

PREPARED BY AND RETURN TO:  
JAY STEVEN LEVINE, P.A.  
2500 N. MILITARY TRAIL, SUITE 490  
BOCA RATON, FLORIDA 33431  
(561) 999-9925

08/21/2002 14:45:55 20020440377  
OR BK 14061 PG 0770  
Palm Beach County, Florida

**DECLARATION OF AGREEMENT RELATING TO  
INDIAN WELLS PUD AND BOYNTON OASIS CONDOMINIUM**

**THIS DECLARATION OF AGREEMENT RELATING TO INDIAN WELLS PUD AND BOYNTON OASIS CONDOMINIUM** (the "Agreement") made and entered into this 4th day of April, 2002, by and between INDIAN WELLS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, whose address is c/o Property Management Resources, 4000 South 57<sup>th</sup> Avenue, Suite 101, Lake Worth, Florida 33463 (the "Homeowners Association") and BOYNTON OASIS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, whose address is c/o Prime Management, 6300 Park of Commerce Boulevard, Boca Raton, Florida 33487-8290 (the "Condominium Association").

**RECITALS:**

A. The Homeowners Association is the owner of and has maintenance obligations for maintaining, for the benefit of 195 single family residential dwelling units lying within "Indian Wells, as well as all of the "Common Area, Association Property, and Common Property," as each is defined in that certain Declaration of Protective Covenants, Restrictions and Reservations of Indian Wells, P.U.D., recorded March 31, 1986, in Official Records Book 4832, at Page 862, of the Public Records of Palm Beach County, Florida (the "HOA Declaration").

B. The Condominium Association is the owner of and has maintenance obligations for maintaining, for the benefit of seventy-eight (78) condominium dwelling units created within "Boynton Oasis, a Condominium," as well as all of the "Common Elements," as each is defined in that certain Declaration of Condominium for Boynton Oasis, a Condominium, recorded March 8, 2000, in Official Record Book 11647, at Page 64, of the Public Records of Palm Beach County, Florida (the "Condominium Declaration").

C. The HOA Declaration affects and encumbers all of the Plat of Indian Wells, according to the Plat thereof, recorded in Plat Book 52, at Page 145 (the "Plat"), less and except Parcel C described thereon. The property subject to the HOA Declaration is hereunder referred to as the "HOA Property".

D. The Condominium Declaration affects and encumbers Parcel C of the Plat and has the effect, *inter alia*, of creating a Condominium (the "Condominium") consisting of certain dwelling units, and various Common Elements and Limited Common Elements (the "Condominium Property").

E. The northerly portion of the HOA Property consists of "Tract F," as defined

in the Plat, consisting of a small lake and its surrounding lake slope (the lake and slope being "Tract F"), which Tract F is owned by the Homeowners Association and is adjacent to the southerly boundary of the Condominium Property.

F. The Homeowners Association and the Condominium Association had previously entered into an unrecorded Maintenance Agreement dated September 28, 2000 (the "Former Agreement") regarding the maintenance responsibilities for certain lands forming the lake bank on the north side of the lake within Tract F. All of such lake bank is hereinafter referred to as the "Lake Slope Property". The Lake Slope Property is situated coterminous with, and south of, the Condominium Property. The Former Agreement is hereby declared null and void and of no further legal effect.

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

**Section 1. Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Covenants of the Condominium Association.** In addition to other covenants of the Condominium Association under this Agreement, the Condominium Association hereby covenants and agrees as follows:

2.1 **Separation Hedge.** The Condominium Association shall construct a densely-placed hedge (the "Separation Hedge") in the location and with the specifications referenced in Exhibit "1" attached to and made a part of this Agreement. Same shall be constructed in a workmanlike manner, with respect to which the Condominium Association shall insure that no claims of liens are filed against the HOA Property. The Homeowners Association hereby grants a non-exclusive easement for purposes of maintenance and access across and upon the Lake Slope Property in favor of the Condominium Association and its contractors and agents for the purposes of maintaining, repairing and replacing the Separation Hedge.

2.2 **Lake Slope Property.** The Condominium Association shall be responsible for the maintenance, repair and replacement of the entirety of the Lake Slope Property as an additional "Common Expense" (as defined in the Condominium Declaration) and shall have a non-exclusive perpetual easement for the purposes of same.

2.3 **Enhanced Landscaping Plan.** Within ninety (90) days from the date of this Agreement, the Condominium Association shall complete the landscaping of a portion of the Condominium Association's Common Elements north of the Lake Slope Property, at locations described and depicted on that certain site plan which is part of Exhibit "1" attached to and made a part of this Agreement.

**2.4 Maintenance Obligations of the Condominium Association.** The Condominium Association agrees at all times to maintain the Separation Hedge, Enhanced Landscaping Plan, irrigation for same and all portions of the Common Elements and condominium buildings on the Condominium Property which can be viewed from the HOA Property, in a reasonably maintained condition, aesthetically pleasing, to include the prohibition against any sheets or tinfoil or other unsightly window treatment in the windows of the condominium buildings facing the HOA Property.

**2.5 Insurance.** The Condominium Association shall keep in full force and effect a policy of comprehensive public liability insurance issued by an insurance company licensed to do business in the State of Florida with respect to Tract F, and the Condominium Association's maintenance thereof, in which the limits of the liability shall not be less than one million dollars (\$1,000,000.00) for death or bodily injury. These policies shall name the Homeowners Association as an additional insured. All insurance policies described or required by this Section 2.5 shall provide that such insurance shall not be canceled prior to thirty (30) days written notice to the Homeowners Association. The certificate of insurance embodying the foregoing has previously been delivered to the Association. Any of such renewal policies shall be delivered to the Homeowners Association at least fifteen (15) days prior to the expiration of the former policies.

**2.6 Indemnification.** The Condominium Association will protect, indemnify and save harmless the Homeowners Association from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against the Homeowners Association by reason of any one or more of the following occurrences:

- A. Any occurrence, injury or death of persons (including workmen) occurring on or about Tract F except members of the Homeowners Association, their families, tenants, guests, contractors, agents, or invitees; and/or
- B. Any use or non-use or condition of Tract F or any part thereof by the Condominium Association, and its members, as well as such members' families, tenants, guests and invitees; and/or
- C. Relating to the Condominium Association's performance or nonperformance of those specific acts or duties required under this Agreement.

In case any action or suit or proceeding is brought against the Homeowners Association by reason of any such occurrence, the Condominium Association, upon the Homeowners Association's written request and at the Condominium Association's expense, will resist

and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel (reasonably acceptable to the Homeowners Association) designated by the insurer whose policy covers such occurrence or by counsel designated by the Condominium Association and approved by the Homeowners Association.

2.7 **Fences and Other Items.** The Condominium Association shall ensure that no fences or other improvements other than landscaping are constructed or placed south of the buildings constructed within the Condominium Property and which can be viewed from the HOA Property, whether in Tract F or on the Common Elements of the Condominium.

2.8 **Limited Access.** The Condominium Association shall ensure that no agent, contractor or employee of the Condominium Association or its members, as well as such members' families, tenants, guest and invitees, use(s) any of the HOA Property, including the Lake Slope Property, other than as is necessary for the Condominium Association to discharge its maintenance responsibilities under this Agreement.

2.9 **Financial Obligation.** The Condominium Association shall pay to the Homeowners Association the following sums, to be paid within fifteen (15) days after request from the Homeowners Association:

- A. The cost of all surveying work incurred by the Homeowners Association and performed by Joseph Tucker, PLS, but not to exceed \$1,000.00
- B. Any sums due and owing by the Homeowners Association to Lawrence Fence Corporation. The Condominium Association shall be permitted to negotiate with Lawrence Fence Corporation to reduce its obligation under this subsection. The Homeowners Association affirms that it has not paid any monies to same.

2.10 **Acknowledgment.** The Condominium Association acknowledges that the Homeowners Association and its members and their tenants and their family members, guests and invitees shall continue to have all use rights over the HOA Property, subject to the rights of the Condominium Association under this Agreement.

**Section 3. Covenants of the Homeowners Association.** In addition to other covenants of the Homeowners Association under this Agreement, the Homeowners Association hereby covenants and agrees as follows:

3.1 The Homeowners Association agrees to permit the Condominium Association at the Condominium Association's expense to trim and/or remove all of the thalias plantings or other weeds now growing within the ten northernmost feet of the lake portion

of Tract F, adjacent to the Lake Slope Property, which, if undertaken, shall be done in a workmanlike manner, and who shall insure that no claims of lien are filed against Tract F for such work.

3.2 The Homeowners Association shall not, except with the prior written consent of the Condominium Association, construct any additional littoral plantings in the northerly half of Tract F coterminous with the Lake Slope Property, except as may be required by any governmental authority or consented to by the Condominium Association. The Homeowners Association shall be entitled to construct littoral plantings in the southerly half of Tract F coterminous with the Lake Slope Property.

3.3 The Homeowners Association shall not construct any fence, obstruction or other barrier within the Lake Slope Property or in the lake except as otherwise provided by this Agreement.

**Section 4. Termination.** In the event that the Condominium Association does not perform or comply with any of its covenants under this Agreement (the "breach"), the Homeowners Association shall be entitled to provide written notice of same to the Condominium Association, setting forth in detail the nature of the breach, and shall afford the Condominium Association a period of thirty (30) days to completely eliminate the breach. The failure of the Condominium Association to completely eliminate the breach within this time period shall at the option of the Homeowners Association, entitle the Homeowners Association to terminate this Agreement, including all rights granted to the Condominium Association hereunder, notice of which termination shall be filed in the public records of Palm Beach County, Florida, without the need for a joinder and consent by the Condominium Association; in that event, this Agreement shall be terminated and of no further legal force and effect upon recordation. Upon termination, no rights of the parties shall accrue or be implied by virtue of the Agreement, except as is necessary to afford the parties' enforcement remedies. The Homeowners Association shall forward a recorded copy of the termination to the Condominium Association upon the receipt of same from the clerk of court.

**Section 5. Amendment.** Except for the right of the Homeowners Association to unilaterally terminate this Agreement pursuant to the provisions of Section 4 above, no amendment to this Agreement shall be made or be effective unless approved by the Boards of Directors of each of the parties, which shall be effective upon recording of the amendment in the public records of Palm Beach County, Florida.

**Section 6. Covenants Running with the Land.** All benefits and burdens of this Agreement shall be deemed covenants running with the land, binding all property subject to the HOA Declaration and Condominium Declaration.

**Section 7. Miscellaneous.**

7.1 **Notices.** All notices, statements, demands, approvals and other communications given pursuant to this Agreement shall be in writing and shall be delivered in person or by certified or registered mail, postage prepaid or by a commercial overnight delivery service or facsimile, to the parties as follows:

If to HOMEOWNERS ASSOCIATION:

Indian Wells Homeowners Association, Inc.  
c/o Property Management Resources  
4000 South 57<sup>th</sup> Avenue, Suite 101  
Lake Worth, Florida 33463

with a copy to:

Jay Steven Levine, Esquire  
2500 North Military Trail, Suite 490  
Boca Raton, Florida 33431

If to CONDOMINIUM ASSOCIATION:

Boynton Oasis Condominium Association, Inc.  
c/o Prime Management  
6300 Park of Commerce Boulevard  
Boca Raton, Florida 33487-8290

unless such addresses are changed by written notice.

7.2 **Construction.** It is hereby recognized and agreed that each party has had ample opportunity to negotiate the terms hereof with advice of legal counsel, and, accordingly, no provision hereof shall be more strictly construed against one party or the other.

7.3 **Severability.** If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

7.4 **Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter in this Agreement, and supercedes all other negotiations, understandings and representations if any made by and between the parties.

7.5 **Governing Law and Venue.** This Agreement will be construed in accordance with the laws of the State of Florida, and venue shall lie in Palm Beach County, Florida.

7.6 **Binding Effect.** The provisions of this Agreement will be binding on the parties and their respective successors, assigns and legal representatives.

7.7 **Recordation of Agreement.** This Agreement shall be recorded in the public records of Palm Beach County at the joint expense of the parties.

7.8 **Dispute.** Either party shall have a right of action against the other for damages for breach, or injunctive relief, as appropriate. The foregoing remedy available to the HOA is in addition to, but not a condition precedent to, its rights of termination under Section 4 above. In the event that any action is filed, the prevailing party shall be entitled to recover from the losing party, reasonable costs and attorneys' fees, including those incurred in appellate, administrative and bankruptcy proceedings.

**IN WITNESS WHEREOF**, the parties execute this Agreement on the later of the dates below.

[Signature]  
Witness  
Print: CHARLES D. BRECKER

[Signature]  
Witness  
Print: Jay Steven Levine

[Signature]  
Witness  
Print: CHARLES D. BRECKER

[Signature]  
Witness  
Print: Jay Steven Levine

INDIAN WELLS HOMEOWNERS ASSOCIATION, INC.

By: [Signature]  
President  
GEORGE A. GLASGOW

BOYNTON OASIS CONDOMINIUM ASSOCIATION, INC.

By: [Signature]  
President George B. [Signature]



STATE OF FLORIDA  
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on the 4<sup>th</sup> day of APRIL, 2002, before me personally appeared GEORGE A. GLASGOW, as President of INDIAN WELLS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit, who is personally known to me ~~or who has produced~~ (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid Certification as his/her free act and deed as such duly authorized officer; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the

Corporation.

WITNESS my signature and official seal at CITY OF BOCA RATON in the County of Palm Beach, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign

*[Handwritten Signature]*



STATE OF FLORIDA  
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on the 9<sup>th</sup> day of APRIL, 2002, before me personally appeared GEORGE J. CORE, as President of BOYNTON OASIS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, who is personally known to me ~~or who has produced~~ \_\_\_\_\_ (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid Certification as his/her free act and deed as such duly authorized officer; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

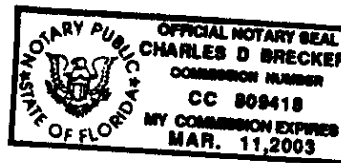
WITNESS my signature and official seal at CITY OF BOCA RATON in the County of Palm Beach, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign

Print

*[Handwritten Signature]*



FILED  
2002 APR 10 AM 10:30  
NOTARY PUBLIC  
Certified Copy

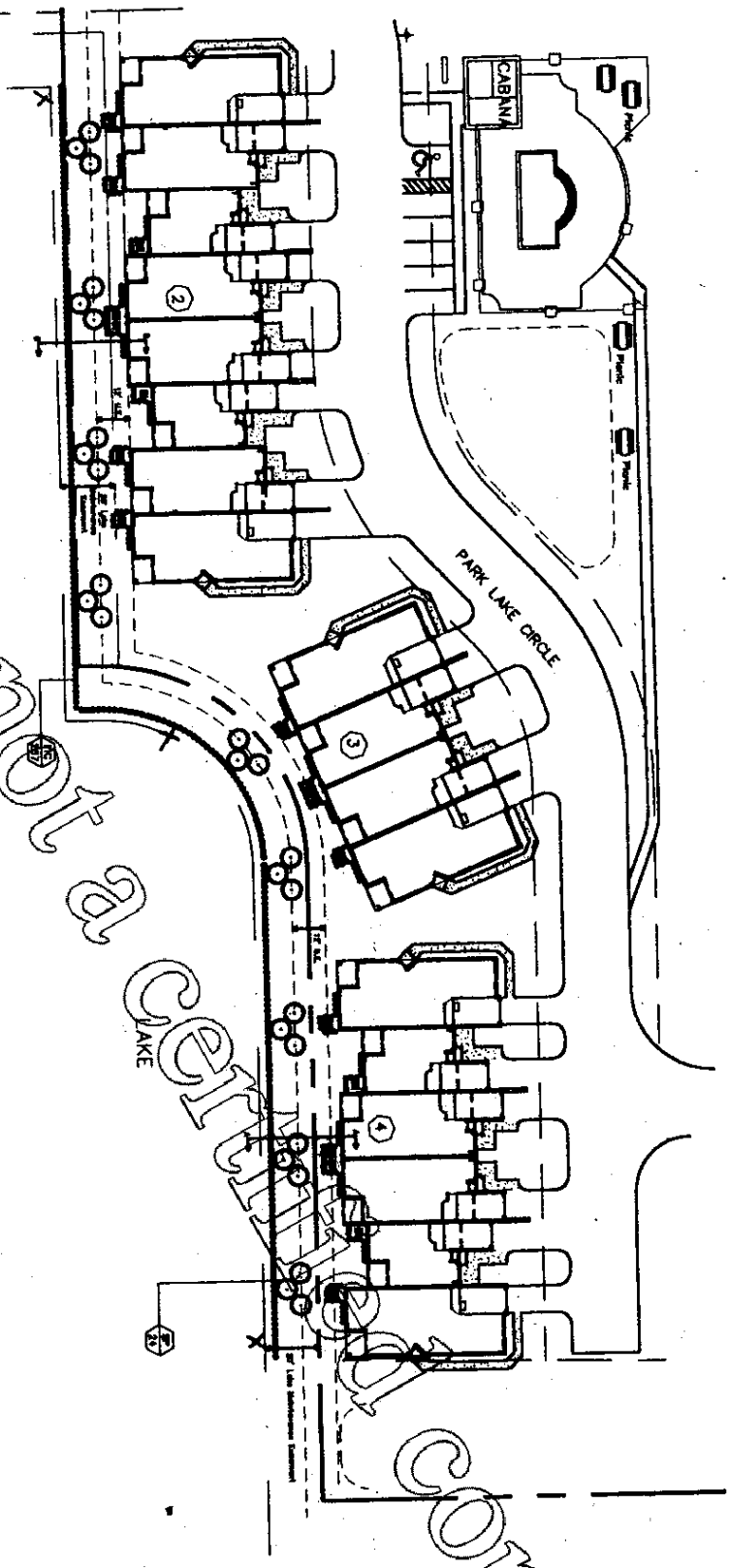
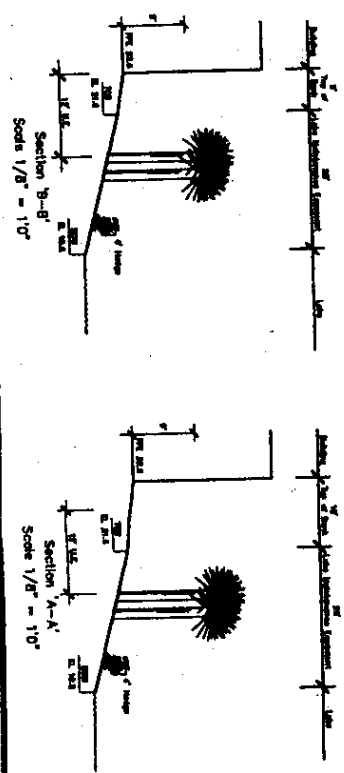


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CKT  
 (Signature)

X = 3.5' x 4' 6" wide  
 for main ramps & access

Not a Certified Copy



PLANT LIST

KEY NAME	QTY	HT	SP
Sp. Small Palm	24	14'	wood
Rc. Palm Hedge	257	5'	2' 4" off edge of water

**JERRY TURNER & ASSOCIATES**  
 Landscape Architecture  
 1000 N. W. 10th St., Suite 100  
 Ft. Lauderdale, FL 33304  
 Phone: (305) 555-1234

**THE OASIS**  
 Palm Beach County  
 2/11/2002  
 4/1/2002

DATE: 01/10/01  
 TIME: 10:01 AM

DATE: 01/10/01  
 TIME: 10:01 AM

DATE: 01/10/01  
 TIME: 10:01 AM

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