

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RAINBERRY PARK**

Rainberry Park Inc., a Florida corporation, hereby declares that all of the property described in Exhibit "A" shall be held, transferred, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the provisions of this Declaration. The provisions of this Declaration shall run with the real property described in Exhibit "A" and shall be binding upon and shall inure to the benefit of all parties that have or may acquire any right title or interest in all or any such property.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

Section 1. "Association" - Rainberry Park Homeowners' Association, Inc., a not-for-profit Florida corporation, its successors and assigns.

Section 2. "Owner" - the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers.

Section 3. "Property" - Property that certain real property described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" - all real property (including the improvements thereto) to be owned by the Association for the common use and enjoyment of the owners. The Common Area shall include, but not be limited to areas dedicated to the Association on any plat of the Property.

Section 5. "Lot" - any plot of land shown upon any recorded plat of the Property intended to accommodate a Residential Unit.

Section 6. "Declarant" - shall mean and refer to Rainberry Park, Inc., a Florida corporation, its successors and assigns, if such successors or assigns should acquire any undeveloped portion of the Property and is designated as such by Rainberry Park, Inc. The Declarant may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Declarant as to these rights which may have been assigned to them.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Initial Property. The initial real property which is, and shall be held, transferred, sold, conveyed, leased, mortgaged and otherwise dealt with subject to this Declaration is described in Exhibit "A".

Section 2. Property Which Shall Be Added. The Declarant may from time to time bring portions, or all of the real property described in Exhibit "B" under the provisions of this Declaration by recording a Supplemental Declaration adding such property. Provided, that upon the recordation of any plat of all or any portion of the property described in Exhibit "B", such platted property shall be automatically subject to this Declaration.

ARTICLE III

PROPERTY RIGHTS

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

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessment against this Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Association to grant permits, licenses and easements over the Common Area for utilities, djads and other purposes reasonable, necessary or useful for the proper maintenance or operation of the Property.

(e) the right of the Association to enter upon each Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property.

(f) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

(g) the right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with any restrictions on the various plats of the Property.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Rules and Regulations of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

Section 4. Utility Easements. Public utilities may be installed underground in the Common Area when necessary for the service of the Property, but all use of utility easements shall be accordance with the applicable provisions of this Declaration.

Section 5. Public Easements. Fire, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 6. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement shall encroach upon any portion of the Common Area or upon an easement by reason of original construction or by the non-purposeful or non-negligent act of Declarant or any other Owner of such building or improvement, then an easement for such encroachment shall exist so long as the encroachment exists.

Section 7. Additional Easement. The Declarant for so long as it is the Owner of any lots in its ordinary course of business and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Property and to grant access easements and to relocate any existing access easements in any portion of the Property as the Declarant or the Association shall deem neces-

sely or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 8. Zero-Lot Line Easement. If a Residential Unit is constructed within one foot of the side lot line of any Lot, the Owner of the adjoining Lot shall have the right to use the face of the wall facing said adjoining Lot for purposes approved by the Association. Said approval shall be in writing and shall be in the form approved by the Association. In order to allow the Owner of any Residential Unit which is located within one foot of the side lot line of any Lot to maintain the wall facing the adjoining Lot, said Owner shall have an easement over such adjoining Lot, with the right of ingress and egress during reasonable times of day, for the purpose of maintaining and repairing the wall facing said adjoining Lot. There shall also be a five foot easement for roof, eaves, overhangs, gutters or other protrusions, for water runoff and for the maintenance of same over said adjoining Lot. Said roof, eaves, overhangs may be guttered and may not project more than eighteen inches onto said adjoining Lot. The easements created in this Section shall be appurtenant, permanent, perpetual and exclusive to the Owners involved.

Section 9. Association Easement. For the purpose solely of performing the maintenance authorized by this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day except Sunday. In the event of an emergency, such right

or entry shall exist without notice on any day, including Sunday. Each Owner grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned. In addition, the owner of the adjoining property (not within the Property) may grant the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress across its properties to effect and perform the exterior maintenance aforementioned. In such event, the Association shall indemnify the adjoining property owner for any damage or injury to the easement areas caused by the use thereof or access to perform the exterior maintenance. In the event an Owner is on vacation and/or will not be present to permit entry onto his Lot for the exterior maintenance aforementioned, said Owner shall deposit his gate key with the Association to permit entry thereon.

Section 10. Developer's Easement During Construction. For so long as the Declarant is the Owner of a Lot, in the ordinary course of its business, Declarant, its licensees, employees, and agents, shall have an easement over and across all the Lots and Common Areas for the purpose of constructing units, appurtenances, and any facilities on the Common Area the Declarant elects to construct. Provided, however, that any damage to pavement, driveways, drainage structures or other structures caused by Declarant, its licensees, employees, or agents during such construction shall be promptly restored and repaired by the Declarant, the licensees, employees, or agents causing such damage.

ARTICLE IV

RAINBERRY PARK HOMEOWNERS' ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the

Property shall be a member of the Association and by acceptance of such interest acknowledges the authority of the Association as set forth in this Declaration and agrees to be bound by this Declaration, the Articles of Incorporation, the By-Laws and any other rules and regulations of the Association. In addition, the family, guests, invitees, licensees, and tenants of each member shall, while in or on the property, abide and be bound by the provisions of the above-mentioned documents. Any person or entity which holds such interest merely as security for the performance of an obligation shall not be a member of said Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class "A". Class "A" member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 by one such member as specified in the Articles of Incorporation of the Association, but in no event shall more than one vote be cast with respect to any Lot.

Class "B". The Class "B" member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership, or
- (b) on January 1, 1989.

Section 3. Merger or Consolidation. Upon a merger or consolidation of the Association with any other association the properties, rights and obligations of such Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by the Declaration within the Property.

Section 4. Termination of the Association. In the event of dissolution of the Association, for whatever reason other than merger or consolidation, assets, both real and personal, of the Association, shall be dedicated to an appropriate public agency or utility. 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. In the event the foregoing is not complied with, any Owner may petition the appropriate court for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Property, and Common Areas. Any such disposition of assets shall be conditioned upon the assets being used for purposes similar to those for which they were utilized by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded covenants and deeds applicable to the Property unless made in accordance with the

SECTION 5. COMMON AREAS.

A. Ownership. Declarant shall convey legal title to the Common Areas shown upon each plat of the Property prior to the conveyance of the first Lot located within the plat and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

B. Maintenance. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. Such taxes shall be prorated between Developer and the Association as of the date of such recordation. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements situated on the Common Areas (upon completion of construction by Declarant), which may include, but not be limited to, all recreational facilities, landscaping, roadways, drainage structures, street lighting fixtures and appurtenances, sidewalks, television and radio antennae and cables for common use and other structures, except public utilities and the treatment of water within designated water management tracts. Said treatment shall be performed in accordance with the Declaration of Covenants, Conditions and Restrictions of Rainberry at West Boca. All such work on the Common Areas is to be done as ordered by the Board of Directors of the Association acting on a majority vote of the board members. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. All work pursuant to this Section and all expenses hereunder shall be paid for by the Assoc-

action through assessments imposed in accordance with Article V hereof. Such assessments shall be against all Lots equally; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association shall be levied as a special individual assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

C. Street Lighting. The Association shall have the obligation for maintenance of any street lighting facilities from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. In the event the Developer, in its sole discretion, elects to install such street lighting, Developer shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Developer and the Association shall forthwith pay same to the Developer.

Section 6. Powers. The Association, through the action of its Board of Directors may enter into an agreement or agreements from time to time with one or more person, firms or corporations for management services. The Association shall have all other powers as provided in its Articles of Incorporation.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned 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 such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for

capital improvements, such assessments to be established and collected as hereinafter provided, and (3) a contribution to the working capital of the Association equal to two months assessments. The annual and special assessments, together with interest, at a rate to be set by the Board of Directors which shall not exceed the maximum interest rate allowable by law and/or late charges not to exceed \$50.00, costs, and reasonable attorney's fees, shall be a charge on the Land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, and/or late charges, costs, and reasonable attorney's 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 Association may, in its discretion, waive interest and/or late charges in a combined amount of \$50.00 or less. 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 to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area.

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

(a) 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 each year not more than 15% 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 15% by a

vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class 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 Section 3 or 4 shall be sent to all members not less than fourteen (14) 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 a majority of all votes of each class of membership shall constitute a quorum.

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 quarterly or monthly basis, as determined by the Board of Directors. Notwithstanding the foregoing, individual special assessments may be assessed against the Owner of a Lot as provided in the Declaration.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the con-

veyance of the Common Area. 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 its issuance.

Section 8. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall bear a late charge of \$50.00 and/or interest from the due date at a rate of interest set by the Board of Directors which shall not exceed the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in a like manner as a foreclosure of a mortgage on real property, or pursue one or more remedies at the same time or successively. There shall be added to the amount of such assessment, attorney's fees and costs, and in the event a judgment is obtained such judgment shall include interest on the assessment as provided and reasonable attorneys' fees to be fixed by the Court together with costs of the action. It shall be the legal duty and responsibility of the Association to enforce payments of the assessments hereunder. The Association may, in its discretion, waive interest and/or late charges in a combined amount of \$50.00 or less. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

lien of the assessment provided for in this Article V shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid assessments. An institutional lender is defined as a state or federal bank or savings and loan association, an insurance company, trust company, savings bank, credit union, real estate or mortgage investment trust, mortgage broker, mortgage banker, private mortgage insurance company, the United States Veterans' Administration, United States Federal Housing Administration or a lender generally recognized in the community as an institutional lender. Any assignee of a mortgage originated by an institutional lender shall be deemed an institutional lender for the purposes of said mortgage. The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any similar institutions created in the future shall be deemed institutional lenders, regardless of where any mortgage held by any of them originated. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provision of this Section 9, shall be deemed to be an assessment divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 10. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from the assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use.

B. All Common Areas.

C. All properties exempt from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

Notwithstanding any provisions herein, no land devoted to residential use shall be exempt from said assessments, charges or liens.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Architectural Control Committee. The Architectural Control Committee shall be a standing committee of the Association appointed by the Board of Directors. The Architectural Control Committee shall be comprised of three (3) members and shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Article. A majority of the Architectural Control Committee may take any action it is empowered to take, may designate a representative to act for the Committee, and may employ such personnel and consultants necessary to carry out its duties. In the event of death, disability or resignation of any member of the Committee, the Board of Directors of the Association shall designate a successor. The members of the Architectural Control Committee shall not be entitled to compensation for services performed and shall serve at the pleasure of the Board of Directors.

Section 2. Architectural Control. No building, wall, fence, or other structure or improvement of any nature shall be erected, placed or altered on any Lot by any person, except the Declarant, until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required

by the Architectural Control Committee have been approved in writing by said Architectural Control Committee. Each building, wall, fence, or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any ground, including purely aesthetic grounds. Any ~~change~~ change in the exterior appearance of any building, wall, fence, or other structure or improvements shall be deemed an alteration requiring approval. Maintenance or repair of any buildings, walls, fences, other structures or improvements in the same manner as was originally furnished by Declarant shall not be subject to review of the Architectural Control Committee.

Section 3. Change in Buildings and Fences. Except for the Declarant, no Owner shall make or permit any structural modification or alteration of any building or fence except with the prior written consent of the Architectural Control Committee and such consent may be withheld if in the sole discretion of the party denying the same, it appears that such structural modification or alteration would affect or in any manner endanger other dwelling units. No building or fence shall be demolished or removed without the prior written consent of the Architectural Control Committee, and the prior written consent of the Owner of the immediately adjoining building. The reconstruction shall be in the same location on the property and shall not exceed the size of the original construction.

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Section 4. Landscaping. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained in accordance with this Declaration, as originally installed by Declarant, unless

the prior approval for any substantial change is obtained from the Architectural Control Committee. No tree or shrub, the trunk of which exceeds two (2) inches in diameter, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Architectural Control Committee. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Architectural Control Committee.

X Section 5. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by Declarant, and except any approved by the Architectural Control Committee.

ARTICLE VII

EXTERIOR MAINTENANCE

4 Each Owner shall at all times maintain in good repair the exterior portions of the residential structures, including the roof, paint coating, stain or other exterior finishing colors on all such structures. All necessary and appropriate maintenance shall be performed in accordance with the standards established and imposed from time to time by the Board of Directors consistent with maintenance of the Property as a first class residential community. All repairs, maintenance, and replacements must be approved in writing by the Architectural Control Committee. If in the exercise of the reasonable judgment of the Board of Directors, any exterior portion of any residential structure is not properly maintained in accordance with the standards from time to time established and imposed by the Board of Directors (which standards may be greater or more stringent than the standards prescribed by any applicable building, zoning, planning or other governmental codes or regulations), the Board of Directors may give written notice to the Owner responsible for said maintenance which shall, in reasonable detail, describe the deficiencies in such maintenance.

...and the steps required by the Board of Directors to correct or cure such deficiencies. If such Owner fails to cure or correct such deficiencies within twenty (20) days after the giving of such notice of deficiency (or the nature of such deficiency is such that a greater or lesser period is required to effect such cure or remedy, if such Owner fails to commence such cure or remedy within a reasonable period and to diligently complete the same), the Board of Directors may, at its option, take such steps and extend such monies as may be necessary and appropriate to cure and correct such deficiencies and may levy or assess the amount so expended against the Owner responsible for such deficiency. Such assessment shall be by individual special assessment and shall be collected and shall constitute a continuing lien on the Lot as provided in Article V of this Declaration.

ARTICLE VIII

PARTY WALLS

Section 1. General. Each wall built as part of the original construction of any attached residential structure constructed upon the Property, and placed on the dividing line between the Lots thereof shall constitute a party wall, and each Owner shall own that portion of the wall which stands on his own Lot, with a cross-easement of support in the other portion. There shall be no openings constructed in any party wall.

Section 2. Sharing of Costs of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

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 the same, but no greater dimension of said party wall, or of any extension or restoration thereof, shall be placed upon the land of the Owner not extending, constructing, or restoring said party wall, or of any extension.

ston thereon already built, that may be made by either of said Owners, or by those claiming under them respectively, shall be placed upon the land of the other Owner, without the written consent of the latter first obtained. Each Owner is hereby granted a mutual easement by the Owners of Lots with adjoining party walls for the purpose of conducting such repair or maintenance of the party walls as may be reasonably required hereunder. If the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice subject, however, to the right of any such Owner to call for a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions. In the event an Owner fails or refuses to conduct required repairs to a party wall, the Mortgagee(s), if any, of the Lots affected by such damaged party wall shall have the right to enter the Lots and conduct any necessary repairs to the party wall that an Owner is authorized to conduct. In the event any residential unit built under this Article VIII is destroyed or removed by or for any cause, if replaced said unit shall be replaced with a unit of at least similar size and type, however, not exceeding the dimensions of the previous unit.

Section 4. Weather Proofing. Notwithstanding any other provision of this Declaration, any 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 VIII shall be appurtenant to the land and shall pass to such Owners' successors in title.

ing concerning a party wall, or under the provisions of this Article VIII, each party shall choose one arbiter, and such arbiters shall choose an additional arbiter, and the decision of a majority of all the arbiters shall be final and conclusive of the question involved.

ARTICLE IX

GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of this Article IX shall be applicable to all Lots situated within the Property.

Section 2. Land Use. No Lot shall be used except for residential purposes. No business, service repair or maintenance for the general public or Owners shall be allowed on any Lot or on the Common Area at any time. Temporary use for model homes, parking lots, construction trailers, or sales offices shall be permitted for the Declarant.

Section 3. Building Location. Buildings shall be located in conformance with the Zoning Code of the applicable governmental authority, and any specific zoning approvals thereunder, or as originally constructed on a Lot by Declarant. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 4. Open Space. Any part of any plat of the Property containing Open Space for the planned unit development, as required by the Palm Beach County Zoning Code as it existed on the date of zoning approval by Palm Beach County, may not be vacated in whole or in part unless the entire plat is vacated.

SECTION 5. NUISANCES. NO NOXIOUS OR OFFENSIVE ACTIVITY

shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing and whose decision shall be final.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the public view or adjoining properties, except on days of pick-up. Provided, however, that any of the Property not yet developed by Declarant shall be maintained in a clean condition, but shall not be expected to be maintained in a manicured condition.

Section 6. Temporary Structures. Except as to the Declarant, no structure of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot or on the Common Area either temporarily or permanently. No gas tank, gas container, or gas cylinder (except gas tanks, gas containers or gas cylinders as placed by the Declarant in connection with the installation of swimming pools, or gas tanks for barbeques) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all gas tanks, gas containers and gas cylinders (except gas tanks, gas containers or gas cylinders as placed by the Declarant in connection with the in-

...restriction on swimming pools, or gas tanks for barbeques, shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the Architectural Control Committee.

Section 7. Signs. No "for rent", "for sale" or other sign of any kind shall be displayed to the public view on the Property without the prior written consent of the Board of Directors of the Association, provided that the Declarant, so long as it has not sold all of its Lots in the Property shall retain the right to disapprove any signs displayed to the public view.

Section 8. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 9. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats, or other household pets may be kept, subject to rules and regulations of the Association, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to have excretions on any Lot, or anywhere else within the Property except in locations designated by the Association in its rules and regulations. In no event shall an Owner or any other person allow a dog anywhere on the Property unless carried or held on a leash not to exceed six (6) feet.

fully observed by their families, guests, visitors, servants, lessees and persons over whom they exercise control and supervision. In order to change or amend any Rule or Regulation or adopt new Rules and Regulations, the same must be approved by a majority of the Board of Directors. No vote of the membership shall be required. A change, amendment or adoption of a Rule or Regulation shall not require an amendment to the Declaration or the By-Laws.

ARTICLE X

GENERAL PROVISIONS

Section 1. Ownership in Rainberry at West Boca. Rainberry Park comprises a portion of the community known as Rainberry at West Boca by taking title to a Unit, each Owner becomes subject to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions of Rainberry at West Boca filed in Official Records Book ____, Page ____, of the Public Records of Palm Beach County, Florida. Among other things that document provides that an Owner shall become a member of the Rainberry at West Boca Property Owners' Association, Inc; shall acquire certain property rights to Common Areas within Rainberry at West Boca; and shall become subject to the assessments of the Property Owners' Association.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any 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.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no

way affect any other provisions which shall remain in full force and effect.

Section 4. Duration/Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners, except that the Declarant may amend this Declaration without the consent of the Association or any Lot Owner(s) for so long as it is the owner of any portion of the Property described in Exhibit "A" or "B" in the ordinary course of business.

Section 5. Mortgagee's Notices. Upon written request to the Association, identifying the name and address of the mortgagee holding a first mortgage on a Lot, the Association will provide timely written notice of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a first mortgage held, insured, or guaranteed by such mortgagee.

B. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot, which remains uncured for a period of sixty (60) days.

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed action which would require the consent of a specific percentage of mortgagees.

The Association shall also make available for inspection to all Owners, lenders and to holders, insurers and guarantors of any first mortgage, upon request, during normal business hours,

... of plumbing pipes, or gas tanks for water heaters, shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the Architectural Control Committee.

Section 7. Signs. No "for rent", "for sale" or other sign of any kind shall be displayed to the public view on the Property without the prior written consent of the Board of Directors of the Association, provided that the Declarant, so long as it has not sold all of its Lots in the Property shall retain the right to disapprove any signs displayed to the public view.

Section 8. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 9. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats, or other household pets may be kept, subject to rules and regulations of the Association, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to have excretions on any Lot, or anywhere else within the Property except in locations designated by the Association in its rules and regulations. In no event shall an Owner or any other person allow a dog anywhere on the Property unless carried or held on a leash not to exceed six (6) feet.

lien of the assessment provided for in this Article V shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid assessments. An institutional lender is defined as a state or federal bank or savings and loan association, an insurance company, trust company, savings bank, credit union, real estate or mortgage investment trust, mortgage broker, mortgage banker, private mortgage insurance company, the United States Veterans' Administration, United States Federal Housing Administration or a lender generally recognized in the community as an institutional lender. Any assignee of a mortgage originated by an institutional lender shall be deemed an institutional lender for the purposes of said mortgage. The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any similar institutions created in the future shall be deemed institutional lenders, regardless of where any mortgage held by any of them originated. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provision of this Section 9, shall be deemed to be an assessment divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 10. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from the assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

SECTION 10. VISIBILITY AT INTERSECTIONS. NO OBSTRUCTION TO
visibility at street intersections shall be permitted.

Section 11. Commercial Trucks, Trailers, Campers and Boats.

No commercial vehicles shall be permitted to be parked or to be stored at any place on any Lot or on any of the Common Area, except only during the periods of approved construction on said Lot, or Common Area and except that they may be stored within garages or behind patio walls if not visible from the streets or any Lot.

The term "commercial vehicle" shall include all trucks, vehicles, and vehicular equipment such as trailers which bear signs or shall have printed some reference to any commercial undertaking or enterprise. Said term shall also include any truck, vehicle, and vehicular equipment such as trailers which are regularly used for carrying equipment or materials which are used for commercial purposes and said equipment and/or materials are visible to a passerby upon casual inspection. No trucks (other than standard size or smaller, pick-up trucks, panel trucks/vans), campers mobile homes, motor homes, boats, house trailers, or trailers of every other kind or description shall be permitted to be parked or to be stored at any place on any Lot or in any of the Common Area, except only during the periods of approved construction on said Lot or Common Area, and except that they may be stored within garages or behind patio walls if not visible from the street or any Lot. This Section shall not apply to the temporary parking of commercial vehicles when being used for providing pick-up, delivery and other commercial services required by the Association or its members.

Section 12. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in underground or in walled-in areas; provided, however, that the requirements from time to time of Palm Beach County or its franchises for

the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 13. Drainage. No changes in elevations of Property subject to these Restrictions shall be made which will cause undue hardship to adjoining property with respect to natural runoff of rain water.

Section 14. Burial of Pipe and Tanks. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Common Area above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

Section 15. Drying Areas. No clothing, laundry or wash shall be aired or dried on any portion of any Lot or street in an area exposed to view from any other Lot. No prohibition of outside clotheslines or drying areas shall be permitted; provided that nothing herein shall prohibit the Architectural Control Committee from enacting reasonable regulations that do not have the effect of prohibiting such drying areas or clotheslines as to any unit.

Section 16. Certain Restrictions, Rules and Regulations. The following restrictions, rules and regulations shall be adhered to by each Owner, lessee, their guests and visitors:

(a) No Owner, lessee, their guests or visitors shall make or permit any disturbance that will interfere with the rights, comforts or convenience of others.

(b) All Owners and lessees of Lots in the Properties shall abide by this Declaration, the Articles of Incorporation, the By-Laws and all Rules and Regulations as they are adopted from time to time by the Board of Directors. The Owners shall, at all times, obey the Rules and Regulations and shall use their best efforts to see that they are faith-

lations, and the books, records and financial statements of the Association. Any holder of a first mortgage on a Lot shall be entitled, upon written request, to a copy of the Association's financial statement for the immediately preceding fiscal years.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this ____ day of ____ 1984.

Signed, sealed and delivered
in the presence of:

DECLARANT:
RAINBERRY PARK, INC.,
a Florida corporation

By: _____
President
(Seal)

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this ____ day of _____, 1984, by _____, as President of Rainberry Park, Inc., on behalf of the corporation.

Notary Public,
State of Florida