

DECLARATION OF  
COVENANTS AND CONDITIONS

THIS DECLARATION, made on the date hereinafter set forth by INDIAN CREEK JOINT VENTURE, a Florida general partnership, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property, known as INDIAN CREEK PHASE V in Jupiter, County of Palm Beach, State of Florida, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

WHEREAS, Declarant desires to provide for the maintenance, repair and replacement of certain property for the benefit of Declarant and "Owners" as hereinafter defined.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Phase V Association" shall mean and refer to INDIAN CREEK PHASE V HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of INDIAN CREEK PHASE V, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(a) Owner of a Lot upon which a "Villa", "Home", "Quadraplex", or "Duplex" (as hereinafter defined) is constructed shall respectively mean a "Villa Owner", "Home Owner", "Quadraplex Owner" or "Duplex Owner".

Section 3. "Properties" shall mean and refer to that certain property as described on Exhibit "A", and such additions and improvements thereon as may hereafter be built in INDIAN CREEK PHASE V.

Section 4. "Phase Common Area" shall mean all real property (including the improvements thereto) to be dedicated to the Phase V Association for the common use and enjoyment of the Owners on the Plat of Phase V of INDIAN CREEK as recorded at Plat Book 46 Pages 84-85 of the Public Records of Palm Beach County, Florida ("Plat").

Section 5. "Community Association" is the INDIAN CREEK COMMUNITY HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation one of whose present and continuing members is Phase V Association and one of whose responsibilities is to own, maintain, operate and repair certain real property, improvements thereon and appurtenances thereto for the recreational use and benefit of all Owners in INDIAN CREEK ("Community Common Area").

Section 6. "Lot" shall mean and refer to any plot of land shown upon the Plat of INDIAN CREEK PHASE V with the exception of the Phase Common Area, if any.

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(a) "Villa" shall mean a single story or two story attached townhouse constructed upon a Lot.

(b) "Home" shall mean a single story or two story detached residence constructed on one Lot.

(c) "Quadrplex" shall mean each of the four units constructed on the four adjoining Lots.

(d) "Duplex" shall be construed as the same as a "Home" unless otherwise specified by special exception as hereinafter described.

Section 7. "Roadways" shall mean the forty foot access and utility easements contained within INDIAN CREEK PHASE I, as shown on the Plat, and all improvements thereon, adjacent or attached thereto, including but not limited to roadways, sidewalks and gutter and drainage systems.

Section 8 "Declarant" shall mean and refer to INDIAN CREEK JOINT VENTURE, its successors and assigns.

## ARTICLE II

### PROPERTY RIGHTS AND DUTIES

Section 1. Owner's Easements Enjoyment. Every Owner shall have a right and easement of enjoyment in and to his Lot and to the Phase Common Area, if any, and Community Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) All provisions of this Declaration, any additional covenants and restrictions of record, the Plat of the Properties, the Articles of Incorporation and By-Laws of Phase V Association, and the Articles of Incorporation and By-Laws of the Community Association;

(b) The right of Phase V Association and of the Community Association to suspend voting rights and right to use the recreational facilities which may become part and parcel of Community Common Area by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the rules and regulations adopted by the Phase V Association and Community Association governing use and enjoyment of the Phase Common Area, if any, and Community Common Area respectively;

(c) The right of the Phase V Association and Community Association to dedicate or transfer all or any part of the Phase Common Area, if any, and Community Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by a two-thirds (2/3) vote of each Phase V Association class as defined in Article III hereof; and

(d) Any and all restrictions covering INDIAN CREEK PHASE V.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws or Rules and Regulations of the Community Association, his right of enjoyment to the Community Common Area to the members of his family or his tenants.

Section 3. Ingress and Egress. A non-exclusive easement for access, ingress and egress is hereby created and reserved for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways, paved surfaces and lanes, including, without limitation, landscaped areas, as the same from time to time, may exist upon the Lots as shown on the Plat of INDIAN CREEK PHASE V for each Owner, his family, tenants, guests,

B4061 P0279

invitees, employees and agents for the Phase V Association employees and agents for public officials and employees and for all other persons who may use or travel on the same for lawful purposes.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS OF PHASE V ASSOCIATION

Section 1. Membership. The members of the Phase V Association shall consist of all Owners. Membership is automatically conferred upon acquisition of a Lot, as defined in this Declaration, and as evidenced by the filing of a deed to such a Lot. Membership is an incident of ownership and is not separately transferable.

Section 2. Voting Rights. The Phase V Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as said persons determine, but in no event shall more than one vote be cast with respect to any one Lot.

(b) Class B. The Class B Member(s) shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs later: (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or (2) on December 31, 1984.

### ARTICLE IV

#### RIGHTS AND OBLIGATIONS OF PHASE V ASSOCIATION

Section 1. Maintenance of Common Area. Phase V Association, as set forth herein and in any other recorded documents or restrictions, shall be responsible for the cost of maintenance, repair, management and control of the Phase Common Area, if any, and all improvements thereon, and its pro rata share of the maintenance, repair and replacement responsibilities of the Community Association.

Section 2. Maintenance of Roadways. Phase V Association shall be responsible for the actual or projected cost of maintenance, repair and replacement of the Roadways.

Section 3. Maintenance of Street Lighting. Phase V Association shall be responsible for any and all operation charges, costs and expenses for street and walkway lighting charged by Declarant and/or any power company or other provider of such lighting. Phase V Association shall return to Declarant all sums or installments thereon received from any power company or other provider of the subject lighting for the installation of same, for which Declarant has paid.

Section 4. Right of Entry. Phase V Association and the Community Association are hereby granted a right of entry to each Lot to the extent reasonably necessary to discharge their duties of maintenance and repair or for any other purpose reasonably related to the Phase V Association's performance or the Community Association's performance of any duty imposed, or exercise of any right granted, by this Declaration. Such right of entry shall be exercised in a reasonable manner at reasonable times, except in emergencies.

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Section 5. Decorative Identification Sign. The Community Association's maintenance responsibilities shall extend to and include maintenance of the decorative or identification signs in any phase of INDIAN CREEK and all future similar signs, for which the Phase V Association shall contribute its pro rata share.

Section 6. Sprinkler Systems. Lot Owners shall have the option of providing for the professional installation of their own respective sprinkler systems with the prior approval of Declarant. Any Lot Owner exercising such option with the prior approval of Declarant shall be responsible exclusively for the costs of maintenance, repair and replacement of such systems and shall also be responsible exclusively for any damage rendered or caused thereby.

Section 7. Ponds. Phase V Association's maintenance responsibilities further extend to and include maintenance, as well as the recharging or refilling, if necessary, of all lakes, drainage systems, ditches, ponds, creeks and canals in Phase V of INDIAN CREEK.

## ARTICLE V

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Phase V Association: (1) Annual assessments as hereinafter defined; (2) Special assessments, not otherwise herein contained, against any particular Lot which are established pursuant to the terms of this Declaration or pursuant to the terms of the Articles of Incorporation and Bylaws of Phase V Association or of the Community Association; and (3) All excise taxes, if any, which may be imposed on all or any portion of the foregoing by law. All such assessments, together with interest and all costs and expenses of collection, including reasonable attorneys' fees and appellate attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest on all costs and expenses of collection, including reasonable attorneys' fees and appellate 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. The personal obligation for delinquent assessments shall pass to an Owner's successors in title, only if expressly assumed by said successors.

(a) Each Villa Owner, Quadrplex Owner or Duplex Owner shall also pay a special prorata assessment for the lawn cutting, painting and maintenance service provided by Phase V Association; provided, however, said special assessment may only be used for the purpose herein stated.

Section 2. Purpose of Assessments. The assessments levied by the Phase V Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area, of decorative identification sign(s), existing now or in the future, and of the Roadways by the Community Association. To effectuate the foregoing purposes, an annual assessment shall be levied by the Phase V Association, in accordance with the Articles of Incorporation and Bylaws of the Community Association, to provide and be used for the improvement and maintenance of the Common Area, the above cited decorative sign(s) and the Roadways and all other general operations of the Community Association.

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(a) The special above cited assessments levied by Phase V Association on each Villa or Quadraplex in addition the annual assessments will be used exclusively for the lawn cutting, painting and maintenance service provided by Phase V Association.

Section 3. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Eighty-Four (\$84.00) Dollars per Home and per Villa, Quadraplex and Duplex.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year no more than five (5%) percent above the maximum assessment for the previous year without a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum special assessment for lawn cutting and maintenance services may be increased each year no more than five (5%) percent above the maximum assessment for the previous year without a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the 1st day of the month following the conveyance of the first Lot, except that there shall be no annual assessment or special assessment on Lots where the Phase V Association has received assessment revenue in excess of ten (10%) percent of its current operating or capital expenses determined in accordance with generally acceptable accounting principles. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

The assessments, at the election of Phase V Association, may be collected on a monthly basis. The Phase V Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Phase V Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Phase V Association as to the status of assessments on a Lot is binding upon the Phase V Association as of the date of its issuance.

(a) The special assessment levied by Phase V Association on each Villa, Quadraplex and Duplex shall commence on the first day of the month following the day of conveyance of the first Villa, Quadraplex and Duplex respectively to an Owner.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Phase V Association may levy, in any assessment year, a special assessment applicable to that year only for, including without limitation, the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Phase or Community Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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Section 6. Notice and Quorum for Any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 above shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Effect of Nonpayment of Assessments: Remedies of Phase V Association. Any assessment, annual or special, not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) percent per annum. The Phase V Association may, at its election, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, or both. An election hereunder shall not be a waiver of any right or other rights Phase V Association may have either in law or equity. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Phase Common Area, Community Common Area or Roadways or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien for assessments provided for herein shall be subordinate to the lien of any first mortgage securing an indebtedness which is amortized for monthly or quarterly annual payments over a period of not less than ten (10) years, and shall be subordinate to any mortgage held or insured by the Federal Housing Administration or held or guaranteed by the Veterans Administration, regardless of the period of amortization. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure or any proceeding in lieu thereof of a first mortgage meeting the above qualifications, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Foreclosure. The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Phase V Association in the same manner in which mortgages on real property may be foreclosed in Florida. In any such foreclosure, the Owner shall be required to pay all the costs, and expenses of such foreclosure, including reasonable attorneys' fees and appellate attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Phase V Association any assessments against the Lot which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the Owner's title is divested by foreclosure. The Phase V Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In the event the foreclosure sale results in a deficiency, Phase V Association may, in its discretion, obtain a personal judgment against the Owner thereof for such deficiency, in the same manner as is provided for foreclosure of mortgages on real property in the State of Florida.

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Section 11. Homesteads. By acceptance of a deed thereto, the Owner of each Lot shall agree to waive any and all possible defenses of homestead protection in an action for the foreclosure of the lien for sums assessed pursuant to this Declaration.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 1. Enforcement. If any person, firm, corporation, or other entity shall violate or attempt to violate any of the Covenants and Conditions, it shall be lawful for Owners or Phase V Association:

(a) To institute and maintain civil proceedings for the recovery of damages against those so violating or attempting to violate any such Covenants or Conditions; or

(b) To institute and maintain a civil proceeding in any court of competent jurisdiction against those so violating or attempting to violate any of the Covenants or Conditions for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this Section shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of Declarant, Phase V Association, their grantees, successors or assigns, to enforce any covenant, condition or any other obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto.

Section 2. Paragraph Headings. The paragraph headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning, content or interpretation hereof.

Section 3. Severability. Invalidation of any one of these conditions, and covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Annexation. Additional residential real property may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members of Phase V Association.

Section 5. VA Approval. As long as Declarant maintains Class B membership in Phase V Association, the following actions will require the prior approval of the Veterans Administration: Annexation of additional properties, dedication of the Phase Common Area, and amendment of this Declaration of Covenants and Conditions.

Section 6. Assignments. Declarant shall have the sole and exclusive right at any time and from time to time to transfer and assign to, and to withdraw from such person, firm, or corporation as it shall select, any or all rights, powers, easements, privileges, authorities, and reservations given to or reserved by Declarant by and any part or paragraph of the Covenants and Conditions or under the provisions of the Plat for so long as Declarant owns no less than thirty-three and three-tenths (33.3%) percent of the Lots or until December 31, 1984 whichever is earlier. If at any time hereafter there shall be no person, firm or corporation entitled to exercise the rights, powers, easements, privileges, authorities, and reservations given to or reserved by Declarant under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners of a majority of the Lots. Nothing herein contained, however,

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shall be construed as conferring any rights, powers, easements, privileges, authorities or reservations in said committee, except in the event aforesaid.

Section 7. Declarant's Rights. Declarant reserves and shall have the right to amend by recorded instrument this Declaration for the purpose of curing any error or ambiguity in or any inconsistency between the provisions contained herein, with the prior approval of the Veterans Administration.

Section 8. Term and Amendment. The Covenants and Conditions of this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time same shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) percent of the Owners. Any amendment which would affect the surface water management system, including the water management portions of the Common Area, shall require the prior written approval of the South Florida Water Management District. All amendments shall be certified and recorded among the Public Records of Palm Beach County, Florida.

Section 9. Additional Covenants. No property Owner, without the prior written approval of Declarant, may impose any additional covenants or restrictions on any part of the land shown on the Plat, so long as Declarant is an Owner in Phase I.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 29th day of September, 1983.

Signed, Sealed and Delivered in the presence of:

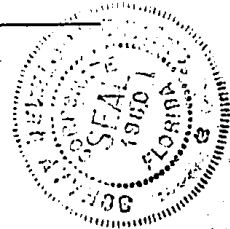
INDIAN CREEK JOINT VENTURE, a Florida general partnership  
BY: Schaaf Development, Inc., Florida corporation, partner

Carole J. Tuerbin

Don Schaaf, President

Richard A. Jones

Corporate Seal

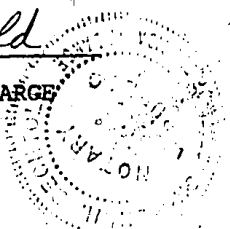


STATE OF FLORIDA )  
COUNTY OF PALM BEACH ) SS:

The foregoing was acknowledged before me this 29th day of September, 1983, by Don Schaaf, President of Schaaf Development, Inc., a Florida Corporation, a partner of and on behalf of INDIAN CREEK JOINT VENTURE, a Florida general partnership.

My Commission Expires:  
Notary Public, State of Florida at Large  
My Commission Expires July 16, 1984  
Bonded Thru Troy Falg Insurance Inc.

Sharon H. Bechtold  
NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE



This Instrument Prepared By and Return To:

Henry B. Handler, Esquire  
Sachs & Weiss, P.A.  
Interstate Plaza - Suite 402  
1499 West Palmetto Park Road  
Boca Raton, Florida 33432

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INDIAN CREEK PHASE V, Jupiter, County of Palm Beach,  
State of Florida, as more particularly described at Plat  
Book 46, Pages 84-85 of the Public Records of Palm Beach  
County, Florida.

This is not a certified copy

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EXHIBIT A

RECORD VERIFIED  
PALM BEACH COUNTY, FLA  
JOHN B. DUNKLE  
CLERK CIRCUIT COURT