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**DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR
ATLANTIC GROVE TOWNHOME**

Dated: April 16, 2003

Prepared By:

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*Declaration of Covenants, Restrictions and Easements
for
Atlantic Grove Townhome*

DECLARATION OF COVENANTS, RESTRICTIONS AND
EASEMENTS FOR ATLANTIC GROVE TOWNHOME

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**DECLARATION
OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
ATLANTIC GROVE TOWNHOME**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ATLANTIC GROVE TOWNHOME ("Declaration") is made this _____ day of _____, 2003, by ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company, its successors and assigns (hereinafter referred to as the "Declarant"), and joined in by ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., a Florida corporation not for profit (hereinafter referred to as the "Association").

RECITALS:

- A. Declarant owns or has the development rights for certain real property located in Palm Beach County, Florida, which is known as the Plat of Atlantic Grove, as recorded in Plat Book 96, Pages 55 through 58 of the Public Records of Palm Beach County, Florida (hereinafter referred to as the "Land").
- B. Declarant is developing the Land as a residential/commercial mixed use development known as Atlantic Grove (hereinafter called the "Community"). The Community is to initially consist of two distinct developments, to wit: a fifty-five (55) unit residential townhome development (hereinafter referred to as the "Property" which is more particularly described on Exhibit "A" attached hereto), together with a mixed use condominium development. The condominium development is to initially consist of twenty (20) residential condominium loft apartment units and up to forty-eight thousand (48,000) square feet of commercial development that will consist of a mixture of retail and office uses (collectively "Condominium Property").
- C. In order to provide for the orderly development and efficient operation of the Property and to maintain the values thereof, Declarant intends to develop the Property pursuant to a general plan, subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and burdens, all running with the Property, as hereinafter set forth.
- D. In connection with the foregoing, Declarant deems it desirable to create the Association, a corporation not for profit, under the laws of the State of Florida, to which certain rights, powers, duties and obligations for the Property have been delegated and assigned including, without limitation, operation, administration, maintenance and repair of portions of

the Property, including the "Common Properties" and "Community Facilities" (as hereinafter defined), and administering and enforcing the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be hereafter owned, used, sold, conveyed, improved, encumbered, hypothecated, leased, demised and occupied, all subject to the covenants, restrictions, easements, reservations, conditions, regulations, burdens, liens, equitable servitudes and all other provisions of this Declaration as hereinafter set forth, which shall run with, benefit and burden all of the Property, and shall be binding on all parties having any right, title or interest in the Property, or any portion thereof, including the parties' heirs, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

- 1.1 "Atlantic Grove", "Atlantic Grove Community" or "Community" shall mean and refer to the residential townhome and mixed/use condominium developments located within the Atlantic Grove Plat in the City of Delray Beach, Palm Beach County, Florida.
- 1.2 "Articles" shall mean and refer to the Articles of Incorporation of the Association which have been filed in the office of the Department of State of Florida, a copy of which is attached hereto as Exhibit "C," as such Articles may be amended from time to time.
- 1.3 "Assessment(s)" shall mean and refer to "Common Assessments," "Individual Assessments," and "Special Assessments," (as each is hereinafter defined), individually and collectively, as the context may require.
- 1.4 "Association" shall mean and refer to Atlantic Grove Townhome Association, Inc., a Florida corporation not for profit, its successors and/or assigns.
- 1.5 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.
- 1.6 "Bylaws" shall mean and refer to the Bylaws of the Association, which have been adopted by the Board, a copy of which is attached hereto as Exhibit "D," as the Bylaws may be amended from time to time.
- 1.7 "City" shall mean and refer to the City of Delray Beach, including all of its agencies, divisions, departments, attorneys, or agents employed to act on its behalf.
- 1.8 "Common Assessment" shall mean and refer to the charge against all Owners and their "Lots" (as hereinafter defined), representing their proportionate share of the routine "Common Expenses" (as hereinafter defined) of the Association.
- 1.9 "Common Expenses" shall mean and refer to the actual and estimated costs of ownership, maintenance, management, operation, repair and replacement of the Common

Properties, together with any other portion of the Property which is now or hereafter becomes the maintenance obligation of the Association, including but not limited to, any maintenance easements or other easements covering portions of Lot(s) in favor of the Association, including reserves for the foregoing to the extent adopted as part of the Association's budget, as provided in the Bylaws, including, without limitation: (a) unpaid Assessments; (b) the costs of any and all commonly-metered utilities, cable or master television charges, if any, and other commonly-metered charges for the Common Properties; (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other agents, employees, or independent contractors; (d) costs of all gardening and other services benefiting the Common Properties, and all recreational facilities thereon; (e) costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering or connected with the Association or the Common Properties; (f) costs of bonding the members of the Board and the "Management Company" (as hereinafter defined); (g) taxes paid by the Association, including real property taxes for the Common Properties, if any; (h) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Properties, or portions thereof; and (i) costs of any other items or expenses incurred by the Association for any reason whatsoever in connection with the Common Properties, the Association's rights or duties set forth in this Declaration and/or for the benefit of the Owners or the Property.

1.10 "Common Properties" shall mean and refer to those portions of the Property (or any interest therein) which are declared as being Common Properties in this Declaration or in any "Supplemental Declaration" (as hereinafter defined), or those portions of the Property (or any interest therein) which are conveyed by Declarant or otherwise to the Association as Common Properties, including where the context requires or permits, any "Improvements" (as hereinafter defined) thereon or any personal property owned by the Association and used or useful in connection with the operation of the Common Properties. Common Properties are for the common use and enjoyment of the Owners, subject to the rights hereunder of Declarant and others. Declarant hereby declares the real property described in Exhibit "B" hereto to be the initial Common Properties.

1.11 "Community Facilities" shall mean and refer to certain recreational facilities used in common with the residential owners of the Atlantic Grove Mixed Use Condominium. These recreational facilities include, but are not limited to, a pool, pool deck and cabana area and are a part of the Common Properties (as defined herein).

1.12 "Community Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Atlantic Grove Community from time to time. Additional standards affecting the Property may be reasonably and more specifically determined by the Board from time to time.

1.13 "Condominium Property" shall mean and refer to that portion of the Land designated as Tracts C-1, C-2 and C-3 on the Plat (as hereinafter defined) to be developed as a residential/commercial mixed use condominium.

1.14 "Condominium Units" shall mean and refer to any residential condominium loft unit located within the Atlantic Grove Community, described in a declaration of condominium that is recorded encumbering the Condominium Property and all easements, rights and improvements appurtenant thereto.

1.15 "County" shall mean and refer to Palm Beach County, Florida.

1.16 "Declarant" shall mean and refer to Atlantic Grove Partners, L.L.C., a Florida limited liability company, presently having an office located in Palm Beach County, Florida, and any assignee of Declarant's rights hereunder in accordance with Section 15.13 hereof, but only to the extent that such assignment is evidenced by an express written assignment of Declarant's rights recorded in the Public Records of the County.

1.17 "Declaration" shall mean this instrument, as it may be amended from time to time.

1.18 "Dwelling Unit" shall mean and refer to all units of residential housing situated within the Community, including an attached single family townhome or residential condominium loft unit.

1.19 "Family" shall mean and refer to (i) a group of natural persons related by blood, or legally related to each other by marriage, or adoption, or (ii) a group of persons not so related who maintain a common household on a Lot.

1.20 "Improvement" shall mean and refer to all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, structures, fixtures, walkways, sprinkler pipes and other apparatus, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, bicycle racks, benches, antennas or satellite dishes, signs, and exterior air-conditioning and water-softener fixtures or equipment, if any.

1.21 "Individual Assessment" shall mean and refer to a charge against one or more Owners and their Lots, directly attributable to such Owner(s)' failure to duly perform or breach their obligations or burdens hereunder, and the Association's enforcement of this Declaration against such Owner(s) and/or Lot(s), as further described in Section 6.6 hereof.

1.22 "Institutional Mortgage" shall mean and refer to any bona fide first mortgage encumbering a Lot which was made in favor of Declarant, a bank, mortgage company, insurance company, federal or state savings and loan association, real estate or mortgage investment trust, the Federal Mortgage Association, or other lender who makes residential mortgage loans in the ordinary course of its business and is generally recognized in the community as an institutional lender.

1.23 "Institutional Mortgagee" shall mean and refer to the holder of any Institutional Mortgage.

1.24 "Land" shall mean and refer to all of that certain real property located in Palm Beach County, Florida more particularly described on the Plat of Atlantic Grove as the same may be amended from time to time.

1.25 "Lot" shall mean and refer to any residential Lot as shown on the Plat, as presently or hereafter recorded or modified, or as shown on any plat waiver or record survey filed with the County, or any parcel of land located within the Property which has been or is intended to be conveyed to an Owner and which contains or is intended to contain one Dwelling Unit, together with any Improvements which may be constructed thereon.

1.26 "Management Company" shall mean and refer to the person, firm, or other entity employed by the Association as its agent to assist it in fulfilling or carrying out certain duties, powers, obligations or functions of the Association.

1.27 "Members" shall mean and refer to any Persons who are entitled to membership in the Association, as provided in Article III hereof.

1.28 "Notice and Hearing" shall mean and refer to written notice and a public hearing, before a tribunal appointed by the Board, at which the Owner charged with a particular offense shall have an opportunity to be heard in person or by counsel at such Owner's expense and as otherwise provided in the Bylaws.

1.29 "Owner" shall mean and refer to a record owner of any percentage of the fee simple interest in a Lot within the Property, including Declarant, but excluding those Persons having an interest in a Lot merely as security for the performance of an obligation. For purposes of Article 10 of this Declaration only, unless the context otherwise requires, the term Owner shall also include the Family, invitees, licensees, lessees and sublessees of any Owner, and any other user or occupant of a Lot. If a Lot is owned by more than one Person, the term Owner shall mean each such Person, jointly and severally.

1.30 "Person" shall mean and refer to any of an individual, corporation, governmental agency, trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity with the legal right to hold title to real property.

1.31 "Plat" shall mean and refer to the Plat of Atlantic Grove, recorded in Plat Book 96, Pages 55 through 58 of the Public Records of Palm Beach County, Florida.

Each Owner, by acceptance of a deed to a Lot, shall be deemed to be bound by and shall comply with each and every Plat restriction applicable to the Lot. The Association shall be empowered (but not obligated) to enforce any Plat restriction as if the restrictions were part of this Declaration.

1.32 "Property" shall mean and refer to all of that portion of the Land located in Palm Beach County, Florida, which is intended to be developed with fifty-five (55) residential townhome units, and which is more particularly described on Exhibit "A" attached hereto and made a part hereof, as same may be amended from time to time pursuant to this Declaration.

1.33 "Rec. User(s)" shall mean and refer to all Atlantic Grove Townhome Lot Owners, all Atlantic Grove Condominium Residential Loft Unit Owners and their respective Family, tenants, guests and invitees.

1.34 "Residential Property" shall mean and refer to all real property within the Property which is not Common Properties, and which is not otherwise dedicated, restricted or limited for non-residential use.

1.35 "Rules" shall mean and refer to the rules and regulations which are duly adopted by the Association from time to time.

1.36 "Special Assessment" shall mean and refer to a charge against all Owners and their Lots, representing their proportionate share of the cost incurred by the Association for: (i) reconstruction on the Common Properties pursuant to the provisions of this Declaration; (ii) installation or construction of any capital improvements on any portion of the Common Properties which the Association may from time to time authorize; or (iii) any other extraordinary expense of the Association, including, but not limited to, amounts necessary to pay shortages in Common Expenses of the Association after collections of Common Assessments, as all are further described in Section 6.7 hereof.

1.37 "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions and easements which may be recorded by Declarant for the purpose of supplementing or amending this Declaration.

1.38 "Surface Water Management System" shall mean and refer to the collection of devices, improvements or natural systems whereby surface waters are collected, impounded or obstructed. This term includes, but is not limited to, the entire constructed drainage system including pipes, inlets, catch basins, swales, yard drains, streets, alleys and curbs. The Surface Water Management System located within the Atlantic Grove Community shall mean and refer to those roads, curbs, catch basins, easements, pipes and other facilities installed or constructed by the Declarant for the use and ownership of the Association, and which are located within the Property.

1.39 "Townhome Lot" shall mean and refer to Lots 1 through 55 as depicted on the Plat.

The foregoing definitions shall be applicable to this Declaration, as amended from time to time, and also to any Supplemental Declaration, unless specifically stated to the contrary herein or therein.

ARTICLE 2

OWNER'S PROPERTY RIGHTS; EASEMENTS

2.1 Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive, common right and easement of ingress and egress and of enjoyment in, to and over, and use of, the Common Properties, which shall be appurtenant to and shall pass with title to every Lot, subject to the following rights, provided, however, that none of the following shall deny the rights of ingress and egress granted in this Declaration, and to the extent they attempt to deny any rights of ingress and egress they shall not be of any force or effect:

A. The right of the Association to reasonably limit the number of guests or invitees of Owners using the Common Properties at any one time.

B. The right of the Association to establish Rules pertaining to the use of the Common Properties, including, but not limited to, the right and obligation of the Association to enforce all parking and other restrictions within the Common Properties.

C. The right of the Association to promulgate traffic regulations governing the use and enjoyment of the alleys located within the Property, and the right of the Association and/or the City to promulgate traffic regulations governing the use and enjoyment of the roadways located within the Property.

D. The right of the Association, in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of Members entitled to cast sixty-seven (67%) percent of the votes of Members in the Association, to borrow money for the purpose of improving the Common Properties, in aid thereof, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinate to the use rights of the Owners.

E. The right of the Association or Declarant to dedicate, grant, release, convey, alienate or transfer all or any part of the Common Properties to any public agency, authority, utility, private party or entity.

F. The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Properties and the facilities thereof, without charge, including ingress and egress, as necessary, for purposes of sales, marketing, advertising, display, signs, access, construction, development and any other activities or purposes.

G. The right of the Association or Declarant to construct, replace or refinish any Improvement or portion thereof upon the Common Properties, in accordance with the provisions of this Declaration.

H. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Properties.

I. The right of the Association or Declarant to grant such other easements over the Common Properties as Declarant deems appropriate, which easements shall be joined in or similarly granted by the Association as requested by Declarant or sought by the Association.

J. Provided a court order has been obtained by the Association, the right of the Association to suspend the right of an Owner to use the Common Properties (except for purposes of ingress and egress) for any Owner, except Declarant, in accordance with the terms and conditions of the court order and for: (i) any period during which any Assessment against an Owner's Lot remains unpaid and delinquent; and (ii) a period not to exceed thirty (30) days for any single infraction of this Declaration or the Rules of the Association, provided that any suspension of such rights to use the Common Properties based upon infractions other than non-payment of Assessments shall be made only by the Board after Notice and Hearing as provided in the Bylaws.

Anything to the contrary herein notwithstanding, no action authorized in the lettered paragraphs above shall be taken which in any fashion impairs or limits Declarant's rights hereunder without the prior written consent of Declarant, as long as Declarant owns any portion of the Property.

2.2 Use of Property.

A. Each Owner's use of the Property shall be in compliance with the terms, provisions and conditions of this Declaration, as it may be amended from time to time, all laws, ordinances, regulations, and orders of the City of Delray Beach and all other applicable governmental regulatory agencies.

B. Certain recreational facilities will be used in common with the residential owners of the Atlantic Grove Condominium. These facilities will be used by a maximum of fifty-five (55) residential townhome owners and twenty (20) residential condominium loft owners, and their approved tenants, guests, and invitees. These facilities will be located on property (hereinafter referred to as the "Community Facilities") which will be ultimately owned by the Association. These recreational facilities include, but are not limited to, a Pool, Pool Deck and Cabana Area.

2.3 Delegation of Use. Any Owner may delegate its right of enjoyment to the Common Properties and Community Facilities to the members of the Owner's Family, in accordance with the Bylaws. Any Owner may so delegate such rights to the Owner's tenant(s) who reside on the respective Lot, subject to the Rules and other reasonable regulations imposed by the Board.

2.4 Waiver of Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association, or cause a release of the Lot owned by the Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties and/or Community Facilities or by abandonment of the Owner's Lot.

2.5 Title to the Common Properties and Community Facilities. Within a reasonable time after control of the Association is turned over to Owners other than Declarant, or sooner at the option of Declarant, Declarant shall convey to the Association by quit-claim deed the fee simple title to the Common Properties and the Association shall be bound to accept said conveyance without the joinder to such deed. Declarant, and thereafter the Association, shall hold title to the Common Properties for the benefit of those Persons entitled to use same under the provisions hereof. Declarant may mortgage the Common Properties to finance the original development and construction thereof, provided that the Common Properties shall be free and clear of all mortgages at the time of conveyance to the Association, and the Association shall not be personally liable for payment of the debt secured by such mortgage(s).

The Association is obligated to accept any and all conveyance to it by Declarant of a fee simple title, easement or lease to any of the Common Properties, the personal property, and Improvements appurtenant thereto, subject to the terms and provisions of this Declaration. At the time of any such conveyance, the Association shall be required to accept such portion of the Common Properties, personal property and/or Improvements "AS IS" without any representations or warranties, express, implied, in fact, or by law, as to the condition or fitness thereof.

2.6 Access. Declarant hereby reserves unto itself, including its designees from time to time, and hereby grants to the Association and all Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across: (i) any private streets, sidewalks, access ways, and parking areas constructed on the Property from time to time; and (ii) over and across those portions of the Common Properties lying adjacent to and between the boundary line(s) of the Lot(s) and the private streets, sidewalks, access ways and/or parking areas, as the case may be, which portions of the Common Properties are either designated as or necessary for ingress and egress up to the Lot(s), it being the specific intent of the Declarant to hereby grant perpetual, uninterrupted and contiguous access for ingress and egress to and from Lot(s) to and from the private road rights of way. Any rights granted or reserved under this Section, however, shall be subject to any rights granted or permitted to be granted by Declarant and/or the Association to third parties, as provided elsewhere in this Declaration.

2.7 Utilities. The Property shall be subject to such non-exclusive easements as may be determined in the sole discretion of Declarant for utilities, including, but not limited to, drainage, water, sewer, telephone, electric and cable television, as may be reasonably required to properly and adequately serve the Property or other portions of the Project as it exists from time to time, provided, however, that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or other Improvements, wherever said buildings or other Improvements may be located from time to time. Declarant reserves the right to locate drainage, water, sewer, telephone, electric, cable television and other utility lines, meters, including but not limited to sanitary sewer and water distribution and drainage lines, serving any Lot, buildings or other facilities in one common location on one Lot, and in that event an easement shall exist for

the meters so constructed and sanitary sewer manifolds so constructed, and any wires, pipes, or other facilities connecting such utilities to the Lots, and for the maintenance and repair of the foregoing and for the reading of such meters. Each of said easements, whether now in existence or hereafter created, shall constitute covenants running with the Property and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use thereof. No structure, planting, or other material or improvement may be planted or permitted to remain within any utility easement that would interfere with or prevent the maintenance of utilities.

2.8 Declarant. Declarant hereby reserves such non-exclusive easements as are necessary (in Declarant's reasonable discretion) over, under, across and through the Property, in order to exercise its rights hereunder and otherwise construct, develop and market the Property, including, but not limited to installation of any and all entry features, signage, monuments, landscaping features, perimeter walls, and/or entry walls, if any. Without limiting the generality of the foregoing, Declarant hereby specifically reserves, in Declarant's sole and absolute discretion, the right to install or place within the Property, the Common Properties and/or the Community Facilities any and all marketing signs, advertising, decorative features or any other item. Unless Declarant conveys such item(s) to the Association, such item(s) shall remain the sole property of Declarant and Declarant shall have the right, but not the obligation, to remove all or any one of such item(s) at anytime. The Property shall be subject to any and all such easements deemed necessary by Declarant, provided, however, that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or other Improvements wherever said buildings or other Improvements may be located from time to time. Any easement rights created by this Declaration, generally or specifically, in favor of Declarant may be assigned by Declarant, partially or otherwise, without the consent or joinder of the Association, the Owners or any third party. Furthermore, Declarant reserves the exclusive right, but not the obligation, to install from time to time, improvements within the Common Properties consisting of, walls, buffers, fences, gates, guard houses, gate houses, bicycle racks, benches or similar Improvements, in Declarant's sole and absolute discretion. In addition, Declarant and Association are granted a perpetual and irrevocable easement over, under, across and through the Property for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, Declarant specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Declarant may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of the Property if Declarant is required to do so in order to obtain the release of any bond posted with any governmental agency.

2.9 Easements. Declarant reserves unto itself, including its designees from time to time, perpetual, non-exclusive easements of access, ingress and egress as are deemed necessary by Declarant (in Declarant's reasonable discretion) over, under, through and across any Lot, in

order to (i) obtain access to any Lot or portion of the Property owned by Declarant, (ii) exercise its rights hereunder, (iii) otherwise construct, reconstruct, develop, repair, replace and/or alter any Improvement or facility located or to be located on the Common Properties or on any Lot; or (iv) for any other purpose which is deemed necessary by the Declarant in its sole and absolute discretion; provided, however, that Declarant's use of such easement shall not unreasonably interfere with the Owner's use of its Lot.

2.10 Additional Easements. For so long as Declarant owns any portion of the Property, Declarant reserves the exclusive right, in its sole discretion, to grant easements, permits and/or licenses for ingress and egress, drainage, utilities services, maintenance, telecommunication services, and other purposes over, under, across and through the Property, including the Lots, so long as any said easements do not materially and adversely interfere with the intended use of the Lot previously conveyed to Owners. Without limiting the foregoing, Declarant may relocate any easement affecting a Lot, or grant new easements over a Lot, after conveyance to an Owner, without the joinder or consent of such Owner, so long as the grant or easement or relocation of easement does not materially and adversely affect the Owner's use of the Lot as a residence. As an illustration, Declarant may grant an easement for Telecommunication Systems, irrigation, drainage lines or electrical lines over, under or across any portion of the Property so long as such easement is outside the footprint of the foundation of any residential improvement constructed on such portion of the Lot. The Association shall not grant any easements, permits or licenses to any other entity providing the same services as those granted by Declarant, nor shall it grant any such easements, permits or licenses prior to the date which Declarant no longer owns any portion of the Property without the prior written consent of the Declarant, which consent may be granted or denied in Declarant's sole discretion.

2.11 Easement to Maintain Walls, Hedges and Fences. Certain Lots may contain community perimeter walls, hedges and/or fences along the Property boundary lines. There is reserved in favor of the Association and Declarant, a perpetual, non-exclusive easement over and across each Lot necessary for installation, maintenance, replacement and repair of all community walls, hedges and fences. If there is any doubt about whether a particular wall, hedge or fence is the maintenance obligation of the Association, the Association's determination of such matter shall be final and binding on all Owners.

2.12 Services. Declarant hereby grants to courier or delivery services, pick-up and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by Declarant to service the Property, and to such other persons as Declarant from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Common Properties for the purposes of performing their authorized services and investigations.

2.13 Encroachments/Roof Overhangs. Certain dwellings and other Improvements constructed on Lots may be situated so that a portion thereof, including, without limitation, any exterior wall of such dwelling, roof overhangs, balconies, gutters or fences, hedges and landscaping may be located upon, immediately adjacent to, overhang, or encroach upon the boundary line (as well as that portion of the adjoining Lot or Common Properties subject to such

encroachment) between the Lot upon which said dwelling is located and either an adjoining Lot or a portion of the Common Properties. In all such cases, said adjoining Lot or portion of the Common Properties shall be subject to an easement and appurtenant rights, including the right of ingress and egress, in favor of the encroaching Lot and its respective Owner, which easement and appurtenant rights shall be for the purpose of (a) permitting the existence of the encroachment, and (b) allowing ingress and egress for the performance of proper and normal maintenance to the encroaching Improvement, including meter reading. All of such Improvements, which have been constructed by Declarant and approved by applicable building authorities, are deemed to have been reasonably constructed, notwithstanding any such encroachment. In no instance shall the exercise of any such easement and appurtenant rights created pursuant to this Section 2.13 unreasonably interfere with the use of the Lot subject to same.

2.14 Easements for Townhomes. The Declarant hereby grants a perpetual easement to all Owners for driveway and vehicular access across driveways located within the Common Properties. Declarant also grants a perpetual easement over the Common Properties to all Owners for any air conditioning pads and air conditioning equipment located upon any Common Properties which are adjacent to any Lots. Any utility service providers requiring access to such air conditioning pads or equipment shall likewise have the right of ingress and egress over such portions of the Common Properties as may be needed to service, repair, replace and/or maintain such air conditioning equipment.

2.15 Easements to Atlantic Grove Condominium Residential Units / Access and Use of the Community Facilities. Declarant hereby reserves and grants to the Atlantic Grove Condominium Association, Inc., for the benefit and use of its residential owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across: (i) any private streets, sidewalks, access ways, and parking areas constructed on the Property from time to time; and (ii) over and across those portions of the Common Properties lying adjacent to and between the boundary line(s) of the Lot(s) and the private streets, sidewalks, access ways and/or parking areas, as the case may be, which portions of the Common Properties are either designated as or necessary for ingress and egress to and from the Community Facilities, it being the specific intent of the Declarant to hereby grant perpetual, uninterrupted and contiguous access for ingress and egress to and from the Condominium Property to and from the Community Facilities. Any rights granted or reserved under this Section however, shall be subject to any rights granted or permitted to be granted by Declarant and/or the Association to third parties, as provided elsewhere in this Declaration.

2.16 Party Walls. Each common wall shared by two Lots shall be a party wall for the perpetual benefit of and use by the Owners of each respective Lot. Each such Lot and Owner is hereby granted an easement for the existence of the party wall to the extent it encroaches on the adjoining Lot, whether encroachment exists as a result of initial construction, reconstruction or natural settling or shifting. Except as otherwise provided herein, each Owner shall bear the responsibility to repair and maintain the unfinished surface of the exterior portion of the party wall which is located within his residence. Both Owners shall equally share the cost of repair

and maintenance of the structural and interior portions of the party wall. However, if either Owner's negligence or willful misconduct causes damage to the party wall, such Owner shall bear the entire cost of repair. Each Owner shall have the right to enter the adjacent Lot, including the residence located thereon, where necessary in connection with the repair or maintenance of a party wall, upon reasonable prior notice to the affected Owner(s) and at reasonable times and an easement for same is hereby created. Any repair or reconstruction shall utilize substantially similar materials, design and location as originally existed. No openings may be cut in the party wall or structural changes made thereto, unless agreed upon by Owners sharing the party wall.

2.17 Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, an easement is hereby granted in favor of the Association, including its agents and designees, for purposes of carrying out all obligations and/or rights of the Association pursuant to the Declaration, including but not limited to, the functions of the Association contained in Article 5 hereof. Furthermore, a non-exclusive easement is hereby created over all private roads, utility easements and drainage easements located on any Lot, whether now existing or hereafter created, and over, under and across all Common Properties, including but not limited to all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association. The Association shall have the right to assign, in whole or in part, without the consent or joinder of any Owner, Mortgagee or third party, any easement rights created under this Section to any public agency, authority, utility or private party or entity.

2.18 Execution. If and to the extent that the creation of any future easements (exclusive or non-exclusive), deemed necessary by Declarant for any purpose it deems appropriate in its sole discretion, including but not limited to, access, ingress and egress, emergency access, utilities, drainage, water and sewer, gas, cable television and related uses, electric and telephone, requires the joinder of any Owner(s), then Declarant may, by its duly authorized officers, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such instruments required to create such easements, so long as said easements do not encroach upon any buildings. The easements may be created upon any portion of the Property, including but not limited to, Lots and Common Properties and shall be valid and effective whether created before or after Declarant has conveyed title to any portion of the Property so affected, and said easements shall not require the joinder of any Owners, Mortgagees, the Association or any other party holding an interest in the Property affected. The Owners, by the acceptance of deeds to their Lots, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal agent or attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such instrument executed pursuant to this Article shall recite that it is made pursuant to Article 2 of this Declaration.

2.19 Drainage Easement. An easement for drainage and flowage over, under, across and upon those portions of the Property which are more particularly set forth in the Plat, and described on the Plat as being drainage easements, (the "Drainage Easement(s)"), is hereby granted in favor of the Association, the Declarant and each of the Owners, which shall include, but shall not be limited to, reasonable rights of access, ingress and egress for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the water drainage systems and the flowage pipes. Each Owner shall obtain the prior approval of the Architectural Review Committee ("ARC") (as hereinafter defined), in accordance with the provisions of Article 14 hereof, prior to the Owner's application to the City for a building permit for any improvement which would likely encroach or could potentially encroach upon any portion of the Drainage Easement(s). Notwithstanding the foregoing, no improvements of any kind shall be permitted to be constructed upon any portion or portions of the Drainage Easement(s) which would interfere with the function of the Drainage Easement(s). A determination of whether or not an improvement would interfere with the function of the Drainage Easement(s) shall be determined by the Board in its sole and absolute discretion, and shall be final.

2.20 Survival. Any and all easements, licenses, or other rights granted or reserved pursuant to this Article 2 shall survive any termination of this Declaration.

ARTICLE 3

MEMBERSHIP IN ASSOCIATION

3.1 Membership. Every Owner of a Lot, including Declarant, shall be a Member of the Association (hereinafter referred to as the "Membership"). Membership in the Association, except for Membership of Declarant, shall be appurtenant to and may not be separated from the Lot. Except as to Declarant, ownership of a Lot shall be the sole qualification for Membership in the Association.

3.2 Co-Ownership of Lots. When more than one Person owns an interest in any Lot (a "Co-Owner"), all such Co-Owners shall be Members, but only one such Co-Owner shall be entitled to exercise the vote to which the Lot is entitled. All Co-Owners of each Lot shall designate in writing to the Secretary of the Association one of their number to so vote the interests of their Lot. Fractional votes shall not be allowed. The vote for each Lot shall be exercised as a single vote or not at all. Where no voting Co-Owner is designated, the Lot shall not be entitled to vote until one individual is designated by all Co-Owners to vote the interests of the Lot. The nonvoting Co-Owner(s) shall be jointly and severally responsible for all of the obligations imposed upon the Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, or in the Bylaws, shall be binding on all Co-Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, any Supplemental Declaration, and in the Articles and Bylaws (to

the extent applicable). If a Lot is owned by a corporation or other entity, the individual entitled to vote for the Lot shall be designated by a certificate signed by an appropriate officer or agent of the entity and filed with the Secretary of the Association.

ARTICLE 4

VOTING RIGHTS

4.1 Classes of Voting Membership. The Association shall have two (2) classes of Members, each with voting rights as follows:

A. Class A. Class A Members shall be all Owners, including Declarant. Class A Members shall be entitled to one (1) vote, in accordance with the Bylaws, for each Lot they own.

B. Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the sum of all Class A Members are entitled to cast at any time, thus giving the Class B Member approximately a 2/3 majority of votes in the Association. The Class B Membership shall cease upon the first to occur of the following:

(1) the date which is ten (10) years from the date upon which this Declaration is recorded in the Public Records of the County; or

(2) three (3) months after ninety (90%) percent of the Lots within the Property that will ultimately be operated by the Association have been conveyed to Members; or

(3) termination of the Class B Membership by resignation of all Declarant-appointed directors and delivery to the Secretary of the Association of a certificate in recordable form, signed by Declarant and stating that Declarant elects to terminate the Class B Membership.

4.2 Termination of Class B Membership. Upon termination of the Class B Membership, Declarant shall retain any voting rights it may have as a Class A Member.

ARTICLE 5

FUNCTIONS OF THE ASSOCIATION

5.1 Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board; the Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

5.2 Required Services. In addition to those other responsibilities specified in the Articles or Bylaws, the Association, or its Management Company if applicable, shall be required to provide the following services as and when deemed necessary and appropriate by the Board and shall have easement rights necessary to perform same:

A. All painting and maintenance of the Common Properties, and all Improvements thereon, as and when deemed necessary by the Board.

B. Except as limited by this Section 5.2.B and Sections 9.1 and 9.2 hereof, maintenance and care for all landscaped areas within the Common Properties and Lots, including but not limited to, as applicable, the front yards, side yards, rear yards, court yards (if any) and garden areas (if any), of each Lot, and which shall include but not be limited to the maintenance of the lawns and all trees, shrubs, hedges, bushes, and plantings, and which shall include irrigation of all portions of each Lot, and maintenance of irrigation equipment and facilities within each Lot. Subject to any County, State or City imposed restrictions regarding same, the Board shall be entitled to determine, in its sole discretion and without notice to any Owner, the time of day or night that various portions of the Common Properties and the Lots will be irrigated and maintained.

C. Maintenance of any and all streets, roads, alleys, open spaces, parking areas, sidewalks, driveways, lead walks, paths, entry features, fountains, monuments and all similar Improvements, exterior lighting fixtures located on the Common Properties and the Lots, and entry monuments, bicycle racks, benches, statues and other decorative features located within the Common Properties.

D. Maintenance of all road and Lot drainage, including curbs, gutters, sanitary sewer manifolds, storm sewers and swales, located adjacent to, within or throughout the Common Properties, Lots, or within any portions of the Property which may now or hereafter be dedicated to the public or to any governmental or quasi-governmental body or conveyed or transferred to any public agency, authority, utility, homeowners association, or private party or entity.

E. Payment of ad valorem and non-ad valorem taxes, commercial personal property taxes, and assessments, if applicable, with respect to the Common Properties, both prior to and after conveyance of same by Declarant to the Association. This provision for payment of taxes prior to conveyance of legal title is fair in light of the Members' use and benefit of such property by virtue of easements created herein.

F. Operation of the Common Properties in accordance with the Rules and other standards adopted by the Board from time to time, both prior to and after conveyance of same by Declarant to the Association.

G. Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Property and performing any of the functions or services delegated

to the Association in any covenants, conditions or restrictions applicable to the Property, or in the Articles or Bylaws.

H. Conducting business of the Association, including arranging for ancillary administrative services such as legal, accounting and financial, and communication services such as informing Owners of activities, notice of meetings, and other important events.

I. Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board, including but not limited to blanket insurance policies covering the building structures located on the Lots, which blanket insurance policies shall be in the name of the Association, individually and as agent for the Owners covered by the policies, without naming them and as agents for their mortgagees without naming them.

J. Acceptance of any instrument of conveyance with respect to any Common Properties delivered to the Association by Declarant.

K. Painting and non-structural, cosmetic maintenance of the exterior surfaces of walls, privacy walls, and trim of any Improvement on any Lot; and painting only of any front doors, side doors, rear doors and/or framing or casings thereof, located on each townhome on any Lot; and painting and structural maintenance, repair or replacement, of roofs, including gutters, downspouts and skylights, as the Board and/or the Association deems proper, in their sole discretion, provided, however, that such painting and structural maintenance, repair or replacement shall be for ordinary wear and tear from time to time, removal of graffiti, and not for damages caused by fire, hazards or any other perils or any other casualty loss. Except as provided in Sections 5.2.B and 5.2.C hereof and except as provided in this Section, the Association shall not be responsible for maintenance, repair or replacement of each townhome and related structures within or on any Lot, including, but not limited to, any stucco repairs, any structural repairs (other than roofs, including gutters, downspouts and skylights as provided in this Section), any windows, window screens, door screens, patio screens, screened enclosures, balcony railings, tiles, if any, front doors, side doors, rear doors, and/or the framing or casings of any of the foregoing, any air-conditioning or water softening fixtures or equipment, or any equipment, facilities or other items whatsoever installed within or placed upon any Lot by any Owner, including its agents, or other designees, and/or any other maintenance obligations designated as the Owners' responsibilities from time to time in the Declaration or the Rules.

L. Establishing the ARC (as hereinafter defined) for purposes of aiding the Community Architect in maintaining the visual integrity of the Project and considering and making decisions on all applications of Owners submitted pursuant to Article 14 hereof.

M. Establishing the Community Facilities Committee for purposes of advising the Board with matters related to the Community Facilities, including, but not limited to, preparation of the proposed budget and promulgating rules and regulations for the use of the Community Facilities.

5.3 Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

- A. Maintenance of any and all streets, roads, parking areas, sidewalks, lead walks, entry parcels and features, road and lot drainage, including curbs, gutters, storm sewers and swales, throughout the Property.
- B. Lighting of roads, sidewalks, walks, paths, monuments, fountains and landscaping throughout the Property;
- C. Fire protection and prevention;
- D. Garbage and trash collection and disposal;
- E. Conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests and invitees;
- F. Protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse and a traffic monitoring device;
- G. Maintenance of electronic and other surveillance devices, including but not limited to security gates over roadways (manned and/or unmanned);
- H. Installation, operation and maintenance of cable television facilities, including but not limited to a Bulk Cable Television Service Agreement, or other communication systems throughout the Property, provided the appropriate governmental approvals are obtained.
- I. Such other services as are authorized in the Articles or Bylaws;
- J. Cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, roads or other property (public or private) adjacent to the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;
- K. Emergency repairs and other work on Lots reasonably necessary for the proper maintenance and operation of the Project, including, but not limited to party wall repairs as stated in Section 2.16 hereof.
- L. Dedicate, grant, release, convey, alienate or transfer all of any part of the Common Properties, at any time, to any public agency, authority, utility, homeowners association, or private party or entity.

M. Contract or enter into agreement(s) with any Owner for the purposes of the Association providing additional maintenance and/or repair services to a Lot, which services are in addition to those required to be provided by the Association pursuant to this Declaration.

5.4 Surface Water Management and Drainage. The Water Management System for the Property is part of one integrated system, is initially owned by the Declarant and will be owned in the future by the Association as part of the Common Properties. An easement is hereby created over the Common Properties, the Lots and over all drainage easements throughout the Property whether now or hereafter existing, in favor of the Declarant, including its agents or other designees, for surface water drainage and for the installation and maintenance of the Water Management System; provided, however, that such easement shall be subject to Improvements constructed within the Property as permitted by controlling governmental authority from time to time. The Water Management System shall be developed, operated and maintained in conformance with the requirements of the South Florida Water Management District ("SFWMD"), the Lake Worth Drainage District ("LWDD") and the City and/or any other controlling governmental authority. The Association shall maintain the entire Water Management System within the Property, including any portion thereof owned but not maintained by the City, and the rules and regulations promulgated from time to time by the SFWMD, the LWDD and the City. Upon presentation by the Declarant, the Association shall immediately execute all necessary documentation required to be executed by any governmental or quasi-governmental agency, evidencing that the Association shall assume the maintenance responsibilities of the Water Management System. Notwithstanding the foregoing, the Association will have the right, but not the obligation, to maintain any property which is owned and/or maintained by the City or any other controlling governmental authority, subject to the requirements of the City.

A. Any proposed amendment to this Declaration which would affect the Water Management System, environmental conservation areas, if any, or water management portions of the Common Properties must be submitted to the SFWMD, the LWDD, and the City or any other controlling governmental authority to determine whether the proposed amendment necessitates a modification of the Surface Water Management Permit (the "Permit"). After a review of the proposed amendment, the SFWMD, the LWDD, the City or any other controlling governmental authority will advise the Association if a modification of the permit is necessary. The Permit and its conditions shall be attached to the Rules as an Exhibit thereto. The registered agent for the Association shall maintain copies of all further permitting actions for the benefit of the Association.

B. The City, the Association and all other appropriate governmental authorities, shall have easements for ingress and egress on, across and over the Water Management System, and other areas reasonably needed for ingress and egress to the Water Management System, to enforce and carry out the requirements of the Association and other governmental authorities, and to carry out the Permit requirements and other applicable governmental requirements relating to the Water Management System.

C. Catch basins and drainage areas are for the purpose of structured and channeled flow of surface water only. No obstructions or debris shall be placed in the foregoing areas. No Persons, other than Declarant, the Association, or the City may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. The Declarant and the Association hereby reserve a perpetual easement across the Property for the purpose of altering drainage and water flow.

5.5 Irrigation System. The Association shall be responsible in perpetuity for the Irrigation System and the operation, maintenance, repair and replacement of the Irrigation facilities owned by the Association and located within the Common Property, as well as those Irrigation facilities located on the Lots, in accordance with the standards, rules and regulations of all competent regulatory agencies, including, without limitation, the City. The Association shall have access to all Lots for the operation, maintenance, repair and replacement of Irrigation facilities.

A. Easements. A non-exclusive easement is hereby created over the applicable and necessary portions of the Common Properties and the Lots in favor of the Declarant and/or Association, including its agents or other designees, for the installation and maintenance of the irrigation system for the Property; provided, however, that such easement shall be subject to Improvements constructed within the Property as permitted by controlling governmental authority from time to time, and provided that such easement shall not unreasonably interfere with the Declarant's or any Owner's (including their respective agents or other designees) intended or permitted use of the Common Properties and/or the Lots.

B. Except for sprinklers or irrigation systems installed by the Declarant, and except as otherwise provided below, no sprinkler or irrigation systems of any kind, which draws water from ground waters within the Property, shall be installed, constructed or operated within the Property, unless the prior written approval from the ARC has been obtained.

5.6 Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Article 7 hereof, (ii) collecting of debts owed to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by 75% of the total votes of all Members of the Association in existence at any time. If the Association's actions have been approved by the Members in accordance with this Section 5.6, all expenses incurred shall be deemed Common Expenses. In any action brought by or against the Association, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. This Section 5.6 may not be amended.

5.7 Survival. Any easement rights granted and reserved under Sections 5.4 and 5.5, above shall survive any termination of this Declaration.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.1 Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (1) annual Common Assessments for Common Expenses, (2) annual Community Facilities Assessments for Community Facilities Common Expenses, (3) Individual Assessments, and (4) Special Assessments, hereinafter collectively described as the "Assessments." All Assessments are to be imposed and collected as hereinafter provided. The obligation of each Lot and Owners thereof for its respective Assessments shall commence the day on which title to the Lot is conveyed by Declarant to the first purchaser thereof and shall be prorated from such date.

All Assessments, together with interest, costs, late charges and reasonable attorneys' fees for the collection thereof, shall be a charge on each Lot (except for Declarant-owned Lots) and shall be a continuing lien thereon as more particularly described in Article 7 hereof. Each Assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting Institutional Mortgagees, the personal obligation for delinquent Assessments shall be the joint and several obligation of such Owner and the successors-in-title to such Owner.

6.2 Common and Community Facilities Assessments. The Common Assessments levied by the Association shall be used exclusively to pay Common Expenses. The Community Facilities Assessments levied by the Association shall be used exclusively to pay common expenses of the Community Facilities. Disbursements shall be made by the Board of Directors for such purposes as are deemed necessary for the discharge of its responsibilities herein for the common benefit of the Owners and to reimburse Declarant for any start-up expenses advanced by Declarant.

6.3 Amount of Common Assessments; When Payable. At least fourteen (14) days prior to the beginning of each fiscal year the Board of Directors shall prepare, adopt and distribute to all Owners a written, itemized, estimated budget of the Common Expenses to be incurred by the Association during the coming year in performing its functions under this Declaration. The annual Common Assessment for each Lot shall equal the amount of the estimated operating budget, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from prior years), divided by all Lots. On or before the date each Common Assessment is due, each Owner shall pay to the Association the Common Assessment due for their respective Lot. From time to time during the fiscal year, the Board may modify the budget for the fiscal year and, upon written notice to Members, change the amount, frequency, or due dates of Common Assessments. Subject to the right of the Association to accelerate Assessments for

delinquencies as provided herein, annual Common Assessments shall be payable on the first day for each calendar month for which a Common Assessment is due and shall be payable in equal monthly installments unless determined by the Board, from time to time, to be payable less frequently. In the event any Assessments for Common Expenses are made payable in equal periodic payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Common Expenses be due less than ten days from the date of the notification of such Assessments. The budget and Assessment procedure shall be further subject to the provisions of the Bylaws.

6.4. Amount of Community Facilities Assessment; When Payable.

A. At least forty-five (45) days prior to the beginning of each fiscal year, the Board of Directors shall prepare, adopt and distribute to all Owners and to the Atlantic Grove Condominium Association for distribution to each Residential Condominium Loft Unit Owner who is a Member of the Condominium Association, but not a member of this Association, a written, itemized, estimated budget of the Community Facility Common Expenses to be incurred by the Association during the coming year in performing its functions under this Declaration. The annual Community Facility Assessment for each Dwelling Unit shall equal the amount of the estimated operating budget, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from prior years), divided equally by all Assessment Units (defined in the following sentence). Assessment Units shall be determined as follows: (1) as to any Townhome Lot there shall be one Assessment Unit, and (2) as to each residential Condominium Loft Unit, each unit or intended unit within the condominium shall likewise be considered one Assessment Unit.

B. On or before the date each Community Facilities Assessment is due, each Owner shall pay to the Association the Community Facilities Assessment due for their respective Dwelling Unit, and the Condominium Association shall pay to the Association an amount equal to the Community Facilities Assessment per residential Condominium Loft Unit multiplied by the number of Assessment Units within the Condominium Association then owned by Owners (other than Declarant). From time to time during the fiscal year, the Board may modify the Community Facilities budget for the fiscal year and, upon written notice to all the Owners and to the Condominium Association, change the amount, frequency, or due dates of the Community Facilities Assessment. Subject to the right of the Association to accelerate Assessments for delinquencies as provided herein, annual Community Facilities Assessments shall be payable on the first day of each calendar month for which a Community Facilities Assessment is due and shall be payable in equal monthly installments unless determined by the Board, from time to time, to be payable less frequently. In the event any Assessments for Community Facilities Expenses are made payable in equal periodic payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic

payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Owner and the Atlantic Grove Condominium Association in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Community Facilities Expenses be due less than ten days from the date of the notification of such Assessments. The budget and Assessment procedure shall be further subject to the provisions of the Bylaws.

C. It shall be the obligation of the Atlantic Grove Condominium Association to collect the Community Facilities Assessments from the Residential Condominium Loft Unit Owners (other than Declarant, however, notwithstanding whether the Condominium Association collects all or any portion of the Community Facilities Assessments from each residential condominium owner (other than Declarant), the Atlantic Grove Condominium Association shall be obligated to timely pay to the Association the proper amounts of the Community Facilities Assessments as provided above. No mortgagee holding a mortgage lien on any Dwelling Unit shall be required to collect any Assessments due hereunder.

6.5 Declarant Funding of Deficit. Until such time as Declarant no longer owns any portion of the Property, or until Declarant notifies the Association in writing that Declarant elects to pay Common Assessments for Common Expenses, as in the case of any other Owner, Declarant shall not be liable for Common Assessments for Common Expenses for any Lots owned by Declarant, but in lieu thereof, Declarant shall be responsible for all Common Expenses in excess of (i) the Common Assessments for Common Expenses receivable from the other Owners; and (ii) the "Contribution" (as defined in Section 6.13 hereof) receivable from the other Owners. During such period when Declarant is not liable for Common Assessments for Common Expenses for Lots owned by Declarant, the Common Assessments for Common Expenses shall be established by Declarant based upon Declarant's good faith estimate of what the expenses of the Association would be if all Lots within the Property were improved, so that Common Assessments for Common Expenses during such period will be approximately what said Common Assessments would be if the development of the Property, as contemplated by Declarant, was complete. Such obligation of Declarant shall be deemed a Common Assessment and if Declarant fails to pay same, then the Association shall have all of the remedies for collection provided in this Declaration. Declarant shall have the right to pay any deficit funding amounts in a monthly, quarterly, or annual basis, or at any other time and in any manner it may determine in its sole and absolute discretion. During such period when Declarant is electing to fund the Common Expenses in excess of the Common Assessments for Common Expenses, Declarant shall not be obligated to deficit fund any reserves.

6.6 Individual Assessments. Any (i) maintenance, repair, or replacement within a Lot arising out of an agreement or contract between the Owner of a Lot and the Association for the Association to provide additional services to a Lot (other than those required under this Declaration), or (ii) maintenance, repair, or replacement within the Property arising out of or caused by the act or failure to act of an Owner and/or the Owner's failure to fulfill any obligations contained in this Declaration, including the Owner's family, tenants, guests or invitees; shall be effected at the Owner's expense and an Individual Assessment therefore shall

be made against the Owner's respective Lot, (to the extent proceeds of insurance are not collected with respect to such loss). Additionally, any fine imposed by the Board in accordance with the Bylaws or other expense of the Association incurred as a result of any Owner's failure to comply with the provisions of this Declaration, the Articles, Bylaws, or Rules, shall be effected at the Owner's expense and shall be charged to such Owner and the Owner's respective Lot as an Individual Assessment, including, but not limited to, party walls as provided in Section 2.16 hereof. Any and all fines levied will be enforced pursuant to Florida Statutes 720.

6.7 Special Assessments. In addition to the Common and Individual Assessments authorized above, subject to the provisions in Section 6.8 below, the Board may levy at any time, in accordance with the Bylaws, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a structure or capital improvement, upon the Common Properties, including fixtures and personal property related thereto, or for defraying any other Common Expenses of the Association not originally budgeted, including shortfalls in Common Assessments. No action authorized in this Section shall be taken without the prior written consent of Declarant as long as Declarant owns any Lot. Such consent may be granted on the condition that the Special Assessment only be applied to Owners and Lots other than Declarant and Declarant-owned Lots, in which event Declarant and Lots owned by them shall be exempt from such Special Assessment. Special Assessments are not covered by Declarant's funding of the deficit set forth in Section 6.4 hereof.

6.8 Notice and Approval for any Special Assessment. Written notice of any meeting of Members called for the purpose of authorizing a Special Assessment, or as part of an annual meeting of Members, shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of the meeting. If the required quorum is not present, such meeting may be rescheduled, subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding scheduled meeting. Any Special Assessment approved by a vote of each class of Members at such meeting shall be assessed as provided below. Notwithstanding anything herein to the contrary, approval need not be obtained for any Special Assessment for (i) the replacement or repair or a previously existing improvement (including, but not limited to landscaping) on the Common Properties, (ii) repairs to the Common Properties, if destroyed or damaged, or (iii) the operation, maintenance or repair of the Secondary Water Management System.

6.9 Proportionate Share of Assessment. Common Assessments and Special Assessments provided for in this Article 6 shall be allocated and assessed equally among all Lots required to make such payments, pursuant to Sections 6.3 and 6.7 hereof. Community Facilities Assessments provided for in this Article 6 shall be allocated and assessed among all Lots and all of the Residential Condominium Loft Unit Owners of the Atlantic Grove Condominium who are required to make such payments, pursuant to Section 6.4 hereof.

6.10 Financial Reports. Within sixty (60) days following the end of each fiscal year, the Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for the preceding fiscal year, and shall cause to be distributed a copy of each such statement to each Member, and to each

Institutional Mortgagee who has filed a written request for copies of the same with the Board. Such financial report shall be, at a minimum, reviewed and certified by an independent certified public accountant, and, at the election of the Board, may be audited.

6.11 Assessment Roster and Notices. The Association shall maintain a roster of the amount of all Assessments against each Lot, which shall be calculated in accordance with this Article 6. The roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of such Assessments and the due date(s) thereof shall be sent to every Owner subject to such Assessments. The Association shall, upon reasonable request of any Owner, furnish to such Owner or any prospective purchaser or the purchaser's mortgagee a certificate in writing signed by an officer of the association setting forth the amount of current Assessments and whether any delinquencies exist. Such certificate may be relied upon by any prospective purchaser or mortgagee named in the certificate and, as to such purchaser or mortgagee shall be conclusive as to the information set forth therein.

6.12 Due Dates for Special or Individual Assessments. Any Individual Assessment or Special Assessment shall be payable pursuant to written notice to each Owner by the Board, unless any such Assessment is deemed by the Association to be of an emergency nature, in which case such Assessment shall be payable within ten (10) days after notice thereof.

6.13 Initial Start-Up Contributions. Upon the first conveyance of each Lot and completed residence by Declarant, or by any other builder or developer constructing residences in the ordinary course of business, to any Person, other than an Institutional Mortgagee acquiring title by foreclosure or deed in lieu of foreclosure, the purchasing Owner shall pay to the Association as an initial start-up contribution ("Contribution"), a sum as determined from the Board from time to time, however, such sum shall not exceed the sum equal to three months of Assessments. The Contribution shall not be considered an advance payment of Assessments and shall be placed in the general operating fund of the Association so that the Association will have funds available to be used by the Association for start-up expenses, general operating expenses, Common Expenses or otherwise as the Association shall determine from time to time in its sole discretion, including reimbursement of various expenditures of Declarant.

6.14 Exempt Property. Notwithstanding anything contained herein, the following property shall be exempt from the payment of Assessments:

- A. All Common Property;
- B. All Community Facilities; and
- C. All property dedicated to and accepted by the City, any governmental authority or public utility.

ARTICLE 7

**EFFECT OF NON-PAYMENT OF
ASSESSMENTS; REMEDIES OF THE ASSOCIATION**

7.1 Effect of Non-Payment of Assessments; Remedies of the Association. A lien is hereby imposed upon each Lot to secure the payment of all Assessments now or hereinafter imposed on the Lot by the Association (the "Assessment Lien"). The Assessment Lien shall relate back to and be effective from the date hereof, and shall include all costs of collection, including reasonable attorneys' and legal assistants' fees and costs incurred at all tribunal levels, as well as late charges and interest as herein provided. Any installment of a Common Assessment, Community Facilities Assessment, Individual Assessment, or Special Assessment, not paid within the time periods as provided in Article 6 hereof shall bear interest from the due date of such installment at the highest rate of interest allowed to be charged under applicable law, or any greater interest which may be lawfully charged under any amendments to applicable law, or if no such rate is applicable, then at the rate of eighteen (18%) percent per annum, computed from the due date until such payment is made. If any installment of an Assessment is not paid when due, as extended by grace periods provided hereunder, the Owner responsible therefore may be required further by the Board to pay a late charge equal to an amount not greater than the amount of the unpaid installment. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose its Assessment Lien against the Lot of such Owner(s), or both. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Properties and/or Community Facilities or abandonment of his Lot. If any installment of a Common Assessment and/or Community Facilities Assessment is not paid when due, as extended by grace periods provided hereunder, the Board may mail an acceleration notice to the Owner and to each Institutional Mortgagee which has requested in writing a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than fifteen (15) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessments and/or Community Facilities Assessments for the then current fiscal year. If the delinquent installment(s) of Common Assessments and/or Community Facilities Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment and/or Community Facilities Assessment to be immediately due and payable upon written notice of such election by the Association, which may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration.

Any payments made to the Association by any Owner shall be applied or be disbursed by the Association, in order, for (i) any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens, or encumbrances which may have been advanced by the Association in order to preserve and protect its Assessment Lien; (ii) reasonable attorneys' fees and costs incurred by the Association incidental to the collection

of assessments and other monies owed to the Association by the Owner for the enforcement of its Assessment Lien; (iii) interest on any Assessments or other monies due to the Association, as provided herein; and (iv) any unpaid Assessments owed to the Association with application to the oldest Assessments first.

Notwithstanding the foregoing, unless otherwise provided in such Institutional Mortgage, an Owner's failure to pay Assessments hereunder shall not be deemed to constitute a default under an Institutional Mortgage.

7.2 Notice of Lien. No action shall be brought to foreclose the Assessment Lien herein created unless at least thirty (30) days has expired following the date a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, addressed to the Owner of the Lot, and a copy thereof has been recorded by the Association in the Public Records of the County. The Notice of Lien must recite a good and sufficient legal description of any such Lot, the record Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid Assessment at the rate set forth in Section 7.1 hereof, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said Assessment Lien and late charges), and the name and address of the Association as claimant. Such Notice of Lien shall be signed and acknowledged by a duly authorized officer or agent of the Association. Filing of the Notice of Lien shall not be a prerequisite to creating the lien (which is created by this Declaration), nor shall the lien's priority be established by such Notice of Lien (priority being based on the date of recording this Declaration, subject to the provisions of Section 7.3 hereof). The Assessment Lien shall continue until fully paid or otherwise satisfied, and shall secure any and all Assessments, costs, charges, interest and reasonable attorneys' fees which accrue subsequent to filing the Notice of Lien.

7.3 Subordination of the Lien to Institutional Mortgages. Anything herein to the contrary notwithstanding, the lien securing Assessments provided for in this Declaration shall be subordinate to the lien of any Institutional Mortgage, which is arms-length, made in good faith and not intended to avoid said lien, and recorded prior to the date on which a Notice of Lien is recorded. The sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to foreclosure of such Institutional Mortgage or deed in lieu thereof (if such Institutional Mortgage was recorded prior to the recording of a Notice of Lien) shall extinguish the Assessment Lien as to installments and other sums which became due prior to such sale or transfer. Such sale or transfer shall also extinguish the personal liability for such Assessments as to such transferees; provided, however, no sale or transfer shall relieve such Lot from liability for any installments of Assessments thereafter becoming due or from the lien thereof.

7.4 Foreclosure Sale. The Assessment Lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through a duly authorized officer or agent, shall have the power to bid on the Lot at foreclosure sale, with credit given for the amount of the judgment, and to acquire and hold, lease, mortgage and convey the same.

7.5 Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association (including payment of all delinquent principal, interest, late charges, and costs of collection), a duly authorized officer or agent of the Association shall record an appropriate release of the Assessment Lien upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Two Hundred Fifty Dollars (\$250.00), to cover the cost of preparing and recording such release.

7.6 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and under law or in equity, including a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE 8

RIGHTS OF INSTITUTIONAL MORTGAGEES

8.1 General Lender Rights. Upon written request to the Association by an Institutional Mortgagee, or the insurer or guarantor of any Institutional Mortgage held by an Institutional Mortgagee encumbering a Lot or residence on a Lot, conditioned on such notice or request specifying the name and address of the requesting party, then such party shall be entitled to prompt written notice of:

- A. any condemnation or casualty loss that affects either a material portion of the Property or any Lot or residence on a Lot encumbered by its Institutional Mortgage;
- B. any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot or residence on a Lot on which it holds the Institutional Mortgage;
- C. a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

8.2 Financial Statement. Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year.

8.3 Consent of Institutional Lenders. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering any Lots is required by this Declaration, the Articles, the Bylaws, or any applicable statute or law, to any amendment of the Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or

equivalent delivery evidencing such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within thirty (30) days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavit, where necessary, may be recorded in the public records of the County, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Lender is otherwise required to specifically join in an amendment to this Declaration.

8.4 Amendments. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or Bylaws, or prior to the effective date of any termination of an agreement with the Management Company.

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance Obligations of Owners. Except for the duty of the Association to provide for maintenance and other services as enunciated in Section 5.2 of this Declaration, it shall be the duty of each Owner, at the Owner's sole cost and expense, to maintain, repair, replace and restore the Lot, including all Improvements located thereon, including but not limited to the party wall as provided in Section 2.16 hereof, in a neat, sanitary and attractive condition, as may be subject to the Owner's respective control in accordance with the terms of this Declaration. Owners shall remove at Owners' sole cost and expense any equipment, fixtures or any other item installed within or placed upon the Lot by Owners, including their agents, or other designees, upon request from the Board and/or the Association to remove same, as deemed necessary or desirable by the Board and/or the Association, in their sole discretion, to enable the Association to perform its maintenance and other services enunciated in Section 5.2 hereof. In the event that any portion of such Lot (i) falls into disrepair, (ii) is not properly maintained so as to create a dangerous, unsafe, unsightly, or unattractive condition, or (iii) otherwise violates any of the obligations stated in this Declaration, then the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance as is required in the Association's reasonable discretion; provided, however, the Association shall have the right of immediate entry with respect to those portions of the Lot lying outside of the townhome or other enclosed structures in the event of an emergency. The cost thereof shall be charged to the appropriate Owner and shall be an Individual Assessment as to the respective Lot. The Owner of such Lot

shall pay promptly all amounts due for such work, pursuant to written notice received from the Association in like fashion to an Individual Assessment. Any costs and expenses or collection may be added, at the option of the Board of Directors, to the Individual Assessment.

9.2 Maintenance Obligations of Association. The Association shall maintain, or provide for the maintenance of, all of the Common Properties and all Improvements thereon, as well as portions of the Lots, as more fully described in Section 5.2 hereof. The maintenance obligations of the Association shall include the Community Facilities and all other recreational facilities, if any, owned or operated by the Declarant and/or the Association, or their respective successors, assigns, agents, employees or other designees, from time to time, commonly metered utilities, the interior and exterior of the Community Facilities building(s) and all other recreation buildings, if any, owned or operated by the Declarant and/or the Association, or their respective successors, assigns, agents, employees or other designees, from time to time, and any and all utility facilities and buildings or other structures situated on the Common Properties, except if such facilities are to be maintained by either private or public utility companies, or some governmental agency. In addition, and except as otherwise provided in Sections 5.2, 9.1 and this Section 9.2, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which are on the Common Properties and/or the Community Facilities. The Association shall further maintain, reconstruct, replace and refinish any paved surface on the Common Properties and or the Community Facilities. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine, in its sole judgment, to be appropriate.

9.3 Standard of Maintenance. All real property, Improvements, Common Properties and Community Facilities within the Property shall be maintained in a safe, neat and well-kept manner by the Association or its successor. It is understood that this standard of maintenance is not brand new, but Class A residential condition for its age, reflecting reasonable wear and tear. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located within the Property and intended for use by vehicular or pedestrian traffic shall be kept clean and free of debris at all times, and cracks, damaged, or eroding areas on same shall be repaired, replaced, or resurfaced as necessary or as requested by the City Engineer. All curbing and bumper stops shall be replaced if damaged. All striping, including but not limited to parking space, traffic lane, and directional markings, within any road, street, or parking area located within the Property shall be repainted as necessary or as requested by the City Engineer, so that same will be clearly visible at all times.

ARTICLE 10

USE RESTRICTIONS

The Property shall be held, used and enjoyed subject to all of the terms, limitations and restrictions of the Declaration, including this Article 10; provided, however, these restrictions shall be further amplified and/or limited by the Rules promulgated by the Board from time to

Rules concerning the use of any such parking/storage area, including reasonable charges therefore. The Association shall have the right to authorize the towing away of any vehicles in violation of this rule with the costs and fees, including attorneys' fees, if any, to be borne by the vehicle owner or violator.

10.5 Agents of Association. No owner or resident may direct, supervise, or in any manner attempt to assert control over the employees or agents of the Association, unless such person is an officer or director of the Association acting within their scope of authority.

10.6 Construction of Improvements. During construction of any permitted Improvements on a Lot, the Lot and all other portions of the Property shall be kept in a clean, neat and orderly condition at all times. Any debris, trash or mud resulting from the construction shall be promptly removed or remedied, as appropriate, from the Lot and the Property. After commencement of construction of any permitted Improvements on any Lot, the work thereon shall be diligently pursued and completed so that Improvements shall not remain in a partly finished condition for any period of time longer than that which is absolutely required.

10.7 Nuisances. No Owner shall make or permit (i) any loud and/or disturbing noises of a continuing nature, (ii) any noxious or offensive activity, (iii) any emanation of unpleasant odors, or (iv) any other nuisance or annoyance by himself, his family, employees, agents, visitors, and licensees, nor do or permit anything by such persons that will interfere with the reasonable rights, comforts or conveniences of the Owners. Any hazardous activity permitted or undertaken by any Owner within any portion of the Property shall be a nuisance, subject to extra protection and/or assurances of safety provided to the Board.

10.8 Antennas. No radio or television installation may be permitted on a Lot which interferes with the television or radio reception of another Lot. No exterior antenna, aerial, satellite dish or other apparatus for the transmission of, or receiving television, radio or other signals of any kind shall be placed, allowed or maintained upon any portion of a Lot without the prior written consent of the Board. The Board shall not prohibit or deny approval to any of the foregoing which are not prohibited by applicable law. However, in no event shall any Board approved exterior antenna, aerial, satellite dish or other apparatus be permitted on the front portion of a Lot. The Board shall have the right to promulgate and regulate standards and guidelines restricting or limiting the dimensions, including the diameter, height, and length of any improvement, and the location in which any of the foregoing improvements may be erected on the Property. If such improvement is permanent, the Board may, at the time of installation, or at any time subsequent thereto, in its discretion, require that parallel shrubbery or other improvements selected at the discretion of the Board, be installed to camouflage the presence of such improvement.

10.9 Signs. No sign, advertisement, notice or other lettering (except names and addresses on mail boxes and street numbers attached to the front of the Dwelling Units as part of the initial construction by Declarant, [which street numbers may only be replaced with street numbers identical to those installed as part of the original construction and shall at all times be identical to those attached to the other Dwelling Units]) shall be exhibited, displayed, inscribed,

painted or affixed, in, on or upon any part of the Property without the written consent of the Board. The Board shall have the right to prohibit any signs offering property for sale or rent, or limit the size of such sign. No Owner shall cause any sign, advertisement, notice or other lettering to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, patios, windows or roof, unless approved by the Board.

10.10 Prohibited Parking. No overnight parking shall be permitted on sidewalks or landscape swale areas, and all parking shall only be permitted in designated parking areas within the Property. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations promulgated by the Board from time to time may be towed by the Association at the sole expense of the owner of such vehicle, without warning.

10.11 Rules and Regulations. There are current Rules of the Association; provided, however, the Association may adopt additional reasonable rules and regulations, or amend or eliminate those operative from time to time, pertaining to the use and maintenance of the Property, including rules and regulations relating to any of the Common Properties.

10.12 Community Facilities Restrictions. The use of the Community Facilities shall be restricted to Association Members, Atlantic Grove Condominium Association Residential Unit Owners and their respective Family, tenants, guests and invitees (collectively hereinafter referred to as "Rec. Users"). The Board may enact rules governing the use of the Community Facilities, which may, among other limitations, restrict the number of guests and invitees a Rec. User may permit to use the Community Facilities at any time. In order to respect the privacy of those Owners of Lots located adjacent to the Community Facilities area, the hours in which all Rec. Users will be permitted to use the Community Facilities will be from 8:00 a.m. to 10:00 p.m. This Section may only be amended by the affirmative vote of seventy-five percent (75%) of the Rec. Users, and (so long as Declarant owns any portion of the Property) the affirmative vote of Declarant. Each Owner, by acceptance of a deed conveying title to a Lot, expressly assumes the risk of noise, personal injury, and/or property damage caused by the maintenance and/or operation of the Community Facilities, including, without limitation: (a) noise from the maintenance equipment (it being specifically understood that such maintenance may take place around sunrise or sunset); (b) noise caused by users of the Community Facilities; and (c) risk of personal injury from use of the Community Facilities; and agrees that neither the Declarant, the Association, nor any of Declarant's affiliates or agents shall be liable to any Owner or any other person claiming any loss or damage due to, arising from, or otherwise relating to the operation and use of the Community Facilities.

10.13 Fences. Fences, other than any provided by Declarant, shall not be erected, removed or maintained upon the Residential Property, until all necessary permits and approvals have been issued by the City and/or any other governmental entity having jurisdiction thereof, and until said fence has been approved by the Board. All fences, if permitted, must be kept in good repair by the Owner, at the Owner's sole cost and expense. The Board shall have the right to promulgate Standards and/or Guidelines further restricting the height, length, design, composition, material, color and location of any fence to be erected on the Property. If fences

are permitted, the Board may, in its sole discretion, and at the time of installation or at any time subsequent thereto, require a parallel shrubbery to camouflage the presence of such fence. Any fence erected or constructed on a Lot shall be subject to any and all easements located within the Lot, and the Owner thereof shall be responsible to repair and/or replace, at its expense, any damage caused to the fence and/or landscaping which result from any use of the easement for the purpose for which the easement is intended.

10.14 Garages. No Owner shall cause any garage to be enclosed, converted or otherwise remodeled to allow for occupancy of any occupants of the Lot. No garage shall be altered in such a manner that the number of automobiles which may be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

10.15 Pets and Animals. Only common household pets belonging to Owners (or those occupying Lots through the authority of Owners), and which pets have been approved by the Board, will be allowed within the Property, subject to the following further restrictions: (a) Only common household pets may be kept on a Lot; (b) No pet shall be permitted outside a Dwelling Unit except on a leash and at all times under the control of its Owner; (c) No other animals, livestock or poultry of any kind shall be kept on any portion of the Property; (d) No pets may be kept for the purpose of breeding or for any commercial purposes whatsoever; (e) No pets shall be allowed to constitute a nuisance; (f) Each Owner shall walk his pet only in areas designated by the Board, from time to time, as "Pet Walk Areas"; (g) Each Owner shall promptly remove and dispose of waste matter deposited by his pet through a proper sewage receptacle. The Board shall have the right to promulgate Rules further restricting the keeping and walking of pets. The Board may from time to time define common household pets. Notwithstanding the foregoing, no Owner shall be permitted to maintain on its Lot a bull terrier (pit bull or pit bull mix) or any other dog or dogs of mean or of violent temperament or otherwise evidencing such temperament. Each Owner, by acquiring a Lot, agrees to indemnify the Declarant, the Board and the Association and hold them harmless against any loss or liability resulting from said Owner's, its family members' or lessee's ownership of a pet. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner shall remedy the problem or upon written notice from the Association, the Owner will be required to dispose of the pet.

10.16 Emergencies. In case of any emergency originating in or threatening any Lot, the Board or any individual authorized by it shall have the immediate right, but not the obligation, to enter any Lot for the purpose of remedying or abating the cause of such emergency, at the Board's discretion, notwithstanding that the Owner of such Lot is present at the time of such emergency.

10.17 Solicitation. There shall be no solicitation by any person anywhere in the Property for any cause, charity, or any purpose whatsoever, unless specifically authorized by the Board.

10.18 Insurance. Nothing shall be done or permitted by any Owner which would increase the rate for any insurance maintained by the Association, or cause such insurance to be canceled or not renewed by the insurer.

10.19 Leasing/Sale of a Lot. Lots shall not be leased without the prior written approval of the Association, subject to Leasing guidelines established by the Board from time to time. All Leases shall provide that the Association shall have the right to terminate the respective Lease in the event of a default by an Owner's tenant in observing any of the provisions of this Declaration, and applicable rules duly adopted by the Board from time to time. Notwithstanding the Lease of an Owner's Lot, the liability and obligations of the Owners created hereunder, including the rules, shall continue unabated. The sale and/or leasing of a Lot by an Owner shall be further subject to the provisions set forth in Article 16 hereof.

10.20 No Interference with Construction. No Owner shall interfere with or impede any of Declarant's construction and marketing activities within the Property so long as Declarant shall be performing same.

10.21 Business Use. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements and other applicable governmental regulations for the Property; (c) the business activity does not involve persons coming on to the Property who do not reside on the Property or door-to-door solicitation of residents within the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms "business" and "trade" as used in this Section 10.21 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

10.22 No Temporary Buildings. No out-buildings, portable buildings, temporary or accessory buildings or structures, storage buildings shall be erected, constructed or located upon any Lot for storage or otherwise, without the prior written consent of the Board.

10.23 Limitation on Improvements to Lots. Except for seasonal holiday decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights (other than those originally installed by the Declarant) must be approved by the ARC. No artificial vegetation shall be permitted on the exterior of any portion of a Lot. Exterior sculptures, fountains, flags, and similar items must be approved by the ARC.

10.24 Trees/Landscaping. No trees, shrubs, bushes, hedges or other landscaping shall be maintained, removed or planted on any portion of the Property by any Owner unless such Owner has obtained the previous written approval of the ARC. In the event the ARC (and the Community Architect, if applicable) permits the installation of any additional landscaping by an Owner, the Association shall be responsible for the maintenance of such additional landscaping, and the Owner and the Association shall enter into an agreement whereby the Owner agrees to pay the additional costs incurred by the Association for the maintenance of such additional landscaping as an Individual Assessment. This provision shall not be deemed to require the ARC to approve or permit the planting or removal of landscaping. Notwithstanding the foregoing, diseased or dead trees and landscaping, and those needing to be removed to promote the growth of other trees or for safety reasons may be removed by the Declarant and/or the Association at any time.

10.25 Hurricane Shutters. As part of the initial construction of a Townhome Unit upon any portion of the Property there shall be provided Hurricane Shutters and the appropriate methods to affix the Hurricane Shutters over all windows in the home. Each Owner shall be responsible to maintain their shutters and any replacements thereof so that the shutters are available at all times to be installed. It shall be the responsibility of each Owner to install their shutters within 24 hours of the time the National Weather Service officially issues a hurricane warning for an area including the Property. This deadline for installation shall be hereinafter referred to as the "Installation Deadline". In the event that the Owner is not available to install the shutters timely, the Owner must make adequate provisions for others to install the shutters when required prior to the Installation Deadline. In the event that the shutters are not installed by the Installation Deadline then the Association shall have the right, but not the obligation, to come upon the Owner's property to install the shutters. If the Association installs the Owner's shutters, then the Owner shall be responsible to pay the Association for all costs to accomplish the installation, including the purchase of additional panels if the Owner's panels are not readily available, (which payment shall be due within fifteen (15) days of receipt of a bill from the Association and will be considered an Individual Assessment).

It is recognized that it is important to the Property, all Owners and the Association that there be disaster planning for the possibility that a hurricane may affect the Property. There shall be a topic on the agenda of all annual meetings of the Association dealing with disaster planning which may include, but is not limited to, education as to the methods of preparedness, reviewing preparedness needs, planning for coordination in the event that a hurricane is approaching and similar planning efforts. The goal is to accomplish the objective of better safety in the event of a hurricane and the coordination of all efforts by the Owners and the Association.

10.26 Exceptions. All of the Use and Restrictions set forth in Sections 10.1 through 10.25 hereof shall not apply with respect to the customary and usual activities of Declarant in connection with its construction, development and marketing of the Property. Without limitation, this shall include:

- the Property; and
- (1) The construction of buildings, or any other Improvements within
 - (2) The sale of residences by Declarant or any other person or entity initially constructing residences within any portion of the Property.

ARTICLE 11

DAMAGE OR DESTRUCTION TO COMMON PROPERTIES, COMMUNITY FACILITIES AND BUILDING STRUCTURES LOCATED ON LOTS

Damage to or destruction of all or any portion of the Improvements on Common Properties, Community Facilities and building structures located on Lots shall be handled in the following manner:

11.1 Damage or Destruction to Common Properties and Building Structures Located on Lots.

A. In the event of damage to or destruction of Improvements on the Common Properties, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Improvements on Common Properties to be repaired and reconstructed substantially as they previously existed. In the event of damage to or destruction of building structures located on Lots, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such building structures located on Lots to be repaired and reconstructed substantially as they previously existed. Such restoration of building structures located on Lots shall be limited to the building structures only, including party walls, and shall not cover the interior of the buildings insured, including, but not limited to, interior partition walls, interior doors, interior stairways, kitchen cabinets and fixtures, appliances whether built in or not, electrical fixtures, bathroom cabinets and fixtures, and any floor, wall or ceiling coverings. Without limiting the foregoing, in the event of damage to or destruction of a portion of a building structure located on and affecting only one Lot, if such damage or destruction was caused by the negligence or willful misconduct of the Owner of such Lot, including such Owner's Family, tenants, guests and invitees, both minor and adult, then the Association may, in its sole discretion, require said Owner to cause such damaged or destroyed portion of the building structure on said Owner's Lot to be repaired and reconstructed substantially as it previously existed, notwithstanding whether there are sufficient insurance proceeds, or any insurance proceeds whatsoever to effect same. In the event such Owner fails to properly complete such repair and reconstruction within the time prescribed by the Association, then the Association may effect same at such Owner's expense and an Individual Assessment therefore shall be made against such Owner's Lot in accordance with the provisions of Section 6.6 hereof, and may be collected as provided herein for the collection of Assessments. In the case of Co-Owners of a Lot, defined in Section 3.2 hereof, the liability of such Owners shall be joint and several.

B. If the insurance proceeds are within Twenty-Five Thousand Dollars (\$25,000.00) or less of being sufficient to effect total restoration to the Improvements on the Common Properties then the Association shall cause such Improvements to be repaired and reconstructed substantially as they previously existed. Notwithstanding the amount of the insurance proceeds covering building structures located on Lots, the Association shall cause the building structures located on Lots to be repaired and reconstructed substantially as they previously existed. Any difference between the insurance proceeds and the actual cost of restoring Improvements on the Common Properties or building structures located on Lots shall be levied as a Special Assessment against each of the Owners and Lots and no consent of Owners shall be required as otherwise would be the case in the event of a Special Assessment over Twenty-Five Thousand Dollars (\$25,000.00). Declarant and Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section 6.7 thereof.

C. If the insurance proceeds are insufficient by more than Twenty-Five Thousand Dollars (\$25,000.00) to effect total restoration to the Improvements on the Common Properties, then the Members shall determine, by vote of two-thirds (2/3) of Member votes present in person or by proxy at a special meeting of the Members, duly called, whether (1) to rebuild and restore the Improvements on the Common Properties in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying a Special Assessment against all Lots, or (2) to rebuild and restore in a way which is less expensive than replacing these Improvements to substantially the same manner as they existed prior to being damaged, or (3) to not rebuild the Improvements on the Common Properties and to retain the available insurance proceeds. If a decision is made to rebuild in a manner which would result in a change in the Improvements such new plans must receive the written approval of the Board, which may pre-approve plans to be submitted to the Members at a special meeting of Members. Declarant and Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section 6.7 hereof.

D. Each Owner shall be liable to the Association for any damage to the Common Properties and each Owner shall be liable to the Association and to the respective Owners of Lots ("Affected Owners") for any damage to building structures located on Lots which may be sustained by reason of the negligence or willful misconduct of any Owner, as well as the Owner's Family, tenants, guests and invitees, both minor and adult ("Negligent Owner(s)"). The Association has the right, but not the obligation, to pursue all available legal or equitable remedies against the Negligent Owner(s) for losses or damages sustained by the Association and/or the Affected Owners by reason of the negligent or willful misconduct of the Negligent Owner(s) and the Association is hereby authorized by the Affected Owners to act as their agent and is appointed as their attorney-in-fact for same to the extent the Association elects, in its sole discretion, to pursue any such remedies against the Negligent Owner(s). All expenses incurred by the Association in connection with the foregoing, including attorneys' fees and costs, shall be deemed Common Expenses in accordance with Section 6.3 hereof. In addition, the Association shall have the right to charge such Negligent Owner(s) an Individual Assessment equal to the increase, if any, in any insurance premium due from the Association directly attributable to the damage caused by such Negligent Owner(s). In the case of Co-Owners of a

Lot, defined in Section 3.2 of this Declaration, the liability of such Negligent Owner(s) shall be joint and several. The cost of correcting such damage shall be an Individual Assessment against the Lot and may be collected as provided herein for the collection of Assessments.

11.2 Damage or Destruction to Community Facilities.

A. In the event of damage to or destruction of the Community Facilities Improvements, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Community Facilities Improvements to be repaired and reconstructed substantially as they previously existed.

B. If the insurance proceeds are within Twenty-Five Thousand Dollars (\$25,000.00) or less of being sufficient to effect total restoration to the Communities Facilities Improvements then the Association shall cause such Improvements to be repaired and reconstructed substantially as they previously existed. Any difference between the insurance proceeds and the actual cost of restoring the Community Facilities Improvements shall be levied as a Communities Facilities Special Assessment against each of the Rec. Users and no consent of Rec. Users shall be required as otherwise would be the case in the event of a Special Assessment over Twenty-Five Thousand Dollars (\$25,000.00). Declarant and Declarant-owned Lots as well as the Declarant and Declarant-owned residential Condominium Loft Units shall be exempt from such Special Assessments.

C. If the insurance proceeds are insufficient by more than Twenty-Five Thousand Dollars (\$25,000.00) to effect total restoration to the Community Facilities Improvements, then the Rec. Users by vote of two-thirds (2/3) of Rec. Users votes present in person or by proxy at a special meeting of the Rec. Users, duly called, whether (1) to rebuild and restore the Community Facilities Improvements in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying a Special Assessment against all Rec. Users, or (2) to rebuild and restore in a way which is less expensive than replacing these Improvements to substantially the same manner as they existed prior to being damaged, or (3) to not rebuild the Community Facilities Improvements and to retain the available insurance proceeds. If a decision is made to rebuild in a manner which would result in a change in the Improvements such new plans must receive the written approval of the Board, which may pre-approve plans to be submitted to the Rec. Users at a special meeting of the Rec. Users. Declarant and Declarant-owned Lots as well as the Declarant and Declarant-owned residential Condominium Loft Units shall be exempt from such Special Assessments.

D. Each Rec. User shall be liable to the Association for any damage to the Community Facilities which may be sustained by reason of the negligence or willful misconduct of any Rec. User, as well as the Rec. User's Family, tenants, guests and invitees, both minor and adult ("Negligent Rec. User(s)"). The Association has the right, but not the obligation, to pursue all available legal or equitable remedies against the Negligent Rec. User(s) for losses or damages sustained by the Association by reason of the negligent or willful misconduct of the Negligent Rec. User(s) and the Association is hereby authorized to pursue any such remedies against the

Negligent Rec. User(s). All expenses incurred by the Association in connection with the foregoing, including attorneys' fees and costs, shall be deemed Community Facilities Common Expenses in accordance with Section 6.4 hereof. In addition, the Association shall have the right to charge such Negligent Rec. User(s) an Individual Assessment equal to the increase, if any, in any insurance premium due from the Association directly attributable to the damage caused by such Negligent Rec. User(s). The cost of correcting such damage shall be an Individual Assessment against the Lot or the residential Condominium Loft Unit and may be collected as provided for the collection of Assessments in the respective Declaration.

ARTICLE 12

INSURANCE

12.1 Common Properties, Community Facilities and Building Structures Located on Lots. The Association shall keep all buildings, structures, fixtures and other Improvements located on the Common Properties, the Community Facilities, as well as the building structures only as provided below, located on Lots, insured against loss or damage by fire or other casualty for the full insurable replacement value thereof in an amount equal to 100% of the then current replacement cost (excluding foundation, excavating costs and other items normally excluded from coverage) as determined by the Association's casualty insurance company (with reasonable deductibles), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The insurance on the building structures located on Lots shall cover the structures only, including party walls, and shall not cover the interior of the buildings insured, including but not limited to, interior partition walls, interior doors, interior stairways, kitchen cabinets and fixtures, appliances whether built-in or not, electrical fixtures, bathroom cabinets and fixtures, and any floor, wall or ceiling coverings. If desired by the Owners or their mortgagees, it shall be the Owners' responsibility to obtain any insurance for the excluded items in the preceding sentence. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Common Properties and the Community Facilities shall be written in the name of, and the proceeds thereof shall be payable to, the Association, and the insurance coverage with respect to the building structures located on Lots shall be blanket policies written in the name of the Association, individually and as agent for the Owners covered by the policies, without naming them and as agent for their mortgagees without naming them, and the proceeds thereof shall be payable to the Association. Insurance proceeds for Common Properties and the Community Facilities may be used by the Association for the repair or replacement of the property for which the insurance was carried, at the option of the Board. Insurance proceeds for building structures located on Lots must be used by the Association for the repair or replacement of the damaged or destroyed building structure(s). Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

12.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Properties, Community Facilities or the building structures located on Lots, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article 11 of this Declaration.

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

12.4 Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief coverages, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each Owner against liability to each other Owner and to the Association and vice versa. The Association may also obtain Workers' Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, Board of Directors and Management Company, from liability in connection with the Common Properties and the Community Facilities, the premiums for which shall be Common Expenses and included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the Management Company against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof.

ARTICLE 13

ANNEXATION OF ADDITIONAL PROPERTY AND WITHDRAWAL OF PROPERTY

13.1 Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time to annex, subject to the provisions of this Declaration and the jurisdiction of the Association, all or any portion of the real property described in a Supplemental Declaration. Such Supplemental Declaration shall not require the consent of the Members. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transfer or assignment is memorialized in a written, recorded instrument executed by Declarant.

13.2 Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of not less than sixty-seven (67%) percent of the Class "A" Members of the Association. Annexation shall be accomplished by filing of record in the public records of the County, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by an authorized officer of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the Bylaws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 13.2 and to ascertain the presence of a quorum at such meeting.

13.3 Acquisition of Additional Common Properties. Declarant may convey to the Association additional real property, or any interest therein, improved or unimproved, and upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense as a Common Property for the benefit of all of its Members.

13.4 Withdrawal of Property. Declarant shall be entitled to withdraw portions of the Property owned by Declarant from the terms and conditions of this Declaration, subject to the terms and conditions of this Section 13.4. For purposes of this Declaration, the portion of the Property withdrawn from the terms hereof shall be referred to as the "Withdrawn Property." In order to withdraw such portion of the Property from the terms of this Declaration, Declarant shall record in the Public Records of the County an instrument executed with the formalities of a Deed, which instrument shall make reference to this Declaration, state that the purpose of the instrument is to withdraw the Withdrawn Property from the terms and conditions of this Declaration, and contain a legal description of the Withdrawn Property. Declarant shall have the right to withdraw portions of the Property from the terms and conditions of this Declaration without the joinder, ratification or approval of the Association, any Owner, or any lienholder, provided that Declarant is the fee simple owner of the Withdrawn Property, and provided that the withdrawal of the Withdrawn Property shall not result in the reduction of the number of Lots within the Property or the substantial material reduction of the size of any Lot within the Property. Upon the withdrawal of the Withdrawn Property from the terms and conditions of this Declaration, the Withdrawn Property shall no longer be subject to the terms of this Declaration, including all exhibits hereto, or any other covenants, restrictions and/or regulations provided herein or adopted hereunder, except for those easements, rights-of-way, or other portions hereof which, by their terms, specifically survive the termination of this Declaration, which shall include the withdrawal of such lands from the terms and conditions of this Declaration. The foregoing rights shall be in addition to those rights of the Declarant and the Association provided in Section 15.17 hereof.

13.5 Amendment. This Article 13 shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any portions of the Residential Property.

ARTICLE 14

ARCHITECTURAL STANDARDS

The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committee established in this Article 14. This Article 14 shall not in any fashion be applicable to or binding upon Declarant and none of the provisions of this Article 14 may be amended without the Declarant's written consent so long as the Declarant owns any Residential Property.

14.1 Architectural Control for Exterior Changes. There shall be no: (i) construction, which term shall include within its definition but shall not be limited to staking, clearing, excavation, grading, and other site work; (ii) exterior alteration or modification of existing Improvements; or (iii) plantings or removal of plants, trees, or shrubs, except in strict compliance with this Article 14; until the requirements of each have been fully met; and until the approval of the appropriate entities has been obtained. All Improvements constructed on any portion of the Property by any of the Owners shall be designed by and built in accordance with the plans and specifications of a licensed architect.

A. No construction of improvements (including without limitation, pools, saunas, spas, jacuzzis, screened enclosures, building, mailboxes, dog runs, animal pens or fences), decorations, attachments, fixtures, alterations, repairs, change of paint or stain color, pressure cleaning, or other work shall be erected, constructed, affixed, placed, or altered on any Lot or Dwelling Unit contained thereon, until the proposed plans, specifications, exterior colors and/or finishes, landscaping plan, and plot plan showing the proper location of such improvement shall have been approved by the ARC, (as hereinafter defined), its successor or assigns. Refusal of approval of plans, location, or specifications may be based by the ARC upon any reason, including purely aesthetic conditions, which in the sole discretion of the ARC shall be deemed sufficient. Two (2) copies of all plans and specifications shall be furnished to the ARC.

B. In addition to the foregoing, no Improvement (including landscaping) shall be erected, constructed, removed, planted or maintained, nor shall any addition to or any change, replacement or alteration therein be made on any Lot, Dwelling Unit or Common Property until the same has been submitted to and approved by the ARC, pursuant to the procedures set forth in this Declaration.

14.2 Architectural Review Committee. The Board shall have the right, pursuant to the Bylaws, to appoint certain of the Members to an Architectural Review Committee ("ARC"), which shall have exclusive jurisdiction over all original construction on any portion of the Property, as well as over all modifications, additions, or alterations made on or to existing townhomes and all other Improvements within the Property. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines, application and review procedures, and building criteria (the "Guidelines"). The Guidelines shall be promulgated on behalf of the Association and shall be binding upon all of its Members. The

ARC shall have sole and full authority to prepare and to amend from time to time the Guidelines, and shall make the Guidelines available to Owners, builders, developers and contractors who seek to engage in development of or construction upon all or any portion of the Property, and such Owners, builders, developers and contractors shall conduct their operations strictly in accordance therewith.

14.3 Committee Members. Until all Lots have been developed and conveyed to purchasers in the normal course of development and sale, Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of Declarant's right hereunder prior to conveyance of all Residential Property, except as otherwise set forth in a written instrument, in recordable form, executed by Declarant, which may be delivered in Declarant's sole and absolute discretion. Upon the expiration of such right, the Board shall appoint the members of the ARC, to consist of at least three (3) and no more than five (5) members.

14.4 Delegation of Authority and Application Procedure. The ARC may delegate its authority, except that all original construction on any portion of the Property may not be delegated, to the appropriate board or committee of any neighborhood association, council or group subsequently created or subsequently subjected to this Declaration so long as the ARC has determined that such board or committee has in force, review and enforcement practices, procedures, and appropriate standards at least equal to those of the ARC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Owner or its agent requesting such approval shall submit to the ARC each of the following: (a) plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, which shall be reviewed by the ARC for its approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation; (b) evidence that the contractor(s) employed by Owner is properly licensed under Florida law; and (c) evidence of insurance having been obtained which reasonably insures the risk undertaken. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of such Owner's residence, or to paint the interior of such residence any color desired. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission in accordance with the proper procedures, the plans shall be deemed approved.

14.5 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

14.6 Variance. The ARC may authorize variances from compliance with any of the provisions of the Guidelines when circumstances such as topography, natural obstructions,

hardship, or aesthetic or environmental considerations require such waiver, but only in accordance with the Rules. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section 14.6, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

14.7 Defects in Plans, Specifications or Construction of Improvements. Plans and specifications are not approved for engineering design, and by approving such plans and specification, neither the ARC, the members thereof, the Association, its members, the Board or the Declarant assumes liability or responsibility therefore, or for any defect in any structure constructed in accordance with such plans and specifications.

14.8 Right to Appeal. An Owner shall have a right to appeal any decisions of the ARC to the Board upon prior written notice to the Board.

14.9 Fees. A schedule of reasonable fees may be established by the Board for defraying costs of administering any application or submittal to the ARC and/or the Community Architect under this Article 14.

ARTICLE 15

GENERAL PROVISIONS

15.1 Enforcement. This Declaration, including the Articles, Bylaws and Rules, may be enforced against any and all Owners by the Association, as well as Declarant so long as Declarant owns any portion of the Property. Enforcement by the Association (and Declarant) shall include and be governed by the following:

A. Breach of any of the covenants contained in this Declaration, the Articles or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by Declarant or the Association. Any judgment rendered in any action or proceeding to enforce this Declaration or the Bylaws shall include a sum for attorneys' fees, in such amount as the court may deem reasonable, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

B. The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles or the Bylaws are violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity with respect to nuisances, either public or private, shall be applicable and may be exercised by Declarant or the Association.

C. The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

D. The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

E. All remedies provided at law or in equity shall be deemed incorporated herein so as to permit the employment of all remedies permitted under Florida law.

15.2 Severability. Invalidation of any one of these covenants or restrictions or any part thereof by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.3 Term. Subject to the amendment provisions of Section 15.5 hereof, this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, and their respective successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by 75% of the Members and 75% of the Institutional Mortgagees has been recorded terminating this Declaration. At such point of termination, no prescriptive rights shall be established regardless of the nature or duration of use of the Common Properties or any portion thereof.

Should the Members of the Association vote not to renew and extend this Declaration as provided herein, all Community Facilities and Common Properties shall be transferred to a Trustee appointed by the Circuit Court for the County, which Trustee shall sell the Common Properties free and clear of the provisions hereof upon terms established by the Trustee and approved by the Court. The proceeds of such a sale shall first be used for the sale, operation, maintenance, repair and upkeep of the Community Facilities and Common Properties, including a Trustee's fee approved by the Court, then for the payment of any debts or obligations constituting a lien on the Community Facilities and Common Properties. The excess of proceeds, if any, shall be distributed among the Owners equally. Only those easements which state that they shall survive termination hereof shall so survive unless otherwise required under Florida law.

Notwithstanding the provisions of this Section 15.3 or anything contained herein to the contrary, in the event this Declaration is not renewed or is terminated, and/or the Association is dissolved, all portions of the Common Properties which contain the Surface Water Management System shall be conveyed to an appropriate agency of local government. If such Common Properties are not accepted by the governmental agency, then the Surface Water Management System shall be dedicated to a similar not-for-profit corporation.

15.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of Community Facilities and Common Properties. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural, the singular, and the masculine, feminine and neuter genders shall each include the others. The Board shall be the ultimate interpreter of this Declaration and an opinion of counsel that any such interpretation is not unreasonable shall establish the validity of any such interpretation.

15.5 Scrivener's Errors. Prior to the time the Declaration turns over control of the Association to the Owners other than Declarant, the Declarant may amend this Declaration in order to correct a scrivener's error or other defect or omission without the consent of the Owners, the Association, the Board or any other third parties, provided that such amendment is reasonable and does not adversely affect, in a material manner, an Owner's property rights. Such an amendment shall be signed by the Declarant alone and a copy of the amendment shall be furnished to each Owner, the Association, and all Institutional Mortgagees as soon after recording thereof amongst the Public Records of the County, as is practicable.

15.6 Amendments. This Declaration may only be amended (1) by the affirmative vote (at any annual or special meeting of Members) or written approval of Members holding not less than sixty-seven (67%) percent of the votes of the Class A Membership and (so long as Declarant owns any portion of the Property) the affirmative vote or written approval of Declarant; or (2) until such time as Class B Membership terminates pursuant to Section 4.1 hereof, by act (with or without a meeting or notice) of Declarant alone. However, no amendment shall be permitted which has a material and adverse affect upon rights of Declarant or an Institutional Mortgagee without the prior written consent of Declarant or such Institutional Mortgagee, as appropriate. Nothing contained herein shall affect the right of Declarant to make such amendments or Supplemental Declarations without the consent or approval of any Owner, Member, or Institutional Mortgagee, as may otherwise be permitted herein. In the event any amendment is sought other than by Declarant, notice shall be given to all Owners and Institutional Mortgagees who have requested notice pursuant to Article 8 hereof at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, an authorized officer of the Association shall execute an amendment to this Declaration which shall set forth the terms of the amendment, which shall be effective upon its recording. Such amendment shall be recorded in the Official Public Records of the County. Amendments made by Declarant need be signed only by Declarant with no recitation of the items set forth immediately above.

15.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

15.8 Notices. Any notice permitted or required to be delivered as provided herein shall (unless otherwise expressly set forth herein) be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address for such Person contained in the records of the Association. Such address shall be used for all purposes, unless changed from time to time by notice in writing to the Association.

15.9 NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN WRITTEN DOCUMENTS DELIVERED BY DECLARANT TO ANY OWNER, AND (B) AS OTHERWISE REQUIRED BY LAW.

15.10 Declarant Exemption. Anything in this Declaration to the contrary, notwithstanding, so long as Declarant owns, occupies or uses any portion of the Residential Property, nothing herein shall be construed to prevent, limit, or impair Declarant's right and ability to complete development of the Property in any manner determined by Declarant from time to time, including, but not limited to, Declarant's right to operate and maintain models, gates, sales and leasing offices, construction activities, promotional activities and signs.

15.11 Information. The Association shall make available for inspection to Owners and Institutional Mortgagees, upon request, during normal business hours, current copies of this Declaration, the Articles, Bylaws, or any Rules concerning the Property, together with the books, records, and financial statements of the Association.

15.12 Voidability of Contracts. The Association shall not have the right to cancel any contract, lease, or management agreement entered into by the Association prior to Declarant turning over control of the Association to Owners other than Declarant, unless the Association has a right of termination "without cause" in such contract, lease, or management agreement, which is exercisable without penalty at any time after transfer of control upon not more than ninety (90) days notice to the other party.

15.13 Assignability of Declarant's Rights. The rights of Declarant under this Declaration, the Articles, and the Bylaws may be assigned any number of times, in whole or in any part, on an exclusive or non-exclusive basis by written instrument recorded in the public records of the County. Any partial assignee shall not be deemed Declarant, nor shall it be burdened by any of Declarant's obligations arising under this Declaration, except as expressly and specifically assigned and assumed. No assignee shall have any liability for any acts of

Declarant or any prior declarant, prior to the date of assignment or transfer, unless such assignee is assigned and agrees to assume such liability.

15.14 Priority of Documents. This Declaration shall be paramount in those instances of irreconcilable conflict among or between it and the Articles, Bylaws, or Rules, in the absence of any express language indicating which document controls the particular subject matter; the Articles are next paramount, the Bylaws next paramount, and the Rules most subordinate.

15.15 Real Property Covenants. All of the restrictions, reservations, covenants, conditions, assessments, liens and easements contained herein constitute covenants running with the land and shall run perpetually unless terminated or amended as provided herein, and shall be binding upon all Owners as herein defined, and in consideration of receiving and by acceptance of any deed, grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions of this Declaration and the Articles and Bylaws. Both the burdens imposed and the benefits derived from this Declaration shall run with each Lot, as herein defined.

15.16 Disclaimer. THE ASSOCIATION WILL STRIVE TO MAINTAIN THE PROPERTY AS A SAFE AND SECURE RESIDENTIAL ENVIRONMENT. HOWEVER, NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT, AND ANY COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AGAINST LOSS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER THAT THEY ACKNOWLEDGE THAT NEITHER THE ASSOCIATION NOR THE DECLARANT HAS MADE ANY REPRESENTATIONS OR WARRANTIES TO ANY OWNER, TENANT, GUEST, OR INVITEE, NOR HAS ANY OF SUCH PARTIES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN, AS OFFERED OR AGREED TO BY THE ASSOCIATION OR DECLARANT. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY.

15.17 No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Community Facilities and/or Common Properties or any part thereof, nor shall any person acquiring any interest in the Common Properties or any part thereof seek any judicial partition unless the Common Properties have been removed from the provisions of this Declaration. This Section 15.17 shall not be construed to prohibit the

Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

15.18 Modification of Project. Declarant reserves the absolute right at any time and from time to time to modify the Project for all or any portion of the Property, and in connection therewith to develop residences upon the Property which are substantially different from the planned residences for the Property from time to time, and in the event Declarant changes the type, size, or nature of the residences or other Improvements to be constructed upon the Property, Declarant shall have no liability thereafter to any Owner. In addition, Declarant makes no representations or warranties as to the manner in which any other property outside of the Property will be developed, and shall have no liability to any Owner as regards the development of any other property in or around the Property.

15.19 Playground. Any playground or other play areas or equipment furnished by Declarant or the Association, or created within the Property shall be used at the risk of the user, and the Declarant and the Association shall not be held liable to any person for any claim, damage or injury occurring thereon, or related to the use thereof.

15.20 Exhibits. Any exhibits attached to this Declaration, and amendments to this Declaration or any Supplemental Declaration that contain sketches or depictions of Lot(s), Community Facilities, Common Properties, Berm, Improvements and any other items shown on an exhibit, if any ("Sketched Item(s)") shall not be binding as to the existence, size, dimensions, location or identification or any other aspect of such Sketched Item(s) and shall only be for informational, reference, conceptual and general schematic purposes only unless the exhibit together with the text of this Declaration (including any Amendments to this Declaration and Supplemental Declarations) is specifically creating the Sketched Item(s) and then only to the extent specifically created. The depiction of Sketched Item(s) shown on any exhibits (unless to specifically create the Sketched Item(s) as stated in the previous sentence) shall not commit that same will be created and/or constructed at all or in the manner shown and the Declarant makes no representations or warranties as to how the Sketched Item(s) will be created and/or constructed, if at all.

ARTICLE 16

CONVEYANCE OF UNITS

In order to assure a community of congenial residents and thus protect the value of the Dwelling Units in Atlantic Grove Townhome, the sale or lease of Lots, shall be subject to the following provisions:

16.1 Notice to Association. The Owner of a Lot shall notify the Association in writing of its intention to sell or lease its Lot and furnish with such notification a copy of the contract for purchase and sale or a copy of the lease, as applicable. Except as provided in Section 16.4 below, it is not the intention of this Article to grant to the Association a right of approval or disapproval of purchasers or lessees. It is, however, the intent of this paragraph to impose an

affirmative duty on the Owners to keep the Association fully advised of any changes in occupancy or ownership for the purposes of facilitating the management of the Association's membership records. As this Article is a portion of the Declaration which runs with the land, any transaction which is conducted without compliance with this Article may be voidable by the Association.

16.2 Lease Agreement Terms. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing, and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. The lease agreement shall also state the party who will be responsible for the assessments as stated above, and it shall be the obligation of all Owners to supply the Board with a copy of said written agreement prior to the lessee occupying the premises. Unless provided to the contrary in a lease agreement, an Owner, by leasing its Lot, automatically delegates his right of use and enjoyment of the Common Properties and Community Facilities to his lessee; and in so doing, said Owner relinquishes said rights during the term of the lease agreement.

ARTICLE 17

AFFORDABLE HOUSING

A principal goal of the Declarant is the revitalization and the redevelopment of the Property and, further, to assist the City of Delray Beach in realizing its goal of providing affordable housing within the City. In furtherance of this goal, Declarant desires to offer ten (10) of the fifty-five townhome Dwelling Units to be offered for sale to the public as an affordable housing unit as hereinafter defined.

17.1 Affordable Housing Units. Each of the ten (10) Lots specified on Schedule "A" attached hereto, are hereby designated to be an "Affordable Housing Unit". A restriction shall be inserted in each deed to a designated Affordable Housing Unit which requires that the purchaser of each such Affordable Housing Unit comply with the terms and conditions of this Declaration in addition to any other separate agreement that may be entered into between the Declarant and initial purchaser of each Affordable Housing Unit. Each Affordable Housing Unit shall remain affordable, in the "moderate" range, as defined by the Delray Beach Community Redevelopment Agency ("CRA") and the Delray Beach Community Development Corporation ("CDC") for a period of ten (10) years from and after the date each such Affordable Housing Unit receives its certificate of occupancy. The initial cost of an Affordable Housing Unit shall be established by the Declarant. Thereafter, each subsequent purchaser of an Affordable Housing Unit shall complete an affordability worksheet, and submit same to the Association, the CRA and CDC until the conclusion of the ten (10) year affordability period.

17.2 Application to Purchase an Affordable Housing Unit. Any purchaser of an Affordable Housing Unit, other than the initial purchaser from the Declarant, shall complete such affordability worksheets and affidavits as are established and required by the CRA and CDC. The CRA and CDC shall be jointly responsible for the administration and implementation of

procedures for the resale of each Affordable Housing Unit. The CRA and/or CDC shall maintain a separate file on each Affordable Housing Unit for the ten (10) year affordability period.

17.3 Procedure to Purchase an Affordable Housing Unit. All sales of an Affordable Housing Unit shall be subject to the approval of the Association, the CRA and the CDC. The maximum sales price of an Affordable Housing Unit shall be calculated annually by the CRA and CDC utilizing the State of Florida Median Area Purchase Price Index or similar governmental agency index. In order to qualify to purchase an Affordable Housing Unit, the prospective purchaser shall comply with the requirements for conveyances as set forth in this Declaration; shall complete the required affordability worksheet and affidavits; and shall submit such materials to the Association, the CRA and the CDC. The prospective seller and purchaser of an Affordable Housing Unit shall also complete and execute affidavits which shall state the true and correct purchase price for the Affordable Housing Unit, and shall deliver same to the Association, the CRA and the CDC.

17.4 Misrepresentations. In all sales of an Affordable Housing Unit, excepting only the initial purchases from the Declarant, if the Association, the CRA or the CDC determine at any time that a purchaser or a seller of an Affordable Housing Unit either intentionally or negligently misrepresented the sales price of an Affordable Housing Unit, then the Association, acting on its own, or upon the request of the CRA or CDC, shall have the right to void the transaction. All costs and fees, including without limitation, all attorneys fees whether or not a cause of action be filed, and at all trial and appellate levels which may accrue to the Association, CRA or CDC as a result of voiding such a transaction, shall be paid by the seller and purchaser, jointly and severally, of the applicable Affordable Housing Unit. If the seller and purchaser refuse or fail to pay the costs accruing to the Association, CRA or CDC shall have the right to lien the applicable Affordable Housing Unit in an amount equal to such cost and fees accruing to the Association, CRA or CDC. For the Association this assessment and the collection of such assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Individual Assessments.

This space intentionally left blank

Declarant and the Association have caused this Declaration to be executed as of the date first written above.

DECLARANT:

Signed in the presence of:

ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company

BY: NEW URBAN ATLANTIC GROVE, L.L.C., a Florida limited liability company, its Managing Member

Abuelle Ortner
Witness Signature
Abuelle ORTNER
Print Name

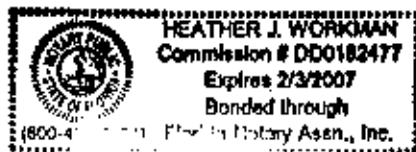
Heather J Workman
Witness Signature
Heather J Workman
Print Name

By: [Signature]
Print Name: Kevin E. Rickard
Title: President
Address: 398 WE 6th Ave
Relay Box #1-22483
(LLC COMPANY SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn to before me this 16 day of April, 2003 by Kevin Rickard, as President, of NEW URBAN ATLANTIC GROVE, L.L.C., a Florida limited liability company, the Managing Member of ATLANTIC GROVE PARTNERS L.L.C., on behalf of the L.L.C. He/She is personally known to me or has produced _____ as identification.

Heather J Workman
(SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA)
DD0182477 Heather J Workman
(Print, type or stamp Commission Name of Notary Public)
2/3/2007
(Commission Expiration Date and Serial No., if any)



JOINED BY THE ASSOCIATION:

ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., a Florida corporation not for profit

Gabriele Ortner
Witness Signature
GABRIELLE ORTNER
Print Name

By: [Signature]
Print Name: TIMOTHY L. HERNANDEZ
Title: V.P.
Address: 398 NE 6th Ave
Delray Beach, FL

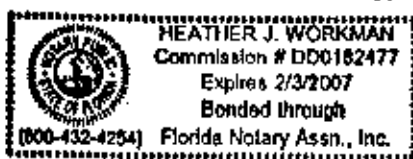
[Signature]
Witness Signature
Heather J Workman
Print Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn to before me this 16 day of April, 2003, by Timothy Hernandez President of ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., a Florida corporation not for profit. He/She is personally known to me or has produced _____ as identification.

[Signature]
(SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA)
DD 0182477 Heather J Workman
(Print, type or stamp Commission Name of Notary Public)
2/3/2007
(Commission Expiration Date and Serial No., if any)



ATLANTIC GROVE CONDOMINIUM ASSOCIATION, INC.
JOINDER AND CONSENT

Joined by Atlantic Grove Condominium Association, Inc., a Florida corporation not for profit, for the sole purpose of Acknowledging and Accepting:

1. Community Facilities Assessment Obligations (Section 6.4);
2. Community Facilities Restrictions (Section 10.12);
3. Damage or Destruction to Community Facilities (Section 11.2); and
4. Any other provision relating to the Community Facilities with the exception of any fee simple ownership rights thereto.

Signed, sealed and witnessed by:

ATLANTIC GROVE CONDOMINIUM ASSOCIATION, INC.,
a Florida corporation not for profit

Gabrielle Ortner
 Witness Signature
GABRIELLE ORTNER
 Print Name

By: [Signature]
 Print Name: Kevin E. Richards
 Title: President
 Address: 398 NE 60th Ave
Palm Beach, FL

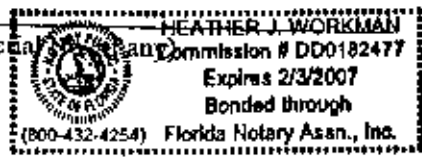
Heather J Workman
 Witness Signature
Heather J Workman
 Print Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn to before me this 16 day of April, 2003, by Kevin Richards as President of ATLANTIC GROVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit. He/She is personally known to me or has produced _____ as identification.

Heather J Workman
 (SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA)
Heather J Workman
 (Print, type or stamp Commission Name of Notary Public)
2/3/2007
 (Commission Expiration Date and Seal)



DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY JOINDER AND CONSENT

Joined by the Delray Beach Community Redevelopment Agency, a public agency established by the City of Delray Beach, a Florida municipality, for the sole purpose of Acknowledging and Accepting the provisions of Article 17 of this Declaration.

Signed, sealed and witnessed by:

Cori Moore
Witness Signature

CORI MOORE
Print Name

Rosalind J. Murray
Witness Signature

Rosalind J. Murray
Print Name

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: [Signature]

Print Name: John Weaver

Title: Chairman

Address: 104 W Atlantic Ave
Delray Beach, FL 33444

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn to before me this 18 day of April, 2003, by John Weaver as Chairman of the DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY. He She is personally known to me or has produced [Signature] as identification.

Juliana M. Steele
(SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA)
Juliana M. Steele
(Print, type or stamp Commission Name of Notary Public)
9-5-2004, CC 965548
(Commission Expiration Date and Serial No., if any)



Juliana M. Steele
Commission # CC 965548
Expires Sep. 5, 2004
Bonded Through
Atlantic Bonding Co., Inc.

DELRAY BEACH COMMUNITY DEVELOPMENT CORPORATION
JOINDER AND CONSENT

Joined by the Delray Beach Community Development Corporation, a Florida corporation not for profit, for the sole purpose of Acknowledging and Accepting the provisions of Article 17 of this Declaration.

Signed, sealed and witnessed by:

Gina Dioufrote
Witness Signature
Gina Dioufrote
Print Name

Carmelita A. Smith
Witness Signature
Carmelita A. Smith
Print Name

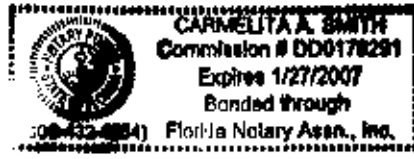
DELRAY BEACH COMMUNITY DEVELOPMENT CORPORATION

By: William Sanders
Print Name: William Sanders
Title: Executive Director/Project Manager
Address: 400 W. Atlantic Ave., S-200
Delray Beach, Fl 33444

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn to before me this 16th day of April, 2003, by William Sanders as Project Manager of the DELRAY BEACH COMMUNITY DEVELOPMENT CORPORATION. He/She is personally known to me or has produced DRIVER LICENSE as identification.

Carmelita A. Smith
(SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA)



(Print, type or stamp Commission Name of Notary Public)
(Commission Expiration Date and Serial No., if any)

MORTGAGEE JOINDER AND CONSENT:

Wachovia Bank, National Association ("Wachovia Bank"), having an address of 33001 West Palm Beach, Florida ~~33001~~ said bank being the owner and holder of a Mortgage and Security Agreement given by ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company, dated 12/10/02, recorded 10/10/02 in Official Records Book 14255, Page 874 of the Public Records of Palm Beach County, Florida, does hereby join and consent to this Declaration of Covenants, Restrictions and Easements for Atlantic Grove Townhome (the "Declaration").

However, it is expressly understood and agreed that this consent shall in no way diminish the security interest in favor of Wachovia Bank created in the above Mortgage and Security Agreement.

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed in its name this 23 day of Apr, 2003.

WITNESSES:

Signed, sealed and delivered in the presence of

Chris Cummings
Witness Signature
CHRIS CUMMINGS
Print Name

Wachovia Bank, National Association

By: Arthur L. Mallard
Print Name: Arthur L. Mallard
Title: Vice President

Sue Williams
Witness Signature
Sue Z. Williams
Print Name

STATE OF Georgia)
COUNTY OF Gwinnett)

The foregoing instrument was acknowledged before me this 23rd day of April, 2003, by Arthur L. Mallard, as V.P. of Wachovia Bank, National Association, on behalf of said bank. He/She is personally known to me or who has produced _____ as identification.

Nancy P. Hawkins
(SIGNATURE OF NOTARY PUBLIC, STATE OF GA)
Nancy P. Hawkins
(Print Notary Name, Commission Name of Notary Public)
NOTARY PUBLIC GWINNETT COUNTY, GEORGIA
My Commission Expires June 23, 2004
(Commission Expiration Date and Serial No., if any)



EXHIBIT "A"
THE PROPERTY

Lots 1 through 55 inclusive, Tract R-1 and Tract R-2 of the Plat of Atlantic Grove according to the Plat thereof, as recorded in Plat Book 96, Page 55 through 58 of the Public Records of Palm Beach County, Florida.

Exhibit A

*Declaration of Covenants, Restrictions and Easements
for
Atlantic Grove Townhomes*

EXHIBIT "B"

COMMON PROPERTIES

Tract R-1 and Tract R-2 as shown on the Plat at of
ATLANTIC GROVE, according to the Plat thereof, as
recorded in Plat Book 96, Pages 55 through 58 the Public
Records of Palm Beach County, Florida.

Exhibit B

*Declaration of Covenants, Restrictions and Easements
for*

EXHIBIT "C"
ARTICLES OF INCORPORATION

Exhibit C

*Declaration of Covenants, Restrictions and Easements
for
Atlantic Grove Townhome*

FILED

ARTICLES OF INCORPORATION 02 AUG 22 PM 2:54

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

OF

ATLANTIC GROVE TOWNHOME ASSOCIATION, INC.

a Florida corporation not for profit

The undersigned hereby makes, subscribes, acknowledges and files these Articles of Incorporation for the purpose of forming a not-for-profit corporation under the laws of the State of Florida:

ARTICLE I: NAME

The name of the corporation is ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., which is hereafter referred to as "the Association".

ARTICLE II: PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office and mailing address of the Association is hereby established and maintained at 398 NE 6th Avenue, Delray Beach, Florida 33483.

ARTICLE III: DURATION

The Association shall have perpetual existence, provided, however, that in the event the Association is dissolved, any property consisting of a surface water management system shall be conveyed to an appropriate agency of local government, and if not accepted, then any such surface water management system shall be dedicated to a similar not-for-profit corporation.

ARTICLE IV: PURPOSES AND POWERS OF THE ASSOCIATION

The specific primary purposes for which the Association is formed are those objects and purposes as are authorized by the Declaration of Covenants, Restrictions and Easements for Atlantic Grove Townhome (the "Declaration"). All terms used herein and in the Bylaws shall have the meanings, if any, assigned to them in the Declaration.

In furtherance of such purposes, the Association by and through its Board of Directors shall have power to:

- (a) Perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Restrictions and Easements for Atlantic Grove Townhome (the "Declaration") as may be amended from time to time, as recorded or to be recorded in the Public Records of Palm Beach County, Florida; said Declaration is incorporated herein as if set forth at length, and any initial capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Declaration;
- (b) Affix, levy, and collect all charges and assessments pursuant to the terms of the declaration, and enforce payment thereof by any lawful means; and pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed on the property of the Association;
- (c) Acquire, own, hold, improve, build on, operate, maintain, convey, sell, lease, transfer, dedicate to public use, or otherwise dispose of real and personal property in connection with the affairs of the Association;
- (d) Borrow money and, subject to the consent of sixty-seven (67%) percent of each class of members, mortgage, pledge, convey by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Dedicate, grant, release, convey, alienate or transfer all or any part of the common properties to any public agency, authority, utility, private party or entity;
- (f) Purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of interests in, real or personal property, except to the extent restricted hereby; to contract for the management and maintenance of the Common Properties and Community Facilities and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Properties and Community Facilities with funds as shall be made available by the Association for such purposes. The Association shall,

however, retain at all times the powers and duties granted by the Declaration, including, but not limited to, the making of Assessments, promulgation of rules and the execution of contracts on behalf of the Association;

(g) Collect on behalf of the Association all costs or charges which may be due to the Association in addition to the Assessments or Common Expenses for the use of any Common Properties or Community Facilities which may be granted therein.

(h) Sue and be sued; and

(i) Have and exercise any and all powers, rights and privileges that a corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any members or individual person, firm or corporation.

ARTICLE V: MEMBERS

Every person or entity who is a record Owner of a fee or undivided fee interest in any Townhome Lot (as defined in the Declaration) which is subject by covenants of record to assessment by the Association and the Declarant shall be a member of the Association, (hereinafter referred to as a "Member(s)"). Notwithstanding the foregoing, any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Membership in the Association shall be appurtenant to and may not be separated from ownership of a lot which is subject to assessment by the Association.

ARTICLE VI: VOTING RIGHTS

Voting shall be in accordance with Article 4 of the Declaration.

ARTICLE VII: DIRECTORS

The property, business and affairs of the Association shall be managed by a board (the "Board of Directors") consisting of the number of Directors determined in the manner provided by the Bylaws of Atlantic Grove Townhome Association, Inc. (the "Bylaws"), but which, prior to the Declarant's turnover of control of the Association to the Owners other than Declarant, shall consist of not less than three (3) Directors. Directors of the

Association shall be elected at the annual meeting of the Members in the manner set forth in the Bylaws.

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 of Directors, its agents, contractors or employees, subject only to approval of Townhome Lot Owners when such approval is specifically required and except as provided in the Declaration.

The names and addresses of the persons who are to serve as the initial Directors are:

Kevin E. Rickard	398 N.E. 6 th Avenue Delray Beach, Florida 33483
Timothy Yaxley	398 N.E. 6 th Avenue Delray Beach, Florida 33483
Gabrielle Ortnier	398 N.E. 6 th Avenue Delray Beach, Florida 33483

ARTICLE VIII: REGISTERED AGENT

The name and address of the registered agent of the Association is Alan L. Gabriel, Esquire, KATZ, BARRON, SQUITERO & FAUST, P.A., 100 NE 3rd Avenue, Suite 280, Fort Lauderdale, Florida 33301.

ARTICLE IX: AMENDMENTS

Amendments to these Articles of Incorporation shall require the affirmative vote of a majority of the Board of Directors and the affirmative vote of sixty-seven (67%) percent of the Members of the Association; provided, however, that (a) no amendment shall make any change in the qualifications for membership nor the voting rights of the Members without the written approval or affirmative vote of all Members of the Association, (b) that these Articles shall not be amended in any manner without the prior written consent of the Declarant to such amendment for so long as the Declarant is the Owner of any Lot located within the Property, and (c) that these Articles shall not be amended in any manner which conflicts with the terms, covenants and provisions contained in the Declaration. Notwithstanding anything herein to the contrary, the Declarant shall be permitted to unilaterally amend these Articles and the Bylaws of the Association so long

as the Declarant is entitled to appoint a majority of the directors of the Association.

ARTICLE X: INDEMNIFICATION

Every director and every officer of the Association and each member of the Architectural Control Board or any other Committee and Tribunal as provided in the Bylaws, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement thereof to which such person may be a party or may become involved by reason of being or having been a director or officer of the Association, whether or not a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duty; provided that in the event of a settlement, the indemnification provided for herein shall apply only if and when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of any and all right of indemnification to which such director or officer may be entitled under statute or common law.

ARTICLE XI: BYLAWS

The Board of Directors shall adopt Bylaws consistent with these Articles of Incorporation. Such Bylaws may be altered, amended or repealed by the membership in the manner set forth in the Bylaws.

ARTICLE XII: INCORPORATOR(S)

The name and address of the Incorporator to these Articles is as follows:

Timothy L. Hernandez

398 N.E. 6th Avenue
Delray Beach, Florida 33483

ARTICLE XIII: OFFICERS

The names of the officers who shall serve until their successors are designated by the Board of Directors in the manner set forth in the Bylaws are as follows:

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President:

Kevin E. Rickard

Vice President:

Timothy Yaxley

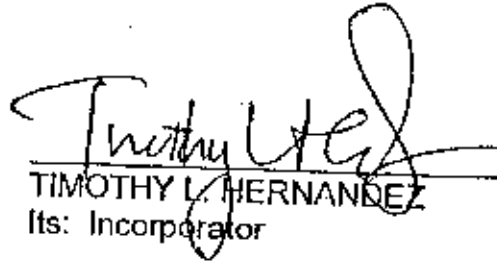
Secretary / Treasurer:

Gabrielle Ortner

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 21st
day of August, 2002.


TIMOTHY L. HERNANDEZ
Its: Incorporator

ACCEPTANCE OF REGISTERED AGENT

I, ALAN L. GABRIEL, ESQ., being a resident of the State of Florida and having been designated as the Registered Agent in the above and foregoing Articles, is familiar with and I hereby restate my acceptance of the obligation of the position of Registered Agent under Section 617.0501, Florida Statutes.

EXECUTED this 21st day of August, 2002.


ALAN L. GABRIEL, ESQ.

EXHIBIT "D"

BYLAWS

Exhibit D

*Declaration of Covenants, Restrictions and Easements
for
Atlantic Grove Townhome*

BYLAWS OF ATLANTIC GROVE TOWNHOME ASSOCIATION, INC.

A corporation not-for-profit organized
under the laws of the State of Florida

1. Identity. These are the Bylaws of ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that portion of the Atlantic Grove Community known as Atlantic Grove Townhome located in Palm Beach County, Florida (the "Property").
 - 1.1 Principal Office. The principal office of the Association shall be at 398 N.E. 6th Avenue, Delray Beach, Florida 33483, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.
 - 1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.
 - 1.3 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation.
2. Definitions. For convenience, these Bylaws shall be referred to as the "Bylaws" and the Articles of Incorporation of the Association as the "Articles." The other terms used in these Bylaws shall have the same definition and meaning as those set forth in that certain Declaration of Covenants, Restrictions and Easements for Atlantic Grove Townhome (the "Declaration"), unless herein provided to the contrary, or unless the context otherwise requires.
3. Members. The members of the Association ("Members") shall be as specified in the Articles and Declaration.
 - 3.1 Annual Meeting. The annual Members' meeting shall be held on the date, at the place and at the time determined by the Board from time to time, provided that there shall be an annual meeting every calendar year. To the extent possible, the annual meeting shall be held during October, November or December and no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the Members, or as stated in the notice of the meeting sent to Members in advance thereof.

- 3.2 Special Meeting. Special Members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board. A special meeting must be called by the President or Secretary upon receipt of a written request from a majority of the Members of the Association. The business conducted at a special meeting shall be limited to the purposes stated in the notice of the meeting.
- 3.3 Notice of Meeting; Waiver of Notice. Notice of a meeting of Members stating the time and place and the purpose(s) for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place within the Property. The notice of the annual meeting shall be hand delivered or sent by mail to each Owner, unless the Owner waives in writing the right to receive notice of the annual meeting by signing a waiver of notice, in person or by proxy, either before or after the meeting. The delivery or mailing shall be to the address of the Member as it appears on the roster of Members described in Section 10 hereof. The posting and mailing of the notice shall be effected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting. Proof of posting or hand delivery may be given by affidavit, and proof of mailing of the notice may be given by retention of post office receipts, or by affidavit. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.
- Notice of Member annual or special meetings may be waived before or after the meeting. The attendance of any Member (or person authorized to vote for such member) shall constitute such Member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- 3.4 Quorum. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast thirty percent (30%) of the votes of Members, unless a higher number is specifically provided elsewhere in the Declaration, the Articles or these Bylaws. If voting rights of any Member are suspended pursuant to the provisions of the Declaration or these Bylaws, the vote(s) of such Member shall not be counted for the purpose of determining the presence of a quorum and the total number of authorized votes shall be reduced accordingly during the period of such suspension.
- 3.5 Voting.
- (a) Classes of Voting Membership. The Association shall have two (2) classes of Members, each with voting rights as follows:

Class A. Class A Members shall be all Owners, including Declarant. Class A Members shall be entitled to one (1) vote for each Lot they own. Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the sum of all Class A Members are entitled to cast at any time, thus giving the Class B Member a two-thirds (2/3rds) majority of votes in the Association. The Class B Membership shall cease upon the first to occur of the following:

(i) the date which is ten (10) years from the date upon which the Declaration is recorded in the Public Records of the County; or

(ii) three (3) months after ninety percent (90%) of the Lots in the Property that will ultimately be operated by the Association have been conveyed to Members; or

(iii) termination of the Class B Membership by resignation of all Declarant-appointed directors and delivery to the Secretary of the Association of a certificate in recordable form, signed by Declarant and stating that Declarant elects to terminate the Class B Membership. Upon termination of the Class B Membership, Declarant shall retain any voting rights it may have as a Class A Member.

Notwithstanding the foregoing, Declarant shall be entitled to appoint at least one (1) member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots within the Property. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant owned voting interest in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the Members of the Board of Directors.

- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Members for all purposes except where otherwise provided by law, the Declaration, the Articles or these Bylaws. As used in these Bylaws, the Articles or the Declaration, the terms "majority of the Members" and "majority of the Members" shall mean a majority of the votes of Members and not a majority of the Members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Members at which a quorum shall have been attained. Similarly, if some greater percentage of Members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of Members and not of the Members themselves.

- (c) Voting Owner. If a Townhome Lot is owned by one person, his right to vote shall be established by the roster of Members. If a Townhome Lot is owned by more than one person, the person entitled to cast the vote for the Townhome Lot shall be designated by a certificate signed by all of the record owners of the Townhome Lot according to the roster of Townhome Lot Owners and filed with the Secretary of the Association. Such person need not be a Townhome Lot Owner, nor one of the joint owners. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Townhome Lot concerned. A certificate designating the person entitled to cast the vote for a Townhome Lot may be revoked by any record owner of an undivided interest in the Townhome Lot. If a certificate designating the person entitled to cast the vote for a Townhome Lot is not on file or has been revoked, the vote of the Member(s) of such Townhome Lot shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed, except if the Townhome Lot is owned jointly by a husband and wife. If a Townhome Lot is owned jointly by a husband and wife, they may, without being required to do so, designate a voting Member in the manner provided above. Such designee need not be a Townhome Lot Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:
- (i) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).
 - (ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Townhome Lot vote just as though he or she owned the Townhome Lot individually, and without establishing the concurrence of the absent person.
 - (iii) If both are present at a meeting and concur, either one may cast the Townhome Lot vote.
- (d) Corporation. If a Townhome Lot is owned by a corporation or other entity, the Chairman of the Board, President, Vice President, Secretary, or Treasurer of the Corporation holding such Membership in the Association, and any like officer of a foreign corporation whether for profit or not for profit, holding a Membership in the Association, shall be deemed by the

Association to have the authority to vote on behalf of the Corporation and to execute proxies and written waivers and consents in relation thereto, unless before a vote is taken on a waiver of consent is acted upon it is made to appear by certified copy of the Bylaws or Resolution of the Board of Directors or executive committee of the Corporation that such authority does not exist or is vested in some other officer or person. In absence of such certification, the person executing any such proxies, waivers or consents or presenting himself at a meeting as one of such officers of a Corporation shall be for the purposes of this Section conclusively deemed to be duly elected, qualified and acting as such officer and be fully authorized. In the case of conflicting representation, the corporate Member shall be deemed to be represented by its Senior Officer, in the order first stated in this subsection.

- 3.6 Proxies. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawfully adjourned and reconvened meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be dated, must state the date, time, and place of the meeting for which it was given, and signed by the person authorized to cast the vote for the Townhome Lot (as above described) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Townhome Lot Owners. If the proxy form expressly so provided, any proxy holder may appoint, in writing, a substitute to act in his place.
- 3.7 Adjourned Meetings. Adjournment of an Annual or Special meeting to a different date, time, or place must be announced at the meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to the notice provision of the Bylaws. If a new record date for the adjourned meeting is or must be fixed, notice of the adjourned meeting must be given to persons who are entitled to vote and are Members as of the new record date but were not Members as of the previous record date. If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as provided by law, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.8 Order of Business. If a quorum has been attained, the order of business at annual Members' meetings, and, if applicable, at other Members' meetings, shall be:
- (a) Call to order by President;

- (b) Appointment by the President of a chairman of the meeting (who need not be a Member or a Director);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

- 3.9 Minutes of Meeting. Minutes of all meetings of the Members of an Association must be maintained in written form or in another form that can be converted into written form within a reasonable time. The minutes of all meetings of Members shall be kept in a book available for inspection by Members or their authorized representatives or board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 3.10 Delinquent Members. If any Assessment or portion thereof imposed against a Member remains unpaid for ninety (90) days following its due date, such Member's voting rights in the Association shall be automatically suspended until all past due Assessments and other sums then due are paid, whereupon the voting rights shall be automatically reinstated.
- 3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action herein required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken shall be signed by the Members (or persons authorized to cast the vote of any such Member as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of

such Members at which a quorum of such Members (or authorized persons) entitled to vote thereon were present and voted.

Written consent shall not be effective to take the Association action referred to in the consent unless the consent is signed by the Members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and is delivered in the manner required by this Section.

Any written consent may be revoked prior to the date that the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Association, or received by the Secretary or other officer or agent of the Association.

A consent signed under this Section has the effect of a meeting vote and may be described as such in any document. Whenever action is taken pursuant to this Section, the written consent of the Members consenting to such action or the written reports of inspectors appointed to tabulate such consents must be filed with the minutes of proceedings of the Members.

Within ten (10) days after obtaining such authorization by written consent, notice must be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

3.12 Recording. Any Member may tape record or vidcotape meetings of the Membership. The Board of Directors of the Association may adopt reasonable rules governing the taping of meetings of the Membership.

4. Directors

4.1 Membership. The affairs of the Association shall be managed and governed by a Board of Directors (the "Board") of not less than three (3) prior to the Declarant's turnover of control of the Association to Members other than Declarant; of not less than three (3) after the Declarant's turnover of such control; and in no event more than five (5) "Directors", the exact number initially to be as set forth in the Articles, and thereafter, except as provided herein, to be determined from time to time upon majority vote of the membership. Directors need not be Townhome Lot Owners.

4.2 Election of Directors. The election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual Members' meeting, except as provided herein to the contrary.
- (b) Nominations for Directors and additional directorships created at the meeting shall be made from the floor.

- (c) The election shall be by written ballot (unless dispensed with by majority consent of the Townhome Lots represented at the meeting) and decided by a plurality of the votes cast for each candidate.
- (d) All Members of the Association shall be eligible to serve on the Board of Directors, and a Member may nominate himself as a candidate for the Board at a meeting where the election is to be held.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by Members, vacancies on the Board occurring between annual meetings of Members shall be filled by majority action of the remaining Director(s), provided that all vacancies in directorships to which Directors were appointed by the Declarant pursuant to the provisions of Section 4.17 hereof shall be filled by the Declarant without the necessity of any meeting.
- (b) Any Director elected by the Members may be removed from office with or without cause by the vote or agreement by a majority of all votes of the Membership. The vacancy in the Board so created shall be filled by the Members at the same meeting or at a meeting of the Membership shortly thereafter. The conveyance of all Townhome Lots owned by a Director in the Property who owned one or more Townhome Lots at the time he was elected or appointed (other than appointees of the Declarant) shall constitute the resignation of such Director.
- (c) Until a majority of the Directors are elected by the Members other than the Declarant, no Directors named by the Declarant shall be subject to removal by Members other than the Declarant. Directors appointed by the Declarant and Directors replacing them may be removed and replaced by the Declarant without the necessity of any meeting.
- (d) If a vacancy on the Board of Directors results in there being no incumbent Directors, any Member may apply to the Circuit Court within whose jurisdiction the Property lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Member shall mail to the Association and post in a conspicuous place in the Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these Bylaws. If, during such time, the Association fails to fill the vacancy(ies), the Member may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these Bylaws.

- 4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the Members and subsequently until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed members of the Board shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to or by the Board of the organizational meeting shall be necessary.
- (a) All meetings of the Board must be open to all Members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by attorney client privilege. Notices of all Board meetings must be posted in a conspicuous place in the Property at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Property, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committees or other similar body, including anybody vested with the powers to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member.
- 4.6 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board shall be open to all Members and notice of such meetings shall be posted conspicuously in the Property at least forty-eight (48) hours in advance for the attention of the Members of the Association, except in the event of an emergency. Members shall not be permitted to participate, and need not be recognized at any such meeting.
- 4.7 Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of two-thirds (2/3rds) of the Directors. Notice of the meeting shall be given personally by mail, telephone or telegraph to each Director, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board shall be open to all Members and notice of a special meeting shall be posted

conspicuously in the Property at least forty-eight (48) hours in advance for the attention of the Members of the Association, except in the event of an emergency. Members shall not be permitted to participate, and need not be recognized, at any such meeting.

- 4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the then incumbent Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these Bylaws.
- 4.10 Adjourned Meetings. If, at any proposed meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer.

- 4.13 Minutes of Meetings. Minutes of all meetings of the Board of Directors must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at the Board meeting must be recorded in the minutes. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Members or their authorized representative or board member at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 4.14 Recording. Any Member may tape record or videotape meetings of the Board of Directors. The Board of Directors of the Association may adopt reasonable rules governing the taping of meetings of the Board of Directors.
- 4.15 Committees. The Board of Directors by resolution adopted by a majority of the full Board of Directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the Articles of Incorporation or the Bylaws, shall have and may exercise all of the authority of the Board of Directors, except that no such committee shall have the authority to:
- (a) Approve or recommend to members actions or proposals required by this act to be approved by members;
 - (b) Fill vacancies on the Board of Directors or any committee thereof; or
 - (c) Adopt, amend, or repeal the Bylaws.

The provisions of the Bylaws governing meetings, notice and waiver of notice, quorum and voting requirements of the Board of Directors shall apply to all committees and their members as well.

Each committee must have two or more members who serve at the pleasure of the Board of Directors. The Board, by resolution adopted, may designate one or more director(s) as alternative members of any such committee who may act in the place instead of any absent member at any meeting of such committee.

Neither the designation of any such committee, and delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the Board of Directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interest of the Association, and with such care as an ordinary prudent person in a like position would use under similar circumstances.

- 4.16 Architectural Review Committee. As provided in the Declaration, the Board of Directors shall create an Architectural Review Committee ("ARC"), composed of

not less than three (3) nor more than five (5) persons appointed by the Board, or, in the Board's discretion, the Board from time to time may constitute itself as the ARC. To the extent not inconsistent with the Declaration, the provisions of Section 4.15 shall apply to the ARC.

- 4.17 Community Facilities Committee. As provided in the Declaration, the Board of Directors shall create a Community Facilities Committee, composed of three (3) persons, two of whom shall be Members of the Association, and one of whom shall be an Atlantic Grove Condominium Association Residential Unit Owner. These committee members shall be appointed by the Board, or, in the Board's discretion, the Board from time to time may constitute itself as the Community Facilities Committee. To the extent not inconsistent with the Declaration, the provisions of Section 4.15 shall apply to the Community Facilities Committee.
- 4.18 Declarant Control of Board; Turnover. So long as there shall be a Class B Membership as set forth in the Declaration, vesting voting control of the Association in the Declarant, the Declarant shall have the right to appoint and replace all Directors and Officers.

Declarant shall be entitled to appoint at least one (1) member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business at least five (5) percent of the Townhome Lots in the Property . After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant owned voting interest in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the Members of the Board of Directors.

The Declarant shall turn over control of the Association to Members other than the Declarant upon termination of the Class B Membership by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Members other than the Declarant to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Declarant's decision to cause its appointees to resign is given to Members, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Members other than the Declarant refuse or fail to assume control. Control of the Association shall be deemed "turned over" upon (i) termination of the Class B Membership and (ii) resignation of all Declarant appointed Directors. Upon such turnover the Declarant shall retain all voting rights incident to its ownership of Townhome Lots.

Within a reasonable time after control of the Association is turned over to Members other than the Declarant, (but not more than ninety (90) days after such event) the Declarant shall deliver to the Association all property of the Members and of the Association held by or controlled by the Declarant, including, but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration, and all amendments thereto. If a photocopy is provided, the Declarant must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- (b) A certified copy of the Articles of Incorporation for the Association;
- (c) A copy of the Bylaws of the Association;
- (d) The Minute Books, including all minutes, and other books and records of the Association;
- (e) Any rules and regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Declarant;
- (g) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association to the date of turnover. The records may be reviewed, at the Association's expense, by an independent certified public accountant;
- (h) Association funds or the control thereof;
- (i) All tangible personal property that is the property of the Association, and an inventory of such property;
- (j) Insurance policies;
- (k) Copies of any Certificates of Completion which may have been issued for the Common Properties and Community Facilities;
- (l) Any other permits issued by governmental bodies applicable to the Common Properties and Community Facilities in force or issued within one (1) year prior to the date the Members take control of the Association;
- (m) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective with respect to the Common Properties and Community Facilities;
- (n) A roster of Members and their addresses and telephone numbers, if known, as shown on the Association's records;
- (o) Leases to which the Association is a party, if applicable;
- (p) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or

Members have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service; and,

- (q) All other contracts to which the Association is a party.
- (r) All deeds to the Common Properties and Community Facilities owned by the Association.
- (s) A list of the names, addresses and telephone numbers of all contractors, subcontractors and others in the employ of the Association at the time the control of the Association is turned over to Members other than Declarant.

4.19 Official Records. The Association shall maintain each of the following items, when applicable, which constitute the Official Records of the Association:

- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the Common Properties, Community Facilities or other property that the Association is obligated to maintain, repair, or replace, if any;
- (b) A copy of the Bylaws of the Association and of each Amendment to the Bylaws;
- (c) A copy of the Articles of Incorporation of the Association and of each Amendment thereto;
- (d) A copy of the Declaration of Covenants and a copy of each Amendment thereto;
- (e) A copy of the current Rules of the Association;
- (f) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least seven (7) years;
- (g) A current roster of all Members and their mailing addresses and parcel identification;
- (h) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years;
- (i) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has an obligation or responsibility. Bids received by the Association for work to be performed must also be considered Official Records and must be kept for a period of one (1) year;

- (j) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:
 - (i) Accurate, itemized, and detailed records of all records and expenditures.
 - (ii) A current account and a periodic statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and the amount of each assessment or other charge against the Member, the date and amount of each payment on the account, and the balance due.
 - (iii) All tax returns, financial statements, and financial reports of the Association.
 - (iv) Any other records that identify, measure, record, or communicate financial information.

4.20 Inspection and Copying of Records. The Official Records shall be maintained within the State and must be open to inspection and available for photocopying by Members or their authorized agents at reasonable times and places within ten (10) business days after receipt of a written request for access. This subsection may be complied with by having a copy of the Official Records available for inspection or copying in the Property.

- (a) The failure of the Association to provide access to the records within ten (10) business days after receipt of a written request creates a rebuttable presumption that the Association willfully failed to comply with this subsection.
- (b) A Member who is denied access to the Official Records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this subsection. The minimum damages are to be \$50.00 per calendar day up to ten (10) days, the calculation to begin on the eleventh (11th) business day after receipt of the written request.
- (c) The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the Official Records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to insure their availability to Members, and prospective members and may charge only its actual costs for reproducing and

furnishing these documents to those persons who are entitled to receive them.

5. Powers and Duties. The Board shall have the powers and duties necessary for the management and administration of the affairs of the Association and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these Bylaws may not be delegated to the Board by the Members. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining the Common Properties and other property owned by the Association.
- (b) Determining the expenses required for the operation of the Association.
- (c) Collecting the Assessments for Common Expenses of the Association from Townhome Lot Owners.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Properties and other property owned by the Association.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Property and any property owned by the Association, subject to a right of the Members to overrule the Board as provided in Section 13 hereof.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Purchasing, leasing or otherwise acquiring Townhome Lots or other property in the name of the Association, or its designee.
- (h) Purchasing Townhome Lots at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Townhome Lots acquired by the Association.
- (j) Settling or compromising claims of or against the Association in which all Members have a common interest.
- (k) Obtaining and reviewing insurance for the Common Properties, Community Facilities and other property owned by the Association.
- (l) Making repairs, additions and improvements to, or alterations of, the Common Properties and Community Facilities in accordance with the

provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.

- (m) Enforcing obligations of the Members, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Property .
- (n) Levying fines against appropriate Members for violations of the Declaration or rules and regulations established by the Association to govern the conduct of such Members.
- (o) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Properties and Community Facilities or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the holders of at least two-thirds (2/3rds) of the votes of the Membership represented at a meeting of Members at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required. If any sum borrowed by the Board on behalf of the Association pursuant to the authority contained in this subsection (o) is not repaid by the Association, any Member who pays to the creditor such portion thereof as his interest in the property owned by the Association bears, to the interest of all the Members in the property owned by the Association, shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Member's Townhome Lot. The Association shall take no action authorized in this subsection without the prior written consent of the Declarant as long as the Declarant owns any Townhome Lot.
- (p) Contracting for the management and maintenance of the Common Properties, Community Facilities or other property owned by the Association and authorizing a management agent (who may be an affiliate of the Declarant) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Properties, Community Facilities or other Association property with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (q) At its discretion, authorizing Members or other persons to use portions of the Common Properties, Community Facilities or other property owned by the Association for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, and these Bylaws, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.
- (s) Imposing a lawful fee in connection with the approval of the transfer, lease, or sale of Townhome Lots, not to exceed the maximum amount permitted by law in any one case.
- (t) Contracting with and creating special taxing districts.
- (u) Adopt and appoint executive committees.

Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating, or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of assessments, including lien rights, (ii) collecting of debts owned to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of the Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by seventy-five percent (75%) of the vote of the Members of the Association.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, Vice-President, a Treasurer and a Secretary, all of whom shall be elected by the Board and who may be preemptorily removed at any meeting at which a quorum of Directors is attained by concurrence of a majority of all of the present Directors. The President and Vice-President shall be Directors. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Members.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.

- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as shall otherwise be prescribed by the Directors.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board.
- 6.6 Declarant Appointees. No officer appointed by the Declarant may be removed except as provided in Section 4.17 hercof and by law.
- 7. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but may be compensated for services performed outside the scope of their service as officers or Directors.
- 8. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such later date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Townhome Lots owned by any Director or officer (other than appointees of the Declarant or other Directors or officers who are not Townhome Lot Owners when elected or appointed) shall constitute a written resignation of such Director or officer.
- 9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:
 - 9.1 Budget.

(a) Adoption By Board; Items. The Board shall from time to time, and at least annually, prepare two budgets, a budget for the Association and a budget for the Community Facilities, determine the amount of Assessments payable by the Members to meet the expenses of the Association and the Community Facilities, and allocate and assess such expenses among the Members and the Residential Condominium Unit Owners who are Members of the Condominium Association if applicable, in accordance with the provisions of the Declaration.

The budgets must reflect the estimated revenues and expenses for the year and the estimated surplus or deficit as of the end of the current year. The Community Facilities budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. In addition to the annual operating expenses, and to the extent applicable, the budgets may include reserve accounts for capital expenditures and deferred maintenance. Prior to turnover of control of the Association by the Declarant to the Owners other than the Declarant, the Declarant may vote to waive reserves annually for each year of the operation of the Association. In the event of such waiver, the budget need not reflect or include reserve accounts for capital expenditures and deferred maintenance. After the Declarant has turned over control of the Association to the Owners other than the Declarant, the Board may, by a vote of the majority of Members present in person or by proxy at a meeting at which a quorum shall have been attached, determine for a fiscal year, not to provide for reserves.

The adoption of the budgets for the Association by the Board shall comply with the requirements hereinafter set forth:

- (i) Notice of Meeting. A copy of the proposed Common Expenses budget shall be mailed to each Member not less than fourteen (14) days prior to the meeting of the Board at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. A copy of the proposed Community Facilities Expenses budget shall be mailed to each Member and to the Atlantic Grove Condominium Association for distribution to each Rec. User (as described in the Declaration) responsible for the payment of Community Facilities Assessments not less than forty-five (45) days prior to the meeting of the Board at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. If the proposed budgets, if adopted, would not result in an increase of the Assessments in excess of five percent (5%) over the prior year's assessment, the meeting shall be open to the Members and/or Rec. Users where applicable, provided that Members and Rec. Users shall not have the right to participate, and need not be recognized, at such meeting.

(ii) Determination of Budget Amount. In determining whether a budget requires Assessments against Members in any year with an increase exceeding five (5%) percent of the Assessments for the preceding year, there shall be excluded in the computation any authorized provisions for reasonable reserves made by the Board in respect of repair or replacement of the Common Properties or Community Facilities or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation Assessments for improvements to the Common Property or Community Facilities and all Special Assessments (including surcharges against specific Members).

(b) Adoption by Membership. In the event that the Board shall be unable to adopt a budget in accordance with the requirements of Subsection 9.1(a) above, the Board may call a special meeting of Members for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection. Alternatively, the Board may propose a budget in writing to all Members of the Association or Rec. Users where applicable. If either such budget is adopted by a majority of the votes of Members and/or Rec. Users where applicable present at such meeting, or receiving such written budget, upon ratification by a majority of the Board, it shall become the budget for such year.

9.2 Common and Community Facilities Assessments. Common and Community Facilities Assessments (as more specifically described in the Declaration) against the Members and/or Rec. Users where applicable for their share of the items of the budget shall be made for the applicable fiscal year annually, if possible at least ten (10) days preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each quarter (or other period at the election of the Board) of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment, and quarterly installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment.

9.3 Individual Assessments. Charges by the Association against less than all Members for other than routine Common Expenses, shall be payable in advance. These charges may be collected by Individual Assessment. Individual Assessments may be made only when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of portions of the Common Properties or other Association property, maintenance services furnished at the expense of a Member, other services furnished for the benefit of a

Member and fines and damages and other sums due from such Member or Rec. User.

- 9.4 Special Assessments. In the event the annual Common Assessment proves to be insufficient, the Board may adopt a Special Assessment to cover any shortfall in the manner otherwise set forth for the adoption of regular annual Common Assessments and as further provided in the Declaration. Special Assessments shall be made in the manner and for the purposes otherwise provided in the Declaration.
- 9.5 Depository. The depository of the Association shall be such bank(s) or savings and loan association(s) in the State of Florida as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund or divided into more than one fund, as determined by the Board.
- 9.6 Acceleration of Assessment Installments upon Default. If a Member shall be in default in the payment of an installment upon an Assessment for more than thirty (30) days, the Board or its agent may accelerate the remaining installments of the annual Assessment upon written notice to such Member, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice or ten (10) days after mailing of the notice, whichever shall first occur.
- 9.7 Fidelity Bonds. Fidelity bonds may be required by the Board for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board, but no less than \$10,000 for each such person so bonded, if any. The premiums on such bonds shall be paid by the Association as a Common Expense.
- 9.8 Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, according to accounting practices normally used by similar associations or the manager under any applicable management contract. The records shall be open to inspection by Members or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Townhome Lot designating the name and current mailing address of the Member, the amount of each Assessment, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due.

Within sixty (60) days following the end of the fiscal year, the Association shall prepare a complete financial report of actual receipts and expenditures for the

previous twelve (12) months. The Association shall provide each Member with a copy of the annual financial report or a written notice that a copy of the annual financial report is available upon request at no charge to the Member. The financial report may consist of either financial statements presented in conformity with general accepted accounting principals or a financial report of actual receipts and expenditures, cash basis, which report must show the amounts of receipts by accounts and receipt classifications and may show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Cost for security;
- (b) Professional and management fees and expenses;(c) Taxes;
- (d) Cost for Community Facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Cost for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses;
- (j) General reserves, maintenance reserves and depreciation reserves; and
- (k) Beginning and ending cash balances of the Association.

9.9 Application of Payment. All payments made by a Member shall be applied as provided in these Bylaws and in the Declaration or as determined by the Board.

9.10 Notice of Meetings. Notice of any meeting where Assessments against Members or Rec. Users, if applicable, are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such assessments.

9.11 Declarant Exemption From Assessments for Lawsuits. The Declarant shall not be liable for the payment of any Assessments applicable to Townhome Lots it owns which relate in any way to the payment of legal or other fees to persons or entities engaged for the purpose of suing, or making, preparing or investigating possible claims against the Declarant.

10. Roster of Owners. The Association shall maintain current information regarding the title holders of all Townhome Lots. Such information shall be obtained by requiring each Member to file with the Association a copy of the deed or other document showing his

ownership. The Association may rely upon the accuracy of any such information for all purposes until notified in writing of changes therein.

Only Members of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Members shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

- 11. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these Bylaws.
- 12. Amendments. Except as otherwise provided in the Declaration, these Bylaws may be amended in the following manner:
 - 12.1 A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than 1/3 of the votes of Members of the Association. A majority of the Board shall thereupon 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.
 - 12.2 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 these 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.
 - 12.3 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 the affirmative vote of at least seventy-five (75%) percent of the Members.
 - 12.4 Any number of amendments may be submitted to the Members and voted upon by them at any one meeting.
 - 12.5 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 Bylaws be adopted, then the amendment shall thereby be adopted as though the above requirements had been satisfied.
 - 12.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of Members without approval by all of the Members and the joinder of all Institutional Mortgagees holding Institutional Mortgages upon the Townhome Lot(s). No amendment shall be made that is in conflict with the Declaration or the Articles. Prior to the closing of the sale of all Townhome Lots within the 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, including, but not limited to, any right of the Declarant to appoint Directors pursuant to these Bylaws.

- 12.7 No amendment to these Bylaws shall be made which discriminates against any Member(s), or affects less than all of the Members within the Property, without the written approval of all of the Members so discriminated against or affected.
- 12.8 Upon the approval of an amendment to these Bylaws, the certificate of amendment shall be executed and a copy shall be recorded in the public records of the County.
- 12.9 Notwithstanding the foregoing, the Federal Housing Administration and the Veterans Administration shall have the right to veto any amendments to these Bylaws as long as there is a Class B membership.
13. Rules and Regulations. The Board may, from time to time, adopt, modify, amend or add to rules and regulations concerning the use and operation of the Property, except that subsequent to the date control of the Board is turned over by the Declarant to Members other than the Declarant, Members of a majority of the Townhome Lots represented at a meeting at which a quorum is present may overrule the Board with respect to the adoption or modification of any rules and regulations, except for rules and regulations relating to the Community Facilities, which would require a majority of the Rec. Users represented at a meeting at which a quorum of Rec. Users is present who may overrule the Board. Copies of such rules and regulations shall be furnished by the Board to each affected Member or Rec. User not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Declarant.
14. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders. If any portion hereof shall be found by competent judicial authority to be unenforceable, then only that portion shall be deemed deleted and the remainder shall be given its nearest permissible meaning and effect.
15. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.
16. Conflict. In the event there should be found any irreconcilable conflict among or between the Declaration, the Articles and/or these Bylaws and in the absence of any express language indicating which document controls the particular subject matter, then the provisions of the Declaration shall be paramount, the Articles next paramount and these Bylaws subordinate.

- 17. Indemnification of Officers and Directors. Subject to the further provisions of this Section, the Association shall indemnify and hold harmless all officers and Directors, (and members of a Tribunal, as provided in Section 18.3 hereof) past or incumbent, from and against all costs, claims, damages, expenses and liabilities of any kind whatsoever, including attorneys' fees and costs at all tribunal levels, arising out of the performance of such person's duties hereunder. Such indemnification and hold harmless provision shall (i) exist regardless of whether the Association itself is named as a party defendant or alleged to have any liability, (ii) include the payment of any settlements upon approval by the Board, and (iii) include indemnification of the estate and heirs of the indemnified party. Such indemnification and hold harmless provision shall not be applicable (i) to the extent the claim or liability is covered by insurance, or (ii) in the event a court of competent jurisdiction finally determines, after all appeals have been exhausted or not timely pursued, that the indemnified party did not act in good faith within what he reasonably believed to be the scope of his duty and/or authority and for purposes which he reasonably believed to be in the best interests of the Association or its Members generally and such court further specifically determines that indemnification should be denied. The provision of this Section may not be amended to terminate the effect hereof as to any persons who became officers or Directors while this Section was effective.

- 18. Suspension of Privileges; Fines. In the event of an alleged violation of the Declaration, the Articles, these Bylaws or the rules and regulations adopted hereunder, and after written notice of such alleged failure is given to the Member or Rec. User in the manner herein provided, the Board shall have the right, after the alleged violator has been given an opportunity for an appropriate hearing and upon an affirmative vote of the Board, to suspend or condition said Member's or Rec. User's and his Family's, guests' and tenants' right to the use of the Common Properties and/or Community Facilities (except for the portions thereof which are necessary as a means of ingress and egress) and to fine such Member or Rec. User. Any such suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) the suspension may be imposed for so long as the violation continues. No fine shall exceed the sum of \$50.00 per violation. Repair or replacement costs shall not be deemed fines subject to the foregoing limitation. Any continuing violation shall be a separate violation for each day it continues. The Association may not suspend the voting rights of a Member. The failure of the Board to enforce the rules and regulations, these Bylaws, the Articles or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws or by law shall be cumulative and none shall be exclusive. However, any individual And/or Rec. User must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by any rules and regulations adopted by the Association, before that Member and/or Rec. User may resort to a court of law for relief from any provision of the Declaration, the Articles, these Bylaws or the rules and regulations. The rights of the Association to suspend voting rights, to impose interest charges, accelerate Assessment payments, or to otherwise enforce the payment of Assessments, as elsewhere provided in the Declaration and these Bylaws, shall not be subject to the provisions of this Section or require the notice and hearing provided for herein.

- 18.1 Written Complaint. A hearing to determine whether a right or privilege of a Member or Rec. User or any of his Family or tenants ("Respondent") under the Declaration or these Bylaws should be suspended or conditioned or a fine imposed shall be initiated by the filing of a written Complaint by any Member and/or Rec. User or by any officer or Director with the President or Secretary of the Association. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, to the end that the Respondent will be able to prepare his defense. The Complaint shall specify the specific provisions of the Declaration, the Articles, these Bylaws or the rules and regulations which the Respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.
- 18.2 Discovery. After initiation of a proceeding in which the Respondent is entitled to a hearing, the Respondent and the individual filing the Complaint, upon written request made to the other party, prior to the hearing and within fifteen (15) days after service by the Board of Directors of the Complaint or within ten (10) days after service of any amended or supplemental Complaint, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, and (2) inspect and make a copy of any statements, writings and investigative reports relevant to the subject matter of the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as work product.
- 18.3 Tribunal. The Board shall appoint a Tribunal of at least three Members and/or Rec. Users where applicable upon receipt of a written Complaint. No member of the Tribunal shall be a Director, Officers or employee of the Association, nor shall any member of the Tribunal be involved in any prior investigation of the matter on behalf of the Board nor related by blood or marriage to either the complaining party or the Respondent. In appointing the members of the Tribunal, the Board should make a good faith effort to avoid appointing any Members or Rec. Users who are witnesses to the alleged violation giving rise to the Complaint or otherwise biased. The decision of the Board shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence of the hearing. In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge, without the President voting. If such challenge is sustained, the President shall appoint another Member to replace the challenged member of the Tribunal. All decisions of the Board in this regard shall be final. The Tribunal shall elect a Chairman. The Tribunal shall exercise all other powers relating to the conduct of the hearing. If the Tribunal, by majority vote does not approve a proposed fine or suspension, it may not be imposed.
- 18.4 Notice of Hearing. The Tribunal shall serve a notice of hearing, as provided herein, on all parties at least fourteen (14) days prior to the hearing.

18.5 Hearing.

- (a) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear and decide the case. Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.
- (b) Each party shall have the right to be represented by counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If the Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.
- (d) Neither the accusing Member and/or Rec. User nor the allegedly defaulting Member and/or Rec. User must be in attendance at the hearing. The hearing shall be open to attendance by all Members and/or Rec. Users where applicable. In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Declaration, the Articles, these Bylaws, the rules and regulations or the workings of the Association.

18.6 Decision. The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Tribunal shall make its determination only in accordance with the evidence presented to it and in accordance with these Bylaws. After all testimony and documentary evidence has been presented to the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling. A copy of the findings and recommendations of the Tribunal shall be posted by the Board at a

conspicuous place on the Common Properties, and a copy shall be served by the President on each party in the matter and his attorney, if any. Disciplinary action and fines under the Declaration, these Bylaws or the rules and regulations shall be imposed only by the Board, and based upon the findings and recommendations of the Tribunal. The Board may adopt the recommendations of the Tribunal in their entirety, or the Board may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board impose more stringent disciplinary action than recommended by the Tribunal. The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective ten (10) days after it is served upon the Respondent, unless otherwise ordered in writing by the Board. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the parties on its own motion or upon petition by a party.

- 18.7 Suspension of Privileges and/or Fines for Failure to Pay Assessments. The Association may, without notice of a hearing, or an opportunity for a hearing, impose a suspension or fine upon any Member and/or Rec. User because of the failure of the Member and/or Rec. User to pay assessments or other charges when due. However, in no event shall a suspension of common area use rights impair the right of an Owner or tenant of a Townhome Lot to have vehicular and/or pedestrian ingress to and egress from the Townhome Lot, including, but not limited to the right to park.

The foregoing was adopted as the Bylaws of ATLANTIC GROVE TOWNHOME ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at its first meeting of the Board of Directors on the _____ day of _____, 2003.

Approved:

SCHEDULE "A"

The following Lots located within the Property known as Atlantic Grove Townhome Development are designated for "Affordable Housing":

- Lot 2
- Lot 3
- Lot 4
- Lot 25
- Lot 26
- Lot 27
- Lot 28
- Lot 29
- Lot 33
- Lot 34

INSTRUMENT PREPARED BY:
RECORD AND RETURN TO:
Michelle DeRosa Mulay, Esquire
HOLLAND & KNIGHT LLP
One East Broward Blvd., 13th Floor
Ft. Lauderdale, Florida 33301

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR ATLANTIC GROVE**

This First Amendment to Declaration of Covenants, Restrictions and Easements for Atlantic Grove ("First Amendment") is made this 20th day of January, 2004 by Atlantic Grove Partners L.L.C., a Florida limited liability company ("Declarant"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483 and is joined in by Atlantic Grove Townhome Association, Inc., a Florida corporation not for profit (the "Association"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483.

RECITALS:

WHEREAS, Declarant recorded a Declaration of Covenants, Restrictions and Easements for Atlantic Grove (the "Declaration") in Official Records Book 15321, Page 925 of the Public Records of Palm Beach County, Florida;

WHEREAS, Section 15.6 of the Declaration permits the Declarant to unilaterally amend or modify the Declaration until such time as Class B membership terminates pursuant to Section 4.1 of the Declaration.

WHEREAS, Class B membership has not terminated and Declarant desires to amend the Declaration as more specifically set forth herein under the authority granted in Section 15.6 of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration in the manner stated below:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The following shall be added to the Declaration as Article 18 thereto:

ARTICLE 18

ADJACENT PARCEL

18.1 Adjacent Parcel. Declarant is currently under contract to purchase that certain real property described on Exhibit "E" attached hereto and made a part hereof (the "Adjacent Parcel") and intends to construct thereon approximately 14 residential townhome dwelling units. The Declarant and the Association hereby reserve and grant unto the Declarant, and all subsequent owners of the Adjacent Parcel, the following perpetual easements and rights (which easements and rights shall only become effective and be deemed to take effect in the event the Declarant becomes the fee simple owner of the Adjacent Parcel):

A. Ingress, Egress and Access. Declarant and the Association hereby reserve and grant unto Declarant, as owner of the Adjacent Parcel, and its successor and/or assigns, for the benefit and use of the Declarant and any subsequent owners of residential townhome dwelling units constructed upon the Adjacent Parcel (the "Adjacent Unit Owner(s)"), including their respective tenants, guests, invitees, a perpetual non-exclusive ingress, egress and access easement over and across; (i) all private streets, roadways, sidewalks, access ways, alleyways and parking areas constructed on the Property from time to time, and (ii) those portions of the Common Properties lying adjacent to and between the boundary line(s) of the Lot(s) and the private streets, roadways, sidewalks, access ways, alleyways and/or parking areas, as the case may be, which portions of the Common Properties are either designated as or necessary for ingress and egress to and from the Community Facilities and all publicly dedicated road right-of-ways located adjacent to the Property, it being the specific intent of the Declarant and the Association to hereby grant perpetual, uninterrupted and contiguous ingress, egress and access to and from the Adjacent Parcel to and from the Community Facilities and all publicly dedicated road right-of-ways which are located adjacent to the Property. Included in the foregoing easements and rights is the right for Declarant, the Adjacent Unit Owners and their respective tenants, guests, invitees and licensees to park upon the parking spaces which are located within the Common Properties from time to time and not reserves for the exclusive use of an Owner. Any rights granted or reserved under this Section however, shall be subject to any rights granted or permitted to be granted by Declarant and/or the Association to third parties, as provided elsewhere in the Declaration.

B. Declarant Easements. Declarant and the Association hereby reserve and grant unto the Declarant, and its successors, assigns, agents, guests, contractors and subcontractors, for the benefit of the Adjacent Parcel, a non-exclusive ingress, egress, access and construction easement and right-of-way for vehicular and pedestrian traffic, in, on, over, under, across and through all Common Properties, including but not limited to all private streets, roadways, sidewalks, access ways, alleyways and parking areas constructed on the Property from time to time, as are necessary (in Declarant's reasonable

discretion) in order for Declarant to exercise its rights under the Declaration and otherwise construct, develop and market the Adjacent Parcel.

C. Utility Easements. The Declarant and the Association hereby reserve and grant unto the Declarant, and its successors, assigns, agents, guests, contractors and subcontractors, for the benefit of the Adjacent Parcel, a non-exclusive easement in, on, over, under, across and through the Property, for the construction, installation and maintenance of utilities, including, but not limited to drainage, water, sewer, telephone, electric and cable television, as may be reasonably required to properly and adequately service the Adjacent Parcel, provided that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or Improvements, wherever said building or other Improvements may be located from time to time. In addition to the foregoing, Declarant, for the benefit of the Adjacent Parcel, shall have the right, at its cost and expense, to tie into any and all utility services which are provided to the Property (which includes but is not limited to electric, telephone, cable, sewer, water, drainage, irrigation, and fire suppression) whether public or private, so as to provide such services to the Adjacent Parcel. In connection with Declarant's attempt to obtain a modification to the existing surface water management and drainage permit for the Property and/or tie into the Surface Water Management System, if required by the South Florida Water Management District, the Association shall be responsible for maintaining all portions of the surface water management system located within the Adjacent Parcel, and the Adjacent Unit Owners shall be responsible for reimbursing to the Association (in a manner similar to the Common Facilities Assessments as set forth below) for the cost incurred by the Association in maintaining that portion of the system located within the Adjacent Parcel.

D. Use of Common Facilities. The Declarant, all Adjacent Unit Owners, and their tenants, guests, licensees and invitees (collectively the "Permittees"), shall have the non-exclusive right and easement to use all Common Facilities which are located within the Common Properties from time to time, subject to the terms and conditions set forth in the Declaration and any rules and regulations promulgated by the Association relating to the use of the Common Facilities by all Owners and any permitted users of the Common Facilities. The Association shall not be permitted to promulgate rules and regulations which limit or diminish the Permittee's use of the Common Facilities unless such rules and regulations equally affect the use of the Common Facilities by the Owners, the Rec. Users and other parties entitled to use same.

18.2 Adjacent Parcel's Share of Community Facilities Assessments. In the event the Declarant becomes the fee simple owner of the Adjacent Parcel and

the easement rights set forth in Section 18.1 above are granted, each Adjacent Unit Owner shall be required to pay to the Association a proportionate share of the Common Facilities Assessments as set forth below. The obligation for payment of the Common Facilities Assessment shall not be due from the Declarant and shall not be deemed to commence until the date on which title to such dwelling unit or lot is conveyed by Declarant to the first purchaser thereof. At least forty-five (45) days prior to the beginning of each fiscal year the Board of Directors shall prepare, adopt and distribute to the Declarant, as owner of the Adjacent Parcel, or to any property owner's association created by Declarant for purposes of administering the Adjacent Parcel (the "Adjacent Parcel Association") for distribution to each Adjacent Unit Owner (but not as a member of the Association), a written, itemized, estimated budget of the Common Facilities expenses to be incurred by the Association during the coming year in performing its functions under this Declaration with respect to the Common Facilities. The Adjacent Parcel Association shall be responsible for collecting from each Adjacent Unit Owner its proportionate share of the Common Facilities Assessment, which shall be payable to the Association on the first day of each calendar month for which a Community Facilities Assessment is due and shall be payable in equal monthly installments unless determined by the Board, from time to time, to be payable less frequently. Each Adjacent Unit Owner's proportionate share of the Common Facilities Assessment shall equal the amount of the estimated operating budget for the Common Facilities, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from the prior years), multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the total of all Assessment Units (as defined in Section 6.4 of the Declaration) plus the total number of all Adjacent Unit Owners currently required to pay a proportion of the Common Facilities as of the date of the estimate operating budget. For example, if Declarant has conveyed 5 dwelling units as of the date of the estimated operating budget to Adjacent Unit Owners, and the total number of Assessment Units equals 75 (as anticipated under the Declaration), the numerator shall be equal to 1 and the denominator shall be equal to 80. If the total amount set forth in the estimated operating budget is \$10,000, each Adjacent Unit Owner's annual proportionate share shall be \$125.00. Notwithstanding anything contained herein to the contrary, in no event shall an Adjacent Unit Owner be required to pay an amount which exceeds the amount due by an Assessment Unit for any given year.

The easements and rights set forth in Section 18.1 A, B and D above and the obligations set forth in Section 18.2 above shall be deemed to terminate in the event the Association annexes the Adjacent Parcel to the Declaration pursuant to Section 18.3 below.

18.3 Annexation of Adjacent Property by Association. Subsequent to the date upon which Declarant takes title to and becomes the fee simple owner of the Adjacent Parcel, but prior to the conveyance of any portion thereof by Declarant to any Adjacent Unit Owner, the Association may elect to annex the Adjacent Parcel to the terms, conditions and restrictions of the Declaration by Supplemental Declaration, pursuant to the provisions set forth in Section 13.2 hereof. The Supplemental Declaration shall be joined in by the Declarant, as owner of the Adjacent Parcel. Upon the recording of the Supplemental Declaration, the Adjacent Parcel shall be deemed to be part of the Property (as defined in the Declaration). In addition, the Declarant, and each subsequent Adjacent Unit Owner shall be subject to the terms, conditions and restrictions set forth in the Declaration, shall be deemed Members and shall be entitled to membership as provided in Article 3 of the Declaration. In the event the Association elects to annex the Adjacent Parcel, the Association shall amend the Declaration as may be required to reflect such annexation, which shall include but shall not be limited to an amendment to the terms "Property" and "Townhome Lot" as set forth in the Declaration. Upon annexation, in addition to the easements and rights contained in Section 18.1C. hereof, Declarant shall be deemed to have all easements and rights originally granted to Declarant under the Declaration.

18.4 Merger or Consolidation. In the event the Association does not annex the Adjacent Parcel to the terms of the Declaration as set forth in Section 18.3 above, Declarant intends to subject the Adjacent Parcel to the terms and conditions of a declaration of covenants, conditions and restrictions and to create a property owners association (the "Adjacent Parcel Association") responsible for administering and enforcing the provisions of such declaration. In such event, the Association shall have the right (upon the written approval of the Declarant, for so long as Declarant owns any portion of the Adjacent Parcel) to merge or consolidate with the Adjacent Parcel Association. Upon a merger or consolidation of the Association with the Adjacent Parcel Association its properties, rights and obligations may, by operation of law, be transferred to the Adjacent Parcel Association or, alternatively, the properties, rights and obligations of the Adjacent Parcel Association may, by operation of law, be added to the properties, rights and obligations of the Association. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration together with the covenants and restrictions established upon the Adjacent Parcel as one scheme.

3. Section 2.2 B. of the Declaration is hereby deleted in its entirety and replaced with the following:

B. The Community Facilities will be used in common with the residential condominium loft owners of the Atlantic Grove Condominium. It is anticipated that the Common Facilities will be initially used by a maximum of

55 Owners of the Lots and 20 residential condominium loft owners, and their approved tenants, guests and invitees. If however, Declarant becomes the fee simple owner of the Adjacent Parcel or the Adjacent Parcel is annexed to the Declaration as more fully set forth in Article 18 hereof, it is anticipated that these facilities, in addition to being used by the 55 Owners and the 20 residential condominium loft owners, will be used by a maximum of 14 owners of the residential townhome dwelling units to be constructed by Declarant upon the Adjacent Parcel, and their approved tenants, guests and invitees. These Common Facilities will be located on property which will be ultimately owned by the Association.

4. The first sentence of Section 10.12 of the Declaration is hereby amended to read as follows:

Except as provided in Section 18.1D hereof, the use of the Community Facilities shall be restricted to Association Members, Atlantic Grove Condominium Association Residential Unit Owners and their respective Family, tenants, guests and invitees (collectively hereinafter referred to as "Rec. Users").

5. Section 11.2 of the Declaration is hereby amended to include the following:

For purposes of this Article 11, the term Rec. Users shall not be deemed to include the owners of any portion of the Adjacent Parcel (as defined in Article 18 hereof).

6. Except as amended by this First Amendment, the Declaration shall remain in full force and effect.

7. Each term defined in the Declaration and used herein, shall have the meaning ascribed to it in the Declaration, unless otherwise defined herein.

8. The Association hereby joins in and is executing this First Amendment to acknowledge its approval, consent and agreement to this First Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant and the Association have caused this First Amendment to be executed as of the date first written above.

Signed in the presence of:

DECLARANT:

ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company

By: New Urban Atlantic Grove, L.L.C., a Florida limited liability company, its Managing Member

By: New Urban Communities Corporation, a Florida corporation, its Managing Member

By: [Signature]
Kevin E. Rickard
President

[Signature]
Witness

DAVID L. CRANE
Print Name

[Signature]
Witness

Heather Workman
Print Name

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 20 day of January, 2004, by Kevin E. Rickard, as President of New Urban Communities Corporation, a Florida corporation, the Managing Member of New Urban Atlantic Grove, L.L.C., a Florida limited liability company, the Managing Member of Atlantic Grove Partners, L.L.C, a Florida limited liability company on behalf of the corporation and the companies. He/She is personally known to me [or has produced _____ as identification].

[Signature]
(SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT)

Heather Workman
(Name of acknowledger, typed, printed or stamped)

(Title or rank (serial number, if any))



ASSOCIATION:

ATLANTIC GROVE TOWNHOME
ASSOCIATION, INC., a Florida not for profit
corporation

Michelle Walker
Print Name: MICHELLE WALKER

Heather Workman
Print Name: Heather Workman

By: Kevin E. Rickard
Print Name: Kevin E. Rickard
Title: President

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 20 day of
January, 2004 by Kevin E. Rickard, as President of Atlantic Grove Townhome
Association, Inc., a Florida not for profit corporation, on behalf of the corporation.
He/She is personally known to me [or has produced _____ as
identification].

Heather J. Workman
(SIGNATURE OF PERSON TAKING
ACKNOWLEDGEMENT)
Heather J. Workman
(Name of acknowledger, typed, printed or
stamped)

(Title or rank (serial number, if any))



INSTRUMENT PREPARED BY:
RECORD AND RETURN TO:
Michelle DeRosa Mulay, Esquire
HOLLAND & KNIGHT LLP
One East Broward Blvd., 13th Floor
Ft. Lauderdale, Florida 33301

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR ATLANTIC GROVE**

This Second Amendment to Declaration of Covenants, Restrictions and Easements for Atlantic Grove ("Second Amendment") is made this ~~20th~~ day of January, 2004 by Atlantic Grove Partners L.L.C., a Florida limited liability company ("Declarant"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483 and is joined in by Atlantic Grove Townhome Association, Inc., a Florida corporation not for profit (the "Association"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483.

RECITALS:

WHEREAS, Declarant recorded a Declaration of Covenants, Restrictions and Easements for Atlantic Grove, and a first amendment thereto (collectively the "Declaration") in Official Records Book 15321, Page 925 of the Public Records of Palm Beach County, Florida;

WHEREAS, Section 15.6 of the Declaration permits the Declarant to unilaterally amend or modify the Declaration until such time as Class B membership terminates pursuant to Section 4.1 of the Declaration.

WHEREAS, Class B membership has not terminated and Declarant desires to amend the Declaration as more specifically set forth herein under the authority granted in Section 15.6 of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration in the manner stated below:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The following shall be added to the Declaration as Article 1, Section 1.40 thereto:

EXHIBIT "E"
THE ADJACENT PARCEL

LOTS 16 THROUGH 21, INCLUSIVE, BLOCK 36 OF REVISED PLAT OF BLOCK 36, TOWN OF DELRAY, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 5, PAGE 38, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

TOGETHER WITH:

A PARCEL OF LAND SITUATE IN SECTION 17, TOWNSHIP 46 SOUTH, RANGE 43 EAST, CITY OF DELRAY BEACH, FLORIDA, PALM BEACH COUNTY FLORIDA, BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THE SOUTH 66.72 FEET OF LOT 2 OF THE PLAT OF MT. OLIVE BAPTIST CHURCH PROPERTY, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 69, PAGE 20, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF THE NORTH HALF OF THE 16 FOOT ALLEY RIGHT OF WAY, BLOCK 28, MAP OF LINTON (NOW DELRAY BEACH), ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 3, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID STRIP LYING NORTH OF AND ADJACENT TO THE NORTH LINE OF TRACT "C-2" OF ATLANTIC GROVE, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 96, PAGE 55, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF THE EAST HALF OF THE 16 FOOT ALLEY RIGHT OF WAY, BLOCK 28, MAP OF LINTON (NOW DELRAY BEACH), ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 3, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND LYING SOUTH OF A LINE 66.72 FEET NORTH OF THE SOUTH LINE OF LOT 2 OF THE PLAT OF MT. OLIVE BAPTIST CHURCH PROPERTY, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 69, PAGE 20, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

1518823_v2



PALM BEACH COUNTY, STATE OF FLORIDA

I hereby certify that the foregoing is a true copy of the record in my office.

This Day of February 2020

DOROTHY H. WILKEN
Clerk Circuit Court

9 BY [Signature] D.C.

Section 25. "Surface Water Management Permit" shall mean and refer to that certain permit issued by the South Florida Water Management District for the construction and operation of the Surface Water Management System under Permit number 50-02892-S-02, and any modification thereof, a copy of which is attached hereto as Exhibit "F" and made a part hereof.

3. The following shall be added to the Declaration as Article 5, Section 5.2.N. thereto:

I. Compliance with all the terms, restrictions, requirements, conditions, and reservations set forth in the Surface Water Management Permit including but not limited to wetland mitigation and/or monitoring, if required. The Association shall satisfy all permit conditions associated with wetland mitigation, maintenance and monitoring, if any.

4. The following is hereby added to Article 5, Section 5.4 B of the Declaration:

The SFWMD shall have the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel the Association to correct any outstanding problems with the Surface Water Management System or in mitigation or conservations areas under the responsibility or control of the Association.

5. Except as amended by this Second Amendment, the Declaration shall remain in full force and effect.

6. Each term defined in the Declaration and used herein, shall have the meaning ascribed to it in the Declaration, unless otherwise defined herein.

7. The Association hereby joins in and is executing this Second Amendment to acknowledge its approval, consent and agreement to this Second Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant and the Association have caused this Second Amendment to be executed as of the date first written above.

Signed in the presence of:

DECLARANT:

ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company

By: New Urban Atlantic Grove, L.L.C., a Florida limited liability company, its Managing Member

By: New Urban Communities Corporation, a Florida corporation, its Managing Member

Jasuelle Orner
Witness

Jasuelle Orner
Print Name

Heather J. Workman
Witness

Heather J. Workman
Print Name

By: Kevin E. Rickard
Kevin E. Rickard
President

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 20 day of January, 2004, by Kevin E. Rickard, as President of New Urban Communities Corporation, a Florida corporation, the Managing Member of New Urban Atlantic Grove, L.L.C., a Florida limited liability company, the Managing Member of Atlantic Grove Partners, L.L.C, a Florida limited liability company on behalf of the corporation and the companies. He/She is personally known to me [or has produced _____ as identification].

Heather J. Workman
(SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT)

Heather J. Workman
(Name of acknowledger, typed, printed or stamped)

(Title or rank (serial number, if any))



ASSOCIATION:

ATLANTIC GROVE TOWNHOME
ASSOCIATION, INC., a Florida not for profit
corporation

Gabriele Orsner
Print Name: Gabriele ORSNER

Heather J. Workman
Print Name: Heather Workman

By: [Signature]
Print Name: Kevin E. Rickard
Title: President

STATE OF FLORIDA)
COUNTY OF Lain Beach

The foregoing instrument was acknowledged before me this 20 day of
January, 2004 by Kevin E. Rickard, as President of Atlantic Grove Townhome
Association, Inc., a Florida not for profit corporation, on behalf of the corporation.
He/She is personally known to me [or has produced _____ as
identification].

[Signature]
(SIGNATURE OF PERSON TAKING
ACKNOWLEDGEMENT)
Heather J. Workman
(Name of acknowledger, typed, printed or
stamped)

(Title or rank (serial number, if any))





Form #0941
08/95

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE
STANDARD GENERAL PERMIT NO. 50-02892-S-02**

DATE ISSUED: March 20, 2002

PERMITTEE: ATLANTIC GROVE PARTNERS LLC
398 NE 6TH AVE
DELRAY BEACH, FL 33483

PROJECT DESCRIPTION: Modification for construction and operation of a surface water management system to serve a 4.78-acre project known as Atlantic Grove Mixed Use Project, located within the City of Delray Beach.

PROJECT LOCATION: PALM BEACH COUNTY, SEC 17 TWP 46S 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. 020111-3, dated January 11, 2002. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

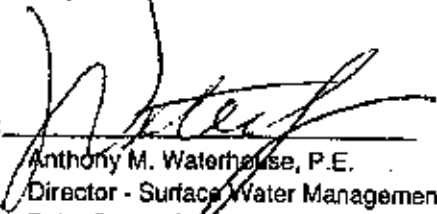
Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

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 9 Special Conditions (See Pages : 5 - 5 of 5) and
4. the attached 8 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 20th day of March, 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 7000 1530 0000 2745 8923

Exhibit E

dec 20 2004

GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied Environmental Resource Permit Construction Completion/Certification Form Number 0881. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings is discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "As-built" or "Record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the

GENERAL CONDITIONS

- approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.
8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
 9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
 10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
 11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
 12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
 13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(4), F.A.C., also known as the "No Notice" Rule.
 14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
 15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
 16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and

GENERAL CONDITIONS

- 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
 18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
 19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on March 20, 2007.
2. Operation of the surface water management system shall be the responsibility of PROPERTY OWNERS ASSOCIATION. The permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association concurrent with the engineering certification of construction completion.
3. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
4. Measures shall be taken during construction to insure that sedimentation and/or turbidity problems are not created in the receiving water.
5. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
6. All special conditions and exhibits previously stipulated by permit number 50-02892-S remain in effect unless otherwise revised and shall apply to this modification.
7. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
8. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
9. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.

40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to chapter 40-E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit,

or

2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a or b above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or

publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

- (a) the caption shall read:
Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, telephone number and any facsimile number of the petitioner;

- (c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

- (d) the applicable rule or portion of the rule;

- (e) the citation to the statute the rule is implementing;

- (f) the type of action requested;

- (g) the specific facts that demonstrate a substantial hardship or violation of principals of fairness that would justify a waiver or variance for the petitioner;

- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

- (i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

- a) the specific facts that make the situation an emergency; and

- b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

28-106.201 INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;

- (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

- (c) A statement of when and how the petitioner received notice of the agency decision;

- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

- (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

- (f) A demand for relief.

**28-106.301 INITIATION OF PROCEEDINGS
(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
 - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
 - (c) A statement of when and how the petitioner received notice of the agency decision;
 - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
 - (e) A demand for relief.

**28-107.004 SUSPENSION, REVOCATION, ANNULMENT,
OR WITHDRAWAL**

- (3) Requests for hearing filed in accordance with this rule shall include:
- (a) The name and address of the party making the request, for purposes of service;
 - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
 - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO
SECTION 373.114 OR 373.217**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

- (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

28-107.005 EMERGENCY ACTION

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) The 14-day notice requirement of Section 120.569(2)(b), F.S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

40E-1.611 EMERGENCY ACTION

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

Included with this letter/permit is a brochure from the Florida Department of Environmental Protection (DEP) on Florida's National Pollutant Discharge Elimination System (NPDES) program for construction activities. As the brochure indicates, the U.S. Environmental Protection Agency authorized the DEP in October 2000 to implement the NPDES stormwater permitting program in Florida. The District is assisting DEP by distributing this information to entities which may be subject to regulation under the NPDES program. No response to the District is required.

A "Generic Permit for Stormwater Discharge from Construction Activities that Disturb Five or More Acres of Land" is required for a construction activity which contributes stormwater discharges to surface waters of the State or into a municipal separate storm sewer system and disturbs five or more acres of land. A permit is required for less than five acres if the activity is part of a larger common plan of development or sale that will meet or exceed the five acre threshold.

The permit required under DEP's NPDES stormwater permitting program is separate from the Environmental Resource Permit required by the District. Receiving a permit from the District does not exempt you from meeting the NPDES program requirements.

If you have any questions on the NPDES program, there are DEP phone numbers, mailing addresses and internet web page addresses in the brochure. The DEP web site, at www.dep.state.fl.us/water/stormwater/npdes/, provides information associated with the NPDES program including all regulations and forms cited in the brochure.

Last Date For Agency Action: April 12, 2002

GENERAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

Project Name: Atlantic Grove
Permit No.: 50-02892-S-02
Application No.: 020111-3
Application Type: Environmental Resource (General Permit Modification)
Location: Palm Beach County, S17/T46S/R43E
Permittee : Atlantic Grove Partners Llc
Operating Entity : Property Owners Association
Project Area: 4.78 acres
Project Land Use: Residential
Commercial
Drainage Basin: INTRACOASTAL WATERWAY
Receiving Body: City of Delray Beach system
Special Drainage District: Lake Worth Drainage District
Conservation Easement To District : No
Sovereign Submerged Lands: No

PROJECT PURPOSE:

This application is a request for modification of Permit Number 50-02892-S to authorize the construction and operation of a surface water management system to serve a 4.78 acre residential and commercial development known as Atlantic Grove Mixed Use Project. Staff recommends approval with conditions.

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

The proposed site is a 4.78-acre mixed-use development in the City of Delray Beach in Palm Beach County. The site is located on the north side of West Atlantic Avenue between NW 3rd Avenue and NW 5th Avenue.

No wetlands or preserve areas have been identified within the project area. No adverse wetland impacts are anticipated from this development. Therefore, no wetland mitigation requirements have been included in this permit

PROJECT BACKGROUND:

The proposed site was previously developed with residential and commercial buildings. The site is within the limits of the City of Delray Beach's Northwest Area Drainage Improvements Project which received a conceptual approval with construction and operation for the Northwest Area, from the District on June 11, 1992 (Permit Number 50-02892-S). In addition, several permit modification have been issued.

PROPOSED PROJECT:

Proposed is the modification of Permit No. 50-02892-S to allow for the construction and operation of a surface water management system to serve a 4.78-acre residential and commercial development.

The proposed surface water management system will consist of inlets, culverts and exfiltration trenches that will provide water quality treatment prior to overflow into the master system of the City of Delray Beach. The applicant's engineer has provided additional exfiltration trench to compensate for the additional amount of impervious above the previously approved impervious percentage. This project has received approval from the City of Delray Beach.

LAND USE:

Construction:
Project:

	This Phase	Total Project	
Building Coverage	1.44	1.44	acres
Pavement	2.34	2.34	acres
Pervious	1.00	1.00	acres
Total:	4.78	4.78	

WATER QUANTITY :

Discharge Rate :

The proposed project has been reviewed by the City of Delray Beach and is consistent with the land use and site grading assumptions from the design of the master surface water management system. Therefore, the surface water management system for this project has not been designed to limit discharge for the design event to a specified rate.

Control Elevation :

Basin	Area (Acres)	Ctrl Elev (ft, NGVD)	WSWT Ctrl Elev (ft, NGVD)	Method Of Determination
SITE	4.78	9.5	9.50	Master System

WATER QUALITY

The water quality treatment for this site will be provided within 568 LF of exfiltration trench.

OPERATING ENTITY

Operation and maintenance of the surface water management system shall be the responsibility of the Property Owners Association.

CERTIFICATION AND MAINTENANCE OF THE WATER MANAGEMENT SYSTEM

It is suggested that the permittee retain the services of a Professional Engineer registered in the State of Florida for periodic observation of construction of the surface water management (SWM) system. This will facilitate the completion of construction completion certification Form #0881 which is required pursuant to Section 10 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, and Rule 40E-4361(2), Florida Administrative Code (F.A.C.).

Pursuant to Chapter 40E-4 F.A.C., this permit may not be converted from the construction phase to the operation phase until certification of the SWM system is submitted to and accepted by this District. Rule 40E-4.321(7) F.A.C. states that failure to complete construction of the SWM system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization unless a permit extension is granted.

For SWM systems permitted with an operating entity who is different from the permittee, it should be noted that until the permit is transferred to the operating entity pursuant to Rule 40E-1.6107, F.A.C., the permittee is liable for compliance with the terms of this permit.

The permittee is advised that the efficiency of a SWM system will normally decrease over time unless the system is periodically maintained. A significant reduction in flow capacity can usually be attributed to partial blockages of the conveyance system. Once flow capacity is compromised, flooding of the project may result. Maintenance of the SWM system is required to protect the public health, safety and the natural resources of the state. Therefore, the permittee must have periodic inspections of the SWM system performed to ensure performance for flood protection and water quality purposes. If deficiencies are found, it is the responsibility of the permittee to correct these deficiencies in a timely manner.

RELATED CONCERNS:

Water Use Permit Status:

A Water Use permit is not required for this project at this time. A Water Use Permit must be obtained prior to irrigation withdrawals, unless the work qualifies for a general permit issued pursuant to Section 40E-20 FAC.

Historical/Archeological Resources:

No information has been received that indicates the presence of archaeological or historical resources or that the proposed activities could cause adverse impacts to archaeological or historical resources.

DCA/CZM Consistency Review:

The District has not received a finding of inconsistency from the Florida Department of Community Affairs or other commenting agencies regarding the provisions of the federal Coastal Zone Management Plan.

Enforcement:

There has been no enforcement activity associated with this application.

STAFF RECOMMENDATION:

The Staff recommends that the following be issued :

Modification for construction and operation of a surface water management system to serve a 4.78-acre project known as Atlantic Grove Mixed Use Project, located within the City of Delray Beach.

Based on the information provided, District rules have been adhered to.

Staff recommendation is for approval subject to the attached General and Special Conditions.

STAFF REVIEW:

DIVISION APPROVAL:

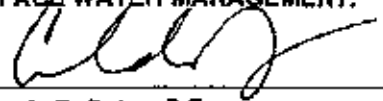
NATURAL RESOURCE MANAGEMENT:



Anita R. Bain

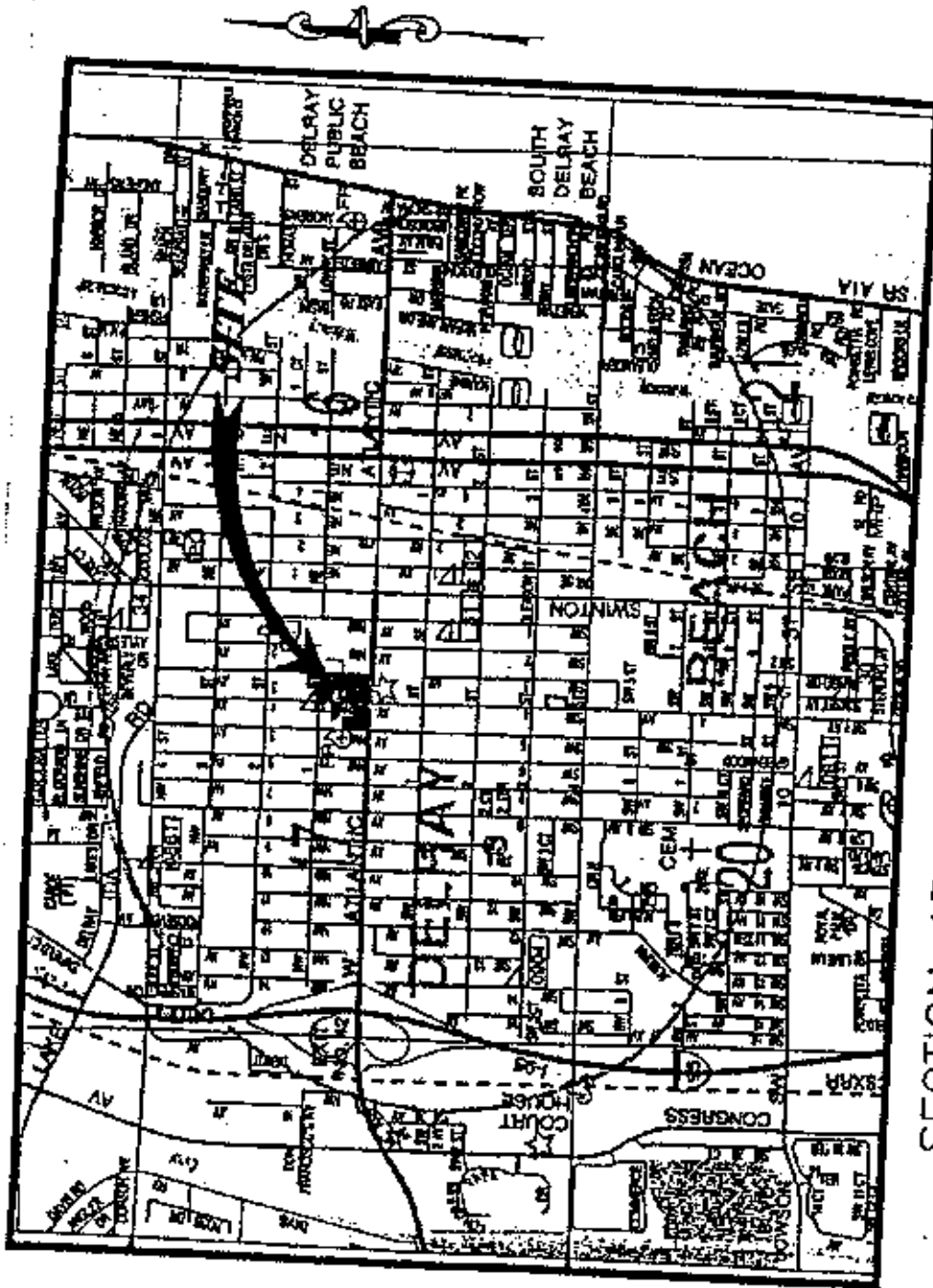
DATE: 3/12/02

SURFACE WATER MANAGEMENT:



Carlos A. DeRojas, P.E.

DATE: 3/12/02



SECTION 17, TOWNSHIP 46S, RANGE 43E

Location Map

Exhibit 1

ATLANTIC GROVE

CITY OF DELRAY BEACH

PALM BEACH COUNTY, FLORIDA

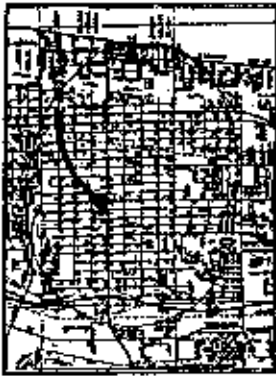
FOR

NEW URBAN COMMUNITIES

398 N.E. 6TH AVENUE
 DELRAY BEACH, FLORIDA 33483

INDEX

SHEET NO.	DRAWING	DESCRIPTION
CI	F	COVER SHEET
12 & 13	SP	GEOMETRIC SITE PLAN
14 & 15	PG	PAVING, GRADING & DRAINAGE PLAN
16	DG	PAVING, GRADING & DRAINAGE DETAILS & NOTES
17	DM	SIGNING & PAVEMENT MARKING DETAILS & NOTES
18	TS	TYPICAL SECTIONS
19 & 20	FW	WATER & SANITARY SERVICE PLAN
21	PRO	SANITARY SERVICE PROFILES
22 & 23	DW	WATER & SANITARY SERVICE DETAILS & NOTES



MILLEG
 ASSOCIATES, INC.
 Engineers • Planners • Surveyors
 Landscape Architects
 Environmental Professionals

1300 Corporate Center Way
 Suite 201
 Wellington,
 Florida 33414-8583

Phone: (561) 795-8981
 Fax: (561) 795-9408

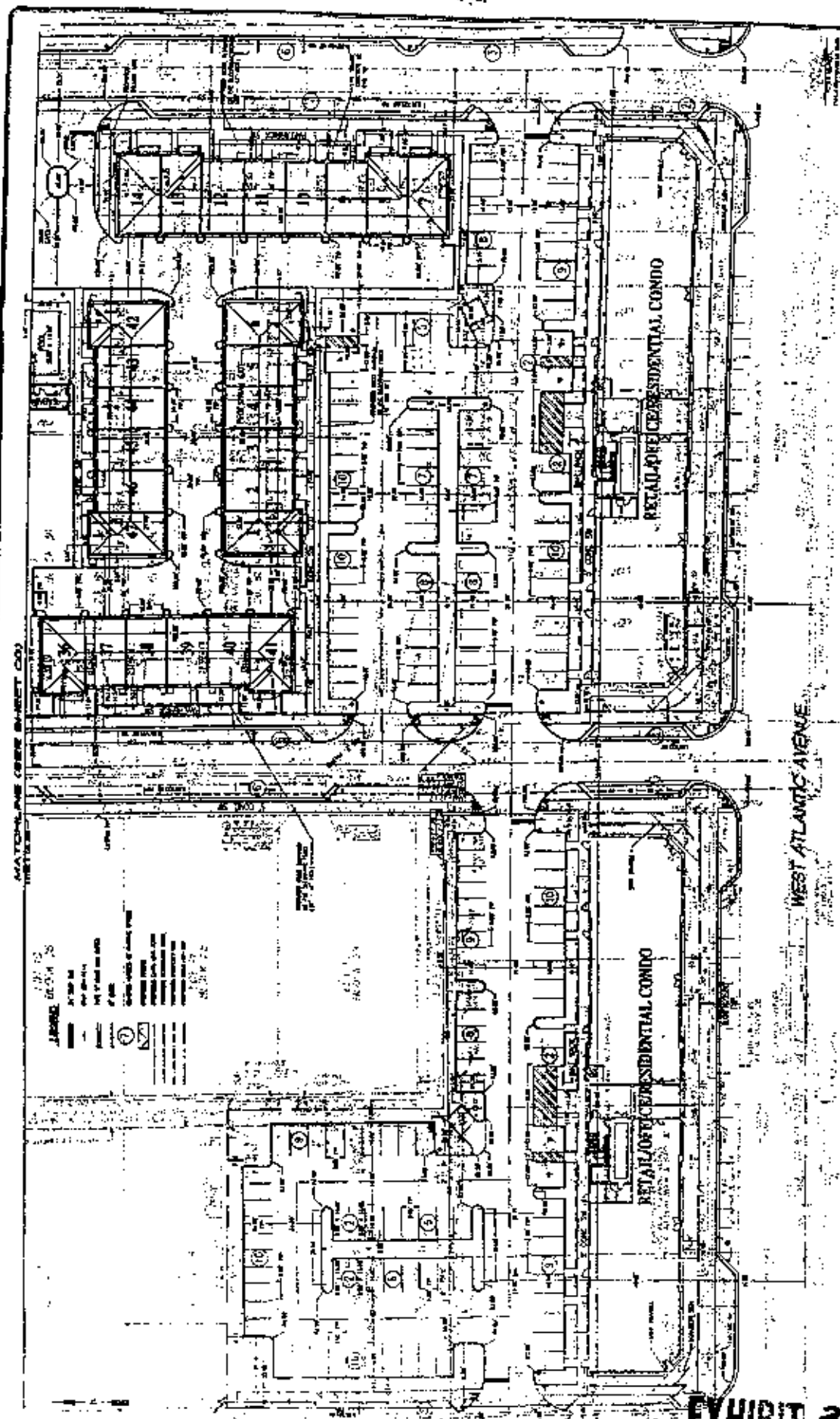
JRM/ML/SJM/STW
 APR 11/04
 1078
 4020111-3

ATLANTIC GROVE

CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA

NEW URBAN COMMUNITIES

EXHIBIT 2



MATCHLINE TO SHEET 001

- LEGEND**
- 1. LANDING
 - 2. DRIVEWAY
 - 3. COURTYARD
 - 4. PARKING
 - 5. WALKWAY
 - 6. BIKEWAY
 - 7. CIRCULAR DRIVEWAY
 - 8. CIRCULAR BIKEWAY
 - 9. CIRCULAR WALKWAY
 - 10. CIRCULAR BIKEWAY
 - 11. CIRCULAR WALKWAY

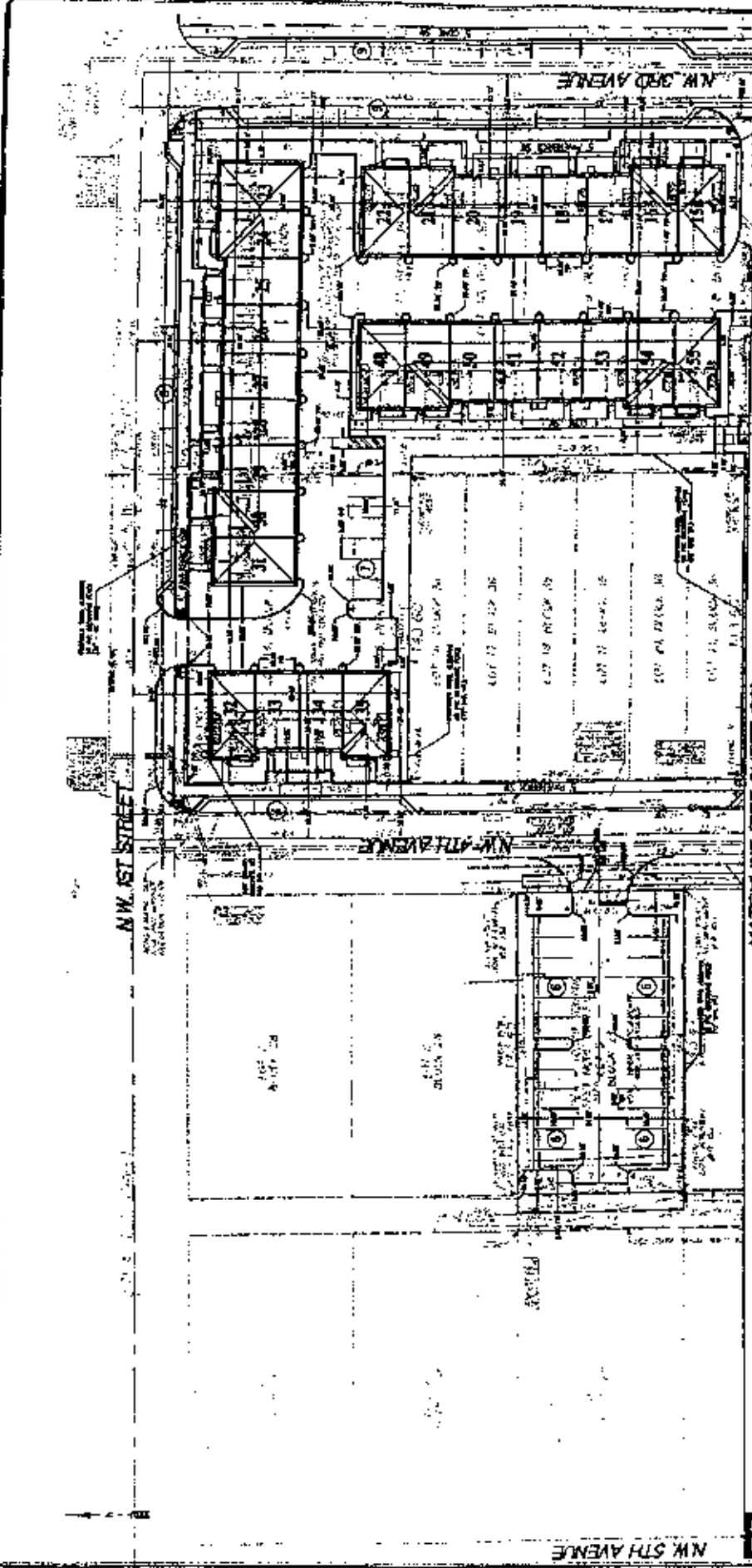
GEOMETRIC SITE PLAN

Project: Atlantic Grove
 Location: Delray Beach, Florida
 Date: 02/15/15
 Scale: 1/8" = 1'-0"
 Drawing No.: 02/15/15-01
 Designer: M. J. ...
 Checker: ...
 Approver: ...

ATLANTIC GROVE
 CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA
 NEW URBAN COMMUNITIES

WEST ATLANTIC AVENUE

EXHIBIT 3



LEGEND

- 1" = 10' 0"
- 2" = 20' 0"
- 3" = 30' 0"
- 4" = 40' 0"
- 5" = 50' 0"
- 6" = 60' 0"
- 7" = 70' 0"
- 8" = 80' 0"
- 9" = 90' 0"
- 10" = 100' 0"

GEOMETRIC SITE PLAN

MILLER
 ENGINEERS & ARCHITECTS
 1101 N.W. 10TH AVENUE
 MIAMI, FLORIDA 33136
 PHONE: 375-1111
 TELETYPE: 375-1111

ATLANTIC GROVE
 CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA
 NEW URBAN COMMUNITIES

EXHIBIT 4

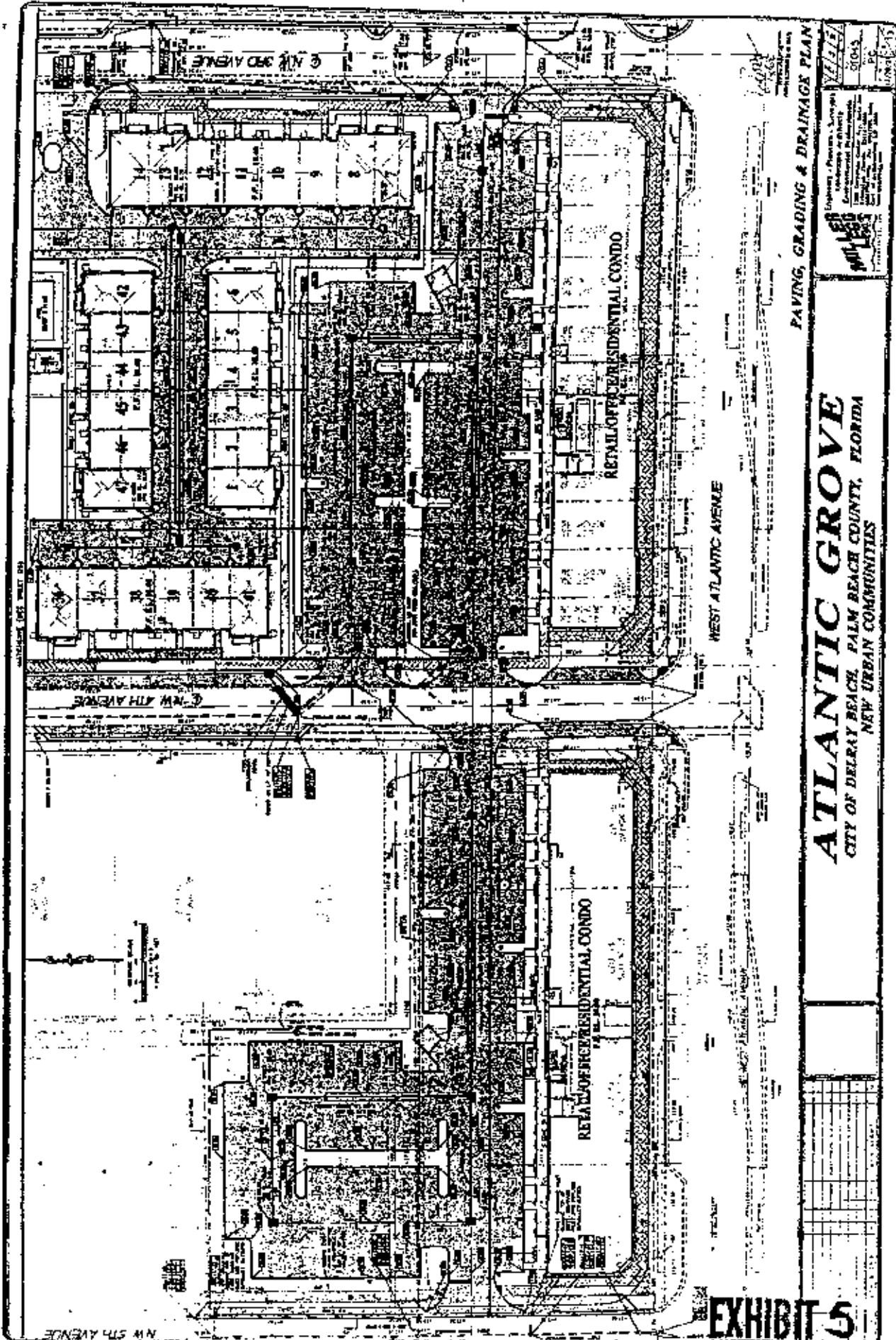


EXHIBIT 5

LEGEND

- 1. 1/2" = 1' - 0"
- 2. 1/4" = 1' - 0"
- 3. 1/8" = 1' - 0"
- 4. 1/16" = 1' - 0"
- 5. 1/32" = 1' - 0"
- 6. 1/64" = 1' - 0"
- 7. 1/128" = 1' - 0"
- 8. 1/256" = 1' - 0"
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Palm Beach County, Florida
Dorothy H Wilken, Clerk of Court

INSTRUMENT PREPARED BY:
RECORD AND RETURN TO:
Michelle DeRosa Mulay, Esquire
HOLLAND & KNIGHT LLP
One East Broward Blvd., 13th Floor
Ft. Lauderdale, Florida 33301

FIRST AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR ATLANTIC GROVE

This First Amendment to Declaration of Covenants, Restrictions and Easements for Atlantic Grove ("First Amendment") is made this 20th day of January, 2004 by Atlantic Grove Partners L.L.C., a Florida limited liability company ("Declarant"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483 and is joined in by Atlantic Grove Townhome Association, Inc., a Florida corporation not for profit (the "Association"), whose address is 398 N.E. 6th Avenue, Delray Beach, Florida 33483.

RECITALS:

WHEREAS, Declarant recorded a Declaration of Covenants, Restrictions and Easements for Atlantic Grove (the "Declaration") in Official Records Book 15321, Page 925 of the Public Records of Palm Beach County, Florida;

WHEREAS, Section 15.6 of the Declaration permits the Declarant to unilaterally amend or modify the Declaration until such time as Class B membership terminates pursuant to Section 4.1 of the Declaration.

WHEREAS, Class B membership has not terminated and Declarant desires to amend the Declaration as more specifically set forth herein under the authority granted in Section 15.6 of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration in the manner stated below:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The following shall be added to the Declaration as Article 18 thereto:

ARTICLE 18

ADJACENT PARCEL

18.1 Adjacent Parcel. Declarant is currently under contract to purchase that certain real property described on Exhibit "E" attached hereto and made a part hereof (the "Adjacent Parcel") and intends to construct thereon approximately 14 residential townhome dwelling units. The Declarant and the Association hereby reserve and grant unto the Declarant, and all subsequent owners of the Adjacent Parcel, the following perpetual easements and rights (which easements and rights shall only become effective and be deemed to take effect in the event the Declarant becomes the fee simple owner of the Adjacent Parcel):

A. Ingress, Egress and Access. Declarant and the Association hereby reserve and grant unto Declarant, as owner of the Adjacent Parcel, and its successor and/or assigns, for the benefit and use of the Declarant and any subsequent owners of residential townhome dwelling units constructed upon the Adjacent Parcel (the "Adjacent Unit Owner(s)"), including their respective tenants, guests, invitees, a perpetual non-exclusive ingress, egress and access easement over and across; (i) all private streets, roadways, sidewalks, access ways, alleyways and parking areas constructed on the Property from time to time, and (ii) those portions of the Common Properties lying adjacent to and between the boundary line(s) of the Lot(s) and the private streets, roadways, sidewalks, access ways, alleyways and/or parking areas, as the case may be, which portions of the Common Properties are either designated as or necessary for ingress and egress to and from the Community Facilities and all publicly dedicated road right-of-ways located adjacent to the Property, it being the specific intent of the Declarant and the Association to hereby grant perpetual, uninterrupted and contiguous ingress, egress and access to and from the Adjacent Parcel to and from the Community Facilities and all publicly dedicated road right-of-ways which are located adjacent to the Property. Included in the foregoing easements and rights is the right for Declarant, the Adjacent Unit Owners and their respective tenants, guests, invitees and licensees to park upon the parking spaces which are located within the Common Properties from time to time and not reserves for the exclusive use of an Owner. Any rights granted or reserved under this Section however, shall be subject to any rights granted or permitted to be granted by Declarant and/or the Association to third parties, as provided elsewhere in the Declaration.

B. Declarant Easements. Declarant and the Association hereby reserve and grant unto the Declarant, and its successors, assigns, agents, guests, contractors and subcontractors, for the benefit of the Adjacent Parcel, a non-exclusive ingress, egress, access and construction easement and right-of-way for vehicular and pedestrian traffic, in, on, over, under, across and through all Common Properties, including but not limited to all private streets, roadways, sidewalks, access ways, alleyways and parking areas constructed on the Property from time to time, as are necessary (in Declarant's reasonable

discretion) in order for Declarant to exercise its rights under the Declaration and otherwise construct, develop and market the Adjacent Parcel.

C. Utility Easements. The Declarant and the Association hereby reserve and grant unto the Declarant, and its successors, assigns, agents, guests, contractors and subcontractors, for the benefit of the Adjacent Parcel, a non-exclusive easement in, on, over, under, across and through the Property, for the construction, installation and maintenance of utilities, including, but not limited to drainage, water, sewer, telephone, electric and cable television, as may be reasonably required to properly and adequately service the Adjacent Parcel, provided that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or Improvements, wherever said building or other Improvements may be located from time to time. In addition to the foregoing, Declarant, for the benefit of the Adjacent Parcel, shall have the right, at its cost and expense, to tie into any and all utility services which are provided to the Property (which includes but is not limited to electric, telephone, cable, sewer, water, drainage, irrigation, and fire suppression) whether public or private, so as to provide such services to the Adjacent Parcel. In connection with Declarant's attempt to obtain a modification to the existing surface water management and drainage permit for the Property and/or tie into the Surface Water Management System, if required by the South Florida Water Management District, the Association shall be responsible for maintaining all portions of the surface water management system located within the Adjacent Parcel, and the Adjacent Unit Owners shall be responsible for reimbursing to the Association (in a manner similar to the Common Facilities Assessments as set forth below) for the cost incurred by the Association in maintaining that portion of the system located within the Adjacent Parcel.

D. Use of Common Facilities. The Declarant, all Adjacent Unit Owners, and their tenants, guests, licensees and invitees (collectively the "Permittees"), shall have the non-exclusive right and easement to use all Common Facilities which are located within the Common Properties from time to time, subject to the terms and conditions set forth in the Declaration and any rules and regulations promulgated by the Association relating to the use of the Common Facilities by all Owners and any permitted users of the Common Facilities. The Association shall not be permitted to promulgate rules and regulations which limit or diminish the Permittee's use of the Common Facilities unless such rules and regulations equally affect the use of the Common Facilities by the Owners, the Rec. Users and other parties entitled to use same.

18.2 Adjacent Parcel's Share of Community Facilities Assessments. In the event the Declarant becomes the fee simple owner of the Adjacent Parcel and

the easement rights set forth in Section 18.1 above are granted, each Adjacent Unit Owner shall be required to pay to the Association a proportionate share of the Common Facilities Assessments as set forth below. The obligation for payment of the Common Facilities Assessment shall not be due from the Declarant and shall not be deemed to commence until the date on which title to such dwelling unit or lot is conveyed by Declarant to the first purchaser thereof. At least forty-five (45) days prior to the beginning of each fiscal year the Board of Directors shall prepare, adopt and distribute to the Declarant, as owner of the Adjacent Parcel, or to any property owner's association created by Declarant for purposes of administering the Adjacent Parcel (the "Adjacent Parcel Association") for distribution to each Adjacent Unit Owner (but not as a member of the Association), a written, itemized, estimated budget of the Common Facilities expenses to be incurred by the Association during the coming year in performing its functions under this Declaration with respect to the Common Facilities. The Adjacent Parcel Association shall be responsible for collecting from each Adjacent Unit Owner its proportionate share of the Common Facilities Assessment, which shall be payable to the Association on the first day of each calendar month for which a Community Facilities Assessment is due and shall be payable in equal monthly installments unless determined by the Board, from time to time, to be payable less frequently. Each Adjacent Unit Owner's proportionate share of the Common Facilities Assessment shall equal the amount of the estimated operating budget for the Common Facilities, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from the prior years), multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the total of all Assessment Units (as defined in Section 6.4 of the Declaration) plus the total number of all Adjacent Unit Owners currently required to pay a proportion of the Common Facilities as of the date of the estimate operating budget. For example, if Declarant has conveyed 5 dwelling units as of the date of the estimated operating budget to Adjacent Unit Owners, and the total number of Assessment Units equals 75 (as anticipated under the Declaration), the numerator shall be equal to 1 and the denominator shall be equal to 80. If the total amount set forth in the estimated operating budget is \$10,000, each Adjacent Unit Owner's annual proportionate share shall be \$125.00. Notwithstanding anything contained herein to the contrary, in no event shall an Adjacent Unit Owner be required to pay an amount which exceeds the amount due by an Assessment Unit for any given year.

The easements and rights set forth in Section 18.1 A, B and D above and the obligations set forth in Section 18.2 above shall be deemed to terminate in the event the Association annexes the Adjacent Parcel to the Declaration pursuant to Section 18.3 below.

18.3 Annexation of Adjacent Property by Association. Subsequent to the date upon which Declarant takes title to and becomes the fee simple owner of the Adjacent Parcel, but prior to the conveyance of any portion thereof by Declarant to any Adjacent Unit Owner, the Association may elect to annex the Adjacent Parcel to the terms, conditions and restrictions of the Declaration by Supplemental Declaration, pursuant to the provisions set forth in Section 18.2 hereof. The Supplemental Declaration shall be joined in by the Declarant, as owner of the Adjacent Parcel. Upon the recording of the Supplemental Declaration, the Adjacent Parcel shall be deemed to be part of the Property (as defined in the Declaration). In addition, the Declarant, and each subsequent Adjacent Unit Owner shall be subject to the terms, conditions and restrictions set forth in the Declaration, shall be deemed Members and shall be entitled to membership as provided in Article 3 of the Declaration. In the event the Association elects to annex the Adjacent Parcel, the Association shall amend the Declaration as may be required to reflect such annexation, which shall include but shall not be limited to an amendment to the terms "Property" and "Townhome Lot" as set forth in the Declaration. Upon annexation, in addition to the easements and rights contained in Section 18.1C. hereof, Declarant shall be deemed to have all easements and rights originally granted to Declarant under the Declaration.

18.4 Merger or Consolidation. In the event the Association does not annex the Adjacent Parcel to the terms of the Declaration as set forth in Section 18.3 above, Declarant intends to subject the Adjacent Parcel to the terms and conditions of a declaration of covenants, conditions and restrictions and to create a property owners association (the "Adjacent Parcel Association") responsible for administering and enforcing the provisions of such declaration. In such event, the Association shall have the right (upon the written approval of the Declarant, for so long as Declarant owns any portion of the Adjacent Parcel) to merge or consolidate with the Adjacent Parcel Association. Upon a merger or consolidation of the Association with the Adjacent Parcel Association its properties, rights and obligations may, by operation of law, be transferred to the Adjacent Parcel Association or, alternatively, the properties, rights and obligations of the Adjacent Parcel Association may, by operation of law, be added to the properties, rights and obligations of the Association. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration together with the covenants and restrictions established upon the Adjacent Parcel as one scheme.

3. Section 2.2 B. of the Declaration is hereby deleted in its entirety and replaced with the following:

B. The Community Facilities will be used in common with the residential condominium loft owners of the Atlantic Grove Condominium. It is anticipated that the Common Facilities will be initially used by a maximum of

55 Owners of the Lots and 20 residential condominium loft owners, and their approved tenants, guests and invitees. If however, Declarant becomes the fee simple owner of the Adjacent Parcel or the Adjacent Parcel is annexed to the Declaration as more fully set forth in Article 18 hereof, it is anticipated that these facilities, in addition to being used by the 55 Owners and the 20 residential condominium loft owners, will be used by a maximum of 14 owners of the residential townhome dwelling units to be constructed by Declarant upon the Adjacent Parcel, and their approved tenants, guests and invitees. These Common Facilities will be located on property which will be ultimately owned by the Association.

4. The first sentence of Section 10.12 of the Declaration is hereby amended to read as follows:

Except as provided in Section 18.1D hereof, the use of the Community Facilities shall be restricted to Association Members, Atlantic Grove Condominium Association Residential Unit Owners and their respective Family, tenants, guests and invitees (collectively hereinafter referred to as "Rec. Users").

5. Section 11.2 of the Declaration is hereby amended to include the following:

For purposes of this Article 11, the term Rec. Users shall not be deemed to include the owners of any portion of the Adjacent Parcel (as defined in Article 18 hereof).

6. Except as amended by this First Amendment, the Declaration shall remain in full force and effect.

7. Each term defined in the Declaration and used herein, shall have the meaning ascribed to it in the Declaration, unless otherwise defined herein.

8. The Association hereby joins in and is executing this First Amendment to acknowledge its approval, consent and agreement to this First Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant and the Association have caused this First Amendment to be executed as of the date first written above.

Signed in the presence of:

DECLARANT:

ATLANTIC GROVE PARTNERS, L.L.C., a Florida limited liability company

By: New Urban Atlantic Grove, L.L.C., a Florida limited liability company, its Managing Member

By: New Urban Communities Corporation, a Florida corporation, its Managing Member

By: [Signature]
Kevin E. Rickard
President

[Signature]
Witness

GABRIELLE CARTNER
Print Name

[Signature]
Witness

Heather Workman
Print Name

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 20 day of January, 2004, by Kevin E. Rickard, as President of New Urban Communities Corporation, a Florida corporation, the Managing Member of New Urban Atlantic Grove, L.L.C., a Florida limited liability company, the Managing Member of Atlantic Grove Partners, L.L.C, a Florida limited liability company on behalf of the corporation and the companies. He/She is personally known to me [or has produced as identification].

[Signature]
(SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT)

Heather Workman
(Name of acknowledger, typed, printed or stamped)

(Title or rank (serial number, if any))



ASSOCIATION:

ATLANTIC GROVE TOWNHOME
ASSOCIATION, INC., a Florida not for profit
corporation

[Signature]
Print Name: Kevin E. Rickard

[Signature]
Print Name: Heather Workman

By: [Signature]
Print Name: Kevin E. Rickard
Title: President

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 20 day of
January, 2004 by Kevin E. Rickard, as President of Atlantic Grove Townhome
Association, Inc., a Florida not for profit corporation, on behalf of the corporation.
He/She is personally known to me [or has produced _____ as
identification].

[Signature]
(SIGNATURE OF PERSON TAKING
ACKNOWLEDGEMENT)

Heather J. Workman
(Name of acknowledger, typed, printed or
stamped)

(Title or rank (serial number, if any))



EXHIBIT "E"
THE ADJACENT PARCEL

LOTS 16 THROUGH 21, INCLUSIVE, BLOCK 36 OF REVISED PLAT OF
BLOCK 36, TOWN OF DELRAY, ACCORDING TO THE MAP OR PLAT
THEREOF AS RECORDED IN PLAT BOOK 5, PAGE 38, PUBLIC RECORDS
OF PALM BEACH COUNTY, FLORIDA

TOGETHER WITH:

A PARCEL OF LAND SITUATE IN SECTION 17, TOWNSHIP 46 SOUTH,
RANGE 48 EAST, CITY OF DELRAY BEACH, FLORIDA, PALM BEACH
COUNTY FLORIDA, BEING MORE SPECIFICALLY DESCRIBED AS
FOLLOWS:

THE SOUTH 66.72 FEET OF LOT 2 OF THE PLAT OF MT. OLIVE
BAPTIST CHURCH PROPERTY, ACCORDING TO THE MAP OR PLAT
THEREOF AS RECORDED IN PLAT BOOK 69, PAGE 20, PUBLIC
RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF THE NORTH HALF OF THE 16 FOOT ALLEY RIGHT
OF WAY, BLOCK 28, MAP OF LINTON (NOW DELRAY BEACH),
ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN PLAT
BOOK 1, PAGE 3, PUBLIC RECORDS OF PALM BEACH COUNTY,
FLORIDA, SAID STRIP LYING NORTH OF AND ADJACENT TO THE
NORTH LINE OF TRACT "C-2" OF ATLANTIC GROVE, ACCORDING TO
THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 96, PAGE
55, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF THE EAST HALF OF THE 16 FOOT ALLEY RIGHT OF
WAY, BLOCK 28, MAP OF LINTON (NOW DELRAY BEACH), ACCORDING
TO THE MAP OR PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE
3, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND LYING
SOUTH OF A LINE 66.72 FEET NORTH OF THE SOUTH LINE OF LOT 2
OF THE PLAT OF MT. OLIVE BAPTIST CHURCH PROPERTY,
ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT
BOOK 69, PAGE 20, PUBLIC RECORDS OF PALM BEACH COUNTY,
FLORIDA.

1518823.v2



PALM BEACH COUNTY, STATE OF FLORIDA

I hereby certify that the foregoing is a
true copy of the record in my office.

This 22nd Day of June 2011

DOROTHY H. WILKEN
Clerk Circuit Court

9 BY [Signature]

D.C.