

**AMENDED AND RESTATED**  
**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**  
**FOR**  
**RAINBERRY BAY HOMES**

WHEREAS, the Declaration of Covenants and Restrictions for RAINBERRY BAY HOMES ASSOCIATION, INC., dated June 14, 1978 (the "Original Declaration"), was recorded in Official Record Book 2882, page 1333, Public Records of Palm Beach County, Florida, and encumbers real property within the RAINBERRY BAY HOMES ASSOCIATION, as described therein; and

WHEREAS, RAINBERRY BAY HOMES ASSOCIATION, INC., is the successor in title and interest to the original Developer; and

WHEREAS, the RAINBERRY BAY HOMES ASSOCIATION, INC., Statement of Marketable Title Action Under Chapter 712, Florida Statute was recorded in Official Record Book 16911, page 0380, Public Records of Palm Beach County, Florida,

WHEREAS, the Original Declaration, as supplemented, amended and restated, including this amendment and restatement, shall be referred to as the "Declaration";

NOW, THEREFORE, THIS AMENDED AND RESTATED DECLARATION is made this 14 day of June, 1978 by DIMENSIONAL BUILDERS, INC., a Florida corporation, \_\_\_ day of \_\_\_\_\_, 2011, by a vote of the Members of the Rainberry Bay Homes Association, Inc., which declares that the real property described in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") set forth below.

**ARTICLE I**  
**Definitions**

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

- (a) **"Master Association"** shall mean and refer to the RAINBERRY BAY MASTER ASSOCIATION, INC., a Florida corporation not-for-profit, ~~which is to be incorporated~~ which is governed by Chapters 617 and 720, Fla. Stat., where applicable, and as same are amended from time to time.
- (b) **"Homes Association"** shall mean and refer to the RAINBERRY BAY HOMES ASSOCIATION, INC., a Florida corporation not-for-profit, ~~which is to be incorporated~~ which is governed by Chapters 617 and 720, Fla. Stat., where applicable, and as same are amended from time to time.
- (c) **"The Properties"** shall mean and refer to all such existing properties and additions thereto as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

- (d) "Lot" shall mean and refer to any lot within The Properties and any lot shown upon any resubdivision of such property.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties.
- (f) "Member" shall mean and refer to all those Owners who are members of the Homes Association as provided in Article III, Section 1 hereof.
- (g) "Member in Good Standing" shall mean and refer to all those Owners who are members of the Homes Association as provided in Article III, Section 1 hereof and who are not delinquent in payment of assessments or other monetary obligations for more than ninety (90) days. Any such Member who is delinquent in the payment of assessments or other monetary obligations in excess of ninety (90) days shall be deemed a Member not in good standing.
- (gh) "Developer" shall mean and refer to DIMENSIONAL BUILDERS, INC., a Florida corporation and DIMENSIONAL BUILDERS & ASSOCIATES Ltd., a Florida limited partnership, together with their respective successors and assigns.
- (hi) "Zero Lot Line" shall mean and refer to any Lot the area of which is less than 7,500 square feet.
- (ij) "Detached Lot" shall mean and refer to any Lot the area of which is 7,500 square feet or more.
- (jk) "Estates Lot", also known as "Riviera Drive", shall mean and refer to any Lot in the Amended Plat of Rainberry Estates, according to the plat thereof, recorded in Plat Book 49, Pages 60 and 61 of the Public Records of Palm Beach County, Florida, as amended by the Second Amended Plat of Rainberry Estates, recorded in Plat Book 5464, at Page 907, of the Public Records of Palm Beach County, Florida.

## ARTICLE II

### Property Subject to This Declaration: Additions Thereto

**Section 1. Legal Description.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Delray Beach, Palm Beach County, Florida and is more particularly described as follows: as an Exhibit attached to this Declaration.

~~Lots 1 through 40 inclusive of Block 1, and Lots 1 through 11 inclusive of Block 2, and Lots 1 through 5 inclusive of Block 3, and Lots 1 through 14 inclusive of Block 4, and Lots 1 through 26 inclusive of Block 5, and Lots 1 through 21 inclusive of Block 6, in RAINBERRY BAY SECTION ONE according~~

~~to the Plat thereof recorded in Plat Book 33, Pages 174-175 of the Public Records of Palm Beach County, Florida.~~

~~Developer may from time to time bring other land under the provisions hereof by recorded supplemental declarations (See Exhibit "A" for Real Property Added by Recorded Supplemental Declarations).~~

**Section 2. Merger or Consolidation.** Upon a merger or consolidation of any association referred to herein with any other association as provided in its articles of incorporation, its properties, rights and obligations 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 of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within The Properties together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within The Properties. Any merger or consolidation of the Homes Association with any other Association shall be in accordance with all applicable laws, including, but not limited to Chapter 720, Fla. Stat. and Chapter 617, Fla. Stat., as same may be amended from time to time.

### ARTICLE III Membership and Voting Rights in the 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 Properties shall be a member of the Homes Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of any obligation shall not be a member of said association.

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

~~Class A:~~ ~~Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A mMembers shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised by one such member as specified in the Articles of Incorporation of the Homes Association but in no event shall more than one vote be cast with respect to any such Lot.~~

~~Class B:~~ ~~The Class B member shall be the Developer. The Class B member shall be entitled to one vote for each Lot in which it holds the interest required for membership by Section 1; provided, however, that, notwithstanding any provision to the contrary, the Developer shall have the right to elect a majority of the Board of Directors of the Homes Association until such time as the Developer no longer holds the title to any portion of The Properties. If the~~

~~Developer elects to bring other land under the provisions hereof in accordance with Article II, the right of Developer to elect a majority of the Board of Directors shall extend until the Developer no longer holds title to any portion of such future lands as may be brought under the provisions hereof.~~

#### ARTICLE IV

##### Homes Association - Covenant for Maintenance Assessment

**Section 1. Creation of the Lien and Personal Obligation of the Assessments.** ~~The Developer, for each Lot owned by it within The Properties hereby covenants, and e~~Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Homes Association assessments for maintenance as provided in Section 3 hereof; and assessments due to the Master Association as hereinafter referred to; such assessments to be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, 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 against which each such assessment is made. Each such assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due.

The assessments of the Homes Association, both regular and special, shall be imposed equally on all Zero Lot Line Lots, equally on all Detached Lots, and equally on all Estates Lots. However, the assessments upon the Zero-Lot Line Lots, the Detached Lots, and the Estates Lots, need not be equal to each other. The Homes Association, in its discretion, may distinguish between the assessments based on the estimated difference in maintenance costs of the Zero Lot Line Lots, the Detached Lots, and the Estates Lots.

**Section 2. Purpose of Assessments.** The assessments levied by the Homes Association shall be used exclusively for exterior maintenance as provided in Section 3 hereof, for payment to the Master Association as hereinafter referred to, or to promote the health, safety, welfare and recreational opportunities of the Members of the Homes Association and their families residing with them, their guests and tenants.

**Section 3. Exterior Maintenance.** The Homes Association shall provide exterior maintenance for each building within The Properties as follows:

- (a) paint, caulk, repair, replace and/or care for roofs and roof ventilators, gutters and downspouts; exterior wood, wood composition, stucco and "stone" building surfaces, and fences, as needed upon inspection and approval. The inspection is required to be performed by the Homes Association prior to commencement of any work to determine if the repair, replacement and/or care is excluded by the Declaration and therefore not the responsibility of the Homes Association. Furthermore, any repair, replacement, and/or care that would be covered by the unit owners insurance is excluded, even if the unit owner fails to purchase insurance. In addition, the Homes Association shall be responsible for

cleaning all gutters and downspouts as needed in the discretion of the Board of Directors.

- (b) maintain the landscaping, trees, shrubs, grass, ~~sprinkler heads~~, entry walks, driveways and other exterior improvements situated on each Lot as originally installed by the Developer and such expenses may be apportioned on a flat overall charge (with separate charges for maintenance of Zero Lot Line Lots and Detached Lots) against all Lots subject to assessment by the Homes Association.
- (c) removal of mildew stain from roofs and sidewalks
- (d) ~~provide termite control and insurance protection against damage caused by subterranean termites, and exterior pest control treatment on a monthly basis for the control of perimeter invaders, including, but not limited to pharaoh ants, carpenter ants, silverfish, spiders and roaches;~~ termite and pest control treatment may be provided by the Master Association in accordance with the Homeowners Association Covenants for Rainberry Bay Master Association, as same may be amended from time to time, and, if performed, shall be a common expense of the Master Association. In the alternative, and if not performed by the Master Association, the Homes Association shall have the authority to provide such termite and pest control treatment on the exteriors of the Lots and any Common Areas.
- (e) repair, replace and maintain initially-installed shingle roofs and roof ventilators, subject to inspection and recommendation by an independent roofing contractor. This responsibility on the part of the Association is limited to the standard roof as it was originally installed and does not extend to additions, changes or upgrades.

Any roof additions, whether attached to original building or installed over extensions or alterations, e.g., skylights and surrounding flashing, shall be the sole responsibility of the current homeowner.

Any upgrades in roofing materials from the original installation and any subsequent repairs in those cases will still be made by the Homes Association. However, the difference in cost for such upgrades and subsequent repairs, which are directly related to the upgrades in roofing materials, shall be the responsibility of the current homeowner.

Any newly installed roof covered by warranty shall be repaired by the installing roofer. Such roofs will be installed with a cleaning program to be in effect after a period of two years after the date of installation.

- (f) repair, replace and maintain, as needed, originally-sized basic driveways and entry walks, as well as any upgrades provided or installed by the Association. The current homeowner does have the option to pay any

add-on fees for such repair, replacement and maintenance of items that differed from original specifications or Association-provided or installed upgrades, and were paid for at time of original installation. Determination of need for repair, replacement and maintenance of driveways and entry walks under these provisions shall be made only after inspection and recommendation by an independent contractor.

It is the responsibility of the current homeowner to maintain, repair or replace any driveway or entry walk not of the basic originally-sized installed version. Consequently, the Association is not responsible for pressure cleaning, maintenance, repair or replacement of any additions or modifications to the original driveway or entry walk, whether or not the modification includes pavers or stamped concrete, is painted or is constructed of a different building material than the basic version, except where such addition or modification was provided or installed by the Association.

The Homes Association shall NOT be responsible for:

- (a) replacement of exterior glass
- (b) painting, repair, replacement or care of:
  - (1) screening and screen frames (including screen porch frames)
  - (2) metal window, door and garage door frames
  - (3) hinged, overhead or sliding door hardware
  - (4) replacement and repair of gutters and downspouts
  - (5) any Owner-installed improvements located on a Lot
- (c) clearing or repair of waste lines
- (d) repair of water line from water meter to and into the home
- (e) removal of mildew stains from walls, or patio decks
- (f) repair of driveway damage caused by automobile fluid leaks
- (g) repair or replacement of roof damage caused by Acts of God, windstorm, hurricane, fire or other casualty; nor shall the Association be liable for consequential damages caused by the failure of a homeowner to maintain a home.
- (h) repair of any mechanical equipment which is part of the residences or any repairs which could be made pursuant to the terms of any warranty.

The obligations of the Homes Association as described herein shall extend only to those buildings, fences, landscaping, etc., as were originally installed by the Developer, but such Association may, at its option, and with prior notice, provide exterior maintenance on

Owner - installed improvements, fences, landscaping, etc., and levy upon the Owner on whose Lot such work is performed a special assessment equal to the cost of such additional work. The Board of Directors of the Homes Association shall estimate the cost of any such exterior maintenance for each year and shall fix the assessment for each year, but said Board shall, thereafter, make such adjustment with the Owners as is necessary to reflect the actual cost of such exterior maintenance. Nothing contained herein shall obligate the Homes Association to make repairs or replacements of improvements damaged by fire, windstorm, hail or other casualty or the negligence of the Homeowner. The Homes Association shall not be obligated to repair any such mechanical equipment (e.g., air-conditioning units) which is part of the residences located on the Lots, nor shall it be responsible for any repairs which could be made pursuant to the terms of any warranty covering a residence. The Association shall not be responsible for repair or maintenance of any damage which can reasonably be ascribed to modifications or additions by the owner, nor any maintenance of any inaccessible areas due to such modifications or additions. The burden of proving that any modification or addition described herein was originally installed by the Developer shall rest upon the Homeowner.

It is the intention hereof that the Homes Association shall perform only routine maintenance as described in this Section 3 and it shall not cover casualty losses.

Nothing contained herein shall cause the Association to be liable for consequential damages resulting from failure to maintain a Home. The responsibility of the Association is limited to the maintenance specified in this Article. For example: in the event of a roof leak, the Association shall not be responsible for repairs to the interior of the home or for damage to its contents.

In addition, the Homes Association shall have the authority, though not the obligation, to enter upon any Lot, during reasonable hours (except in the event of an emergency), including an abandoned Lot, on an emergency basis or where necessary, in the sole and absolute discretion of the Board of Directors, to perform any required or necessary maintenance upon such Lot in order to protect that Lot, any neighboring Lot, or any Association Common Areas. The cost of any such maintenance required or necessary in the discretion of the Board of Directors pursuant to this Section shall be levied as an individual assessment against the Lot, with full rights of collection pursuant to Article IV, Section 6 of this Declaration.

**Section 4. Date of Commencement of Annual Assessments: Due Dates.** ~~The annual assessments provided for in this Article V shall commence on the first day of the month next following the recordation of these covenants.~~

The annual assessments shall be payable in advance in monthly installments, ~~or in annual or quarter-annual installments if so~~ as determined by the Board of Directors of the Homes Association ("Collection Period").

The due date of any special assessment shall be fixed in the Board resolution authorizing such assessments.

The amounts of the annual assessments for the Detached Lot, Zero Lot Line Lot and

Estate Lot shall be established by the Board of Directors from time to time for each Detached Lot, Zero Lot Line Lot and Estate Lot, payable in equal installments. The assessment may be amended at any time by action of said Board of Directors. The Owners shall be given reasonable notice of any amended annual assessment. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

~~The due date of any special assessment shall be fixed in the Board resolution authorizing such assessment.~~

**Section 5. Duties of the Board of Directors.** The Board of Directors of the Homes Association shall fix the date of commencement and the amount of the assessment against each Lot subject to the association's jurisdiction for each assessment period at least 30 days in advance of such date or period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Homes Association shall upon demand at any time furnish to any Owner liable for an annual or special assessment a certificate in writing signed by an officer of the Homes Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Homes Association therein stated to have been paid.

The Homes Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firm or corporations for management services. The Homes Association shall have all other powers provided in its Articles of Incorporation.

**Section 6. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of the Association.** If the assessments are not paid on the date when due (being the date specified in Section 4 hereof), then such assessments shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within 30 days after the due date, a late charge of ~~\$50.00~~ \$25.00 or 5% of the delinquent assessment installment, whichever is greater, per collection period, as well as interest in the highest amount allowable by law, shall be imposed and the Homes Association may bring an action at law against the owner personally obligated to pay the same or may record a claim of lien against the property on which the assessment is unpaid, or may foreclose the lien against the property on which the assessment is unpaid or may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs of preparing and filing

the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include a late charge on the assessment as above provided, interest and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Homes Association shall be entitled to attorneys' fees in connection with any appeal of any such action.

It shall be the legal duty and responsibility of the Homes Association to enforce payment of the assessments hereunder.

**Section 7. Subordination of the Lien to Mortgages.** The lien of the assessment provided for in this Article IV 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 or credit union. 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. Notwithstanding any term herein to the contrary, for all mortgages encumbering a Lot or Tract and recorded in the Public Records after the effective date of this amendment, the provisions of Section 720.3085, Fla. Stat., as now exist or may hereafter be amended, shall apply to the mortgagee's obligation for the payment of assessments or other charges accruing prior to the date the mortgagee obtains title to the Lot or Tract. In addition, and notwithstanding the foregoing, any other purchaser or other person who otherwise acquires title at a foreclosure sale shall be governed at all times by the provisions of Chapter 720, Fla. Stat., as may now exist or may hereafter be amended from time to time. A Parcel Owner is jointly and severally liable with the previous Parcel Owner for all unpaid assessments that came due up to the time of transfer of title, including but not limited to foreclosure and/or deed in lieu of foreclosure except as provided under law pursuant to Section 720.3085, Fla. Stat., as same may be amended from time to time. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section 7, shall be deemed to be an assessment divided equally among, payable by, and a lien against all Lots subject to assessment by the assessing association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Liens for assessments under this Article IV shall be of equal dignity with liens for assessments of the Master Association. Further, and notwithstanding the foregoing, the lien of any assessment provided for in this Declaration shall comply with all requirements under Florida law, including, but not limited to, the requirements of Section 720.308 and Section 720.3085, Fla. Stat.

**Section 8. Access at Reasonable Hours.** For the purpose solely of performing the exterior maintenance authorized by this Article, including all of the maintenance and work permitted under Section 3 of this Article, the Homes Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day except Sunday. In the event of an emergency, such right of entry shall exist without notice and on any day, including Sunday.

**Section 9. Collection of Master Association Assessments.** The Homes Association

shall collect the assessments of the Master Association, including, but not limited to, special assessments as well as regular quarterly assessments, upon certification by the Master Association to the Homes Association from time to time of the amount of assessment with respect to each Lot. The Homes Association shall only be required to remit to the Master Association the actual assessments collected from the individual Owners. In the event that only a portion of the assessments are is collected, the amount collected shall be applied on a proportionate basis such that both the Master Association and Homes Association shall each receive their proportionate share of the amount collected from the individual Owners first in payment of the assessments of the Master Association and next in payment of the assessments of the Homes Association. Payment shall be made to the Master Association on or before the fifteenth day of the month following the last month in any calendar quarter for monies collected during the previous quarter. In the event that any past due assessment is uncollectible, such assessment shall to be divided equally among and payable by all of the Lots subject to assessment by the Homes Association as provided in Section 7 hereof, any amounts representing assessments due the Master Association shall be divided equally among all properties subject to assessment by the Master Association, such that any shortfall of Homes assessments shall be a Common Expense of the Homes Association to be shared equally by all Homes Owners. The Master Association may, but is under no obligation, assign its collection rights to collect past due assessments to the Homes Association.

~~Section 10. Effect on Developer.~~ Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as Developer is the owner of any Lot, the Developer shall not be liable for assessments against such Lot, provided that Developer funds any deficit in operating expenses of the Homes Association. Developer may at any time commence paying such assessments as to Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Homes Association.

~~Section 11~~ Section 10. Trust Funds Reserves Deferred Maintenance Expenditures. The portion of all regular assessments collected by the Homes Association for reserves for non budgeted maintenance including but not limited to painting and roof repairs and replacement, and the entire amount of all special assessments, shall be held by the Homes Association in trust for the Owners of all Lots, as their interests may appear. Such funds may be withdrawn at the direction of the Board as required. The Homes Association Board of Directors shall have the authority to provide for funding accounts for deferred maintenance expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance (also referred to as "Reserves"). Such funds may be used at the direction of the Board of Directors, in its sole and absolute discretion. Additionally, where there is a surplus in collected assessments at the end of any fiscal year, such surplus funds may be applied to any Association reserve fund or may be applied as a credit towards future assessments.

### Section 11. Party Walls.

Section 1. General. Each wall built as part of the original construction of any duplex dwellings or other attached dwellings upon the Properties 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.

Section 2. Sharing of Costs of Repair. The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. The right of any Owner to contribution from any other Owner under this Section 11 shall be appurtenant to the land and shall pass to such Owner's successors in title.

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 wall but may not extend or construct any extension of said party wall or otherwise alter the party wall in such a way as to make it different than the wall existing prior to such fire or other casualty, without the written consent of the adjoining Owner. Notwithstanding the foregoing, any Owner who causes damage to a party wall due to his or her negligent or willful acts shall bear the whole cost of providing the necessary repair or maintenance of such party wall.

## **ARTICLE V** **RESTRICTIONS ON SALES AND LEASES**

All sales, leases and other conveyances or transfer of title or occupancy to a Unit shall be approved and governed pursuant to Article VI, Section 20 of the Homeowners Association Covenants for Rainberry Bay Master Association, as same may be amended from time to time.

## **ARTICLE V VI** **General Provisions**

**Section 1. Duration.** 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 Developer~~, the Master Association, the Homes Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term of 99 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years each unless an instrument signed by the then Owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

**Section 2. Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration, or as otherwise required by law, other than notices sent to all homeowners as part of a general mailing, shall be deemed to have been properly sent when; (a) personally delivered and a receipt obtained or; (b) mailed, ~~Certified Mail Return Receipt Requested~~, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing, unless certified mail is required by law.

**Section 3. Enforcement.** Enforcement of these covenants and restrictions, or the rules and regulations of the Association, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created to these covenants; and failure by ~~the Developer~~, any association or 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. ~~These covenants may also be enforced by the Architectural Control Board~~

established by the Homeowners' Association Covenants to which The Properties are subject. In the event it becomes necessary to enforce these Covenants and Restrictions, or the rules and regulations of the Association, by any of the aforementioned parties, the prevailing party in any such action shall be entitled to recover reasonable attorneys' fees and costs, including such fees and costs on appeal. The Association shall have a right to collect attorneys' fees and costs of enforcement from any violator not only in conjunction with legal action, but also if legal action is not instituted. Unless otherwise prohibited by Florida law, any fine levied by the Association and approved in accordance with Section 720.305, Fla. Stat., may become a lien upon any Lot or Unit, and any such fine shall be treated as an assessment pursuant to this Declaration, with full collection rights. Fines in the aggregate may exceed One Thousand (\$1,000.00) Dollars.

**Section 4. Severability.** Invalidation of any 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 5. Amendment.** ~~In addition to any other manner herein provided for the amendment of this Declaration, the Covenants, Restrictions, Easements, charges and Liens of this agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by the Developer, for so long as it holds title to any Lot affected by this Declaration. Alternatively, This Declaration may be amended by Owners casting not less than two-thirds (2/3) affirmative vote of the total membership in the Homes Association of the votes of members at a members meeting, providing that so long as the Developer is the Owner of any Lot affected by this Declaration Developer's consent must be obtained. Such vote may be cast in person, by proxy or by absentee ballot. Further, absentee ballots may be counted, along with proxies, in determining whether a quorum has been established at any meeting of the Members.~~ Notwithstanding the foregoing provisions, no amendment as required by the ordinances of the City of Delray Beach, shall be effective without the written consent of the City of Delray Beach. Amendments approved by an affirmative vote of two thirds (2/3) of the total members of the Association shall be evidenced by a certificate which shall be executed by the appropriate corporate officers and shall be recorded in the Public Records of Palm Beach County, Florida. In addition, amendments may also be approved by the written consent of the Members in accordance with Section 617.0701(4), Fla. Stat.

**Section 6. Effective Date.** This Declaration shall become effective upon its recordation in the Palm Beach County Public Records.

**Section 7. Cumulative Effect.** The provisions of this Declaration shall be cumulative to the provisions of the Homeowners' Association Covenants of Rainberry Bay (Master Declaration) being recorded by Developer. The homeowners' association referred to in said Agreement is the Master Association.

**Section 8. Insurance on the Individual Homes.** The Homes Association, through the Board of Directors, shall have no obligation to provide any insurance on the individual homes within Rainberry Bay Homes Association, or to insure any personal property owned by the individual Homeowners.

Section 9. Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

EXECUTED as of the date first above written. —

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DIMENTIONAL BUILDERS, INC., a  
Florida corporation

\_\_\_\_\_  
\_\_\_\_\_  
By: /s/ Richard Siemens Secretary  
(CORPORATE SEAL)

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

\_\_\_\_\_  
The foregoing instrument was acknowledged before me, this 14 day of June, 1978, by  
RICHARD SIEMENS, President and Stanley M. Katz, Secretary, of DIMENTIONAL BUILDERS,  
INC., a Florida corporation, on behalf of the corporation.

/s/Elayne D. Nash

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EXHIBIT "A"  
ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO  
SECTION 1. LEGAL DESCRIPTION

RAINBERRY BAY HOMES ASSOCIATION, INC.

Legal Description of Property Subject to Declaration

Lots 1 through 40 inclusive of Block 1; and Lots 1 through 11 inclusive of Block 2; and Lots 1 through 5 inclusive of Block 3; and Lots 1 through 14 inclusive of Block 4; and Lots 1 through 26 inclusive of Block 5; and Lots 1 through 21 inclusive of Block 6; all of RAINBERRY BAY SECTION ONE, according to the Plat thereof recorded in Plat Book 33, Page 174, of the Public Records of Palm Beach County, Florida.

**Declaration ORB 2882 Pg 1334, recorded June 23, 1978.**

Together with:

Lots 1 through 12 inclusive of Block 12; Lots 1 through 14 inclusive of Block 13; Lots 1 through 43 inclusive of Block 14; Lots 1 through 11 inclusive of Block 15; Lots 1 through 33 inclusive of Block 16; and Tracts "AA", "BB" and "CC", all of RAINBERRY BAY SECTION SEVEN according to the Plat thereof, recorded in Plat Book 43, Page 88, of the Public Records of Palm Beach County, Florida.

**Third Supplement to Declaration, ORB 3668 Pg 861, recorded February 3, 1982.**

Together with:

Lots 1 through 32 inclusive all of RAINBERRY BAY SECTION EIGHT, according to the Plat thereof, recorded in Plat Book 47, Page 67, of the Public Records of Palm Beach County, Florida.

Together with:

Lots 1 through 56 inclusive, all of RAINBERRY BAY SECTION NINE according to the Plat thereof, recorded in Plat Book 47, Page 69, of the Public Records of Palm Beach County, Florida.

**Fourth Supplement to Declaration, ORB 4259 Pg 1959, recorded June 6, 1984.**

Together with:

Lots 10 through 19 inclusive of Block 8, and Lots 16 through 35 inclusive of Block 9 all of RAINBERRY BAY SECTION FIVE-A, according to the Plat thereof, recorded in Plat Book 45, Page 14, of the Public Records of Palm Beach County, Florida.

**Fifth Supplement to Declaration, ORB 4975 Pg 408, recorded August 18, 1986.**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
RAINBERRY BAY HOMES ASSOCIATION, INC.**

The undersigned subscribers, desiring to form a corporation not-for-profit under the Chapter 617, and 720, Florida Statutes, as amended, hereby adopt the following Amended and Restated Articles of Incorporation:

**ARTICLE I  
Name**

The name of the corporation shall be RAINBERRY BAY HOMES ASSOCIATION, INC., which is hereinafter referred to as "the Association".

**ARTICLE II  
Purposes and Powers**

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Restrictions and Protective Covenants for Rainberry Bay Homes dated June 14, 1978, and recorded June 23, 1978, in Official Records Book 2882, Page 1333, Public Records of Palm Beach County, Florida, as same may be amended and supplemented from time to time.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have the power:

A. To contract for the management of the Association and to delegate to the party with whom such contract has been entered the powers and duties of the Association except those which require specific approval of the Board of Directors or members.

B. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles and the Restrictions and Protective Covenants above identified, including all of the powers pursuant to Chapter 720, Fla. Stat., as same may be amended from time to time. The Association shall also have all of the powers necessary to implement the purposes of the Association, including all the powers of the Declaration of Restrictions and Protective Covenants and the Bylaws of the Association.

C. To promulgate and enforce Rules and Regulations governing the use of the individual Lots and all improvements and persons situated thereon or residing therein.

D. Suspend the voting rights of any Owner for any period during which any assessments or other monetary obligations against his or her Lot remain unpaid in excess of ninety (90) days.

### **ARTICLE III**

#### **Members**

Section 1. Membership. 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 shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

~~Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer as defined in the above-described Declaration of Restrictions and Protective Covenants, hereinafter referred to as "the Developer". Class A mMembers shall be entitled to one vote for each lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any lot, all such persons shall be members, but and the vote for such lot shall be exercised only by that one person designated in writing by all such the members as they among themselves determine. In no event shall more than one vote be cast with respect to any such lot.~~

~~Class B. The Class B member shall be the Developer. The Class B member shall be entitled to one vote for each lot in which it holds the interest required for membership in Section 1, provided however, that notwithstanding any provision to the contrary, the Developer shall have the right to elect a majority of the Board of Directors of the Association until such time as Developer no longer holds the title to any portion of the properties subject to the Homeowners' Association Covenants for Rainberry Bay being recorded simultaneously with the above-described Declaration or to any additional property which may have been brought under the provisions thereof by recorded supplemental declarations.~~

Section 3. Meetings of Members. The By-Laws of the Association shall provide for an annual meeting of members and may make provision for regular and special meetings of members other than the annual meeting. A quorum for the transaction of business at any meeting of the members shall exist if ~~33 and 1/3 %~~ thirty (30%) percent of the total number of members of the Homes Association in good standing shall be present or represented at the meeting, by proxy or by absentee ballot.

### **ARTICLE IV**

#### **Corporate Existence**

The corporation shall have perpetual existence.

## ARTICLE V Directors

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of ~~not less than three Directors, nor more than nine persons, but as many persons as the Board of Directors shall from time to time determine.~~ A majority of the directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for meetings of directors, including an annual meeting. Notwithstanding the foregoing, at no time shall more than one (1) Owner per Lot be entitled to serve on the Board of Directors at the same time.

~~Section 2. Original Board of Directors. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members in 1979 and until qualified successors are duly elected and have taken office, shall be as follows:~~

~~RICHARD SIEMENS 711 N.W. 25th Avenue Delray Beach, Florida 33445  
STANLEY M. KATZ 711 N.W. 25th Avenue Delray Beach, Florida 33445  
CAROLE SIEMENS 711 N.W. 25th Avenue Delray Beach, Florida 33445~~

~~Section 32. Election of Members of Board of Directors. Except for the first Board of Directors, dDirectors shall be elected by the members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for removal from office of directors. All directors shall be members of the Association, residing in the Rainberry Bay development or shall be authorized representatives, officers, or employees of corporate members of the Association provided that such limitations shall not apply to Directors appointed by the Developer.~~

~~Section 43. Duration of Office. Members elected to the Board of Directors shall hold office for 2 two (2) years unless they resign at which time they may continue to serve until a qualified successor is elected to fill the vacancy. Members elected to the Board of Directors may hold office for no more than two (2) consecutive elected terms, which shall include terms that any such member has served on the Master Board of Directors or Homes Board of Directors. Once a member has served for two (2) consecutive elected terms, such member must take at least one (1) year off from service on any such Board prior to being eligible to be a candidate for the Board of Directors again, or to be appointed to the Board of Directors to fill a vacancy pursuant to Section 4 hereof. For purposes of determining whether a member has served for two (2) consecutive elected terms, where a member is elected to fill a vacancy for the balance of an unexpired term for more than six (6) months, such member shall be deemed to have been elected to one (1) of the two (2) allowable consecutive terms under this Section.~~

~~Section 54. Vacancies. If a director shall for any reason cease to be a director, the remaining directors may elect a successor to fill the vacancy for the balance of the unexpired term, if the unexpired term is less than six months. If the unexpired term is more than six months or there are no remaining directors, the vacancy shall be filled by election by the general membership at a special election to be held as soon as expedient.~~

Section 65. The Association shall purchase and maintain adequate liability insurance, casualty insurance, Directors and Officers insurance, and any other insurance that the Board of Directors reasonably determines to obtain, in an minimum amount of \$500,000.00 to be determined in the reasonable discretion of the Board of Directors. In addition, the Association shall indemnify, defend and hold harmless all directors from liability incurred in the course of their activities as directors. Such obligation shall not exist in cases of fraud or criminal behavior which has been finally determined by appropriate courts of law.

## ARTICLE VI Officers

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary, and a Treasurer and such other officers as the Board of Directors may from time to time elect. Two (2) offices may be held by the same person, except that the President shall not also serve as the Secretary. The President of the Homes Association shall not be entitled to also serve as the President of the Master Association at the same time.

Section 2. Election and Appointment of Officers. The Officers of the Association, in accordance with any applicable provisions of the By-Laws, shall be elected by the Board of Directors for terms of one year and until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filling vacancies, and for the duties of the officers. ~~The President and Vice President shall be directors; other officers may or may not be directors of the Association.~~ All officers shall be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, ~~any~~ the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office other than that of the President shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy, from among the remaining eligible Directors, at any regular or special meeting.

~~Section 3. First Officers. The names and address of the first officers of the Association, who shall hold office until the annual meeting of directors in 1979 and until successors are duly elected and have taken office, shall be as follows:~~

| Office | Name | Address |
|--------|------|---------|
|--------|------|---------|

|           |                 |                                                  |
|-----------|-----------------|--------------------------------------------------|
| President | RICHARD SIEMENS | 711 N.W. 25th Avenue Delray Beach, Florida 33445 |
|-----------|-----------------|--------------------------------------------------|

|                |                 |                                                  |
|----------------|-----------------|--------------------------------------------------|
| Vice President | STANLEY M. KATZ | 711 N.W. 25th Avenue Delray Beach, Florida 33445 |
|----------------|-----------------|--------------------------------------------------|

|               |  |  |
|---------------|--|--|
| Secretary and |  |  |
|---------------|--|--|

|               |  |  |
|---------------|--|--|
| Treasurer and |  |  |
|---------------|--|--|

|                 |                |                                                  |
|-----------------|----------------|--------------------------------------------------|
| Asst. Secretary | CAROLE SIEMENS | 711 N.W. 25th Avenue Delray Beach, Florida 33445 |
|-----------------|----------------|--------------------------------------------------|

## ARTICLE VII By-Laws

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation. Such By-Laws may be altered, amended or repealed by the membership in the

manner set forth in the By-Laws.

## ARTICLE VIII

### Amendments

Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption by a majority of the members present, ~~and voting in person or by proxy, or by absentee ballot.~~ Such voting shall be either in person, by proxy or by absentee ballot. Further, absentee ballots may be counted, along with proxies, in determining whether a quorum has been established at any meeting of the Members.

**ARTICLE IX**  
**Registered Agent**

The County in the State of Florida where the principal office for the transaction of the business of this Association is to be located in the County of Palm Beach. The name and address of this Association's registered agent is ~~Becker & Poliakoff, P.A., 450 Australian Avenue South, West Palm Beach, Florida 33401-5034~~ St. John, Rossin Burr & Lemme, PLLC, 1601 Forum Place, Suite 700, West Palm Beach, Florida 33401, or such other registered agent as from time to time determined by the Board of Directors.

## ARTICLE X

### Subscribers

The names and addresses of the original subscribers to these Articles of Incorporation are:

|                 |                      |                             |
|-----------------|----------------------|-----------------------------|
| RICHARD SIEMENS | 711 N.W. 25th Avenue | Delray Beach, Florida 33445 |
| STANLEY M. KATZ | 711 N.W. 25th Avenue | Delray Beach, Florida 33445 |
| CAROLE SIEMENS  | 711 N.W. 25th Avenue | Delray Beach, Florida 33445 |

— IN WITNESS WHEREOF, the said subscribers have herunto set their hands this 26 day of July, 1978:

IN WITNESS WHEREOF, the undersigned registered agent has hereunto set his hands  
this      day of      , 20      .

Registered Agent

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, as \_\_\_\_\_ of Associated Corporate Services, LLC, who is Personally Known ☐ or Produced Identification ☐.

Type of Identification Produced: \_\_\_\_\_.

\_\_\_\_\_  
(SEAL) NOTARY PUBLIC, State of Florida at  
\_\_\_\_\_  
Large

M:\Association\Rainberry Bay Master\Document Restatement\2011 Amended and Restated Documents\Homes\Homes Articles revised 10-6-11.wpd

**AMENDED AND RESTATED BY-LAWS  
OF RAINBERRY BAY HOMES ASSOCIATION, INC.**

**ARTICLE I  
Definitions**

Section 1. "**Association**" shall mean and refer to the RAINBERRY BAY HOMES ASSOCIATION, INC., a ~~non-profit~~ not-for-profit corporation organized and existing under the laws of the State of Florida.

Section 2. The "**Properties**" shall mean and refer to The Properties as defined in the Declaration of Restrictions and Protective Covenants for Rainberry Bay Homes dated June 14, 1978 and recorded June 23, 1978 in Official Records Book 2882, at Page 1333 of the Public Records of Palm Beach County, Florida, as same may be amended or supplemented from time to time.

Section 3. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot within The Properties.

Section 4. "**Member**" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, of the Articles of Incorporation of the Association.

Section 5. "**Member in Good Standing**" shall mean and refer to all those Owners who are members of the Homes Association as provided in the Articles of Incorporation hereof and who are not delinquent in payment of assessments or other monetary obligations for more than ninety (90) days. Any such Member who is delinquent in the payment of assessments or other monetary obligations in excess of ninety (90) days shall be deemed a Member not in good standing.

Section 6. "**Assessment**" shall mean regular annual assessments for common expenses as well as special assessments, as that term is defined in Section 720.301(1), Fla. Stat. For purposes of this Declaration, the Association Bylaws and Articles of Incorporation, as well as for purposes of communication between the Association and its members, including notices of Board and Membership meetings, the term "Assessment" and "Maintenance Fees" shall be interchangeable and mean the same thing.

**ARTICLE II  
Location**

Section 1. The principal office of the Association shall be located at 2801 Rainberry Circle South, Delray Beach, Florida 33445.

**ARTICLE III  
Membership**

Section 1. Membership of the Association is as set forth in Article III, Section 1, of the

## Articles of Incorporation of the Association.

Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessment is imposed against each Owner of, and becomes a lien upon, the Properties against which such assessments are made as provided by Article IV of the Declaration of Restrictions and Protective Covenants for Rainberry Bay Homes to which the Properties are subject, which is dated June 14, 1978, and was recorded June 23, 1978, in Official Records Book 2882, at Page 1333, Public Records of Palm Beach County, Florida, as same may be amended or supplemented from time to time.

### ARTICLE IV Board of Directors

Section 1. The directors of the Association shall be elected at the annual meeting of the members as specified in the Articles of Incorporation. The election shall be decided by plurality vote of the members present and voting in person or by proxy, or by absentee ballot.

Nominations for directors may be made by a nominating search committee appointed by the Board of Directors in the manner described in the Association rules and regulations. ~~In any event n~~Nominations may be made by any Homeowner from the floor at the annual meeting or may be made by written petition to the Board of Directors which shall be included in the notice of the meeting, including by self-nomination, or by written notice prior to the meeting in a form and manner determined from time to time by the Board of Directors.

Section 2. Pursuant to Section 720.303(10), Fla. Stat., ~~Any~~ directors may be removed from office at any time with or without cause by the affirmative majority vote of the entire Association membership, ~~except that the directors elected by the Class B member may be removed only by the Class B member and except that directors named in the Articles of Incorporation may not be removed until the expiration of their terms.~~

Section 3. The first meeting of the duly elected Board of Directors, for the purpose of organization, including the election of officers, shall be held immediately as soon as expeditious, but not more than ten (10) days after the annual meeting of members, ~~provided the majority of the members of the Board elected be present. Any action taken at such meeting shall be by a majority of the whole Board. If the majority of the members of the Board elected shall not be present at that time, or if the directors shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty days after the annual meeting of members upon three days' notice in writing to each member of the Board elected, stating the time, place and object of such meeting.~~

Section 4. Regular meetings of the Board of Directors shall be held at Rainberry Bay, Delray Beach, Florida, on such days and at such hours as the Board of Directors may, by resolution, appoint.

Section 5. ~~No Notice shall be required to be given of any regular meeting of the Board of Directors.~~ Notices of all Board meetings, both regular and special meetings, shall be in

accordance with Florida Statutes.

Section 6. Special meetings of the Board of Directors may be called at any time by the President or any two members of the Board and shall be held at Rainberry Bay, Delray Beach, Florida.

~~Section 7. Notice of each special meeting of the Board of Directors, stating the time, place and purposes thereof, shall be given by or on behalf of the President, Secretary, or any two members of the Board to each member of the Board not less than three days by mail or one day by telephone or telegraph. Special meetings of the Board may also be held at any time without notice, by unanimous waiver of notice by all Directors.~~

Section ~~8~~ 7. Minutes of all regular and special meetings of the Board of Directors shall be kept, and shall be available and posted at the principal office of the Association, after such minutes have been approved by the Board of Directors.

Section 9. ~~8~~ The Board of Directors ~~shall~~ may hold monthly regular general membership open workshop meetings. Notice of such workshop meetings shall be governed in the same way as notices of Board of Directors meetings. at which proposed rules or changes, or any other matters which would be of interest to the Community at large, shall be presented. After discussion from the floor, the workshop meeting will be closed and the Board will open a regular Board meeting, at which the Board shall take an open vote of the Board members, if required, or the matters may, at the discretion of the Board, be deferred to the next meeting.

Section ~~10~~ 9. ~~Standing committees~~ Committee Chairpersons shall be appointed by the Board of Directors ~~or by the appropriate Board Member, for the purpose of assisting the Board or Board Member, in making appropriate studies as requested, monitoring activities and implementing Board or Member decisions on behalf of the Board. Such Committee Chairpersons shall have the authority to appoint all committee members for their particular committee. Such committees shall have no independent authority to act on their own volition, unless delegated such authority by the Board of Directors or provided for in the Association governing documents or by Florida law, and may be appointed and replaced at the pleasure of the appointing authority Board of Directors. These committees shall include, but are not limited to the following: Legal, Finance, Rental & Resales, Grounds Maintenance, Management Oversight Review, Security, Painting and Driveways, and Beautification.~~

## ARTICLE V Officers

Section 1. All officers shall serve at the pleasure of the Board of Directors. Officers shall include, but shall not be limited to, a President, one (1) or more Vice Presidents, Secretary, Treasurer, and any other such assistants or other minor officers as the Board may, from time to time, appoint. Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

Section 2. The President shall be the chief executive officer of the Association. The

President ~~shall~~ may preside at all meetings of the members of the Association and of the Board of Directors. He shall have the general powers and duties of supervision and management of the Association which usually pertain to his office, and shall perform all such duties as are properly required of him by the Board of Directors. The Board of Directors shall elect one Vice President, who shall have such powers and perform such duties as usually pertain to such office or as are properly required of him by the Board of Directors. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President. The Secretary shall issue notices of all meetings of the membership of the Association and the directors where notice of such meetings are required by law or in these By-Laws. He shall keep the minutes of the membership and of the Board of Directors.

Section 3. The Treasurer shall have the care and custody of all the monies and securities of the Association. He shall enter on the books of the Association, to be kept by him for the purpose, full and accurate accounts of all monies received by him and paid by him on account of the Association. He shall sign such instruments as require his signature and shall perform all such duties as usually pertain to his office or as are properly required of him by the Board of Directors. The day to day obligations of the Treasurer, except check signing, may, at the discretion of the Board of Directors, be performed by management.

Section 4. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting, from among the remaining eligible Directors.

## ARTICLE VI Meetings of Members

Section 1. The regular annual meeting of the members shall be held ~~on the first Wednesday of~~ during the month of March in each year at such time as shall be determined by the Board of Directors at Rainberry Bay, Delray Beach, Florida. The meeting of the Homes Association shall follow the meetings of the Master and Villas Associations.

Section 2. Special meetings of the members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by any two or more members of the Board of Directors, or upon written request of the members who have a right to vote one-fourth of all the votes of the entire membership, ~~or who have a right to vote one-fourth of the votes of the Class A membership~~ or as otherwise provided by statute.

Section 3. Notice ~~may~~ shall be given to ~~the~~ each member ~~either~~ personally, or by sending a copy of the notice through the mail, postage thereon fully paid, to his address appearing on the records of the Association. Each member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed or personally delivered at least ~~six~~ fourteen (14) days in advance of the meeting and shall set forth the general nature of the business to be transacted, provided, however, that if any business of any meeting shall involve any action governed by the Articles of Incorporation, notice of such meetings shall be given or sent as therein provided.

Section 4. ~~The presence at the meeting of members entitled to cast 33 and 1/3% of the votes shall constitute a quorum for any action governed by these By-Laws.~~ A quorum for the

transaction of business at any meeting of the members shall exist if thirty (30) percent of the total number of members of the Homes Association in good standing shall be present or represented at the meeting. At any meetings, Members may vote in person, by proxy or by absentee ballot. Further, absentee ballots may be counted, along with proxies, in determining whether a quorum has been established at any meeting of the Members.

~~Section 5. At any meetings, Members may vote and count toward a quorum by proxy.~~

## **ARTICLE VII**

### **Books and Papers**

Section 1. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any member of the Association. It shall be the duty of the Secretary of the Association to provide access thereto. Copies shall be made available at a reasonable reimbursement cost. The inspection and copying of official records shall be further governed by Section 720.303(5), Fla. Stat., as same may be amended from time to time.

## **ARTICLE VIII**

### **Amendments**

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of members present in person or by proxy, or by absentee ballot, provided that the notice to the members of the meeting disclosed the information that the amendment of the By-Laws was to be considered; provided, however, the provisions which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matters stated herein to be or which are in fact governed by the Declaration of Restrictions and Protective Covenants referred to herein may not be amended except as provided in such covenants.

Section 2. In 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 said Declaration of Restrictions and Protective Covenants and these By-Laws, the said Declaration of Restrictions and Protective Covenants shall control.

~~WE HEREBY CERTIFY that the foregoing By-Laws of the above-named corporation were duly adopted by the Board of Directors of said Association in a meeting held for such purpose on the 8th day of July, 1978.~~

M:\Association\Rainberry Bay Master\Document Restatement\2011 Amended and Restated Documents\Homes\Homes Bylaws revised 9-30-11.wpd