subsurface easement (the "Footings Easement") for the purpose of locating footings for the Retaining Wall ("Footings") within the Easement Area. Grantee shall construct the Footings underground within the confines of the Easement Area at Grantee's sole cost and expense in accordance with all permits and applicable statutes, rules, regulations, codes, and ordinances. Grantee agrees to diligently pursue all work performed hereunder to completion and to exercise the rights granted hereunder in a manner which minimizes the impact upon Grantor's use of the Easement Area and Grantor's adjoining property.
2. Grantor grants and conveys to Grantee, its employees, agents, successors and assigns, a perpetual, non-exclusive easement (the "Maintenance Easement") over, under and across the Easement Area for the purpose of maintaining the Retaining Wall and Footings subsequent to the construction thereof.
3. If the Grantee, its successors or assigns, shall ever abandon the Easements granted hereby or cease to use the same for the purpose for which granted for a period of more than two (2) consecutive years following completion of construction of the Footings and Retaining Wall by Grantee, the Easement described herein shall terminate.
4. Neither Grantor's fee interest nor Grantee's easement interest in the Easement Area shall be subject to liens arising from Grantee's or any other person's use of the Easement Area or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Area to be discharged or bonded off.
5. Grantor hereby reserves to itself all rights and privileges in and to the Easement Area not inconsistent herewith and as may be used and enjoyed without interfering or abridging the rights hereby conveyed. Grantor shall have the right to use the Easement Area for purposes not inconsistent with the Grantee's full enjoyment of the rights hereby granted. If the Grantee, its successors or assigns, shall ever abandon the Easement granted hereby or cease to use the same for the purpose for which granted, the Easement described herein shall terminate.
6. Grantee shall maintain the Footings located within the Easement Area and the Retaining Wall in good condition and repair at all times. Grantee shall take whatever action may be necessary to insure that the construction, maintenance, use and operation of the Retaining Wall



and Footings does not pose a threat, danger or interference with the health, welfare or safety of Grantor, or its commissioners, employees, agents, licensees, customers, successors or assigns.

7. Grantee shall be solely responsible for and shall, at all times, maintain and repair, at its sole cost and expense, any improvements constructed pursuant to this Easement. In addition, Grantee shall promptly repair any damage arising out of Grantee's exercise of the rights granted hereby and restore the Easement Area and any improvements now existing or constructed hereinafter therein, including earth, fill and landscaping, to the condition it was in prior to such damage, using materials of like kind and quality.

8. This Easement shall be an easement appurtenant to Grantee's Parcel and shall inure to the benefit of and shall burden Grantee, and its successors and assigns, and shall run with the title to the Grantee's Parcel.

9. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, Grantee shall indemnify, defend and hold harmless Grantor against any action, claims or damages arising out of exercise of the rights granted hereby or Grantee's negligent or wrongful act or omission in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute an agreement by Grantee to indemnify Grantor for Grantor's negligent, willful or intentional acts or omissions.

10. Grantee shall provide or cause its contractors or agents to provide, maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage liability coverage, and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Easement Area, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. Any contractor or subcontractor performing work within the Easement Area on behalf of Grantee shall, at all times during the performance of such work, maintain in full force and effect General Liability insurance of the same type and amount as Grantee.

Except for Workers Compensation, all insurance policies shall name Grantor as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by Grantor. A Certificate of Insurance evidencing such insurance coverage shall be provided to Grantor prior to the commencement of any work pursuant to this Easement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Agreement. Furthermore, Grantee shall and hereby does hold Grantor harmless from any loss or damage incurred or suffered by Grantor due to Grantee's failure to maintain such insurance. The amount of the insurance required hereby shall be increased every ten (10) years by the increase over such ten (10) year period of the Consumer Price Index.

11. This Agreement contains the entire agreement between the parties respecting the matters herein set forth, and supersedes all prior agreements between the parties respecting such matters.

IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be executed on the day and year first above written.

**GRANTOR:**

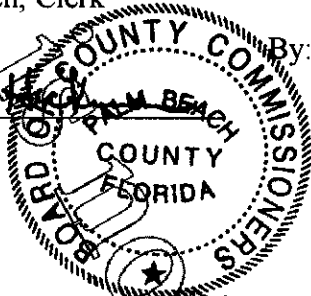
**PALM BEACH COUNTY, a political subdivision of the State of Florida**

By Its BOARD OF COUNTY COMMISSIONERS

ATTEST:

Dorothy H. Wilken, Clerk

Linda C. [Signature]  
Deputy Clerk



By: [Signature]  
Karen T. Marcus, Chair

MAY 20 2003

R2003 0740

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]  
Assistant County Attorney

APPROVED AS TO ITS TERMS AND CONDITIONS:

By: [Signature] Army Wolf  
Director

*Certified Copy*

GRANTEE:

WEST PALM BEACH COMMUNITY  
REDEVELOPMENT AGENCY

By Joel T. Daves  
Joel T. Daves, Chair

ATTEST:

~~Veronica Du Rocher~~  
Name: Veronica Du Rocher  
Title: Secretary

WITNESSES:

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
\_\_\_\_\_

Not a certified copy

**CRA ATTORNEY**  
**Approved As To Form**  
**And Legal Sufficiency**  
By: [Signature]  
Date: 10/11/02

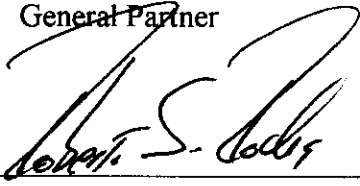
**GRANTEE:**

**CITYPLACE TOWNHOUSE, L.L.C.,**  
a Delaware limited liability company


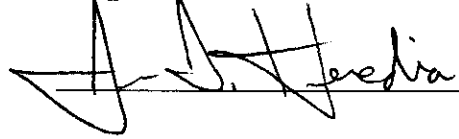
By: **CityPlace Residential Partners,**  
a Florida General Partnership, its Manager

By: TRG City Place, Ltd., a Florida  
limited partnership, its administrative partner

By: TRG City Place, Inc., a Florida corporation, its  
General Partner

By:   
Roberto Rocha, Executive Vice President

**WITNESSES:**

 ELIZABETH BULA  
 IVAN HEREDIA

This is not a certified copy

STATE OF FLORIDA )  
 )  
 ) ss.:  
COUNTY OF PALM BEACH)

MAY 20 2003

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2003 by Karen T. Marcus and N/A, respectively Chair and N/A of the Board of County Commissioners of Palm Beach County, Florida, and on behalf of such body. They are personally known to me or have produced Florida (STATE) Drivers' Licenses or N/A (indicate form of identification) (if left blank personal knowledge existed) as identification.

*Gloria Madison*  
(NOTARY SIGNATURE)

GLORIA MADISON  
(PRINTED NAME)

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(COMMISSION EXPIRATION DATE)

\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

(AFFIX NOTARIAL SEAL)



Gloria Madison  
Commission # CC 880946  
Expires Oct. 19, 2003  
Bonded Thru  
Atlantic Bonding Co., Inc.

STATE OF FLORIDA )  
 )  
 ) ss.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 4 day of NOVEMBER 2002, by JOEL T. DAVES and HECERE C. BOUCHET, respectively Chair and Secretary of the West Palm Beach Community Redevelopment Agency, and on behalf of such entity. They are personally known to me or have produced Florida (STATE) Drivers' Licenses or \_\_\_\_\_ (indicate form of identification) (if left blank personal knowledge existed) as identification.

*Kinda J. Schaefer*  
(NOTARY SIGNATURE)

KINDA J. SCHAEFER  
(PRINTED NAME)

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(COMMISSION EXPIRATION DATE)

\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

MY COMMISSION # CC833169 EXPIRES  
May 5, 2003  
BONDED THRU TROY FARM INSURANCE INC

MY COMMISSION # CC833169 EXPIRES  
May 5, 2003  
BONDED THRU TROY FARM INSURANCE INC  
(AFFIX NOTARIAL SEAL)

STATE OF Florida )  
 )  
COUNTY OF Dade ) ss.:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October 2002, by Roberto Rocha, Executive Vice President of TRG City Place, Inc., A Florida Corporation, General Partner of TRG City Place, Ltd., A Florida Limited Partnership, Administrative Partner of Cityplace Residential Partners, A Florida General Partnership, Managing Member of and on behalf of each of such entities.

Personally Known X OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

Michelle Quevedo  
Notary Public



[Seal}  
Michelle Quevedo  
Commission # CC 954894  
Expires Aug. 27, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.

Not a certified copy

EXHIBIT G1

DESCRIPTION: (FOOTING EASEMENT)

A PORTION OF TRACT "1", CITYPLACE PLAT NO. 2 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 90, PAGES 33-37 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF TRACT "6" AS SHOWN ON SAID PLAT; THENCE NORTH 01°52'42" EAST, ALONG THE NORTHERLY EXTENSION OF THE WEST BOUNDARY OF SAID TRACT "6", A DISTANCE OF 7.00 FEET; THENCE SOUTH 88°08'22" EAST, ALONG A LINE PARALLEL TO AND 7.00 FEET NORTH OR AS MEASURED AT RIGHT ANGLES TO THE SOUTH BOUNDARY OF SAID TRACT "1", A DISTANCE OF 171.00 FEET; THENCE SOUTH 01°51'38" WEST, A DISTANCE OF 1.00 FEET; THENCE SOUTH 88°08'22" EAST, A DISTANCE OF 444.74 FEET; THENCE SOUTH 81°32'10" EAST, A DISTANCE OF 39.36 FEET; THENCE SOUTH 89°12'37" EAST, A DISTANCE OF 274.29 FEET, THE LAST THREE (3) COURSES AND DISTANCES BEING ALONG A LINE PARALLEL TO AND 6.00 FEET NORTH OF AS MEASURED AT RIGHT ANGLES TO SAID SOUTH BOUNDARY OF TRACT "1"; THENCE NORTH 00°51'29" EAST, ALONG A LINE PARALLEL TO AND 6.00 FEET WEST OF AS MEASURED AT RIGHT ANGLES TO THE EAST BOUNDARY OF TRACT "1", A DISTANCE OF 276.41 FEET; THENCE NORTH 50°00'09" EAST, ALONG A LINE PARALLEL TO AND 6.00 FEET NORTHWEST OF AS MEASURED AT RIGHT ANGLES TO THE SOUTHEAST BOUNDARY OF TRACT "7" AS SHOWN ON SAID PLAT, A DISTANCE OF 7.93 FEET TO SAID EAST BOUNDARY; THENCE SOUTH 00°51'29" WEST, ALONG SAID EAST BOUNDARY, A DISTANCE OF 287.59 FEET; THENCE NORTH 89°12'37" WEST, A DISTANCE OF 280.68 FEET; THENCE NORTH 81°32'10" WEST, A DISTANCE OF 39.42 FEET; THENCE NORTH 88°08'22" WEST, A DISTANCE OF 615.40 FEET TO THE POINT OF BEGINNING, THE LAST THREE (3) COURSES AND DISTANCES BEING ALONG SAID SOUTH BOUNDARY.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA.

THE BEARINGS REFERENCED HEREIN ARE BASED ON A BEARING OF SOUTH 88°08'22" EAST ALONG SAID SOUTH BOUNDARY OF TRACT "1" AS SHOWN ON SAID PLAT.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS DESCRIPTION AND SKETCH CONFORMS TO THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 61G17-6 (FLORIDA ADMINISTRATIVE CODE), AS ADOPTED BY THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN SEPTEMBER, 1981, AS AMENDED, PURSUANT TO CHAPTER 472.027 OF THE FLORIDA STATUTES, AND IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

CRAVEN THOMPSON & ASSOCIATES, INC.  
CERTIFICATE OF AUTHORIZATION NUMBER LB271

BY: *[Signature]*  
OF A FLORIDA LICENSED SURVEYOR AND  
MAPPER.

JON V. WOLTING  
PROFESSIONAL SURVEYOR AND MAPPER NO. 4499  
STATE OF FLORIDA



# CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

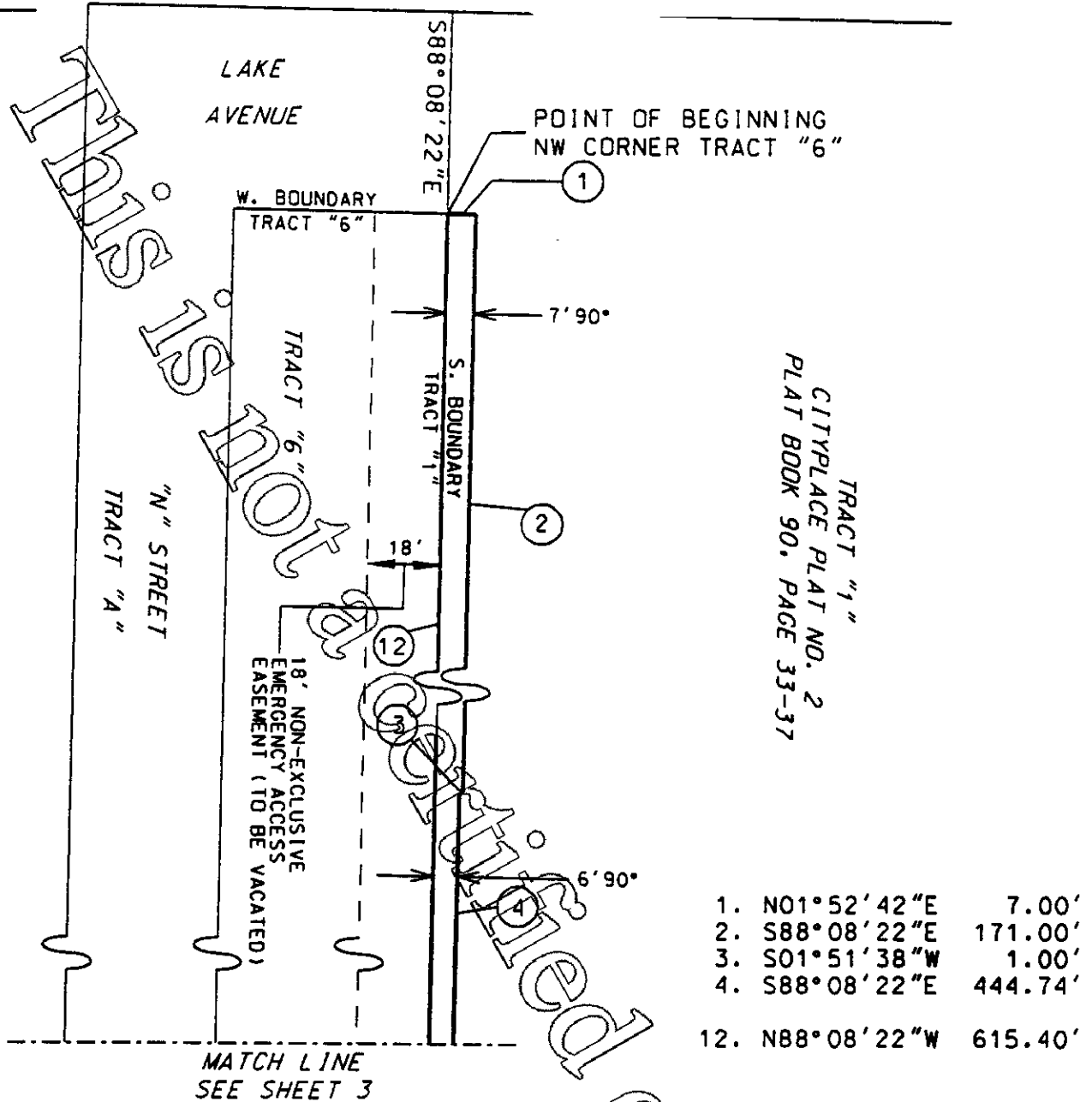
3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6409

## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

EXHIBIT G1

BOOK 15621 PAGE 1718



TRACT "1"  
CITYPLACE PLAT NO. 2  
PLAT BOOK 90, PAGE 33-37

- 1. N01°52'42"E 7.00'
- 2. S88°08'22"E 171.00'
- 3. S01°51'38"W 1.00'
- 4. S88°08'22"E 444.74'
- 12. N88°08'22"W 615.40'

R = RADIUS  
D = DELTA  
A = ARC LENGTH

FOR: RELATED COMPANIES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 2 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D	NOTE	
				<p>NOTE The undersigned and CRAVEN THOMPSON &amp; ASSOCIATES, Inc. make no representations of warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters, such information should be obtained and confirmed by others through appropriate title verification.</p> <p>NOTE Lands shown hereon were not abstracted for right-of-way and/or easements of record.</p>	
JOB NO. 97-0072.03	DRAWN BY: JVN		CHECKED BY: TS	SCALE 1"=40'	DATED: 05-15-01





# Craven Thompson & Associates Inc.

ENGINEERS • PLANNERS • SURVEYORS

3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
 OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6409

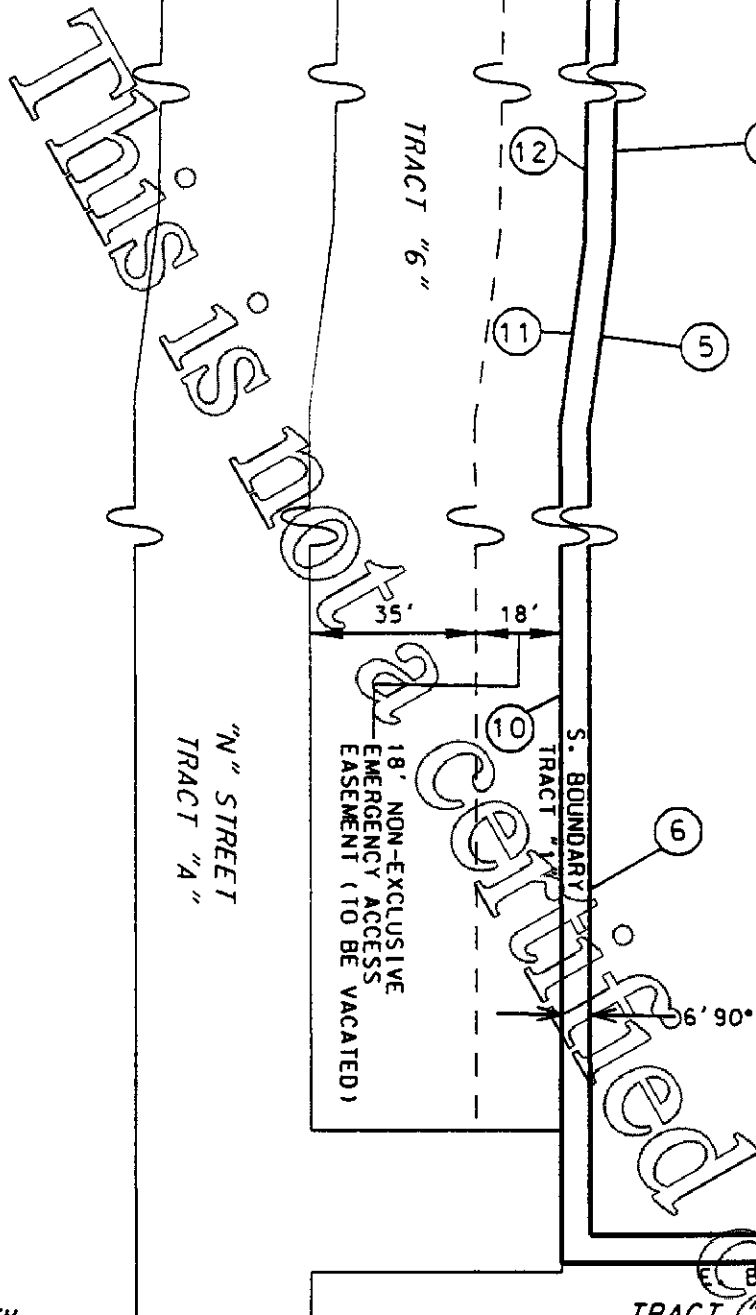
## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

EXHIBIT G1

SEE SHEET 2  
 MATCH LINE

BOOK 15621 PAGE 1719



- 4. S88°08'22"E 444.74'
- 5. S81°32'10"E 39.36'
- 6. S89°12'37"E 274.29'
- 7. N00°51'29"E 276.41'
- 9. S00°51'29"W 287.59'
- 10. N89°12'37"W 280.68'
- 11. N81°32'10"W 39.42'
- 12. N88°08'22"W 615.40'

TRACT "1"  
 CITYPLACE PLAT NO. 2  
 PLAT BOOK 90, PAGE 33-37

SEE SHEET 4  
 MATCH LINE

R = RADIUS  
 D = DELTA  
 A = ARC LENGTH

FOR: RELATED COMPANIES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 3 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D	NOTE
				NOTE The undersigned and Craven Thompson & Associates, Inc. make no representations or warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. such information should be obtained and confirmed by others through appropriate title verification. NOTE Lands shown hereon were not abstracted for right-of-way and/or easements of record.
JOB NO. 97-0072.03	DRAWN BY: JVN	CHECKED BY: TS	SCALE 1"=40'	DATED: 05-15-01



# CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400  
OFFICES: FORT LAUDERDALE, VERO BEACH (FAX) 954-739-6409

## SKETCH TO ACCOMPANY DESCRIPTION FOOTING EASEMENT

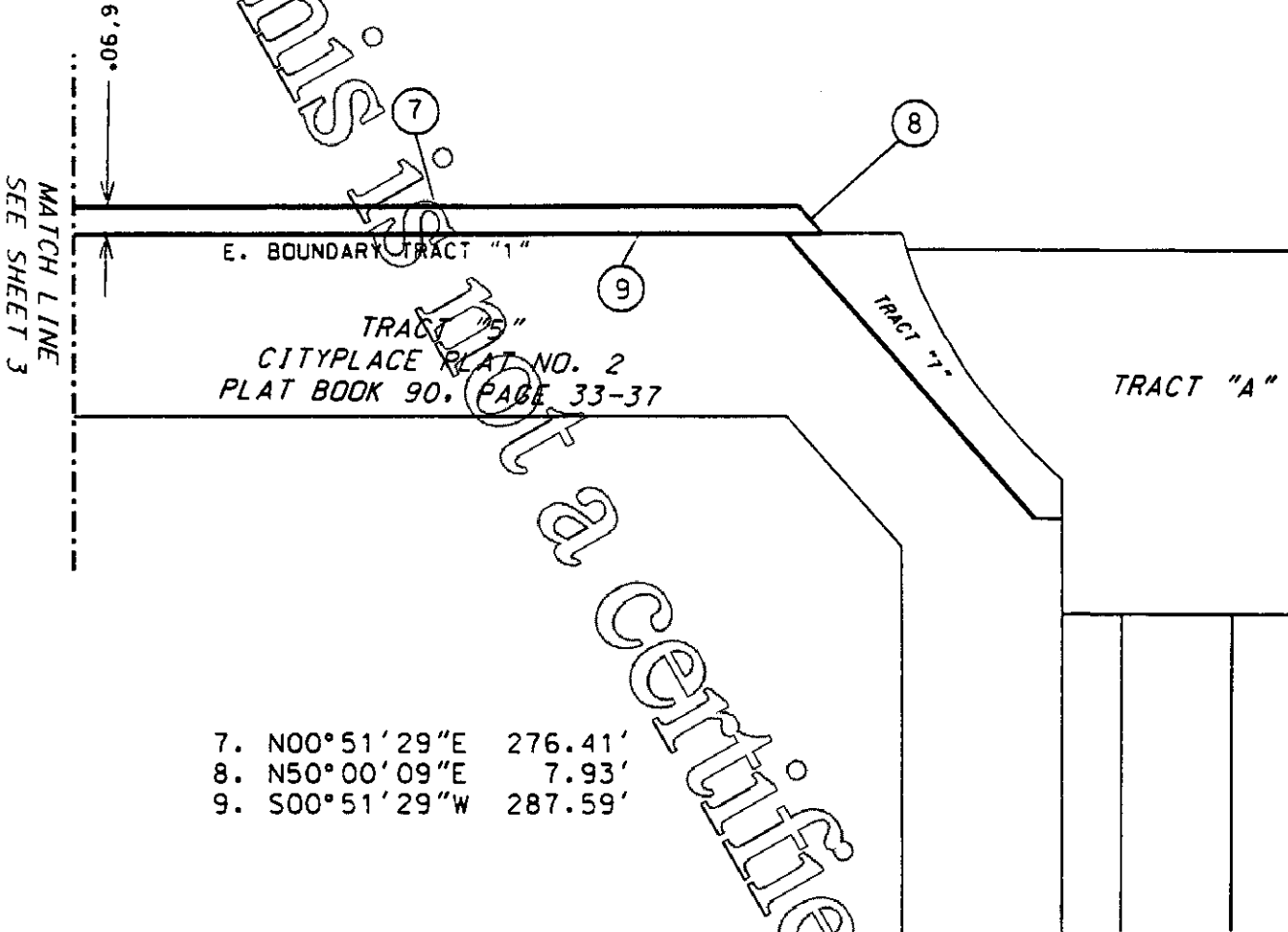
NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

EXHIBIT G1

BOOK 15621 PAGE 1720  
Dorothy H. Wilken, Clerk



TRACT "1"  
CITYPLACE PLAT NO. 2  
PLAT BOOK 90, PAGE 33-37



- 7. N00°51'29"E 276.41'
- 8. N50°00'09"E 7.93'
- 9. S00°51'29"W 287.59'

R = RADIUS  
D = DELTA  
A = ARC LENGTH

FOR: RELATED COMPANIES, L.P.

NOTE: ALL RECORDING INFORMATION SHOWN HEREON IS  
FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 4 OF 4

UPDATES and/or REVISIONS	DATE	BY	CK'D	NOTE
				<p>The undersigned and CRAVEN THOMPSON &amp; ASSOCIATES, Inc. make no representations or warranties as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters, such information should be obtained and confirmed by others through appropriate title verification.</p> <p>NOTE: Lands shown hereon were not abstracted for right-of-way and/or easements of record.</p>

Prepared by and Return to:  
Lynda J. Harris  
Carlton Fields, P.A.  
P.O. Box 150  
West Palm Beach, FL 33402

CFN 20040650276  
OR BK 17769 PG 1351  
RECORDED 11/16/2004 15:30:29  
Palm Beach County, Florida  
Dorothy H Wilken, Clerk of Court  
Pgs 1351 - 1355; (5pgs)

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE is made and entered into as of this 21<sup>st</sup> day of November, 2004 by and between the West Palm Beach Community Redevelopment Agency ("Owner"), with its principal address located at 200 2<sup>nd</sup> Street, West Palm Beach, Florida 33401 and Elan In the City, L.L.C., a Delaware limited liability company ("Elan" or "Tenant"), with its principal address located at 4495 Emerald Vista, Suite #2, Lake Worth, Florida, Attn: Larry Hawkins.

**WITNESSETH:**

**WHEREAS**, Owner and CityPlace Townhouse, L.L.C. ("CityPlace") entered into a certain Agreement of Lease dated as of May 8, 1999, as subsequently modified by First Amendment dated September 15, 2003, as further modified by Second Amendment dated November 8, 2004 and Assignment and Assumption Agreement between CityPlace and Elan ("Lease") whereby Owner has agreed to lease to Tenant that certain property more particularly described in Exhibit "A" attached hereto and incorporated herein ("Property"), upon certain terms, provisions and conditions set forth in the Lease.

**WHEREAS**, Owner and Tenant desire to provide notice as to the existence of the Lease, and as to certain facts and conditions pertaining thereto.

**NOW, THEREFORE**, in consideration of the Lease, the sum of Ten (\$10.00) Dollars and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto do hereby certify and agree as follows:

1. The above stated recitals are true and correct, and are incorporated herein by reference.
2. The Effective Date of the Lease shall be November 8, 2004.
3. The Lease provides that Owner shall lease to Tenant that certain Property described in Exhibit "A" hereto, for a term ending seventy-five (75) years from the Effective Date, unless earlier terminated pursuant to the terms of the Lease.
4. The Lease provides that Tenant shall be obligated to develop and construct a market rate residential townhouse project on the Property in accordance with and subject to the terms, provisions and conditions of the Lease. The Lease also provides, inter alia, that Tenant shall cause all construction agreements to provide that, to the extent enforceable under Florida law, Owner shall not be liable for any work performed or to be performed at the Property or any part thereof for Tenant or any subtenant or for any materials furnished or to be furnished to the Property or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialmen's, or other similar statutory lien for such work materials shall attach to or affect Owner's interest in the Property or any assets of Owner, or Owner's interest in any rent.
5. The Lease provides Tenant with the right and option to purchase all or certain portions of the Property, subject to the terms, conditions and limitations set forth in the Lease.

6. This Memorandum of Ground Lease is recorded solely to give notice of the Lease. The Lease fully sets forth the nature of the entire agreement of the parties with respect to the matters set forth therein. This Memorandum of Lease shall only give notice thereof. The original and duplicate copies of the Lease are retained by the City Clerk of the City of West Palm Beach, and the Tenant.

7. Nothing contained in this Memorandum of Ground Lease shall modify, change or supersede the Lease or any of the terms, covenants or conditions thereof.

IN WITNESS WHEREOF, this Memorandum of Lease has been duly executed by Owner and Tenant as of the date and year first above written.

ATTEST:

*Veronica Touchette*  
Secretary

CRA ATTORNEY  
Approved as to form  
and legal sufficiency

By: *[Signature]*  
Date: 11/08/04

WEST PALM BEACH COMMUNITY  
REDEVELOPMENT AGENCY

By: *[Signature]*  
Name: Lois Frankel  
Title: Chair

WITNESSES:

*[Signature]*  
*Lynette S. Harris*  
*[Signature]*  
*Stephanie A. Ducram*

ELAN IN THE CITY, L.L.C., a Delaware  
Limited Liability Company

By: Grayhawk Development Corporation,  
a Florida corporation, a Member  
a

By: *[Signature]*  
Name: Larry Hawkins  
Title: President

Date: November 8, 2004

STATE OF FLORIDA

COUNTY OF PALM BEACH

On this 9<sup>th</sup> day of November, 2004, before me, the undersigned notary public, personally appeared Lois Frankel, as Chair and THERESSE DUBOUCART as Secretary of the West Palm Beach Community Redevelopment Agency, personally known to me to be the persons who have subscribed to the foregoing instrument or who have produced \_\_\_\_\_ as identification, and acknowledged that they have executed the same on behalf of said Agency and that they were duly authorized so to do.

Bianca A. Suarez

Notary Public, State of Florida



Bianca A. Suarez  
MY COMMISSION # DD081420 EXPIRES  
January 1, 2006  
BONDED THRU TROY FAIR INSURANCE, INC.

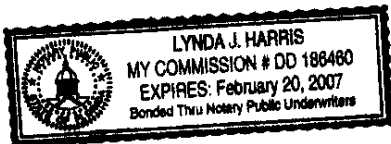
Name (Print)

Commission No.:

STATE OF FLORIDA

COUNTY OF PALM BEACH

On this day 8<sup>th</sup> of November, 2004, before me, the undersigned notary public, personally appeared LARRY HAWKINS, President of Grayhawk Development Corporation, a Florida corporation, a Member of Elan In The City, L.L.C., on behalf of all such corporation and company, who is personally known to me to be the person who has subscribed to the foregoing instrument or who has produced \_\_\_\_\_, as identification, and acknowledged that he has executed the same on behalf of said corporation and that he was duly authorized so to do.



Lynda J. Harris

Notary Public, State of Florida

Lynda J. Harris

Name (Print)

Commission No.:

**EXHIBIT "A"**

All of the plat of CONVENTION CENTER TOWN HOMES, according to the plat thereof, recorded in Plat Book 101, Pages 24-27 of the Public Records of Palm Beach County, Florida.

This is not a certified copy



CFN 20050023239  
OR BK 18009 PG 1114  
RECORDED 01/12/2005 14:53:56  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 1114 - 1125; (12pgs)

PREPARED BY AND RETURN TO:  
Jay A. Taplin, Esquire  
Taplin & Associates, P. A.  
1555 Palm Beach Lakes Blvd., Suite 1510  
West Palm Beach, FL 33401

This

AGREEMENT

THIS AGREEMENT made and entered into this 15 day of November, 2004, by BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation, whose mailing address is 675 W. Peachtree Street, Atlanta, GA 30375 ("BellSouth"), and ELAN IN THE CITY, LLC, a Florida limited liability company, whose mailing address with respect hereto is 4495 Elan Vista, Suite 2, Lake Worth, Florida 33467 ("Developer"), and CONVENTION CENTER TOWNHOMES, POA, INC., a Florida not for profit corporation, whose mailing address with respect hereto is ~~4495~~ Elan Vista, Suite 2, Lake Worth, Florida 33467 ("POA").

WHEREAS, BellSouth is a telecommunications company; and,

WHEREAS, Developer owns a leasehold interest in the property described in Exhibit "A" ("Townhouse Property") pursuant to a long term Townhouse Lease dated March 8, 1999, as amended by a First and Second Amendment ("Lease") with the West Palm Beach Community Redevelopment Agency ("CRA"); and,

WHEREAS, a 10 foot utility easement was granted to BellSouth on the CityPlace Plat No. 2 recorded in Plat Book 90, Pages 33-37, Public Records of Palm Beach County, Florida ("CityPlace Plat"), which easement is within the Townhouse Property and is as described in Exhibit "B" attached hereto (the "BellSouth Easement"); and,

WHEREAS, BellSouth has installed underground conduits containing telecommunication cables and related facilities in and under the BellSouth Easement (the "BellSouth Facilities"); and,

WHEREAS, Developer desires to construct residential townhouse units (the "Improvements") upon the Townhouse Property and upon and over the BellSouth Easement; and

WHEREAS, in anticipation of construction of the Improvements, a protective concrete slab for the protection of the BellSouth Facilities designed by a professional engineer licensed in the State of Florida was installed by Developer, and,



WHEREAS, in order to facilitate the construction of the Improvements, BellSouth is willing to allow Developer to construct the Improvements on the BellSouth Easement, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 (\$10.00) Dollars, the mutual covenants contained herein and for other various valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

BellSouth hereby grants Developer, its respective successors and assigns, including individual townhome owners of the Lots hereinafter defined ("Owners") and the POA, a perpetual right to enter upon and construct the Improvements upon the BellSouth Easement including, without limitation, the right to install, construct, own and maintain the Improvements on, over and across the BellSouth Easement, but not under the surface of the BellSouth Easement area, all only to the extent of BellSouth's interest in the BellSouth Easement and only to the extent of BellSouth's authority to grant such rights, upon the following terms and conditions:

1. BellSouth waives its right of entry upon Lots 28 through and including Lots 36, Convention Center Town Homes, recorded in Official Record Book 101, Pages 24-27 of the Public Records of Palm Beach County (and as designated on Exhibit B) ("Lots"). Maintenance with respect to the BellSouth Facilities in the BellSouth Easement may be performed within the area of the BellSouth Easement but outside the boundaries of the Lots. Except as specified above, BellSouth's rights in and to the BellSouth Easement shall be unchanged and in full force and effect.

2. Within two (2) months of the date of this Agreement, Developer shall provide to BellSouth a certificate by a professional engineer licensed in the State of Florida certifying that the Improvements will in no way, in the opinion of such engineer, cause damage to the BellSouth Facilities located within the BellSouth Easement. The certificate shall acknowledge that it is being provided to and for BellSouth. The certificate shall be provided to BellSouth at the following address: BellSouth Telecommunications, Inc., Attention: Engineering Department, 2021 S. Military Trail, West Palm Beach, Florida 33415.

3. Developer, during the period of time it owns a leasehold interest or fee simple interest in any of the Lots, and then subsequently the Owners, except as to Common Areas, as defined in and covered by Paragraph 7 below, shall maintain all Improvements constructed that they so own within the BellSouth Easement in good condition and repair at all times.

4. Developer, during the period of time it owns a leasehold interest or fee simple interest in any of the Lots, and then subsequently the Owners as to the Lots they own, except as to Common Areas, as defined in and covered by Paragraph 7 below, shall take whatever action may be necessary to ensure that the construction, maintenance, use and operation of the Improvements constructed within the BellSouth Easement area do not pose a threat, danger or interference with BellSouth's use and operation of the BellSouth Facilities or any damage to the condition thereof.

5. Developer agrees to indemnify, defend and hold BellSouth, its successors and assigns harmless from and against any and all claims, damages, injury, loss, cost, damage, expense, action, threat, demand, suit, proceeding, judgment, or liability of any nature whatsoever, including attorneys fees at the trial and appellate level which may be incurred by, claimed, asserted or recovered against or from BellSouth, its successors or assigns, arising during or from the Times as described in this paragraph 5 below, from or out of and/or in any manner connected with (a) Developer's and/or their respective employees', contractors', licensees' and invitees' construction, use, maintenance, operation or repair of the Improvements within the BellSouth Easement area or (b) a breach of this Agreement by Developer, including, without limitation, the representations and warranties in Paragraph 9 below. For the purposes of this paragraph 5 the Times are: (i) that period of time during which Developer owns a leasehold interest or fee simple interest in any of the Lots; and, (ii) that period of time, if any, after construction of the Improvements on any Lot has commenced by Developer, and during which such time the Lease is terminated, such that Developer does not have a leasehold or fee simple interest in such Lot and the CRA has fee simple title to the Lot.

6. Owners agree to indemnify, defend and hold BellSouth, its successors and assigns harmless from and against any and all claims, damages, injury, loss, cost, damage, expense, action, threat, demand, suit, proceeding, judgment, or liability of any nature whatsoever, including attorneys fees at the trial and appellate level which may be incurred by, claimed, asserted or recovered against or from BellSouth, its successors or assigns, arising during or from the period of time they own the Lots and from or out of and/or in any manner connected with (a) Owner's and/or its respective employees', contractors', licensees' and invitees' construction, use, maintenance, operation or repair of the Improvements within the BellSouth Easement area or (b) a breach of this Agreement by Owner.

7. The POA shall maintain all Improvements that are also common elements or limited common elements ("Common Areas") pursuant to a declaration of restrictive covenants to be executed and recorded in good condition and repair at all times. POA, with respect to the Common Areas, shall take whatever action may be necessary to ensure that the construction, maintenance, use and operation of the Improvements constructed within the BellSouth Easement area does not pose a threat, danger or interference with BellSouth's use and operation of the BellSouth Facilities or any damage to the condition thereof. POA agrees to indemnify, defend and hold BellSouth, its successors and assigns harmless from and against any and all claims, damages, injury, loss, cost, damage, expense, action, threat, demand, suit, proceeding, judgment, or liability of any nature whatsoever, including attorneys fees at the trial and appellate level which may be incurred by, claimed, asserted or recovered against or from BellSouth, its successors or assigns, arising from or out of and/or in any manner connected with (a) POA's, any Owner's and/or their respective employees', contractors', licensees' and invitees' construction, use, maintenance, operation or repair of the Common Areas or any other Improvements within the BellSouth Easement area or (b) a breach of this Agreement by POA.

8. This Agreement shall inure to the benefit of and bind BellSouth, Developer, POA, the Owners and their respective successors and assigns. Every Owner of a Lot, by taking title to a Lot, shall be subject to the terms and conditions of this Agreement.

9. Developer represents and warrants that this Agreement is not inconsistent with any Lease terms and that nothing in the Lease requires CRA to execute this Agreement; that pursuant to the Lease, as Lots are sold to Owners, the Developer will take title to Lots from CRA and then transfer title to Owners, such that, as of sale of the Lots to Owners, neither the Developer nor the CRA will have any ownership interest in the BellSouth Easement area as to such sold Lots; and that the Declaration to which the Lots will be subject will specify that the Owners will be subject to the terms and conditions of this Agreement.

10. If vertical construction of the Improvements on any of the Lots is not commenced by June 30, 2005, then this Agreement shall have no further force and effect. This Agreement contemplates only the Improvements. If improvements other than the Improvements are contemplated for construction on the BellSouth Easement area, then Developer will need to seek separate approval from BellSouth therefor.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

WITNESSES:

Theresa de Caso  
Name Theresa de Caso  
K.M. Szymczak  
Name K.M. Szymczak

JAY TAVLIN  
Name JAY TAVLIN

ANN GRAY  
Name ANN GRAY

JAY TAVLIN  
Name JAY TAVLIN

JOHN GRAY  
Name JOHN GRAY

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia Corporation

By: [Signature]  
Name Scott A. Mulcahy  
Title Sr. Network Vice President

ELAN IN THE CITY, L.L.C., a Florida Limited Liability Company,

By: GRAYHAWK DEVELOPMENT CORPORATION, a Florida corporation, Its Managing Member

By: [Signature]  
Lawrence Hawkins, its President


CONVENTION CENTER TOWNHOMES, POA, INC., a Florida not for profit corporation

By: [Signature]  
Name: LAWRENCE HAWKINS  
Title: 0 PAYS COMS  
Date: 12/2/04

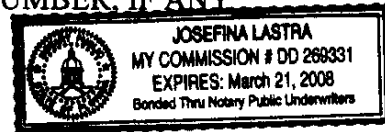
COPIED FROM ORIGINAL

STATE OF FLORIDA  
COUNTY OF Dade

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2004 by Scott Mulcahy, as Senior Network Vice President, Florida, of Bell South Telecommunications, Inc., a Georgia corporation, on behalf of said corporation. He is personally known to me or has produced BST ID. (STATE) FL Driver's Licenses or BST ID (indicate form of identification) (if left blank personal knowledge existed) as identification.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Josefina Lastra  
\_\_\_\_\_  
PRINTED NAME  
MY COMMISSION EXPIRES: \_\_\_\_\_  
SERIAL NUMBER, IF ANY \_\_\_\_\_

(AFFIX NOTARIAL SEAL)




STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of Dec, 2004, by LAWRENCE HAWKINS, as President of GrayHawk Development Corporation, managing member of ELAN IN THE CRA, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ (STATE) Driver's Licenses or \_\_\_\_\_ (indicate form of identification) (if left blank personal knowledge existed) as identification.



(AFFIX NOTARIAL SEAL)

  
\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
PRINTED NAME  
MY COMMISSION EXPIRES: \_\_\_\_\_  
SERIAL NUMBER, IF ANY \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of Dec 2004, by Laurence Hawkins, on behalf of CONVENTION CENTER TOWNHOMES, POA, INC., a Florida not for profit corporation, , on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ (STATE) \_\_\_\_\_ Drivers' Licenses or (indicate form of identification) (if left blank personal knowledge existed) as identification.

(AFFIX NOTARIAL SEAL)

Martha Ann Gray  
NOTARY PUBLIC



PRINTED NAME \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_  
SERIAL NUMBER, IF ANY \_\_\_\_\_

Not a Certified Copy

**EXHIBIT A  
TOWHOUSE PROPERTY**

Exhibit "A"

All of Convention Center Town Homes, according to the plat thereof, recorded in Plat Book 101, Page 24 of the Public Records of Palm Beach County, Florida.

This is not a certified copy

**EXHIBIT B  
BELLSOUTH EASEMENT**

This is not a certified copy



**DESCRIPTION: (10' BELLSOUTH EASEMENT)**

ALL OF THAT CERTAIN 10' BELLSOUTH EASEMENT LYING IN A PORTION OF CITYPLACE PLAT NO. 2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 90, PAGES 33-37, ALSO LYING IN A PORTION OF CITYHOMES AT CITYPLACE (WHICH IS A REPLAT OF PORTIONS OF SAID CITYPLACE PLAT NO. 2), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 95, PAGES 106-109 AND ALSO LYING IN A PORTION OF CONVENTION CENTER TOWN HOMES (WHICH IS A REPLAT OF PORTIONS OF SAID CITYPLACE PLAT NO. 2 AND SAID CITYHOMES AT CITYPLACE), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 101, PAGES 24-27 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH MOST SOUTHEAST CORNER OF PARCEL '1' OF SAID CONVENTION CENTER TOWN HOMES PLAT; THENCE NORTH 89° 12' 37" WEST, ALONG A PORTION OF A SOUTH BOUNDARY OF SAID PARCEL '1', A DISTANCE OF 13.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89° 12' 37" WEST, ALONG SAID SOUTH BOUNDARY, A DISTANCE OF 10.00 FEET; THENCE NORTH 00° 51' 29" EAST, ALONG A LINE PARALLEL WITH AND 17.00 FEET EAST OF AS MEASURED AT RIGHT ANGLES TO A WEST BOUNDARY OF SAID PARCEL '1', A DISTANCE OF 347.34 FEET; THENCE NORTH 50° 00' 09" EAST, ALONG A PORTION OF THE NORTHWEST BOUNDARY OF LOTS 35 AND 38 AS SHOWN ON SAID CONVENTION CENTER TOWN HOMES PLAT, A DISTANCE OF 13.22 FEET; THENCE SOUTH 00° 51' 28" WEST, ALONG A LINE PARALLEL WITH AND 13.00 FEET WEST OF AS MEASURED AT RIGHT ANGLES TO A EAST BOUNDARY OF SAID PARCEL '1', A DISTANCE OF 355.98 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA AND CONTAIN 3,517 SQUARE FEET (0.081 ACRES) MORE OR LESS.

THE BEARINGS REFERENCED HEREIN ARE BASED ON A BEARING OF NORTH 89° 12' 37" WEST ALONG SAID SOUTH BOUNDARY OF PARCEL '1' AS SHOWN ON SAID CONVENTION CENTER TOWN HOMES PLAT.

**CERTIFICATE:**

WE HEREBY CERTIFY THAT THIS DESCRIPTION AND SKETCH CONFORMS TO THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 81G17-6 (FLORIDA ADMINISTRATIVE CODE), AS ADOPTED BY THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN SEPTEMBER, 1911, AS AMENDED, PURSUANT TO CHAPTER 472.027 OF THE FLORIDA STATUTES, AND IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

CRAVEN THOMPSON & ASSOCIATES, INC.  
CERTIFICATE OF AUTHORIZATION NUMBER LB271

 8-10-04  
\_\_\_\_\_  
JON V. NOLTING  
PROFESSIONAL SURVEYOR AND MAPPER NO. 4489  
STATE OF FLORIDA

Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

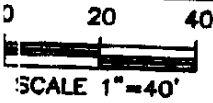
SHEET 1 OF 3  
CTA JOB NO. 97-0072.032  
DATE: August 10, 2004  
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**ENGINEERS ARCHITECTS PLANNERS SURVEYORS**  
 3563 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33309 FAX: (954) 739-6409 TEL: (954) 739-6401  
 FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271  
 FLORIDA LICENSED LANDSCAPE ARCHITECTURE BUSINESS No. C000114  
MATERIAL SHOWN HEREON IS THE PROPERTY OF CRAVEN-THOMPSON & ASSOCIATES, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT PERMISSION OF CRAVEN-THOMPSON & ASSOCIATES, INC. WRITING CRAVEN-THOMPSON & ASSOCIATES, INC. COPYRIGHT © 2000

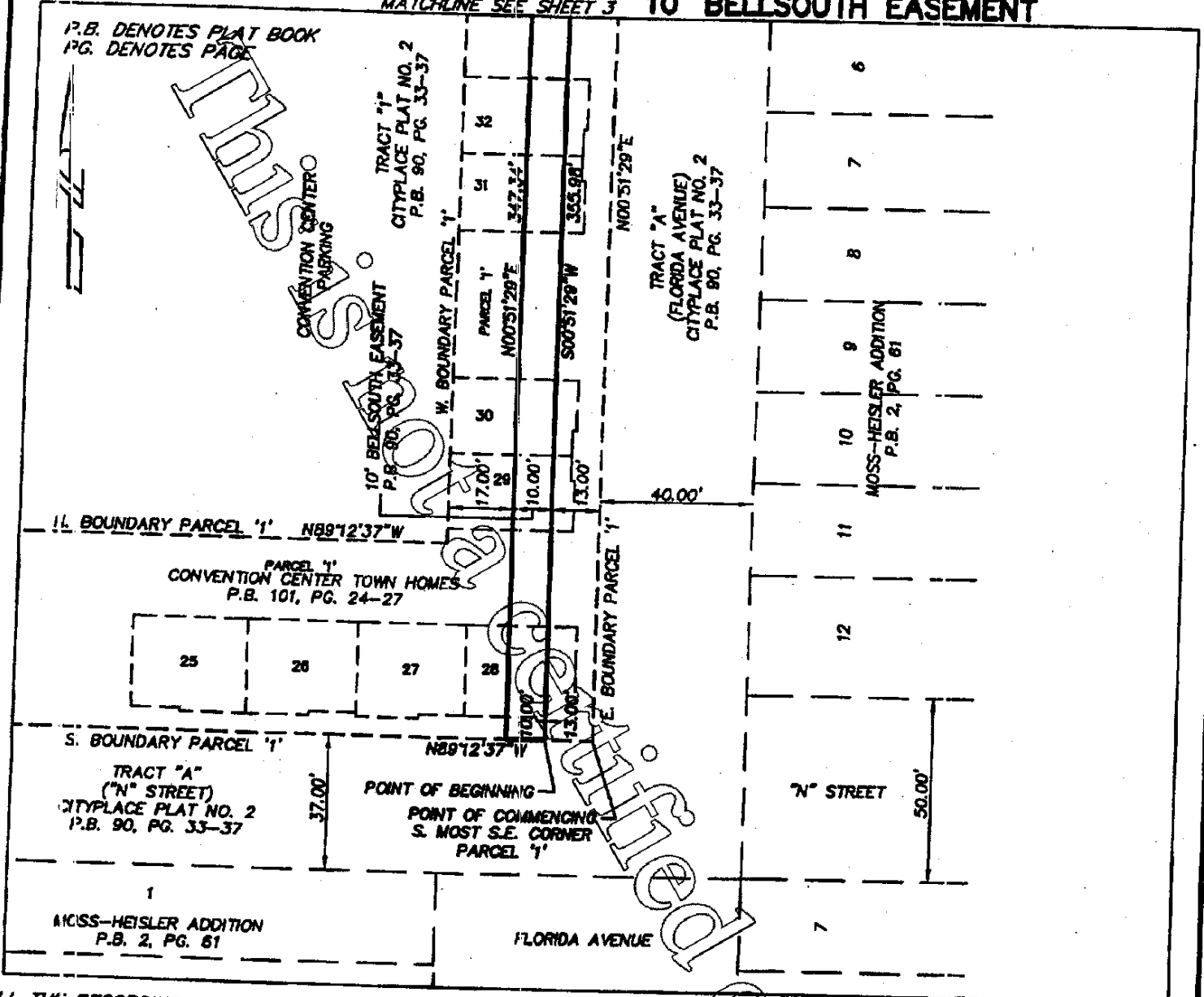
FOR: **TAPLIN & ASSOCIATES**

**NOTE:** THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.



**SKETCH TO ACCOMPANY DESCRIPTION**  
**10' BELLSOUTH EASEMENT**

MATCHLINE SEE SHEET 3



ALL THE RECORDING INFORMATION SHOWN HEREON CAN BE FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY

SHEET 2 OF 3

UPDATES and/or REVISIONS	DATE	BY	CK'D

**NOTE:** The undersigned and CRAVEN-THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification.

**NOTE:** Lands shown hereon were not abstracted for right-of-way and/or easements of record. G:\1997\970072.032\DWG\BELLSOUTH\_S&L.DWG

JOB NO. 97-0072.032	DRAWN BY: JVN	CHECKED BY: RY	F.B.	PG.	DATED: 8-10-04
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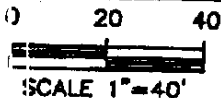
**GRAVEN THOMPSON & ASSOCIATES, INC.**  
**ENGINEERS PLANNERS SURVEYORS**

3563 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33309 FAX: (954) 739-6409 TEL.: (954) 739-644  
 FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271  
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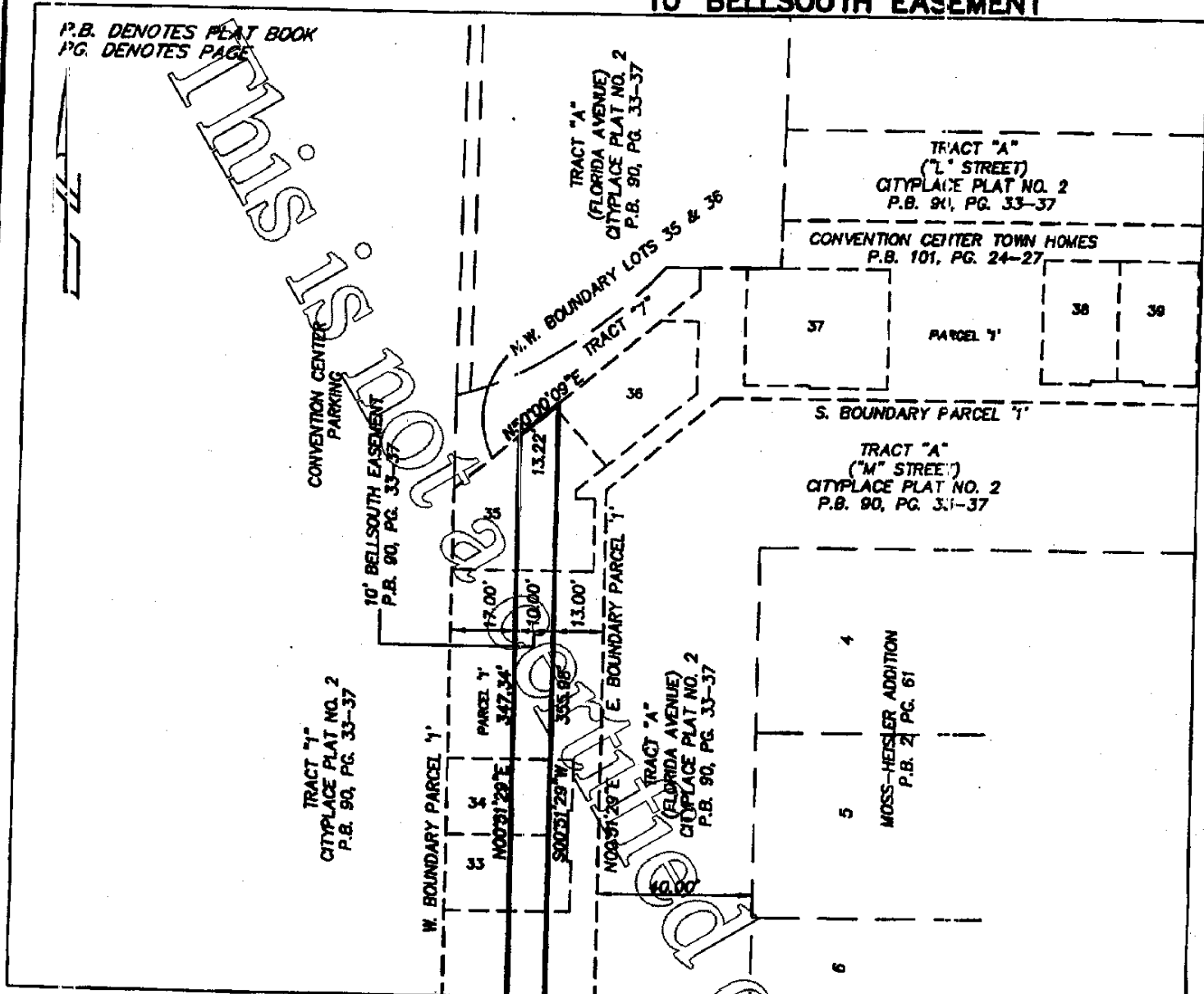
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FOR: **TAPLIN & ASSOCIATES**

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**SKETCH TO ACCOMPANY DESCRIPTION**  
**10' BELLSOUTH EASEMENT**



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MATCHLINE (SEE SHEET 2)

SHEET 3 OF 3

UPDATES and/or REVISIONS	DATE	BY	CK'D

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JOB NO. 97-0072.032 DRAWN BY: JVN CHECKED BY: RY F.B. PG. DATED: 8-10-04