

This instrument was prepared by:  
**KENNETH S. DIREKTOR, ESQ.**  
Becker & Poliakoff, P.A.  
625 North Flagler Drive - 7<sup>th</sup> Floor  
West Palm Beach, FL 33401  
(W-C 112)

**CERTIFICATE OF AMENDMENT TO THE  
DECLARATION OF COVENANTS AND CONDITIONS OF  
INDIAN CREEK PHASE V**

WHEREAS, the Declaration of Covenants and Conditions for Indian Creek Phase V has been duly recorded in the Public Records of Palm Beach County, Florida, in Official Record Book 4061 at Page 278; and

WHEREAS, at a duly called and noticed meeting of the membership of Indian Creek Phase V Homeowners Association, Inc., a Florida not-for-profit corporation, held February 14, 2011, the aforementioned Declaration of Covenants and Conditions was amended pursuant to the provisions of said Declaration of Covenants and Conditions.

NOW, THEREFORE, the undersigned hereby certify that the following amendments to the Declaration of Covenants and Conditions are a true and correct copy of the amendments as amended by the membership.

**AMENDMENTS TO THE  
DECLARATION OF COVENANTS AND CONDITIONS FOR  
INDIAN CREEK PHASE V**

(Additions shown by "underlining",  
deletions shown by "strikeout",  
unaffected text indicated by "...")

**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. An Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments and other charges coming due while that person is the Owner. Except as provided in Section 9 below, the Owner shall also be jointly and severally liable with the previous Owner for all

unpaid assessments and other charges that came due up to the time of the transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Lot and proceed in the same manner as provided herein and in Chapter 720, Florida Statutes, as amended from time to time, for the collection of unpaid assessments. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common area or by the abandonment of the Lot for which the assessments are made or otherwise.

(a) Each Villa Owner, Quadraplex Owner or Duplex Owner shall also pay a special prorated 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.

(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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Phase V Association may levy, in an assessment year, a special assessment applicable to that year 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.~~

~~Section 6 5. Notice and Quorum for any Action Authorized Under Section 5 4. 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 (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 6. 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 quarter 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.~~

~~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.~~

Section 7. Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within fifteen (15) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act, as same may be amended from time to time, on assessments and installments thereof not paid when due. All partial payments upon account shall be applied in the manner prescribed in Chapter 720, Florida Statutes, as same may be amended from time to time. The Association has a lien on each Lot to secure the payment of assessments. The lien is effective from and shall relate back to the earliest date permitted by law, but in no event later than the date of recording of this Declaration. As to a First Mortgagee of record, the lien shall have such priority as may be provided by Chapter 720, Florida Statutes, as same may be amended from time to time. All claims of lien must state the description of the Lot, the name of the record Owner, the name and address of the Association, the amount due and the due dates and must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, which are due at the time a claim of lien is recorded, as well as all regular and special assessments which may be levied or which may accrue subsequent to the recording of the claim of lien and prior to satisfaction of the lien or the issuance of a certificate of title, together with interest, late charges and all reasonable costs and attorney's fees incurred by the Association incident to the collection and foreclosure process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose its lien in the same manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments. As an additional right and remedy of the Association, upon default in the payment of assessments as aforesaid, the Association may declare the assessment installments for the remainder of the fiscal year in which a claim of lien has been filed to be accelerated, as provided in Section 12 below.

Section 8. Assignment of Rents. The Association is hereby granted a lien against any rents derived from the Lot which shall have the same priority as the Association's lien for unpaid assessments against the Lot. Except to the extent limited by Chapter 720, Florida Statutes, as the same may be amended from time to time, the lien on any rentals derived from the Lot shall be enforceable by the delivery of written notice to the

Owner and the tenant demanding the payment of the rents, provided, however, that no such demand may be made unless and until the Owner is delinquent in the payment of any assessment or other charge due and payable to the Association by the Owner under this Declaration.

Section 9. First Mortgagee. A First Mortgagee acquiring title to a Lot as a result of foreclosure of its first mortgage, or by deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership. In addition, the First Mortgagee is liable for the share of common expenses or assessments or other charges imposed by the Association pertaining to such Lot which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed; provided, however, the First Mortgagee's liability may be limited to the maximum amount set forth in Chapter 720, Florida Statutes, as same may be amended from time to time. If any unpaid share of common expenses or assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or Assessments are common expenses collectible from all of the Owners, including such acquirer, and such acquirer's successors and assigns.

Section 10. Certificate of Unpaid Assessments. Within fifteen (15) days after request by an Owner or mortgagee of a Lot, the Association shall provide a certificate stating whether all assessments and other moneys owed to the Association by the Owner with respect to his Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the Certificate.

Section 11. Installments. Regular Assessments may be collected no more frequently than monthly nor less frequently than quarterly, in advance, at the option of the Board of Directors. Special assessments shall be payable on such terms as may be established by the Board.

Section 12. Acceleration of Assessment Installments Upon Default. If an Owner shall be in default in the payment of an installment upon an assessment, the Board may accelerate the remaining installments of the assessment applicable for the balance of the current fiscal year upon notice to the Owner, and the then unpaid balance of the assessment shall be due upon the date stated in the notice.

Section 13 Set Off. Any funds due and payable by the Association to an Owner under this Declaration of Covenants, the Articles of Incorporation or the By-Laws, or under Chapter 720, Florida Statutes, shall be subject to a right of set-off for any amounts due and owing to the Association by the Owner under this Declaration, the Articles of Incorporation, the By-Laws, or Chapter 720, Florida Statutes.

\* \* \* \* \*

*[Signature page to follow]*

WITNESS my signature hereto this 1<sup>ST</sup> day of March, 2011, at Jupiter, Palm Beach County, Florida.

**INDIAN CREEK PHASE V HOMEOWNERS ASSOCIATION, INC.**

Beverly Wardrop  
Witness  
Beverly Wardrop  
(PRINT NAME)

By: Gerald T. Wardrop  
President

Nelson F. Diaz  
Witness  
Nelson F. Diaz  
(PRINT NAME)

Attest C. L. Noble  
Secretary

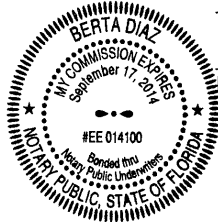
STATE OF FLORIDA :  
COUNTY OF PALM BEACH :

The foregoing instrument was acknowledged before me this 1<sup>ST</sup> day of March, 2011, by Gerald Wardrop and Cheryl Noble as President and Secretary, respectively, of **Indian Creek Phase V Homeowners Association, Inc.**, a Florida not-for-profit corporation, on behalf of the corporation. They are personally known to me, or have produced \_\_\_\_\_ as identification and did take an oath.

Berta Diaz (Signature)

BERTA DIAZ (Print Name)

Notary Public, State of Florida at Large



ACTIVE: 3241198\_1