

# Villas of Rainberry Homeowners Association, Inc.

## Association Documents

*Including:*

*Amended And Restated Declarations of Covenants, Conditions And Restrictions*

*Amended And Restated Articles of Incorporation*

*Amended And Restated By-Laws*

THIS DOCUMENT PREPARED BY  
AND TO BE RETURNED TO:

87/10  
✓  
RANDEE J. GOLDER, P.A.  
400 W. Atlantic Ave., 2nd Floor  
Delray Beach, FL 33444

JAN-13-1997 9:28am 97-012912  
ORB 9610 Pg 1644  
I [barcode]

**CERTIFICATE OF AMENDMENT AND RESTATEMENT OF  
THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF**

***The Villas Of Rainberry***

WE HEREBY CERTIFY that the attached Restated Declaration of Covenants, Conditions and Restrictions of The Villas of Rainberry was duly adopted in the manner provided in Article XV, Section 4 of the Declaration, that is by proposal of the Board of Directors and approval by seventy-five percent (75%) of the members of the Association at a meeting held commencing August 12, 1996, which meeting was adjourned to November 9, 1996. The writings signed by the members approving this action will be held by The Villas of Rainberry Homeowners Association, Inc. as part of the Association's records. This instrument replaces the Declaration of Covenants, Conditions and Restrictions of The Villas of Rainberry as described in OR Book 3342 at Page 0624 of the Official Records of Palm Beach County, Florida, as amended by recording on April 15, 1993 in OR Book 7665 at Page 825 of the Official Records of Palm Beach County, Florida and any other amendments recorded prior to the date of recording this instrument.

IN WITNESS WHEREOF, we have affixed our hands this 26 day of December, 1996, at Delray Beach, Palm Beach County, Florida.

WITNESSES:

The Villas of Rainberry Homeowners  
Association, Inc., a Florida not-for-profit  
corporation

Sign: [Signature]  
Print: M. J. Gallup

By: [Signature]  
Clair Bauman, President

Sign: [Signature]  
Print: Karen Giles

Attest: [Signature]  
Lila Feitler, Secretary

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26 day of December, 1996 by CLAIR T. BAUMAN and LILA K. FEITLER, as secretary and president for The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He/she is/are (Check one):

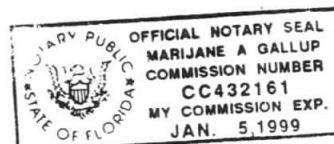
☒ personally known to me, or

☐ has produced identification:

(Describe) \_\_\_\_\_

and did take an oath.

[Signature]  
Print: MARIJANE A. GALLUP  
NOTARY PUBLIC - STATE OF FLORIDA  
My Commission Expires:



*Amended And Restated*  
***Declaration Of Covenants, Conditions And Restrictions of  
The Villas Of Rainberry Homeowners Association, Inc.***

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THIS DECLARATION,

Made on the date hereinafter set forth by The Villas of Rainberry Homeowners Association, Inc., a Florida corporation (hereinafter referred to as "Declarant.")

WITNESSETH:

Whereas, Declarant is the owner of certain property located in Palm Beach County, Florida, which is more particularly described and designated on Exhibit "A," attached hereto and made a part hereof; and

Whereas, said property includes a residential community including therein various Common Areas for the collective use of all the residents thereof which consist of the property now submitted to this Declaration; and

Whereas, Declarant desires: (i) to provide for the preservation of the values and amenities in said community and for the maintenance, repair, replacement and administration of such Common Areas; and (ii) to establish the rights of persons entitled to the use of such Common Areas and their respective rights, duties and obligations relative to such use and the payment of their respective shares of the cost of maintenance, repair, replacement and administration; and

Whereas, there is incorporated under the laws of the State of Florida a non-profit corporation, The Villas of Rainberry Homeowners Association, Inc. for the purpose of performing those functions hereinabove set forth;

Now, Therefore, Declarant hereby declares that all of the property described in Exhibit "A" hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

For the purpose of the within Declaration, the following definitions shall control:

Section 1. "Association" shall mean and refer to The Villas of Rainberry Homeowners Association, Inc., a Florida non-profit corporation, its successors and assigns.

Section 2. "Owner" 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 the Property, including contract sellers, but excluding contract buyers and those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and made a part hereof, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association. The Common Areas include Water Management Tract "A," Buffer Zone Tract "B," and Recreation Tract "C," "F," "G" and "I," as shown on the Re-Plat of Rainberry Lake Phase IV-A, according to the Plat thereof as recorded in Plat Book 39, at Page 99, of the Public Records of Palm Beach County, Florida. The Common Areas shall also include any additional property designated by Declarant, its predecessors, successors or assigns, with respect to any annexation of additional property to the terms and conditions of this Declaration in accordance with the terms of this Declaration.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Areas.

Section 6. "Declarant" shall mean and refer to The Villas of Rainberry Homeowners Association, Inc., a Florida corporation.

Section 7. "Member" shall mean and refer to each Owner who is a member of the Association.

Section 8. "Declaration" shall mean the within instrument, together with those exhibits which are attached hereto and made a part hereof and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof. The within Declaration may be referred to in any other documents as The Villas of Rainberry Declaration of Covenants, Conditions and Restrictions.

Section 9. The term "institutional first mortgagee" means a bank, or a savings and loan association, or an insurance company, or a pension fund, or a real estate trust, or other private or governmental institution which is engaged in the business of mortgage financing, which owns or holds a first and prior mortgage encumbering a residence.

Section 10. The term "institutional first mortgage" means a mortgage made by a bank, or a savings and loan association, or an insurance company, or a pension fund, or a real estate trust, or other private or governmental institution which is engaged in the business of mortgage financing, which is a first and prior mortgage encumbering a residence.

Section 11. "Residence" shall mean and refer to a single family dwelling constructed upon a Lot.

Section 12. "Articles of Incorporation" shall mean and refer to the Amended and Restated Charter of The Villas of Rainberry Homeowners Association, Inc., all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Articles of Incorporation are attached hereto and made a part hereof as Exhibit "B".

Section 13. "By-Laws" shall mean and refer to the Amended and Restated By-Laws of The Villas of Rainberry Homeowners Association, Inc., all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said By-Laws are attached hereto and made a part hereof as Exhibit "C".

Section 14. "Recreation Area Agreement" shall mean and refer to that certain Recreation Area Agreement governing the use and maintenance of the recreation area as that



term is therein defined, and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Recreation Area Agreement is recorded at OR Book 3342 at page 0663 of the Official Records of Palm Beach County, Florida.

Section 15. "Declaration of use and Obligations of Rainberry Lake" shall mean and refer to that certain Declaration governing the use and maintenance of Rainberry Lake, all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Declaration of Use and Obligations of Rainberry Lake is recorded at OR Book 3342 at page 0679 of the Official Records of Palm Beach County, Florida.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The Property shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of this Declaration, and any lawful amendments hereto. The filing of this Declaration and the subjecting of the Property to the conditions and easements contained herein shall not be construed in any way and shall never inhibit or prohibit the Declarant from conveying the Lots or improvements within the Property to third parties free and clear of any conditions, restrictions or easements except for those specifically provided for herein. Lots so conveyed by the Declarant to third parties shall be used and held in fee simple title by said third parties in accordance with this Declaration.

## **ARTICLE III**

### **PROPERTY RIGHTS IN THE COMMON AREAS**

Section 1. **Owner's Rights of Enjoyment.** Subject to the other provisions of this Article, every Owner shall have a right and easement of enjoyment in and to the Common Areas in common with all other Owners and such rights and easements shall be appurtenant to and pass with the title of every Lot. Such rights and easements shall inure to the benefit of the Owner, his family, and authorized guests and tenants.

Section 2. **Title to the Common Areas.** The Declarant shall have fee simple title to the Common Areas of the Property .

Section 3. **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas in common with all other Owners, and such rights and easements shall be appurtenant to and pass with the title of every Lot. Such rights and easements shall inure to the benefit of the Owner, his family, authorized guests and tenants, though subject to:

- a. The right of the Association to limit the number of guests of Members;
- b. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder;
- c. The right of the Association to suspend the voting rights and right to use of the Common Areas 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 its published rules and regulations;

- d. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days nor more than sixty (60) days in advance of the duly called meeting at which the vote on such dedication or transfer is held;
- e. The right of the Association to establish, from time to time, certain easements over the Common Areas for purposes of creation of water distribution systems.

**Section 4. Delegation of use.** Any Owner may delegate his right of enjoyment to the Common Areas and facilities to the members of his family or his tenants who reside on the Property, provided the Owner notifies the Secretary of the Association in writing of the names of all delegates, and the delegates comply with any or all approval procedures required by the Association.

**Section 5. Parking Rights.** Each residence shall contain two on-site parking spaces to be utilized by the Owner of said Lot. At least one parking space may be garaged.

**Section 6. Mailboxes.** Any replacement mailbox for a Residence shall conform in size, shape, color, style and method of attachment as the mailboxes originally provided with the residence or as established by the Board of Directors.

**Section 7. No Dedication to Public Uses.** Nothing contained in the within Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Areas to or for any public use or purpose whatsoever.

**Section 8. Recreation Area Agreement.** Every Member shall have a right of use and enjoyment of the recreation area and facilities described in the Recreation Area Agreement. The recreation area and facilities are owned by the Association and Rainberry Lake Homeowners Association, Inc. as tenants in common. Rainberry Lake Homeowners Association, Inc. owns an undivided 32.74% interest in the recreation area and the Association owns and undivided 67.26% interest in the recreation area. In accordance with the terms of the Recreation Area Agreement, the Members of these two Associations shall share the use and enjoyment and the expenses of the recreation area and facilities. The expenses of the recreation area and facilities will be treated as common expenses of the Association. The maximum number of residences that shall have the right to use the recreation area and facilities shall be 460.

**Section 9. Use and Maintenance of Rainberry Lake.** Every Member shall have a right of use and enjoyment of Rainberry Lake described in the Declaration of Use and Obligations of Rainberry Lake. The use of Rainberry Lake is shared between Members of the Pines of Delray North Association, Inc., Rainberry Lake Homeowners Association, Inc. and The Association. In accordance with the Declaration of Use and Obligations of Rainberry Lake, the expenses of maintaining the Lake and the lock referred to in the Declaration shall be shared as follows: the Pines of Delray North Association, Inc. shall pay 25% of the cost of said maintenance; Rainberry Lake Homeowners Association, Inc. shall pay 25% of the cost of said maintenance; and The Villas of Rainberry Homeowners Association, Inc. shall pay 50% of the cost of said maintenance. The expenses of maintenance of the Lake shall be treated as a common

expense of the Association.

Section 10. **Incorporation of Easements by Reference.** Reference in the respective deeds of conveyance, or any mortgage or trust deeds or other evidence of obligation to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of said parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

#### **ARTICLE IV** **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. **Membership.** Every person or entity who is a record Owner of fee or undivided fee interest in any Lot which is subject to this Declaration and to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot which he owns. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. **Voting Rights.** Owners 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 they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

#### **ARTICLE V** **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. **Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant, which covenant shall run with the land and be binding on every Owner and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, and (3) annual assessments or charges to effect payment of the real property taxes assessed against the Common Areas as such term is defined in Section 4 of Article I hereof, and the personal property taxes assessed against the personal property located on, or contained in, the Common Areas; and such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments and annual assessments for payment of the real and personal property taxes, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property upon which each such assessment is made, and said lien may be enforced in the same manner in which mortgages are enforced. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property and in particular the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas situated upon the Property. The use of these assessments shall also specifically include the maintenance of the recreation area and Rainberry Lake as provided in this Declaration.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be \$564.00 per Lot.

- a. From and after January 1 of the year following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, 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 Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 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 percent (60%) of the voting 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 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 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots within the Property on the first day of the month following the conveyance of the Common Areas to the Association. 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 Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association; the Personal Obligation of the Owner; the Lien.** (i) Any assessments which are not paid when

due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law, and the Association, acting through its Board of Directors, may bring an action at law or equity against the Owner personally obligated to pay the same, and foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

(ii) If the assessment is not paid within thirty (30) days after it becomes due, then the Association shall have a continuing lien on the delinquent Lot, which lien shall continue until the delinquent assessment is paid. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance is deemed to covenant, which covenant shall run with the land, that such lien does exist and is, and shall be superior to all other charges or liens against the property except the lien of a first mortgagee. Such lien may be perfected by the filing of an instrument among the Public Records of Palm Beach County, Florida indicating the amount of such lien and the obligation for interest and attorneys' fees and costs of collection. Such lien shall be foreclosed in the same manner in which mortgages are enforced and foreclosed. The Association, by and through its authorized officers, shall, from time to time, upon the request of an Owner or mortgagee, issue a certificate, in recordable form, stating the amount of any assessments due with respect to such Lots or stating that all assessments are current with respect to such Lots, and any third party may rely on such certificate, and the Association shall be bound thereby.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be superior to all other liens save and except tax liens and mortgage liens, provided said mortgage liens are first liens against the property encumbered thereby (subject only to tax liens), and secure indebtednesses which are amortized in monthly or quarterly payments over a period of no fewer than ten (10) years. Sale or transfer of any Lot which is subject to a mortgage as herein described, pursuant to a decree of foreclosure under such mortgage or any voluntary conveyance in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof 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. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Areas; (c) any portion of the Property which is designated and/or reserved for easements; and (d) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Florida. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## **ARTICLE VI**

### **EXTERIOR MAINTENANCE**

In the event an Owner of any Lot in the Property shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be enforced in the same manner and using the same remedies as are available for collection of assessments including but not limited to the right to record and foreclose a lien.

## **ARTICLE VII**

### **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots and fences or other barriers or structures built along any property line shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rules of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## **ARTICLE VIII**

### **ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made upon any Lot, nor shall any Owner change the exterior appearance of any residence constructed upon any Lot by repainting or otherwise, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of exterior design and location in relation to surrounding structures and topography by the Board of Directors of the Association, and by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board and its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE IX**

### **MAINTENANCE BY CITY OF DELRAY BEACH**

In the event the Association fails properly to maintain the Common Areas or any portion thereof in a reasonable manner, the City of Delray Beach ("City") shall have the right, but not the obligation, to undertake such maintenance, repair or replacement as may be reasonably necessary. The judgment of the City as to whether or not the standard of maintenance called for



in this paragraph is being met shall be final. The right of the City shall not become effective, however, unless written notice shall first be given to the Association of the details of the intended maintenance, repairs or replacements to be undertaken by the City, and thirty (30) days shall elapse after the giving of such notice. If, during such thirty (30) day notice, the Association shall commence and diligently pursue the completion of such maintenance, repair or replacement, then the rights of the City shall not become effective.

In the event the City shall expend any money in maintaining, repairing or replacing any part of the Common Area pursuant to the right given to the City herein, then the City shall have the right to assess all the Owners for such expenditures in the same manner as the Association would have had, except that the City shall not be subject to any monetary limit established herein. Any such assessment levied by the City shall be subject to collection by the City by any of the remedies given to the Association for collection of assessments, and such assessments shall be a lien on all the land affected by this Declaration, proportionately allocated to each Owner. The lien shall secure costs of collection and a reasonable attorney's fees.

## **ARTICLE X**

### **RESTRICTIONS ON USE OF THE COMMON AREAS AND RESIDENCES**

**Section 1. Lot Restriction.** No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than a one family dwelling.

**Section 2. Common Area and Residence Restriction.** No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Areas or residence, nor shall any "For Sale" or "For Rent" signs or any window display advertising be maintained or permitted on any part thereof without approval of the Board of Directors.

**Section 3. Obstructions.** There shall be no obstructions of the Common Areas except as specifically provided herein, nor shall anything be stored in the Common Areas without the prior consent of the Association.

**Section 4. Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose. All Owners shall be required to comply with the Code of Ordinances of the City of Delray Beach, Florida, relative to animals and fowl, as the same may be amended from time to time.

**Section 5. Nuisances.** No nuisance, noxious or offensive activity shall be carried on upon any Lot or in the Common Areas nor shall anything be done thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Property.

**Section 6. Rubbish.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

**Section 7. No Unsightly Uses.** No garments, rugs or any other materials may be hung, exposed or dusted from the windows or from the front facade of any residence.

**Section 8. Vehicles.** There shall not be parked on any Lot or on the Common Areas, any trailer, commercial-type van, commercial vehicle, boat, boat trailer, truck or other non-passenger private automobile, except for temporary parking in designated Common Areas as allowed by the Rules and Regulations.

Section 9.     **Fences, Walls, Patios.** No Owner shall relocate, heighten, lower or otherwise move or change any fence, wall or patio adjoining or adjacent to the Common Areas without approval of the Board of Directors and the Architectural Control Committee.

Section 10.   **Antennas and Other Signal Devices.** No lot owner shall install any exterior antennae or other device for receiving or sending signals upon any Residence, except that satellite dishes for the reception of audio/visual signals no larger than eighteen (18) inches may be installed with the approval of the Architectural Board which installation must not be visible from the common areas of the community.

Section 11.   **No Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence or appendage to such residence, either temporary or permanent.

Section 12.   **Rules and Regulations.** The Board of Directors shall adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Areas as the Board of Directors in its sole discretion deems appropriate or necessary, provided such additional rules and regulations shall be consistent with the provisions contained in this Declaration.

Section 13.   **Residence Construction.** All residences shall be of a quality of workmanship and materials substantially the same or better than that which exists in the community at the time of construction. Each residence shall contain not less than 1,000 square feet of living space.

Section 14.   **Lot Area and Width.** The area and width of each Lot on the Platted Property upon which residences may be constructed shall be as shown on the Plat of Rainberry Lakes Phase IV-A, as recorded in Plat Book 38 at Pages 110 and 111 of the Public Records of Palm Beach County, Florida. The area and width of each Lot on the Unplatted Property upon which residences may be constructed shall be as shown on any subsequent Plat of said Unplatted Property, which Plat shall be recorded in the Public Records of Palm Beach County, Florida.

Section 15.   **Easements.** Easements for the installation and maintenance of public utilities are reserved as shown on the recorded Plat of the Platted Property, and shall include additional easements as specified by Declarant in connection with the platting of the Unplatted Property.

Section 16.   **Water Supply.** No individual water supply system will be permitted upon any Lot except for sprinkler systems, swimming pools and/or air conditioners.

Section 17.   **Sewage Disposal.** No septic tank will be permitted upon any Lot.

## **ARTICLE XI**

### **EASEMENTS**

Section 1.     **Reservation of Easements.** Easements for the installation and maintenance of canals and for all utilities and drainage facilities are as set forth and contained in the Plat for the Property. Additional easements may be contained in any subsequent plat or plats filed, from time to time, among the Public Records of Palm Beach County, Florida, covering the Unplatted Property and additional properties annexed pursuant to Article XII.



## ARTICLE XII

### ANNEXATION OF ADDITIONAL PROPERTIES

Annexation of additional property shall require the assent of two-thirds (2/3) of the Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

## ARTICLE XIII

### GENERAL PROVISIONS

**Section 1. Covenants Run with Land.** All restrictions, reservations, covenants, conditions and easements contained in this Declaration shall constitute covenants running with the land, and 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 (a) this Declaration of Covenants, Conditions and Restrictions, and (b) the Articles of Incorporation and By-Laws of the Association which will be the entity responsible for the operation and maintenance of the Common Areas.

#### Section 2. Enforcement.

(A). **GENERAL.** The Association or any Owner shall have the right to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall be entitled to an award of its reasonable attorney's fees and costs in the event the Association prevails in any legal action arising from the provisions of this Declaration.

(B). **FINES.** The Board of Directors shall appoint a committee of at least three (3) members of the Association who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee, who shall have the power to review fines imposed on property and the Owners for violations of the covenants and restrictions contained in this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations which are adopted by the Board of Directors at a regular or special meeting of the Board of Directors which has been noticed in accordance with the Bylaws. Prior to imposition of a fine, the Owner must be given at least 14 days notice that the Board has determined there to be a violation which results in a fine and the Owner must be given an opportunity to appear before committee and show why the fine should not be imposed. Fines may be imposed against a property and Owner for violations which are committed by the Owner, their guests or invitees. Fines may only be imposed by a majority vote of the committee and in accordance with a duly adopted schedule of fines and a fine policy to be established by the Board of Directors.

(a). **Payment of Fines.** Any fine imposed in accordance with the procedure set forth herein, must be paid to the Association within thirty (30) days after the hearing before the Board of Directors at which the fine was imposed at the address where monthly maintenance assessments are paid. Fines not paid timely shall bear interest at a rate of twelve percent (12%) per annum.

(b). Failure to Pay Fines; Lien Rights. Each Owner, by taking title to property affected by this Declaration and the powers of the Association, implicitly agrees to comply with the covenants, restrictions, rules and regulations of the Association. The powers given to the Board of Directors of the Association to establish rules and regulations must include the power to enforce compliance with those rules and regulations as well as the covenants and restrictions with which all Owners are required to comply. A violation which results in imposition of a fine under this Article shall also give rise to the Association's ability to enforce payment of the fine through imposition of a lien against the specific property whose Owner, guests, or invitees violated the rules, regulations, covenants, or conditions. Fines imposed under this Article, together with such interest and costs of collection (including attorneys fees), shall be a charge on the land and shall be a continuing lien upon the property upon which such fine is imposed. The Association shall have the ability to impose a lien against any property whose Owner fails to pay a fine imposed in compliance with this Article and to foreclose that lien in the same manner in which mortgages are foreclosed. This lien right of the Association is in addition to the Association's right to seek payment of the fine and accrued interest and costs of collection (including attorneys fees) from the Owner by other means.

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

Section 4. **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of then (10) years. The covenants and restrictions of this Declaration may be amended at any duly called meeting of the Members of the Association at which a quorum is present provided that notice of the meeting informs the Members of the proposed amendment(s) and there is an affirmative vote of seventy-five percent (75%) of the voting membership. Any such amendment passed at the meeting shall become effective upon recording in the Public Records of Palm Beach County, Florida.

Section 5. **Remedy for Violation.** For violation or a breach of any of the provisions herein, or the provisions of the Articles of Incorporation or By-Laws of the Association, by any person claiming by, through or under the Association, or by virtue of any judicial proceedings, the Owner, or the Association, or a first mortgagee, or any of them, shall have the right to proceed at law for damages or in equity to compel compliance with any of them, or for such other relief as may be appropriate. In addition to the foregoing right, whenever there shall have been built upon the Property any structure which is in violation of this Declaration, the Association, upon the affirmative vote of two-thirds (2/3) of the Board of Directors, may enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs, construction, etc., to insure that the property and improvements where such violation occurred is restored to the same condition in which it existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. In the event that resort to this Section becomes necessary, then the defaulting parties shall be liable for costs of enforcement, including attorneys' fees and court costs.

Section 6. **Effect of Waiver of Violation.** No waiver of a breach or violation of any of the terms, provisions and covenants in this Declaration, or in its Articles of Incorporation and By-Laws of the Association, shall be construed to be a waiver of any succeeding breach of the

same term, provision or covenant of this Declaration, or the Articles of Incorporation or Bylaws of the Association.

**Section 7. Instruments Governing Common Areas and Owners of Lots.** This Declaration and the Articles of Incorporation, the By-Laws of the Association, the Recreation Area Agreement and the Declaration of use and Obligations of Rainberry Lake, which are attached hereto and made a part hereof, and any lawful amendments, from time to time, to said instruments, shall govern the Common Areas and the rights, duties and responsibilities of the Owners of Lots.

**Section 8. Notices.** Whenever notices are required to be given hereunder, the same shall be sent to the Owners by First Class mail, at the address of the residence situated upon the Lot. Such notices shall be deemed given when deposited in the United States first class mail. Any Owner may change his mailing address by written notice given to the Secretary, The Villas of Rainberry Homeowners' Association, Inc.

**Section 9. Owner's Liability and Casualty Insurance.** No person other than the Owner or his mortgagee where permitted by his mortgage, shall have the right to place hazard or liability insurance on his Lot. There may not be any requirement imposed to insure through a particular company or agent or to require the policies be approved by the Association or Declarant. Proceeds of insurance shall not be required to be paid to any one other than the Owner and/or his mortgagee.

Absolute liability shall not be imposed upon Owners for damage to the Common Areas, including the improvements thereon, where maintained by the Association which is caused by said Owners, their families, guests or invitees. This liability shall be limited to only that for which they are legally responsible under Florida law.

**Section 10. Encroachment Easements.** Notwithstanding any other provisions contained in this Declaration to the contrary, in the event that any residence, as constructed by the Declarant on a Lot, encroaches upon any portion of the Common Areas or adjoining Lot, then a perpetual easement appurtenant to such Lot shall exist for the continuance of any such encroachment on the Common Areas or adjoining Lot.

**Section 11. Gender.** Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and the plural shall include the singular.

IN WITNESS WHEREOF, we have affixed our hands this 26 day of DECEMBER, 1996, at Delray Beach, Palm Beach County, Florida.

WITNESSES:

The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation

Sign: M. J. Gallup  
Print: M. J. GALLUP

By: Clair J. Bauman  
Clair Bauman, President

Sign: Karen Giles  
Print: Karen Giles

Attest: Lila K. Feitler  
Lila, Feitler, Secretary

STATE OF FLORIDA

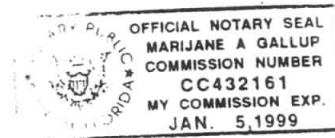
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26 day of December, 1996 by CLAIR T BAUMAN and LILA K FEILER, as secretary and president for The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He/she is/are (Check one):

☒ personally known to me, or  
and did take an oath.

☐ has produced identification:  
(Describe) \_\_\_\_\_

Marijane A Gallup  
Print: MARIJANE A. GALLUP  
NOTARY PUBLIC - STATE OF FLORIDA  
My Commission Expires:



-----

**LEGAL DESCRIPTION**

All of RE-PLAT OF RAINBERRY LAKE-PHASE IV-A,  
according to the Plat thereof, as recorded in Plat Book 39, at Pages  
99 and 100, of the Public Records of Palm Beach County, Florida.

Less and except therefrom Recreation Tract "K," as shown on said  
Plat.

Exhibit "A"

THIS DOCUMENT PREPARED BY  
AND TO BE RETURNED TO:

ORB 9610 Pg 1660

RANDEE J. GOLDER, P.A.  
400 W. Atlantic Ave., 2nd Floor  
Delray Beach, FL 33444

**CERTIFICATE OF AMENDMENT AND RESTATEMENT OF  
THE ARTICLES OF INCORPORATION OF**

***The Villas Of Rainberry Homeowners Association, Inc.***  
*(a Florida not-for-profit corporation)*

WE HEREBY CERTIFY that the attached Amended and Restated Charter of The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, was duly adopted in the manner provided in the Thirteenth Section of the Charter, that is by proposal of the Board of Directors and approval by seventy-five percent (75%) of the members of the Association at a meeting duly called and noticed and held commencing August 12, 1996, which meeting was adjourned to November 9, 1996. This instrument replaces the Charter of The Villas of Rainberry Homeowners Association, Inc. as described in OR Book 3342 at Page 0643 of the Official Records of Palm Beach County, Florida and any other amendments recorded prior to the date of recording this instrument and replaces all Charters or Amendments previously filed with the Florida Department of State, Division of Corporations.

IN WITNESS WHEREOF, we have affixed our hands this 26 day of  
DECEMBER, 1996, at Delray Beach, Palm Beach County, Florida.

WITNESSES:

The Villas of Rainberry Homeowners  
Association, Inc., a Florida not-for-profit  
corporation

Sign: M. J. Gallup  
Print: M. J. GALLUP

By: Clair T. Bauman  
Clair Bauman, President

Sign: Karen Giles  
Print: Karen Giles

Attest: Lila K. Feitler  
Lila Feitler, Secretary

STATE OF FLORIDA

COUNTY OF PALM BEACH

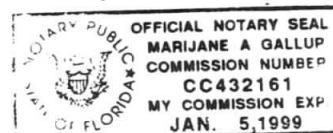
The foregoing instrument was acknowledged before me this 26 day of  
DECEMBER, 1996 by CLAIR T. BAUMAN and  
LILA K. FEITLER, as secretary and president for The Villas of Rainberry  
Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He/she  
is/are (Check one):

☒ personally known to me, or

☐ has produced identification:  
(Describe) \_\_\_\_\_

and did take an oath.

Marijane A. Gallup  
Print: MARIJANE A. GALLUP  
NOTARY PUBLIC - STATE OF FLORIDA  
My Commission Expires:



*Amended And Restated Charter Of  
The Villas Of Rainberry Homeowners Association, Inc.  
(Amended And Restated Articles Of Incorporation)*

---

1. The name of the Corporation is: The Villas of Rainberry Homeowners Association, Inc.

2. Said Corporation is incorporated as a corporation not-for-profit under the provisions of Chapter 617, Florida Statutes, as amended.

3. The address and post office address of the office of the Corporation in the State of Florida is 2100 Rainberry Lake Drive, Delray Beach, Florida 33445. Randee J. Golder, Esq. is hereby designated as the Registered Agent of the Corporation for the service of process upon the Corporation, with her offices at 400 W. Atlantic Avenue, 2nd Floor, Delray Beach, Florida 33444, being designated as the domicile for the service of process upon the Corporation, and Randee J. Golder is hereby authorized to accept service of process as a Registered Agent of the Corporation. The Board of Directors may change the registered agent from time to time by resolution duly adopted and by filing the required notice with the Secretary of State.

4. The purposes for which this Association is formed do not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residential Lots and Common Areas within that certain tract of property located within Rainberry Lake Phase IV-A, being a portion of Rainberry Lake, a planned residential development located within the City of Delray Beach, Palm Beach County, Florida, according to the Plat thereof which has been or will be recorded among the Public Records of Palm Beach County, Florida, and to promote the health, safety and welfare of the residents within the above described property, and any additions thereto as may hereafter be brought within the jurisdiction of this Association. The Association shall have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Florida by law may now or hereafter have or exercise.

5. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership for each Lot which he owns. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

6. The Association shall have voting membership. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Paragraph 5. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

7. The term for which this Corporation is to exist is perpetual.

8. The affairs of the Corporation are to be managed by the following Officers and such other officers or positions as the Board of Directors may create:

*Villas of Rainberry  
Articles of Incorporation  
Incorporating amendments as of 12/17/96*

Page i

President  
Vice President  
Secretary  
Treasurer

9. The Officers shall be elected according to the Bylaws. The annual meeting of the Members shall be held during the third week of February as established by the Board of Directors. Meetings of the membership shall be held in Palm Beach County, Florida, at such place as may be specified in the notice of meeting. The Board of Directors shall always use its best efforts to provide a meeting place as near to Rainberry Lake as possible. The Directors elected at the first annual meeting and at each subsequent annual meeting of the Members shall elect Officers of the Corporation who will hold office until the next annual meeting of the Board of Directors, or until their successors are elected and qualified.

10. This Corporation shall be governed by a Board of Directors consisting of nine (9) persons, who shall be elected according to the Bylaws.

At the expiration of the term of office of each of the said respective Directors, his successor shall be elected to serve a term of three (3) years. Directors shall hold office until their successors have been elected and qualified. Vacancies in the Board of Directors may be filled by the remaining Directors and the Directors so appointed by the remaining Directors shall serve until the next annual meeting or special meeting of the Members of the Association. At that meeting, a Director will be elected who will serve until the term of the departing Director has expired.

The Directors shall have the right to increase or decrease the number of the Board of Directors from time to time and to fill the vacancies thereby created. However, at no time shall there be less than three (3) Directors.

The annual meeting of the Board of Directors shall be held immediately following and at the same place as the annual meeting of the Members of the Association. Special meetings of the Board of Directors may be called by the President or by a majority of the Board of Directors on the giving of not less than three (3) days' notice to each Director. Directors may waive notice of a meeting or consent to or take any action without a formal meeting. At any meeting of the Board of Directors a majority of the Board of Directors shall constitute a quorum for the transaction of business, and any action may be taken by a majority of those present, except as may otherwise be required by the Bylaws or the Declaration.

11. The Board of Directors shall have all the powers and duties referred to in the Declaration of Covenants and Conditions, Bylaws, and in the Statutes of the State of Florida respecting corporations not-for-profit.

12. The Board shall have no authority to approve or authorize any capital expenditure in excess of five percent (5%) of the total annual budget of the Association. Any expenditure in excess of five percent (5%) of the total annual budget of the Association shall require approval of fifty percent (50%) of the members entitled to vote. Any expenditure in excess of ten percent (10%) of the total annual budget of the Association shall require approval of seventy-five percent (75%) of the members entitled to vote.

Notwithstanding the preceding paragraph, the Board shall have the authority to spend funds in a special reserve account for the purpose for which the special reserve account was established.

13. These Articles of Incorporation may be altered, amended, changed, added to, or repealed in the manner now or hereafter prescribed by statute or herein, at any duly called meeting of the Members of this Corporation provided that (a) the notice of the meeting is given



in the manner provided for in the Bylaws and it contains a full statement of the proposed alteration, amendment, change, addition or repeal, and (b) there is an affirmative vote of seventy-five percent (75%) of the voting membership. An Amendment to these Articles may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by the Members upon a vote of a minimum of twenty-five percent (25%) of the Members entitled to vote. Upon any Amendment or Amendments to these Articles of Incorporation being proposed by said Board of Directors or Members, such proposed amendment or Amendments shall be transmitted to the President of the Association or such other officer of the Association in the absence of the President, who shall thereupon call a special meeting of the Membership of the Association in accordance with the Bylaws.

14. This Corporation shall never have or issue shares of stock nor will it ever have or provide for non-voting membership.

15. From time to time, and at least once annually, the corporate Officers shall furnish periodic reports to the Members, which shall include profit and loss statements and balance sheets prepared in accordance with sound business and accounting practice.

16. The Association shall indemnify its officers, directors, and employees to the extent allowed by Chapters 617 and 607, Florida Statutes.

17. The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes. The dissolution of the Association shall be subject to the provisions of Chapter 617 of the Florida Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Delray Beach, Palm Beach County, Florida, this 26 day of December, 1996.

WITNESSES:

VILLAS OF RAINBERRY HOMEOWNERS  
ASSOCIATION, INC.

Chas. J. Bon...

Lila K. Feitler

BY: Lila K. Feitler, Secretary

(Address) 2100 Rainberry Lake Dr  
Delray Beach, Florida 33445

M. J. Gallup  
Sign

M. J. Gallup  
Print

Karen Giles  
Sign

Karen Giles  
Print

VRD 754610 4000-8

☒ is personally known to me;      or      ☐ has produced the following identification  
(Describe)

OFFICIAL NOTARY SEAL  
MARIJANE A GALLUP  
COMMISSION NUMBER  
CC432161  
MY COMMISSION EXP.  
JAN. 5, 1999

THIS DOCUMENT PREPARED BY  
AND TO BE RETURNED TO:

ORB 9610 Pg 1665

RANDEE J. GOLDER, P.A.  
400 W. Atlantic Ave., 2nd Floor  
Delray Beach, FL 33444

CERTIFICATE OF AMENDMENT AND RESTATEMENT OF  
THE BY-LAWS OF

**The Villas Of Rainberry Homeowners Association, Inc.**  
(a Florida not-for-profit corporation)

WE HEREBY CERTIFY that the attached Amended and Restated By-Laws of The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, was duly adopted in the manner provided in Article XVIII, Section 1, that is by proposal of the Board of Directors and approval by seventy-five percent (75%) of the members of the Association at a meeting duly called and noticed and held commencing August 12, 1996, which meeting was adjourned to November 9, 1996. This instrument replaces the By-Laws of The Villas of Rainberry Homeowners Association, Inc. as described in OR Book 3342 at Page 0651 of the Official Records of Palm Beach County, Florida and any other amendments recorded prior to the date of recording this instrument.

IN WITNESS WHEREOF, we have affixed our hands this 26 day of December, 1996, at Delray Beach, Palm Beach County, Florida.

WITNESSES:

The Villas of Rainberry Homeowners  
Association, Inc., a Florida not-for-profit  
corporation

Sign: M. J. Gallup  
Print: M. J. Gallup

By: Clair Bauman  
Clair Bauman, President

Sign: Karen Giles  
Print: Karen Giles

Attest: Lila K. Feitler  
Lila Feitler, Secretary

STATE OF FLORIDA

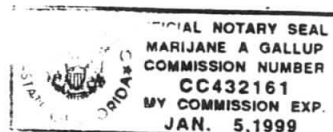
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26 day of December, 1996 by CLAIR T. BAUMAN and LILA K. FEITLER, as secretary and president for The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He/she is/are (Check one):

☒ personally known to me, or  
and did take an oath.

☐ has produced identification:  
(Describe) \_\_\_\_\_

Marijane A. Gallup  
Print: MARIJANE A. GALLUP  
NOTARY PUBLIC - STATE OF FLORIDA  
My Commission Expires:



*Amended And Restated By-Laws Of  
The Villas Of Rainberry Homeowners Association, Inc.  
(a Non-Profit Florida Corporation)*

---

**Article I**

Name and Location

The name of the Corporation is The Villas of Rainberry Homeowners Association, Inc., hereinafter referred to as the "Association." The principal office of the Corporation shall be located at 2100 Rainberry Lake Drive, Delray Beach, Florida 33445, or at such other places as may be subsequently designated by the Board of Directors, but meetings of Members and Directors may be held at such places within the State of Florida, County of Palm Beach as may be designated by the Board of Directors.

**Article II**

Definitions

Section 1. "Association" shall mean and refer to The Villas of Rainberry Homeowners Association, Inc., a Florida non-profit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in The Villages of Rainberry Declaration of Covenants, Conditions and Restrictions and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association. The Common Areas include Water Management Tract "A," Buffer Zone Tract "B," and Recreation Tract "C," "F," "G" and "I," as shown on the Re-Plat of Rainberry Lake Phase IV-A, according to the Plat thereof as recorded in Plat Book 39, at Page 99, of the Public Records of Palm Beach County, Florida. The Common Areas shall also include any additional property designated by Declarant, its predecessors, successors, or assigns.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Areas.

Section 5. "Member" shall mean and refer to each Owner who is a member of the Association as provided in the Articles of Incorporation.

Section 6. "Owner" 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 the Property, including contract sellers, but excluding contract buyers and those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation.

Section 8. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the property recorded in the Public Records of Palm Beach County, Florida, together with those exhibits which are attached thereto and made a part thereof and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof.

Section 9. The term "institutional first mortgage" means a mortgage made by a bank, or a savings and loan association, or an insurance company, or a pension fund, or a real estate trust, or other private or governmental institution which is engaged in the business of mortgage financing, which is a first and prior mortgage encumbering a residence.

Section 10. "Residence" shall mean and refer to a single family dwelling constructed upon a Lot.

### **Article III**

#### **Membership**

Section 1. Membership. Membership is composed of all those who are members as defined by the Articles of Incorporation.

Section 2. Suspension of Membership. During any period in which a Member is delinquent in the payment of any annual or special assessment levied by the Association, the voting rights of such Member shall be suspended until such assessment has been paid. Such rights of a Member may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Areas.

Section 3. Voting Rights. Members shall be entitled to one vote for each Lot, as more specifically described in the Articles of Incorporation.

### **Article IV**

#### **Board of Directors; Term of Office**

Section 1. Number. The affairs of the Association shall be managed by a Board of nine (9) Directors.

Section 2. Term of Office. The Directors of this Association shall consist of nine (9) Directors, all of whom will have a term of three (3) years which shall be staggered so that three (3) terms shall expire each year.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successor may be selected by the remaining Directors of the Board and shall serve until the next annual or special meeting of the Members. At that meeting, a Director will be elected who will serve until the term of the departing Director has expired.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

### **Article V**

#### **Meetings of Directors**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly at such place and hour as may be fixed from time to time by resolution of the Board. Notice of the meeting shall be posted at a conspicuous place on the Property which is designated by the Board of Directors for the posting of such notices.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 3.     Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board unless otherwise specified in the Association documents.

Section 4.     Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 5.     Annual Meeting. The annual meeting of the Directors shall be held following the Membership Annual Meeting. At the annual meeting, the Directors shall elect officers to serve for the year.

## **Article VI**

### **Nomination and Election of Directors**

Section 1.     Time of Election. Elections of the Board of Directors shall be by ballot and shall be held at the regular annual meeting.

Section 2.     Procedure for Nominations. A nominating committee of three (3) members shall be appointed by the President, with the approval of the Board of Directors, not less than sixty (60) days prior to the date of the annual membership meeting. At least forty (40) days prior to the date of the annual meeting, the nominating committee shall submit to the Board, the names of regular members, in good standing, for election to the Board of Directors. The minimum number to be submitted shall equal the number of vacancies to be filled. The Secretary shall mail, at the time of mailing the notice of annual meeting, one copy of the list of nominees to each regular member of the Association. Additional names of regular members may be placed in nomination from the floor at the annual meeting, provided that said nominee is willing to accept the nomination.

Section 3.     Ballot. The Secretary shall cause all nominations to be printed alphabetically on a ballot. Those nominations from the floor may then be written into this ballot.

Section 4.     Voting. Only one regular member, in good standing, per lot, may cast one (1) vote for as many nominees as there are Directors to be elected. Any ballot marked for more nominees than there are Directors to be elected shall be invalidated. Cumulative voting will not be recognized.

Section 5.     Election Supervisors. Three election supervisors shall be appointed by the President with the approval of the Board of Directors. A nominee shall not be an election supervisor. At the annual meeting, the election supervisors shall take charge of the distribution, collection and counting of all ballots received. The results, including the total number of votes cast, the number of votes invalidated, and the number of votes cast for each candidate shall be certified by the election supervisors and made a part of the minutes of the annual membership meeting.

## **Article VII**

### **Powers and Duties of the Board of Directors**

Section 1.     Powers. The Board of Directors shall have power:

- a. To adopt and publish, from time to time, rules and regulations governing the use of the Common Areas by an affirmative vote of 75% of the total Directors;
- b. To exercise for the Association all powers, duties and authority vested in or delegated to the Association not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- c. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- d. To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;
- e. To enter into contracts for a term not to exceed three (3) years unless approved by a majority of the voting membership.

Section 2. Duties. It shall be the duty of the Board of Directors:

- a. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;
- b. To supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed;
- c. As more fully provided herein and in the Declaration:
  - (1) To take into account the Common Expenses of the Association, the appropriate expenses respecting the maintenance of the Common Areas, the real and personal property taxes levied against the Association or the Common Areas, and other expenses of the Association, and fix the amount of the annual assessment of each Lot at least thirty (30) days in advance of each annual assessment period; and
  - (2) To send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;
- d. To issue, or cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid;
- e. To collect delinquent assessments, fines, and penalties and to create, record and foreclose the lien securing the said assessments and to hire attorneys, accountants and other professionals to do the same;
- f. To procure and maintain adequate liability insurance, and to procure adequate hazard insurance on property owned by the Association;
- g. To cause all Officers or employees having fiscal responsibilities to be

bonded, as it may deem appropriate;

- h. To cause the Common Areas to be maintained; and
- i. To cause the exterior of the dwellings to be maintained by the Owners, and if an Owner fails to maintain the same, then the Association may, pursuant to the provisions of the Declaration, repair and restore the Lot and the exterior of the building and any other improvements erected thereon, all at the cost of the Owner.

## **Article VIII**

### **Committees**

Section 1. The Association shall appoint an Architectural Control Committee pursuant to Article VIII of the Declaration, and a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

(a) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Common Areas and the maintenance of the improvements located on any Lot, and shall perform such other functions as the Board, in its discretion, determines;

(b) An Audit Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting as provided in Article XI, Section 8(d). The Treasurer shall be an ex officio member of the Committee.

Section 2. It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or Officer of the Association as is further concerned with the matter presented.

## **Article IX**

### **Meetings of Members**

Section 1. Annual Meetings. The annual meeting of the Members shall be held during the third week of February. Meetings of the Membership shall be held in Palm Beach County, Florida, at such place as may be specified in the notice of meeting. The Board of Directors shall always use its best efforts to provide a meeting place as near to Rainberry Lake as possible.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4th) of all of the votes of the entire membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by the Secretary or person authorized to call the meeting, by mailing a copy of such notice, first class postage prepaid, at least fifteen (15) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.



Section 4.     Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10th) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be presented or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be presented or represented.

Section 5.     Proxies. At all meetings of Members, each Member may vote in person or by proxy as permitted by law. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

## **Article X**

### **Officers and Their Duties**

Section 1.     Enumeration of Offices. The Officers of the Association shall be a President and Vice President, a Secretary and a Treasurer, who shall at all times be members of the Board of Directors, and such other Officers as the Board may from time to time by resolution create.

Section 2.     Election of Officers. The election of Officers shall take place at the annual meeting of the Board of Directors following each annual meeting of the Members.

Section 3.     Term. The Officers of the Association shall be elected annually by the Board, and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4.     Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5.     Resignation and Removal. Any Officers may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.     Vacancies. A vacancy in any office may be filled by the Board of Directors. The Officer elected to such vacancy shall serve for the remainder of the term of the Office he replaces.

Section 7.     Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8.     Duties. The duties of the Officers are as follows:

#### **President**

(a) The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

### **Vice President**

(b) The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

### **Secretary**

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

### **Treasurer**

(d) The Treasurer shall receive and deposit in financial institutions which are insured by the federal government or in direct obligations of the federal government all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members, and shall furnish a corporate surety bond in a sum satisfactory to the Board for the faithful performance of the duties of his office and the restoration to the Association of all books, papers, vouchers, money or other property of whatever kind in his possession, or under his control, belonging to the Association. The Association shall pay all premiums for said bond.

## **Article XI**

### **Assessments**

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

## **Article XII**

### **Books and Records**

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

**Article XIII**  
**Corporate Seal**

The Association shall have a seal in circular form having within its circumference the words: "The Villas of Rainberry Homeowners Association, Inc. - Non Profit."

**Article XIV**  
**No Stock and/or Certificates of Membership**

The Association shall never have or issue shares of stock and/or certificates of membership, nor will it ever have or provide for non-voting membership.

**Article XV**  
**Joint Ownership**

In the event a Lot is owned by more than one person, then all of the Owners of such Lot shall be entitled collectively to only one voice or ballot in the management of the affairs of the Association, and the vote of such Owners may not be divided between plural Owners of a single Lot. If the Owners are unable to agree upon their ballot upon any subject at any meeting, they shall lose their right to vote on such subject; but if all of the Owners of such Lot shall not be present at the meeting, either in person or by proxy, the one or ones so present shall cast the vote of all such Owners.

**Article XVI**  
**Amendments**

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of seventy-five percent (75%) of Members entitled to vote who are present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**Article XVII**  
**Miscellaneous**

Section 1. The fiscal year of the Association shall begin on the first day of May and end on the 30th day of April every year.

Section 2. No Owner or Member, except as an Officer of the Association, shall have any authority to act for the Association or bind it.

Section 3. If any By-Law or part thereof shall be adjudged invalid, the same shall not affect the validity of any other By-Law or part thereof.

Section 4. In the event the Owner of a Lot fails to maintain it as required or otherwise violates or intends to violate the provisions of the Declaration or these By-Laws, the Association shall have the right to proceed in a Court of Equity for injunction to seek compliance with the provisions hereof. In lieu thereof, and in addition thereto, the Association shall have the right to record a lien against the Owner for the necessary sums to correct the violation, remove any structure or obstruction and restore the property. The defaulting Owner shall be responsible for all costs and legal fees of such proceedings. In the event resort is ever had to legal counsel, for violation of any rules and regulations or provisions of the Declaration, Articles of Incorporation, or Bylaws against an Owner, such Owner shall be responsible for such costs incurred including legal fees.

## Gender

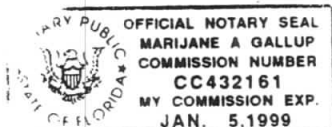
IN WITNESS WHEREOF, we, being all of the Directors of The Villas of Rainberry Homeowners Association, Inc. have hereunto set our hands and seals this 26 day of December, 1996.

VILLAS OF RAINBERRY HOMEOWNERS  
ASSOCIATION, INC.

BY: Debra K. Feitler, Secretary  
(Address) 2100 Rainberry Lake Dr.  
Delray Beach, Florida 33445

The foregoing instrument was acknowledged before me this 26 day of December, 1996, by CLAIR S. BAUMAN, as Secretary of The Villas of Rainberry Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He or she (Check One):

Print: Marianne A. Gallup  
NOTARY PUBLIC - STATE OF FLORIDA  
MY COMMISSION EXPIRES:



THIS AGREEMENT made and entered into this 26th day of October, 1979, by and among RSM DEVELOPERS & ASSOCIATES, LTD., a Florida Limited partnership (hereinafter called "RSM"), and CAROLE SIEMENS, as Trustee, and CENTEX HOMES OF FLORIDA, INC., a Nevada corporation, authorized to do business in the State of Florida (hereinafter called "Centex"), and LAKESBERRY DEVELOPERS, INC., a Florida corporation (hereinafter called "Lakesberry"), and RAINBERRY LAKE HOMEOWNERS ASSOCIATION, INC., a non-profit Florida corporation (hereinafter called "Rainberry Association"), and THE VILLAS OF RAINBERRY HOMEOWNERS ASSOCIATION, INC., a non-profit Florida corporation (hereinafter called "Centex Association").

W I T N E S S E T H :

WHEREAS, CAROLE SIEMENS, as Trustee, is the owner of the land described on Exhibit L-1; and

WHEREAS, Lakesberry has an option to acquire the land described on Exhibit L-2 from Melvin I. Muroff, as Trustee (present owner of land described on Exhibit L-2); and

WHEREAS, RSM DEVELOPERS & ASSOCIATES, LTD. is the owner of land described on Exhibit L-3; and

WHEREAS, RSM has entered into a contract to acquire all of the residential lots located on the land described on Exhibits L-1 and L-2 as well as the common recreation area located thereon; and

WHEREAS, Centex is the owner of the land described in Exhibits "C" and "D"; and

WHEREAS, RSM is in the process of constructing homes on land described on Exhibit L-3 as well as on the land described on Exhibit L-1 and in connection therewith has agreed to install certain recreational improvements, including tennis courts, swimming

Exhibit "D"



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pool, and other amenities which shall be located on recreation tracts "A", "B" and "C", as shown on the Plat of Rainberry Lake Phase 2, according to the Plat thereof, recorded in Plat Book 37, at Page 94 of the Public Records of Palm Beach County, Florida, and the Recreation Area shown on the Plat of Rainberry Lake Phase III-A, to be recorded among the Public Records of Palm Beach County, Florida, designated as Recreation Area Tract "J" and Recreation Area Tract "K", as shown on the Plat of Rainberry Lake Phase IV-A, to be recorded among the Public Records of Palm Beach County, Florida, and the entrance feature, guard house and road, which together with the aforescribed Recreation Tracts have been conveyed to the Associations (all together being referred to herein as the Recreation Areas"); and

WHEREAS, Rainberry Association is the association in connection with the Rainberry Lake development being built by RSM and which association is charged with the operation and government of the homes being built in the said development (which development is to be built on the land described on Exhibits L-1, L-2, and L-3), which homeowners shall be given the right to jointly (together with the homeowners in the Centex Development) use said Recreation Areas, and which association is charged with the operation and government of the Recreation Areas referred to in the preceding paragraph together with Centex Association; and

WHEREAS, Centex intends to develop the land described on Exhibits "C" and "D" (Centex Development) and construct and sell homes thereon, the purchasers of said homes to be given the joint right (together with the homeowners of the Rainberry Lake Development) to use the Recreation Areas, and Centex Association is the association charged with the responsibility for the government, operation and management of the Centex Development and Centex Association is charged with the operation and government of the Recreation Areas together with Rainberry Association.

NOW, THEREFORE, in consideration of these mutual covenants, it is hereby agreed among the parties, as follows:

1. RSM agrees to develop and construct upon the Recreation

Areas certain recreational facilities substantially in accordance with plan shown on Exhibit "R" and title to the Recreation Areas has been conveyed to the Associations in the following proportions:

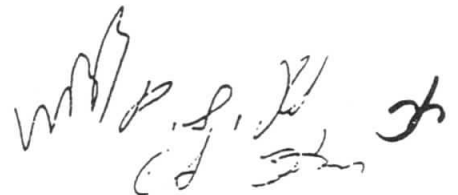
- (a) Rainberry Association - 32.74%
- (b) Centex Association - 67.26%

2. Rainberry Association and Centex Association agree to operate and govern for the benefit of the respective members of the Associations, the Recreation Areas recreational facilities.

3. Rainberry Association and Centex Association accept the conveyance of title to the Recreation Areas and the personal property located thereon, and thereafter (provided the pools, tennis courts, other improvements described on Exhibit "R" have been completed) to be fully responsible for the operation of the Recreation Areas and all expenses incurred in the operation, maintenance, replacement, taxes, insurance and other items of expense, except that in no event shall Centex Association be responsible for any portion of said expenses of maintenance until April 16, 1980, at which time it shall begin paying its share of the maintenance. Rainberry Association and Centex Association agree to contribute to the maintenance of the Recreation Areas in the same proportions as are set forth in Paragraph 1 hereof. Each Association agrees to assess its members and shall collect from same sufficient moneys to pay for the expenses described in this paragraph. The individual members of each of said Associations, being the owners of the lots, shall have the responsibility of paying their share of the maintenance to their Association in accordance with their obligation to pay maintenance to their Association.

4. The associations agree to create a Governing Board of the Recreation Areas by appointing six (6) members to the Governing Board, Centex Association having the right to appoint four (4) members and Rainberry Association having the right to appoint two (2) members. Said members of the Governing Board shall be appointed by the respective

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ing Board shall have full responsibility for the operation and control of the Recreation Areas and shall promulgate Rules and Regulations (a) for the use of the Recreation Areas in general and (b) for the use of the Recreation Areas by guests of residents, and shall prepare, not less than once annually, an Operating Budget and to divide the Budget into the percentages that each of the Associations owns the Recreation Areas and to collect the same from their individual members in the manner provided in their respective Declarations, Charters and By-Laws. The Governing Board is empowered to restrict the use of the facilities as to any person or persons failing or refusing to pay their share of the assessments and the Governing Board is directed so to do upon the expressed instructions from either of the Associations with respect to their members. The governing board shall act by and through a majority of its members. The Associations shall establish a joint account into which the monthly assessments for the Recreation Areas shall be deposited and all of the various expenses shall be paid therefrom, upon the joint signatures of one of the governors from the Centex Association and one of the governors from the Rainberry Association. Provided, however, that until such time as the Centex Association commences its maintenance payments as hereinabove provided for, the Rainberry Association shall pay all of the expenses directly without setting up the foregoing fund.

5. While the Governing Board of the Recreation Areas are not at present contemplated to be an incorporated association, nevertheless, they are empowered, with the consent of each of the respective Associations, to form themselves into a corporation so long as the purposes and powers of the corporation are in conformance with this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above wirtten.

WITNESSES:

[Signature]  
[Signature]  
[Signature]  
[Signature]

RSM DEVELOPERS & ASSOCIATES, LTD.  
By RSM DEVELOPERS, INC., General Partner

By [Signature]  
Richard Siemens, Vice President

[Signature]  
Carole Siemens, Trustee

CENTEX HOMES OF FLORIDA, INC.

By [Signature]  
Henry E. Marks, Vice President

LAKESBERRY DEVELOPERS, INC.

By [Signature]  
Paul Stein, President

RAINBERRY LAKE HOMEOWNERS ASSOCIATION, INC.

By [Signature]  
Richard Siemens, Vice President

THE VILLAS OF RAINBERRY HOMEOWNERS ASSOCIATION, INC.

By [Signature]  
William Beinstein, President

[Signature]  
[Signature]

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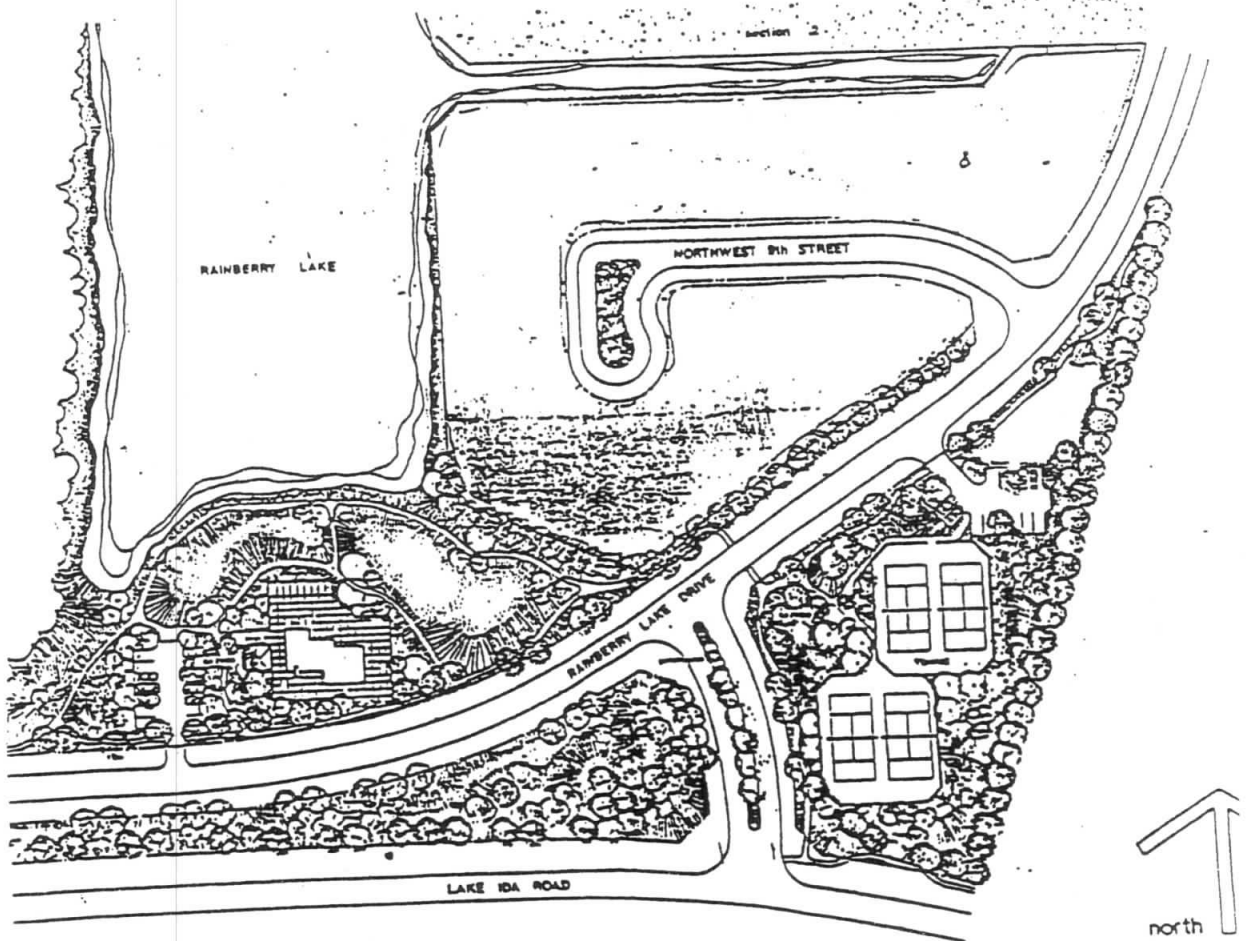
EXHIBIT "R"

This exhibit is intended to describe the recreation facilities and their approximate locations, together with the parking for same. Landscaping may vary substantially in type and amount.

# Rainberry Lake



section 1



3342 P0878

*P.S.*  
*W.B.*  
*Ch. R. H.*

DECLARATION OF USE AND OBLIGATIONS

-of-

RAINBERRY LAKE

THIS DECLARATION made this 16 day of OCT 1979, between the PINES OF DELRAY NORTH ASSOCIATION, INC., a Florida non-profit corporation, hereinafter referred to as the "Pines", and all of the owners (other than owners of condominium units of the Pines of Delray North Condominium) of the property described on Exhibit "A" attached hereto, all of which owners are listed on Exhibit "B" attached hereto.

1. The Pines (on behalf of itself and all of the condominium units owners of the Pines of Delray North, a condominium), with respect to the property described on Exhibit "C", as well as all of the other owners of property described in Exhibit "A", do hereby declare and agree that all of the property described in Exhibit "A" and Exhibit "C" shall be subject to the obligations of this Declaration and shall be entitled to the benefits created hereby.

2. The Lake area located within the property described on Exhibit "A" and Exhibit "C" shall hereinafter be referred to as "Rainberry Lake" or the "Lake". Rainberry Lake, as presently constituted, shall not be reduced in size, nor shall the perimeter thereof be modified in any substantial manner, other than (a) by the creation of canals connecting into the said Lake, (b) filling in the area at the north end for purposes of constructing and maintaining the control gate (sometimes herein referred to as the "lock connection") connecting the Lake to the Lake Worth Drainage District

Exhibit "E"

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Canal L-30, and (c) filling in an area at the south end to be used for a recreation area for members of Rainberry and Gentex Association.

3. Every owner of a lot on the property described on Exhibit "A", as well as any unit owner of a condominium of the Pines of Delray North, a condominium, shall have the right to use the Lake area, provided legal access thereto is obtained by any such property or unit owner, subject, however, to the rules and regulations established hereby and subject to the obligations contained herein. The land adjoining the Lake shall belong exclusively to the adjoining land owner and shall not be used for egress or ingress by anyone, except by specific permission from the said adjoining land owner. With respect to the land frontage which is part of the Pines of Delray North condominium, same shall be subject to the rules and regulations hereof as well as the rules and regulations established by the Pines.

4. All of the parties hereto do hereby agree to share in the cost of maintaining the Lake and the lock connection between the Lake and the Lake Worth Drainage District Canal L-30 located at the north end of the Lake. The said costs shall be shared as follows:

Pines	25%
Rainberry Lake Homes Association, Inc.	25%
Centex Homeowners Association	50%

All land owners located west of the center line of Rainberry Lake and east of Davis Road, north of Lake Ida Road and south of said

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Lake Worth Drainage District Canal L-30<sup>7</sup> (excluding any area which shall be designated as a common area or for egress and ingress on any filed plat affecting such land) shall be obligated to be a member of the no profit homeowners association formed by the developer of such land, ("Centex Association" or "Centex"), and all land owners located east of the Lake and south of the Pines shall be obligated to be a member of Rainberry Lake Homes Association, Inc. ("Rainberry"). An account shall be opened by the Governing Board for the purpose of collecting funds to be used for paying for the said maintenance costs. The account shall be in the name of the three Associations and shall require the signature of one of the members of the Governing Board designated by Centex and one of the members of the Governing Board designated by either Pines or Rainberry. All members of the Governing Board will be authorized signatories. The Governing Board shall decide whether payments to the said account will be required to be made by each Association annually or more frequently and the said Board shall also decide what the initial amount to be deposited in the account, shall be, and when same shall be made.

5. The Governing Board of the Lake shall be appointed as follows:

Pines	1 member
Rainberry	1 member
Centex Association	2 members

Each member of said Governing Board must be an owner of a lot or a condominium unit affected by this Declaration or an officer of Pines, Rainberry or Centex Association. The Governors are to be

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appointed by the respective Associations. Said Governing Board shall have full responsibility for the operation and control of the Lake as contemplated hereby and shall promulgate rules and regulations for the use of the Lake in general, as well as for the use of the Lake by guests, and shall prepare an operating budget at least once each year to cover all of the expenses contemplated hereby, which budget shall be payable by each Association in the percentages mentioned in Paragraph 4. Each Association shall be responsible for collecting same from the individual members of such Association. While the Governing Board of the Lake is not to be a separate incorporated association, the Governing Board is hereby given the right, provided they first obtain the consent of each of the Associations, to form themselves into a corporation so long as the purposes and powers of the corporation are in conformance with this Agreement. All actions taken by the Governing Board shall be by a majority of the Board except as otherwise set forth herein.

6. No land owner or condominium unit owner nor any association may avoid or otherwise escape liability for the moneys payable hereunder by the non-use of the Lake or by the abandonment of any rights herein.

7. Pines and each owner of any land located on Exhibit "A" is hereby granted the right to use the water in the Lake for purposes of drainage (to the extent same is legally permissible) and for lawn sprinkling, provided access to the Lake is obtained by such land owner through legal means.

The following rules and regulations shall apply until modified as permitted herein:

(a) Use of the Lake is permitted only from 7 A.M. until midnight seven (7) days per week;

(b) Children under the age of sixteen shall not use a motorized boat on the Lake unless accompanied by a person at least sixteen years of age;

(c) All persons using the Lake do so at their own risk;

(d) The control lock to be located at the north end of the Lake where same connects with the Lake Worth Drainage District L-30 will be operated by a device issued by the Associations, such as a key or a magnetic card. The operation of the control lock is subject to the regulations of the South Florida Water Management District and the Lake Worth Drainage District. One key or magnetic card (or other type of opening device) will be issued to each member having rights to use the lake and same is not to be duplicated without the written permission from the Association to which said member belongs;

(e) No boat shall be left in a stationary position for more than fifteen minutes in any area customarily used for cruising; no boat shall be docked anywhere other than at a permanent dock authorized hereby;

(f) No refuse of any kind is to be discharged into the Lake;

(g) Size of boat not to exceed 19 feet in length;

(h) The speed limit on the Lake shall be five miles per hour and the speed limit in a canal shall be the maximum speed

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which will not cause a wake;

(i) No boat shall cause or permit any oil or gas spills;

(j) No water skiing shall be permitted anywhere on the Lake;

(k) Each Association shall be responsible for the actions of its members.

Said rules and regulations may be amended or supplemented by 75% of the Governing Board.

8. This Declaration and the obligations herein, as well as the rights herein, shall be binding upon and shall be for the benefit of the parties hereto, their heirs, successors and assigns, and shall bind each and every land owner or condominium unit owner located within the land described on Exhibit "A" and on Exhibit "C", for a period of seventy-five years from the date of the execution of this Agreement. Thereafter, 75% of the Governing Board of the Lake shall have the right to extend the term of this Declaration for three twenty-five year extension periods. 100% of Governing Board is hereby given the right to amend this Declaration.

9. An architectural review committee consisting of three, to be designated by the members of the Governing Board of the Lake, to be composed of one member of the Pines and one member of the Rainberry Association and one member of the Centex Association is hereby granted the power and authority to control the appearance of any dock or other similar structure which may hereafter be erected on the land immediately adjoining and surrounding Rainberry Lake.

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No such dock or other similar structure may be erected or maintained, nor shall any addition or alteration thereof be made which would change the exterior appearance thereof unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing, as to harmony of exterior design. Plans and specifications for final approval shall include the following: Front elevation (front elevation meaning the side facing the Lake) and both side elevations; data as to materials, color and texture. Any dock referred to herein must be placed either at an edge of a canal, or on land owned, or in the area of an easement granted by the following sentence. The owner of any land is hereby granted an easement to install and maintain a dock beyond such property owner's land extending two feet into an adjoining canal and extending into the Lake so that the edge of the dock which is furthest from the owner's land is where the depth of the Lake does not exceed two feet (when the mean water level is eight feet above sea level). Any dock installed above a canal shall not protrude more than two feet beyond the sea wall cap. Any dock installed on the Lake shall not extend beyond the area where the depth of the Lake does not exceed two feet (when the mean water level is eight feet above sea level). In the event the mean water level varies from year to year, if a dock was in accordance with the depth requirements of this Declaration when installed, same may remain where originally installed. No dock shall exceed four feet by twelve feet in size. In the event the committee shall fail to approve or disapprove such plans and specifications within thirty days after submission of the plans, to them, there

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such approval will not be required but all other conditions and restrictions contained herein shall remain in force. Request for approval of the architectural review committee shall be submitted in writing with a copy addressed to the architectural review committee, c/o each Association. The architectural review committee shall have the right to require an owner of a dock to repair a dock if the appearance thereof has reached the state of being unsightly in the opinion of the architectural review committee, and in the event of the failure on the part of any such owner to make such repair, then the architectural review committee and/or any Association referred to herein shall have the authorization to make such repair and charge the owner for same. In the event any owner fails to pay for the cost of any such repair made by the architectural review committee or the association within ten days after the demand for same, such owner hereby agrees that his property shall be subject to a lien to secure the repayment of same. Any such lien, however, shall be subject and subordinate to any "institutional first mortgage" (as such term is commonly defined in the Palm Beach County area) of record as of the date of the filing of the lien authorized by this paragraph.

10. Invalidation of any portion of this Declaration by judgment or Court order shall in no wise affect any other provision hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their

*Handwritten mark*

hands and seals the day and year first above written.

In the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_


PINES OF DELRAY NORTH ASSOCIATION, IN

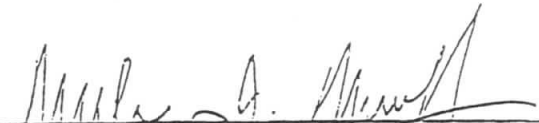
By \_\_\_\_\_

LAKEBERRY DEVELOPERS, INC.

By Paul Stein  
Pie

In the presence of:

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


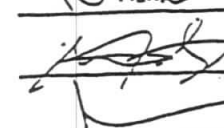
  
Melvin I. Muroff, Individually and  
as Trustee

~~Gloria Muroff~~

RSM DEVELOPERS & ASSOCIATES, LTD.  
a Florida Corporation

By RSM DEVELOPERS, INC.

By: Richard Siemens  
Morton V. Ziffish, Pres.  
Richard Siemens

  
\_\_\_\_\_  
  
\_\_\_\_\_

Carole Siemens  
Carole Siemens, individually  
and as Trustee



JOINDER

Centex Homes of Florida, Inc., a Nevada corporation, hereby joins in the execution of the Declaration of Use and Obligations of Rainberry Lake attached hereto in that as of date hereof it has acquired a portion of the property subject to the Declaration, which is located West of the center line of Rainberry Lake and East of Davis Road, North of Lake Ida Road and South of Lake Worth Drainage District Canal L-30. The Association that will be responsible for the operation and administration of the homes to be constructed upon the property acquired by Centex shall be "The Villas of Rainberry Homeowners Association, Inc., a Florida non-profit corporation.

DATED this 16 day of October, 1979.

CENTEX HOMES OF FLORIDA, INC.

By Henry E. Marks  
Henry E. Marks, Vice President

STATE OF FLORIDA     )  
                          : ss.  
COUNTY OF Dade

BEFORE ME, the undersigned authority, personally appeared Henry E. Marks as Vice President of CENTEX HOMES OF FLORIDA, INC., a Florida corporation, to me well known, who acknowledged before me that he executed the foregoing joinder for the purposes therein described.

WITNESS my hand and official seal in Dade County, Florida, this 16 day of October, 1979.

Lucy Pittman  
Notary Public, State of Florida  
at Large

My Commission Expires:

MY COMMISSION EXPIRES  
FEBRUARY 29, 1980

83342 P0694

*John*