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Palm Beach Gardens, FL 33410

**RESTATED GOVERNING DOCUMENTS OF  
SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC.**

THESE RESTATED GOVERNING DOCUMENTS are set forth this 24<sup>th</sup> day of March, 2022, by SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, for the purpose of inserting all amendments through this date into the body of the governing documents, in order to create one, more easily readable, set of operative documents. The documents included herein are as follows:

DECLARATION OF COVENANTS AND RESTRICTIONS FOR SPRAY COTTAGES, originally recorded at Official Records Book 4731, Page 1840, of the Public Records of Palm Beach County, Florida;

ARTICLES OF INCORPORATION OF SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., originally filed with the Secretary of State, State of Florida, on January 9, 1986, but unrecorded in the Public Records of Palm Beach County, Florida;

BY-LAWS OF SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., which were not previously recorded in the Public Records of Palm Beach County, Florida; and

All amendments of the above-referenced documents through the above date.

*(Note: Amendments or Exhibits regarding additional property subjected to the Declaration are not included herein).*

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**RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR**

**SPRAY COTTAGES**

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**RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR**

**SPRAY COTTAGES**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, made and executed this 3rd day of December, 1985, by BREAKERS WEST DEVELOPMENT CORPORATION, a Florida corporation, ("Declarant"), joined by SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation and by BREAKERS WEST ASSOCIATION, INC., a Florida not-for-profit corporation.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that real property located in Palm Beach County, Florida, and legally described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and,

WHEREAS, it is the intent of Declarant to establish a general plan and uniform scheme of development and improvement of the Property; and,

WHEREAS, Declarant wishes to provide for the preservation and enhancement of property values, amenities and opportunities within the Property in order to contribute to the personal and general health, safety and welfare of the property owners and residents therein, and to maintain the land and improvements therein, and to this end wishes to subject the Property to the covenants, restrictions, easements, reservations, Assessments, charges, liens and other provisions hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, reservations, Assessments, charges, liens and other provisions hereinafter set forth in this Declaration of Covenants and Restrictions.

**ARTICLE 1**  
**DEFINITIONS**

The following terms, as used in this Declaration, shall have the following meanings:

1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Sub-Association as they may exist from time to time.

1.2 "Assessment" shall mean and refer to those charges made by the Sub-Association from time to time, against each Parcel within the Property, for the purposes and subject to the terms, set forth herein.

1.3 "Association" shall mean and refer to BREAKERS WEST ASSOCIATION, INC., a Florida corporation not for profit, and its successors and assigns.

1.4 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Sub-Association.

1.5 "Breakers West" shall mean and refer to the planned unit development which is located in Palm Beach County, Florida and known as Breakers West.

1.6 "By-Laws" shall mean and refer to the By-Laws of the Sub-Association, as they may exist from time to time.

1.7 "Common Expenses" shall mean and refer to all expenses incurred by the Sub-Association in connection with its ownership, maintenance and other obligations set forth herein.

1.8 "Common Property" shall mean and refer to all portions of the Property which are intended for the common use and enjoyment of the Owners, and which are conveyed to the Sub-Association by deed or which are dedicated to the Sub-Association on any recorded plat of the Property and all real, personal and other property which may at any time be acquired by the Sub-Association.

1.9 "County" shall mean and refer to Palm Beach County, Florida.

1.10 "Declarant" shall mean and refer to Breakers West Development Corporation, Inc., a Florida corporation, its successors and assigns.

1.11 "Declaration" shall mean and refer to this instrument and all exhibits hereto, as same may be amended from time to time.

1.12 "Declaration of Covenants and Restrictions for Breakers West" shall mean and refer to that certain declaration and all exhibits thereto to be recorded in the Public Records of the County, as same may be amended from time to time.

1.13 "Development(s)" shall mean and refer to such residential or commercial developments which are now or hereafter located within Breakers West.

1.14 "Dwelling" shall mean and refer to a cottage constructed, or to be constructed, on a Lot.

1.15 "Environmental Control Board" or "E.C.B." shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of Improvements within the Property.

1.16 "Flagler Parcel" shall mean and refer to that parcel described in Exhibit "B", attached hereto and made a part hereof.

1.17 "Improvements" shall mean and refer to all structures of any kind, including, without limitation, any building, fence, wall, sign, paving, grading, any addition, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping or landscape device or object.

1.18 "Institutional Mortgagee" shall mean and refer to any bank, bank holding company, trust company or subsidiary thereof, savings and loan association, Federal National Mortgage Association, insurance company, union pension fund, mortgage company approved by Declarant, an agency of the United States Government, or Declarant, which holds a first mortgage of public record on any Parcel, and the holder of any mortgage of public record given or assumed by Declarant, whether a first mortgage or otherwise, and their successors and assigns.

1.19 "Lot" shall mean and refer to any tract of land located within the Property which is intended for use as a site for a Dwelling.

1.20 "Mayacoo Parcel" shall mean and refer to that parcel described in Exhibit "C" attached hereto and made a part hereof.

1.21 "Member" shall mean and refer to a member of the Sub-Association and to the Declarant, all of which are members of the Sub-Association.

1.22 "Owner" or "Parcel Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel, excluding, however, any mortgagee, unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

1.23 "Parcel" shall mean and refer to a Lot and the Dwelling located thereon, if any. The term "Parcel" specifically does not include the Flagler Parcel or the Mayacoo Parcel.

1.24 "Property" shall mean and refer to that real property legally described in Exhibit "A", attached hereto and made a part hereof and any other property subsequently subjected to this Declaration, pursuant to the provisions hereof.

1.25 "Spray Cottages" shall mean and refer to that residential development on the Property.

1.26 "Street" shall mean and refer to any street, highway, or other thoroughfare which is constructed within Breakers West and which is dedicated to the Association, the Sub-Association or any other sub-association within the Development, on any plat(s) of Breakers West or conveyed to the Association, the Sub-Association, or any other sub-association within the Development, by deed or other instrument, whether same is designated as street, highway, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk or other similar designation.

1.27 “Sub-Association” shall mean and refer to Spray Cottages Homeowners Association, Inc., and its successors and assigns.

1.28 “Water Management System” shall mean and refer to those lakes, canals and other facilities created and used for drainage of Breakers West, as shown on or described in the South Florida Water Management District Conceptual Surface Water Management Permit, as amended from time to time.

1.29 “Effect of Definitions”. The definitions provided in this Article 1 shall apply throughout this Declaration, all exhibits hereto, and all amendments thereof, as the context may require.

**ARTICLE 2**  
**PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Existing Property. The initial property subject to this Declaration upon the recordation hereof in the County Public Records, is the property described in Exhibit “A” attached hereto and made a part hereof.

2.2 Additional Property. Declarant may, at any time and from time to time, subject additional property to this Declaration in accordance with applicable statutes and ordinances of the County, by recording in the public records of the County an amendment to this Declaration, describing such additional property. Such amendments may be made by Declarant without the joinder or consent of the Sub-Association, other Owners or mortgagees of any portion of Spray Cottages at Breakers West, or any other person or entity,

**ARTICLE 3**  
**SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC.**

3.1 Formation. At or about the time of the recording of this Declaration, Declarant has caused the Sub-Association to be formed, by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Florida. The Sub-Association is formed to operate, maintain and own the Common Property; to enforce the covenants, conditions, restrictions, and other provisions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation and the By-Laws of the Sub-Association. Subject to the additional limitations provided herein and in the Articles of Incorporation and the By-Laws of the Sub-Association, the Sub-Association shall have all of the powers and be subject to all of the limitations of a not-for-profit corporation as contained in Florida Statutes, Chapter 617, Part I (1983) (the “Florida Not for Profit Corporation Act”), in existence as of the date of recording the Declaration in the public records of the County.

3.2 Membership. A person or entity shall automatically become a Member of the Sub-Association upon acquisition of fee simple title to any Parcel, by filing a deed therefor in the

public records of the County. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred and conveyed by operation of law, at which time membership, with respect to the Parcel conveyed shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of Parcel(s) subject to this Declaration. Declarant shall be a Member from and after the date of recording the Declaration in the public records of the County. No person or entity holding an interest of any type or nature whatsoever in a Parcel only as security for the performance of an obligation shall be a Member. Declarant, by including additional property within the imposition of this Declaration, may cause additional membership in the Sub-Association and may designate the ownership basis for such additional membership.

3.3 Voting. The Sub-Association shall have one (1) class of voting membership. Each Member, including Declarant, shall be entitled to one (1) vote for each Parcel owned by such Member as to matters on which the membership shall be entitled to vote, which vote may be exercised or cast by the Member in such manner as may be provided in the By-Laws of the Sub-Association. Any Member who owns more than one (1) Parcel, shall be entitled to exercise or cast one (1) vote for each such Parcel. When more than one (1) person owns a Parcel, all such persons shall be Members of the Sub-Association; provided, however, that the vote of such Owners shall be exercised as provided herein below, and that in no event shall more than one (1) vote be cast with respect to each Parcel. If more than (1) person, a corporation, or other entity owns a Parcel, they shall file a certificate with the Secretary of the Sub-Association naming the person authorized to cast votes for said Parcel. If the certificate is not on file, the Owner(s) shall not be qualified to vote and the vote of such Owner(s) shall not be considered nor shall the presence of such Owner(s) at a meeting be considered in determining whether the quorum requirement has been met. If a Parcel shall be owned by husband and wife as tenants by the entirety, no certificate need be filed with the Secretary naming the person authorized to cast votes for said Parcel, and either spouse, but not both, may vote in person or by proxy and be considered in determining whether the quorum requirement has been met at any meeting of the members, unless prior to such meeting, either spouse has notified the Secretary in writing that there is a disagreement as to who shall represent the Parcel at the meeting, in which case the certificate requirements set forth above shall apply.

3.4 Administration of the Sub-Association. The affairs of the Sub-Association shall be administered by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and the By-Laws of the Sub-Association. The Articles of Incorporation and By-Laws may be amended in the manner set forth therein; provided, however, that no such amendment shall conflict with the terms of this Declaration or adversely affect the rights of Declarant, without Declarant's prior written approval; and provided further that no amendment, alteration or rescission may be made which affects the rights or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected, and provided further that no amendment, alteration or rescission of the Articles of Incorporation or the By-Laws shall be made without the Association's prior written approval. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

3.5 Suspension of Membership Rights. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or franchises of the Sub-Association, or

any right, interest or privilege which may be transferable, or which shall continue after his membership ceases, or while he is not in good standing. A Member shall be considered "not in good standing" during any period of time in which he is delinquent in the payment of any Assessment, or in violation of any provision of this Declaration or of any rules or regulations promulgated by the Sub-Association. While not in good standing, the Member shall not be entitled to vote or exercise any other right or privilege of a Member of the Sub-Association.

3.6 Control by Declarant. Anything contained herein to the contrary notwithstanding, Declarant shall have the right to retain control of the Sub-Association until the year 2000, or until such earlier time as is determined by Declarant, in Declarant's sole discretion. At the time of turnover of control of the Sub-Association, the Sub-Association shall record a Notice of Turnover in the Public Records of the County. So long as Declarant retains control of the Sub-Association, Declarant shall have the right to appoint all members of the Board of Directors and to approve the appointment of all officers of the Sub-Association, and no action of the membership of the Sub-Association shall be effective unless, and until, approved by Declarant. After turnover of control of the Sub-Association and so long as Declarant owns any property within Breakers West, the Declarant shall have the right to appoint one (1) member of the Board of Directors; such director need not be a Member of the Sub-Association. In the event that Declarant shall enter into any contracts or other agreements for the benefit of Owners, or the Sub-Association, Declarant may, at its option, assign its obligations under the agreements to the Sub-Association, and in such event, the Sub-Association shall be required to accept such obligations.

#### **ARTICLE 4** **COMMON PROPERTY**

4.1 Title to Common Property. The Declarant shall not be required to convey title to the Common Property or any portion thereof until such time as the Declarant voluntarily relinquishes control of the Sub-Association, in accordance with this Declaration. Notwithstanding the manner in which fee simple title is held, the Sub-Association shall be responsible for the management, maintenance and operation of the Common Property, the maintenance of the lawns and landscaping for all Parcels, and the maintenance of the sprinkler system for the Property, and for the payment of all property taxes and other assessments which are liens against the Common Property. Anything herein contained to the contrary notwithstanding, certain portions of the Common Property may be reserved as limited common property for the exclusive benefit and use of specific Owners.

4.2. Acquisition and Conveyance of Property. The Sub-Association shall have the power and authority to acquire and convey such interests in real, personal and other property as it may deem beneficial to its Members, which property shall be referred to herein as "Common Property". Such interests may include fee simple or other absolute ownership interests, leaseholds, or such other possessory use interests as the Sub-Association may determine to be beneficial to its Members.



4.3 Maintenance of Property.

4.3.1 The Sub-Association shall, either by virtue of the appointment of a real estate management agent, or through its own personnel, be responsible for the maintenance and repair of the Common Property, and for the maintenance of the landscaping and lawns of all Parcels and the sprinkler system for the Property.

4.3.2 Declarant, its parents, subsidiaries, affiliates, their successors and/or assigns, may be the management agent for the Sub-Association and may hire such employees, including but not limited to: attorneys, accountants, bookkeepers, gardeners, and laborers, as the Declarant may deem necessary in order to maintain the property described herein. No management agreement between the Sub-Association and Declarant or its parents, subsidiaries, affiliates or their successors or assigns shall be held invalid solely for the reason that at the time of entering into the management agreement, the employees, officers or agents of Declarant, or its parents, subsidiaries, or affiliates, or their successors or assigns are officers, directors and/or employees of the Sub-Association.

4.4 Rules and Regulations Governing Use of Common Property. The Sub-Association, through its Board of Directors, shall regulate the use of the Common Property by Members and Owners, and may from time to time promulgate such rules and regulations consistent with this Declaration, governing the use thereof as it may deem to be in the best interests of its Members. A copy of all rules and regulations established thereunder and any amendments thereto shall be made available to all Members at the office of the Sub-Association. Such rules and regulations and all provisions, restrictions and covenants, including, without limitation, all architectural and use restrictions contained in this Declaration, may be enforced by legal or equitable action of the Association or the Sub-Association.

4.5 Owners' Easements of Enjoyment. Subject to the provisions hereinbelow, each Owner shall have a right and easement of enjoyment in and to the Common Property, which easement shall be appurtenant to, and shall pass with, the title to each Parcel.

4.6 Extent of Owner's Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

4.6.1 The right of Declarant and the Sub-Association to borrow money for the purpose of improving the Common Property and, in connection therewith, to mortgage the Common Property.

4.6.2 The right of Declarant and the Sub-Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.

4.6.3 The right of the Sub-Association to suspend the enjoyment rights and easements of any Owner for any period during which an Assessment remains unpaid by that Owner.

4.6.4 The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which such Owner is in violation of this Declaration, the Declaration of Covenants and Restrictions for Breakers West, any of the rules and regulations promulgated by the Sub-Association or the Association, or any of the traffic regulations of the Association.

4.6.5 The right of the Sub-Association to maintain the Common Property.

4.6.6 The right of the Sub-Association, its agents and employees, and any management entity contracted by the Sub-Association, to have access to the Parcels for purposes of maintenance of the landscaping and lawns of all Parcels, and maintenance of the sprinkler system.

4.6.7 The rules and regulations governing the use and enjoyment of the Common Property, as promulgated by the Sub-Association or the Association.

4.6.8 The traffic regulations governing the use and enjoyment of the Streets, as promulgated by the Association.

4.6.9 The right of the Declarant and the Sub-Association to dedicate or transfer all, or any part, of the Common Property to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

4.6.10 Restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.

4.6.11 All of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Sub-Association and all exhibits thereto, and all rules and regulations adopted by the Sub-Association, as same may be amended from time to time.

4.6.12 All of the provisions of the Declaration of Covenants and Restrictions for Breakers West, and the Articles of Incorporation and By-laws for the Association and all exhibits thereto, and all rules and regulations adopted by the Association, and the traffic regulations, as same may be amended from time to time.

4.6.13 The Owners' easements of enjoyment shall be subject to easements, hereby reserved over, through and underneath the Common Property, and the Parcels for present and future utility services to the Property, including, but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm drainage pipes, sprinkler pipes, telephone cables, security wires and streetlights. Easements for such utility services are reserved by Declarant for all buildings and improvements which have been or may be constructed on the Property and Declarant may grant specific easements to utility companies and others as reasonably necessary.

4.6.14 The Association reserves the right to lease portions of the Common Property to a cable television company or a similar operation for the purpose of installation of a

transmission tower. The Declarant or the Association may grant easements over the Common Property for cable television, cable radio, or similar operations. However, the granting of such easements shall be in the sole and absolute discretion of the Declarant or the Association. No easement provided for herein or on any plat of the Property may be used for the above purposes without the consent of the Association or the Declarant, which consent may be made in their sole and absolute discretion. The rights granted herein may not be eliminated or limited by the Association except with the written approval of the Declarant.

4.6.15 In case of any emergency originating in, or threatening any Parcel, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association or Sub-Association, or any other person authorized by the Association or the Sub-Association, or the management agent under a management agreement, shall have the right to enter such Parcel and the Improvements located thereon, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

4.6.16 The Owners' easements of enjoyment shall be subject to the rights reserved by Declarant, for future development of the Property. As a material condition for ownership of a Parcel, each Owner, by accepting a deed to a Parcel, releases Declarant from any claim for interference with his quiet enjoyment of his Parcel or the Common Property, due to the development of the Property, whether or not the construction operations are performed on the Common Property or the Parcels, and each Owner acknowledges and agrees that Declarant shall have the sole right of design, construction, development and improvement of the Common Property, and the Parcels within the Property.

4.6.17 Notwithstanding the fact that parts of the bicycle/pedestrian path in Breakers West may be located upon a Parcel, such paths are subject to an easement for use by all Owners of property within Breakers West, their guests, licensees and invitees.

4.7 Continual Maintenance. In the event of a permanent dissolution of the Sub-Association, or in the event the sub-Association fails to maintain the Common Property, the Association shall maintain the Common Property and may collect assessments against the Members for the costs thereof, in accordance with Article 7 of the Declaration of Covenants and Restrictions for Breakers West. Upon permanent dissolution of the Sub-Association, the Members shall immediately hold title to the Common Property as tenants in common.

## **ARTICLE 5** **EASEMENTS**

5.1 Easement Grants. The following easements are hereby granted or reserved over, across and through the Property:

5.1.1 Easements for the installation and maintenance of utilities are granted as shown on the recorded subdivision plats of the Property (provided, however, that this paragraph shall not apply to easement(s) for cable television, which shall be governed by Paragraph 4.6.14 of the Declaration). Within these easement areas, no structure, planting or

other material, (other than sod) which may interfere with the installation and maintenance of underground utility facilities, shall be placed or permitted to remain, unless such structure, planting or other material was installed by the Declarant. The Sub-Association, utility companies serving the Property, and their respective assigns are hereby granted access to all easements within which such underground facilities are located for the purpose of operation, maintenance and replacement thereof.

5.1.2 Easements for the installation and maintenance of drainage facilities are granted to the Sub-Association, and Declarant as shown on the recorded plat(s) of the Property. Within these easement areas, no structure, planting or other material, (other than sod and official golf course accessories) which may interfere with such installation and maintenance, or which may obstruct or retard the flow of water through drainage channels shall be placed or permitted to remain unless such structure, planting or other material was installed by Declarant. The Sub-Association (and its assigns) shall have access to all such drainage easements for the purpose of operation and maintenance thereof.

5.1.3 The Common Property is hereby declared to be subject to a perpetual nonexclusive easement in favor of the Sub-Association, the Association, employees and agents of the Sub-Association and the Association, and of any management entity contracted by the Sub-Association or the Association, in order that such employees, agents or management entity may carry out their duties and may have reasonable access to all property dedicated to the Sub-Association on the recorded plat(s) of the Property or conveyed to the Sub-Association by deed.

5.1.4 Easements are hereby granted to all Institutional Mortgagees holding a first mortgage upon any portion of the Property for the purpose of access to the property subject to its mortgage.

5.1.5 Easements are hereby reserved throughout the Common Property, including without limitation, the Streets located on the Common Property and the easements shown on the plat(s) of the Property, by Declarant, for its reasonable use and the reasonable use of its agents, employees, licensees and invitees, for all purposes.

5.1.6 An easement is hereby granted to the Sub-Association, its agents and employees, and any management entity contracted by the Sub-Association, for purposes of maintaining the landscaping and lawns of each Parcel, and the sprinkler system for the property.

5.1.7 An easement is hereby granted to the Owners, invitees, guests, licensees, employees, agents and members of the club or clubs located on the Flagler Parcel and the Mayacoo Parcel, to permit the doing of every act necessary and incident to the playing of golf on the golf courses adjacent to the Parcels. These acts shall include, but not be limited to, the recovery of golf balls from Parcels, the flight of golf balls over and upon Parcels, the use of the necessary and usual equipment upon the golf courses, the creation of the usual and common noise level associated with the playing of the game of golf, together with all such other common and usual activities associated with the game of golf and with all the normal, and usual activities associated with the operation and maintenance of a golf club. The Declarant shall have the right to prescribe in writing to the owner of the Mayacoo Parcel and the owner of the Flagler Parcel

the manner and extent to which the rights under this easement shall be exercised. In addition, the Declarant may, at its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement.

5.1.8 A reciprocal maintenance easement is hereby granted on each Parcel in order to enable Owners to have access on adjacent Parcels, for the purpose of maintaining and repairing the Owner's Dwelling. Such easement shall be located on the zero lot line side of the Lot and shall be five (5) feet in width. There shall also be a twenty-four (24) inch easement on each Parcel for roof overhangs and foundations, so that no technical encroachments will be created.

5.1.9 A easement for encroachments is hereby granted in the event that any Dwelling or any part of a Dwelling, including without limitation, any screen porch or any other improvement, now or hereafter encroaches upon another Parcel or the Common Property, due to minor inaccuracies in survey, construction, or reconstruction, or due to settlement or movement or otherwise. The encroaching Improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachments shall also include an easement for the maintenance and use of the encroaching Improvements.

5.1.10. All Members of the Sub-Association are hereby granted a perpetual easement over all the platted roadways on the Property. This easement is subject to all rules and regulations promulgated by the Sub-Association from time to time and the traffic regulations of the Association.

5.2 Additional Easements. Declarant and the Sub-Association, shall have the right to grant such additional easements or to relocate existing easements throughout the Property as the Declarant or the Sub-Association may deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, provided that such additional easements or relocation of existing easements do not prevent or unreasonably interfere with the Owners' use or enjoyment of the Property.

5.3 Restriction on Owner Easements. Except as specifically provided in paragraph 5.2 hereinabove with regard to the Declarant and the Sub-Association, no Owner shall grant any easement upon any portion of the Property to any person or entity, without the prior written consent of the E.C.B.

## **ARTICLE 6** **ASSESSMENTS AND FINES**

6.1 Authority of Sub-Association. The Sub-Association, through its Board of Directors, shall have the power and authority to make and collect Assessments and to impose and collect fines as hereinafter set forth.

6.2 General Assessments. General Assessments shall be determined annually for the purpose of maintenance and management of the Sub-Association and the Common Property, and for maintenance of the landscaping and lawns of each Parcel, and the sprinkler system for the Property, and for the purpose of promoting the safety and welfare of the Owners. Without limiting the foregoing, general Assessments shall be used for payment of: operation, maintenance and management of the Sub-Association and the Common Property; other insurance coverage; maintenance of the landscaping and lawns of each Parcel and the sprinkler system for the Property; property taxes and assessments against, and insurance coverage for the Common Property; legal and accounting fees; maintenance of the Streets located on the Common Property; management fees; security costs; emergency services; normal repairs and replacements; charges for utilities used upon the Common Property; cleaning services; expenses and liabilities incurred by the Sub-Association in the enforcement of its rights and duties against the Members or others; maintenance of vacant property; the creation of reasonable reserves; and all other expenses deemed by the Sub-Association to be necessary and proper for management, maintenance, repair, operation and enforcement.

6.3 Basis and Collection of General Assessments. The Sub-Association shall annually estimate the Common Expenses it expects to incur and the period of time involved therein and shall assess its Members sufficient monies to meet this estimate. All Parcels shall be assessed at a uniform rate, to be determined by the Sub-Association, so that all Parcels subject to a general Assessment shall be assessed equally. Should the Sub-Association at any time determine that the Assessments made are insufficient to pay the Common Expenses, or in the event of an emergency, the Sub-Association shall have the authority to levy and collect additional general Assessments to meet such needs. The amount of the general Assessment may be adjusted periodically as deemed necessary by the Sub-Association. General Assessments shall be collectible in advance monthly, quarterly, semi-annually or annually, as the Sub-Association shall determine.

6.4 Special Assessments. The Sub-Association shall have the power and authority to levy and collect a special Assessment from each Member for payment of the following: the acquisition of property by the Sub-Association; the cost of construction of capital Improvements to the Common Property; the cost of construction, reconstruction, unexpected repair or replacement of a capital Improvement, including the necessary fixtures and personal property related thereto; and the expense of Indemnification of each Director and officer of the Sub-Association. All special Assessments shall be at a uniform amount for each Parcel assessed and shall be collectible in such manner as the Board of Directors shall determine.

6.5 Emergency Special Assessments. The Sub-Association may levy an emergency special Assessment when, in the sole determination of the Board of Directors, there is potential danger of damage to persons or property. Emergency special Assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, Improvements, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to, hurricanes, floods, and fires. Emergency special Assessments shall be collectible in such manner as the Board of Directors shall determine.

6.6 Individual Assessments. The Sub-Association shall have the power and authority to levy and collect an individual Assessment against a particular Parcel for the cost of maintenance, repairs or replacements within or without the Parcel, (other than for the cost of those maintenance duties to be performed by the Sub-Association, as provided in Section 4.3 of this Declaration), which the Owner thereof has failed or refused to perform, and which failure or refusal has, in the opinion of the Sub-Association, endangered or impaired the use or value of other portions of the Property. The Sub-Association shall have a right of entry onto each Parcel to perform necessary maintenance, repairs and replacements, including the right to abate or eliminate any nuisance. The individual Assessment may include an administrative fee charged by the Sub-Association in an amount to be determined by the Board of Directors in its discretion from time to time. All individual Assessments shall be collectible in such manner as the Sub-Association shall determine.

6.7 Fines. The Sub-Association may levy reasonable fines against Owners for violations of the provisions contained in the Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations promulgated by the Sub-Association. The Sub-Association may levy a fine according to a schedule of fines to be adopted by the Sub-Association, provided, however, that in no event shall the total fines assessed for any one violation exceed the annual general Assessment against the Owner for the year the violation occurs. Owners who violate any of the foregoing documents or rules shall be entitled to notice and a hearing before the Board of Directors of the Sub-Association, prior to the imposition of any fine. Fines are individual Assessments and shall be collectible as such.

6.8 Effect of Non-Payment of Assessments or Fines. All notices of Assessments or fines from the Sub-Association to the Members shall designate when the Assessment or fine is due and payable. If an Assessment or fine is not paid on the date when due, it shall become delinquent and shall bear interest at the maximum rate allowed by the Florida usury laws, from the date when due until paid. The Assessment, or fine, together with interest thereon and the costs of collection thereof, including attorneys' fees, shall be a continuing lien against the Parcel against which the Assessment or fine is made, and shall also be the continuing personal obligation of the Owner thereof. The Sub-Association shall also record a claim of lien in the Public Records of the County, setting forth the amount of the unpaid Assessment, the rate of interest due thereon, and the costs of collection thereof. If any Assessment or fine, or any installment thereof, shall not be paid within thirty (30) days following the due date, the Sub-Association may declare the entire Assessment or fine immediately due and payable. The Sub-Association may at any time thereafter bring an action to foreclose the lien against the Parcel assessed in the manner in which mortgages on real property are foreclosed, or a suit on the personal obligation of the Owner. There shall be added to the amount of the Assessment or fine, the costs of such action, including attorneys' fees, and in the event a judgment is obtained, such judgment shall include interest on the Assessment or fine, as above provided, and attorneys' fees incurred by the Sub-Association, together with the costs of the action. Regardless of the date of recordation of any claim of lien, the effective date thereof shall relate back, and it shall take priority, as of the date of recordation of this Declaration. Any successor in title to a Parcel shall be held to have constructive notice of the records of the Sub-Association to determine the existence of any delinquency in the payment of Assessments.

6.9 Certificate of Assessments. The Sub-Association shall prepare a roster of the Parcels and Assessments applicable thereto, which shall be kept in the office of the Sub-Association and shall be open to inspection by all Members. At the request of an Owner, the Board of Directors shall prepare a Certificate of Assessments signed by an officer of the Sub-Association, setting forth whether the Owner's Assessments have been paid or the amount which is due as of the date of the Certificate. As to parties without knowledge of error who rely thereon, such certificate shall be presumptive evidence of payment or partial payment of any Assessment therein stated as having been paid or partially paid.

6.10 Subordination of Lien to Mortgages. Regardless of the effective date of the lien of any Assessments or fines made by the Sub-Association, the lien of the Assessments or fines provided for in this Declaration shall be superior to all liens, including homestead rights, but shall be subordinate and inferior to the lien of the mortgage of any Institutional Mortgagee. Such subordination shall, however, apply only to the Assessments or fines which have become due and payable prior to a final sale or transfer of the mortgaged Parcel pursuant to a decree of foreclosure, or in any other proceeding or conveyance in lieu of foreclosure of the mortgage. No sale or other transfer shall relieve any Parcel from liability for any Assessment or fine becoming due thereafter, nor from the lien of any such subsequent Assessment or fine. Any delinquent Assessments or fines which are extinguished pursuant to a sale or transfer in connection with the foreclosure of a mortgage, or any proceeding or deed in lieu of foreclosure, shall be reallocated and assessed to all Members in the same manner as general Assessments are assessed. The written opinion of the Sub-Association that the Assessment lien is subordinate to a mortgage lien shall be dispositive of any question of subordination.

6.11 Payments by Declarant. In lieu of the payment of any Assessments, Declarant shall be responsible only for the payment of that portion of the Common Expenses which exceeds the amount paid by the Owners, Members, the owner of the Flagler Parcel and the owner of the Mayacoo Parcel (the "Shortfall"). In lieu of the payment of the Shortfall, Declarant may elect, in its sole and absolute discretion, to pay the Assessment(s) attributable to each Parcel owned by Declarant. Declarant shall have no obligation to fund reserves for the Association at any time.

6.12 Exempt Property. The following property shall be permanently exempt from the payment of all Assessments:

6.12.1 All property dedicated to, or owned by, the Sub-Association.

6.12.2 Any portion of the Property dedicated to the County.

6.12.3 Any portion of the Property owned by Declarant; Declarant shall pay those amounts stated above in that subsection entitled "Payments by Declarant", in lieu of Assessments, unless Declarant elects otherwise, pursuant to paragraph 6.11 hereof.

6.13 Association Assessments and Association Fines. The Sub-Association shall have the power and authority to collect from Owners all Assessments, whether they be general, special, emergency special or individual assessments, which are levied against Parcels by the



Association (the "Association Assessment"). The Sub-Association shall also have the power and authority to collect from Owners all fines which are levied against Owners by the Association (the "Association Fine"). The Association Assessment and the Association Fine shall be collected by the Board of Directors of the Sub-Association, pursuant to the procedures set forth in this Article 6. If the Association Assessment or the Association Fine is not paid on the date when due, the provisions of the Declaration of Covenants and Restrictions for Breakers West as to the effect of non-payment of the Association Assessments and the Association Fines, including the Association's lien rights, shall fully apply. The Association Assessments and the Association Fines shall be in addition to, and not in lieu of, the Assessments and fines levied by the Sub-Association. The rights granted to the Sub-Association by this paragraph shall be in addition to, and not in lieu of, those rights granted to the Association by the Declaration of Covenants and Restrictions for Breakers West.

## **ARTICLE 7** **MAINTENANCE OF PROPERTY**

7.1 Sub-Association Responsibilities. The Sub-Association shall be responsible for maintenance of the Common Property, the landscaping and lawns of all Parcels, and the sprinkler system for the Property.

7.2 Parcel Owner Responsibilities. The owner of each Parcel shall be responsible for maintenance of all interior and exterior areas of his Dwelling, and other Improvements located on his Lot, provided however that maintenance of the landscaping and lawns for each Parcel and of the sprinkler system for the Property shall be the responsibility of the Sub-Association. The expense of any maintenance, repair or construction of any portion of the Common Property necessitated by the negligent or willful acts of an Owner, or his invitees, licensees, family or guests, shall be borne solely by such Owner, and his Parcel shall be subject to an individual Assessment for such expense. All repairs and replacements made by an Owner shall be subject to the approval of the Environmental Control Board, as set forth in Article 9 of this Declaration.

## **ARTICLE 8** **USE RESTRICTIONS**

8.1 Restrictions on Use of Parcels and Common Property.

8.1.1 Residential Use. Except as provided in Section 13.6 of this Declaration, all Parcels shall be used only as single family, private, residential Dwellings and for no other purpose. No business or commercial building may be erected on any Parcel and no business may be conducted on or any part thereof.

8.1.2 Pets. Parcel Owners may keep as pets, dogs, cats, tropical fish and birds; provided that no more than two (2) pets per Parcel shall be permitted with the exception of tropical fish, and that no such pets are kept, bred or maintained for any commercial purpose. All pets shall be restrained and/or kept on a leash under the control of a responsible person at all

times when the pet is outside of a Dwelling. At no time shall a pet be allowed to enter upon any Parcel other than the Parcel on which the pet is kept. The pet owner shall be responsible at all times for cleaning up and removing all excrement after a pet relieves itself while on the Property and for appropriately disposing of said excrement using the sanitary containers on said Owner's Parcel. The Association and the Sub-Association shall have the right to order the removal of any pet which is considered a nuisance, in their sole discretion. In such event, the Association or the Sub-Association shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property.

8.1.3 Boats. Except as needed for authorized maintenance and control of the lakes and waterways by Declarant or the Association, no boat or watercraft of any kind shall be kept or used upon any lake or waterway within the Property without the prior written approval of the E.C.B.

8.1.4 Recreational and Commercial Vehicles. No boats, recreational vehicles, trailers or habitable motor vehicles of any kind, motorcycles, trucks, "pick-ups", commercial vehicles, or other motor vehicles, except four-wheel passenger automobiles, shall be kept, placed, parked or stored upon any Parcel nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Parcel except within a building which is totally removed from public view. Notwithstanding the foregoing, service and delivery vehicles may park on a Parcel during regular business hours, as needed for providing services or deliveries to the Parcel. No vehicle of any kind shall be parked overnight on any Street. In the event of a dispute concerning the type of vehicle, the manufacturer's classification of the vehicle shall control. The Association shall have the right to authorize the towing of any vehicles in violation of this provision, and to collect the costs thereof from Owners, as an individual Assessment.

8.1.5 Temporary Structures. No structure or object of a temporary character such as, but not limited to, house trailers, vans, tents, shacks, sheds, or temporary or accessory buildings or structures, shall be erected, kept or maintained on the Property, or any part thereof. This restriction shall not apply to temporary structures used by Declarant for development, construction or sale of property throughout Breakers West.

8.1.6 Insurance. No Owner shall permit or suffer anything to be done or kept within his Parcel, or make any use of the Common Property, which will increase the rate of insurance on any portion of the Property.

8.1.7 Nuisances. No use or practice which is an interference with the peaceful possession and proper use of the Property by the Owners shall be allowed. No Owner shall commit or permit any nuisance or any immoral or illegal activity in or about the property. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners, or allow any such noise or disturbance to be made on his Parcel.

8.1.8 Outside Displays. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his parcel, nor shall he place any furniture or equipment outside his Dwelling, without the prior

written consent of the E.C.B., except that the consent of the E.C.B. shall not be required with respect to the use of lawn furniture in the back yard of a Lot, nor shall it be required with respect to the Declarant.

8.1.9 Antennae. No radio, television or other electronic antennae, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Common Property or the exterior of any Parcel unless installed by Declarant or the Association.

8.1.10 Subdivision of Lots. No Lot shall be re-subdivided to form a lot smaller than a platted Lot; provided, however, that two or more entire Lots may be combined to form a larger lot or lots, with the prior written approval of the E.C.B. and in accordance with the applicable statues and ordinances of the County; such larger lot(s) shall then be defined as the "Lot", for purposes of this Declaration.

8.1.11 Access to Parcels. Whenever the Sub-Association, any management entity contracted by the Sub-Association, or the Association is permitted or required by this Declaration or the Declaration of Covenants and Restrictions for Breakers West, to enter any Parcel for the purpose of correction, repair, cleaning, clearing, mowing, or in the event of an emergency, or any other required or permitted activity, such entrance shall not be deemed a trespass.

8.1.12 Easements. No Dwelling or other Improvement, or any tree, bush, shrub or landscaping of any kind, other than sod and official golf course accessories, shall be built or maintained upon any easement or right-of-way and said easements and rights-of-way shall at all times be open and accessible to the persons entitled to the use thereof. This provision shall not apply to the reciprocal maintenance easement described in section 5.1.8 of this Declaration, in that roof overhangs may be maintained within the reciprocal maintenance easement areas.

8.1.13 Restrictions on Access onto Golf Courses. On Parcels abutting a golf course, Owners, their guests, licensees, invitees and employees shall not use any portion of their Parcels for purposes of access onto the golf course(s).

8.1.14 Limited Access Easements. On Parcels abutting a Street, vehicular access is prohibited in the three (3) foot limited access easement area abutting the Streets, as shown on the plat(s) of Spray Cottages. The limited access easements shown on the plat(s) of Spray Cottages are dedicated to the Board of County Commissioners of Palm Beach County, Florida, for the purposes of control and jurisdiction over access rights.

8.1.15 Maintenance of Parcels. All Parcels shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. In the event an Owner fails to maintain his Parcel as aforesaid, for a period of at least thirty (30) days, the Sub-Association shall have the right, exercisable in its discretion, to remove any rubbish, refuse or unsightly debris and/or growths from any Parcel deemed by the Sub-Association to be a health menace, fire hazard or a detraction from the

aesthetic appearance of Spray Cottages; provided, however, that at least fifteen (15) days prior notice shall be given by the Sub-Association to the Owner of such Parcel before such work is done by the Sub-Association. In the event the Sub-Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the usury laws of the State of Florida, shall be charged to the owner and shall become a lien on the subject Parcel, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in Article 6 of this Declaration.

8.1.16 Refuse Containers and Storage Tanks. No Lot may be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary refuse containers, which shall be placed in a walled-in area, so they are not visible from the Street or from adjoining Parcels. All oil tanks or bottle gas tanks must be kept underground or placed in a walled-in area so they shall not be visible from the Street or from adjoining Parcels. Trash, refuse or waste materials shall not be burned on any Parcel.

8.1.17 Streets. No title to any land in any Street is intended to be conveyed or shall be conveyed to the grantee of a Parcel under a deed, or to the purchaser of a Parcel under any contract, unless expressly so provided in such deed or contract of purchase from Declarant.

8.1.18 Laundry. No portion of a Parcel shall be used for the drying or hanging of laundry, unless such laundry is adequately screened from public view, so that the laundry is not visible from the Street, or from adjoining Parcels. This provision is not intended to totally prohibit the drying or hanging of laundry on a Parcel.

8.1.19 Air Conditioners. All window or wall air conditioning units are prohibited. All air conditioner compressors shall be screened from view from the Street and from adjacent Parcels and shall be insulated by a fence, wall or shrubbery so as to minimize the transmittal of noise.

8.1.20 Underground Utilities. All electrical conduits and hook-ups shall be kept underground. No above ground wires of any kind shall be permitted.

8.1.21 Energy Saving Devices. All Dwellings shall be equipped with the latest state of the art energy saving devices, including without limitation, refrigerators and motors. Time clocks shall be installed on all underground sprinkler systems, pool motors, hot water heaters and outside lights.

8.1.22 Newspaper Boxes. No newspaper box may be installed or maintained on any Parcel.

8.1.23 Storms. Dwellings may be boarded up only when there is an imminent threat of a storm or hurricane. In no event shall any Dwelling be boarded up for any period after the imminent threat of a storm has passed. No hurricane or storm shutters shall be installed or maintained unless they are first approved, in writing, by the E.C.B.

8.1.24 Storage Areas. All exterior storage areas, service areas, and utility meters shall be screened from view from the Street and from adjacent Parcels by an enclosure, fence, wall, or mature landscaping materials.

8.1.25 Basements. No Dwelling shall be permitted to have a basement.

8.1.26 Minimum Size of Dwellings. The minimum square foot area of all Dwellings shall be not less than 1600 square feet. In computing square footage, credit shall not be given for garages, porches, patios, terraces, or other similar areas. No Dwelling shall occupy more than fifty percent (50%) of the Owner's Lot.

8.1.27 Elevation. The first floor elevation of all Dwellings shall comply with the one hundred (100) year flood criteria established by the South Florida Water Management District. No change in the elevation of any Lot shall be made, nor shall any fill be used to extend the property beyond the Lot line, without the prior written consent of the E.C.B. Further, no Lot abutting water shall be increased in size by filling in the water it abuts, without the prior written consent of the E.C.B.

8.1.28 Height of Dwellings. No Dwelling which is more than one (1) story in height shall be erected, constructed or maintained on any Lot.

8.1.29 Garages. No automobile garage shall be permanently enclosed or converted without the prior written approval of the E.C.B. All garages must be attached to the Dwelling; garages shall not have entrances facing a Street, unless otherwise approved by the E.C.B. The doors of all garages shall be kept in a useful operating condition and shall be closed at all times, except as needed for ingress and egress. No carports shall be constructed or maintained on any Lot.

8.1.30 Driveways. All materials to be used in the construction of a driveway must be first approved in writing, by the E.C.B. No circular drives, parking areas or oversized driveways may be constructed or maintained without the prior written approval of the E.C.B.

8.1.31 Additions, Improvements and Painting. The exterior surfaces of all Dwellings, including all colors, materials and finishes on all exterior areas of Dwellings shall not be altered or changed in any manner whatsoever by an Owner. Provided however, that all external areas of a Dwelling which are stained or painted must be restained or repainted (according to the color scheme originally used on the Dwelling constructed by Declarant) at sufficient intervals, so as to preserve the aesthetic beauty of Spray Cottages. No Owner shall have the right to construct any Improvements of any type or nature whatsoever on his Parcel, including without limitation, any fences, hedges, pools, patios or landscaping, without the prior written consent of the E.C.B.

8.1.32 Docks. No docks, bulkheads, moorings, pilings, boathouses or boat shelters of any kind may be erected on any part of the Property, including without limitation any lakes and waterways within the Property, without the prior written consent of the E.C.B.

8.1.33 Colors. All colors, materials and finishes on all exterior areas of Dwellings must be coordinated to achieve design consistency and must be approved, in advance, by the E.C.B. All external areas of a Dwelling which are stained or painted must be restained or repainted at sufficient intervals, so as to preserve the aesthetic beauty of Spray Cottages at Breakers West.

8.1.34 Solar Heating. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems, and be approved by the E.C.B. The location and size of all solar heating apparatus and equipment must also be approved by the E.C.B. No solar panels, vents or any other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Dwelling; further, all such equipment shall be painted consistent with the color scheme of the roof of the Dwelling, which color scheme has been approved by the E.C.B.

8.1.35 Setback Restrictions:

8.1.35.1 Dwellings. No Dwelling shall be constructed within fifteen (15) feet of the front Lot line, or within twenty-five (25) feet of the rear Lot line, or within ten (10) feet of the non-zero Lot line side of the Lot. One side of the Lot shall be designated as the “zero Lot line” side, and no setback from this side shall be required.

8.1.35.2 Swimming Pools and Tennis Courts. No swimming pool, screen enclosure of a swimming pool, or tennis court shall be constructed or maintained within twenty-five (25) feet of any Lot line, nor shall any swimming pool project with the coping more than one (1) foot above the established grade.

8.1.36 Walls, Fences, Hedges. All walls, fences and hedges must be approved, in advance, by the E.C.B.; in no event shall walls, fences or hedges be constructed or maintained in excess of six (6) feet in height.

8.1.37 Windows, Doors. No windows, doors or other openings of any type whatsoever shall be constructed or maintained on the side of a Dwelling facing the zero Lot line side of the Lot.

8.1.38 Window Treatment. All draperies, curtains, shades or other window coverings installed in a Dwelling and which are visible from the Street or from other Dwellings shall have a white backing, unless otherwise approved, in writing, by the E.C.B.

8.1.39 Approval of Curtains, Draperies and Shades. The color of all draperies, curtains, shades or other similar coverings installed inside a screened porch or glass enclosed porch must be approved, in writing, by the E.C.B.

8.1.40 Swimming Pools and Tennis Courts. The location and construction of all swimming pools and tennis courts must be approved, in advance, by the E.C.B. Any lighting

of a pool or tennis court shall be designed so as to buffer the surrounding Parcels from such lighting.

8.1.41 Recreational Facilities. Use of any recreational facilities shall be totally at the risk of those individuals using such facilities and not at the risk of the Sub-Association, the Association or the Declarant. The Sub-Association, the Association or the Declarant shall not be liable for the negligence of any party in connection with the use of the Common Property or any other portion of the Property.

8.1.42 Additional Protective Covenants. Declarant may include in any contract or deed for any Parcel, additional protective covenants and restrictions not inconsistent with those contained herein.

8.2 Rules and Regulations. No person shall use the Common Property, or any parcel, in any manner contrary to, or not in accordance with the Rules and Regulations which may be promulgated by the Sub-Association, or the Association, or the traffic regulations which may be promulgated by the Association, whether or not such Rules and Regulations are restated herein in whole or in part.

## **ARTICLE 9** **ENVIRONMENTAL AND LANDSCAPING CONTROLS**

9.1 Environmental Control Board. It is the intent of Declarant to create a general plan and uniform scheme of development of the property and to create within the Property a residential community of high quality and harmonious Improvements. Accordingly, the Declarant will establish an Environmental Control Board (the "E.C.B.") which shall be a permanent committee of the Association and which shall have the powers, duties and responsibilities set forth in the Declaration of Covenants and Restrictions for Breakers West.

9.2 E.C.B. Procedures. All of the procedures and provisions governing the E.C.B., including without limitation, the approval process for Improvements, shall be as set forth in the Declaration of Covenants and Restrictions for Breakers West.

9.3 Declarant Exempt. Notwithstanding anything contained herein to the contrary, any Improvements of any nature made or to be made by the Declarant shall not be subject to the review of the E.C.B.

## **ARTICLE 10** **ADDITIONAL RESTRICTIONS**

In addition to all of the covenants, restrictions and provisions contained in this Declaration, the Articles of Incorporation and the By-Laws for the Sub-Association, and the Rules and Regulations adopted by the Sub-Association, as same may be amended from time to time, the Property shall also be subject so all of the covenants, restrictions and provisions,

including without limitation all assessments, and lien rights, contained in the Declaration of Covenants and Restrictions for Breakers West, the Articles of Incorporation and the By-Laws for the Association, all Rules and Regulations adopted by the Association, all Rules and Regulations adopted by the E.C.B., and all traffic regulations adopted by the Association, as same may be amended from time to time.

**ARTICLE 11**  
**SALE OR OTHER ALIENATION**  
**OF PARCELS**

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Property, the transfer of a Parcel by any Owner other than Declarant and the owner of the Mayacoo Parcel, to whom this Article does not apply, shall be subject to the procedures and provisions governing the sale, lease or other transfer of Parcels, as set forth in Article 11 of the Declaration of Covenants and Restrictions for Breakers West, which provisions and procedures each Owner covenants to observe.

**ARTICLE 12**  
**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Every director and officer of the Sub-Association shall be indemnified by the Sub-Association against all expenses and liability, including attorneys' fees, incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer, whether or not he is a director or officer at the time such expenses are incurred, except in such cases where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided however, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of directors approves such settlement and reimbursement as being in the best interest of the Sub-Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer or director may be entitled.

**ARTICLE 13**  
**GENERAL PROVISIONS**

13.1 Assignment. All of the rights, powers, obligations, easements and estates reserved by, or granted to, Declarant, the Sub-Association, or the Association, may be assigned by Declarant, the Sub-Association or the Association, as the case may be. After such assignment, the assignee shall have the same rights and powers, and be subject to the same obligations and duties as were the Declarant, the Sub-Association or the Association, prior to the assignment, and Declarant, the Sub-Association and/or the Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.



13.2 Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the Public Records of the County, subject however, to the following provisions:

13.2.1 Except as provided hereinbelow, the amendment must be approved by a vote of a majority of the Members.

13.2.2 This Declaration may be amended by the Declarant, at any time, without the joinder of other Owners or Mortgagees, for the purpose of subjecting additional real property to the provisions hereof, and the Declarant specifically reserves for itself, its successors and assigns, the absolute and unconditional right to alter, modify, change, revoke, rescind or cancel any or all of the provisions contained in this Declaration; provided, however, that no such change shall adversely affect the rights of the owner of the Mayacoo Parcel hereunder or at law. The Owners and the Sub-Association hereby waive any rights to consent to such changes. Such rights may affect the entire Property or only specific portions of the Property, but shall be subject to applicable governmental approvals.

13.2.3 Until one hundred percent (100%) of the Parcels are conveyed by Declarant, no amendment may adversely affect the Declarant without the specific joinder of the Declarant.

13.2.4 No amendment shall affect the Assessments, easements and other rights affecting the Flagler Parcel or the Mayacoo Parcel without the specific joinder of the owner of the Flagler Parcel or the owner of the Mayacoo Parcel, as the case may be.

13.2.5 Any duly adopted amendment to this Declaration shall run with and bind the Property for the same period and to the same extent as do the Covenants and Restrictions set forth herein.

13.3 Duration. All of the covenants, restrictions and other provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recordation of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument executed by at least seventy percent (70%) of the votes of the membership then existing, and by all Institutional Mortgagees, has been recorded, agreeing to change or terminate these covenants and restrictions.

13.4 Covenants Running with the Property. The agreements, covenants, conditions, restrictions, Assessments, liens and other provisions contained herein shall constitute a servitude upon the Property and each portion thereof, shall run with the Property, shall be binding upon the Owners of any portion thereof, and shall inure to the benefit of Declarant, the Sub-Association, the Association, and the Owners.

13.5 Enforcement. Enforcement of the Covenants, Restrictions, conditions, obligations, reservations, rights, powers, fines, Assessments, Association Assessments, Association Fines, liens and other provisions contained herein shall be by a proceeding at law or

in equity against any persons or entities violating or attempting to violate same or against the Property subject hereto to enforce any lien created by this Declaration. In the event that Declarant, the Sub-Association and the Association fail to enforce the terms of this Declaration then any Member may do so. The failure or refusal of Declarant, the Sub-Association, the Association or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter.

13.6 Declarant's Rights. For so long as Declarant owns or has any use rights to any property subject to this Declaration, Declarant shall have the right to transact any business necessary to consummate sales of property throughout Breakers West, including but not limited to, the right to maintain office(s) on the Property, in location(s) to be selected by Declarant; to have employees in such offices, to construct and maintain sales agency offices, and such other structures or appurtenances which are necessary or desirable for the development and sale of property throughout Breakers West, including without limitation, sales models and parking lots; to post and display a sign or signs on any Parcels owned by Declarant or on the Common Property; and to use the Common Property, and to show Parcels. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within Breakers West shall not be considered Common Property and shall remain the property of the Declarant.

13.7 Notice. Any notice required or permitted to be given by this Declaration shall be given or made in writing by personal delivery or by certified mail addressed:

to the Declarant at:                    Breakers West Development Corporation  
8954 Okeechobee Boulevard  
West Palm Beach, Florida 33411

with a copy to:                         Jerry E. Aron, Esquire  
Gunster, Yoakley, Criser & Stewart, P.A.  
Phillips Point, Suite 500  
777 South Flagler Drive  
West Palm Beach, Florida 33401-6194

or to Owner at:                         the last known address of Owner  
as appears on the records of  
the Sub-Association at the time of  
such delivery or mailing.

or to the  
Sub-Association at:                    Spray Cottages Homeowners  
Association, Inc.  
8954 Okeechobee Boulevard  
West Palm Beach, Florida 33411

or to the  
Association at:                         Breakers West Association, Inc.  
8954 Okeechobee Boulevard  
West Palm Beach, Florida 33411

Any notice given in accordance with the provisions of this subsection shall be deemed to be effective, if personally delivered, on the date of such delivery, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to each of the other parties of a change of its address for the purposes of giving notice under this subsection, which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Declaration.

13.8 Golf Course Membership. The primary use of the Flagler Parcel and Mayacoo Parcel shall be as distinct private golf clubs. Parcel Owners shall not have a proprietary interest in either golf club. Membership and priority of use in each golf club shall be determined by the membership rules and regulations of the respective club. There shall be no discrimination against Owners as to membership or fees charged to join the golf clubs. The Owners of the Flagler Parcel and Mayacoo Parcel shall maintain their property in a first class condition, unless restrained or prohibited by governmental authorities.

13.9 Plat. In addition to this Declaration, the Property shall be subject to the additional Covenants, Restrictions, reservations and other terms and provisions set forth in the plat of the Property, which plat is recorded or to be recorded in the Public Records of the County.

13.10 Gender and Number. The use of the singular herein shall include the plural, and the use of any gender shall include all genders.

13.11 Severability. Invalidation of any one of the Covenants or Restrictions contained herein by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

13.12 Captions. The captions used in this Declaration and the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto.

13.13 Effective Date. This Declaration shall become effective upon its recordation in the Public Records of the County.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of BREAKERS WEST Plat No. 9, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 52, Pages 77-78.

**RESTATED ARTICLES OF INCORPORATION**

**OF**

**SPRAY COTTAGES**

**HOMEOWNERS ASSOCIATION, INC.**

**(A corporation not for profit)**

The undersigned hereby executes these Articles of Incorporation for the purpose of forming a corporation not for profit under Chapter 617 (Part I) (1982) of the Florida Statutes in existence as of the date of filing these Articles with the Secretary of State of Florida, (the "Florida Not for Profit Corporation Act") and certifies as follows:

**ARTICLE I**

**NAME**

The name of the corporation shall be SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Sub-Association" and its duration shall be perpetual.

**ARTICLE II**

**PURPOSE**

The purpose for which the Sub-Association is organized is to engage as a non-profit organization in protecting the value of the property of the Members of the Sub-Association, to exercise all the powers and privileges and to perform all of the duties and obligations of the Sub-Association as defined and set forth in that certain Declaration of Covenants and Restrictions for Spray Cottages (the "Declaration") to be recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, including the establishment and enforcement of payment of charges and Assessments contained therein, and to engage in such other lawful activities as may be to the mutual benefit of the Members and their property. All terms used herein which are defined in the Declaration shall have the same meaning herein as therein.

## ARTICLE III

### POWERS

The powers of the Sub-Association shall include and be governed by the following provisions:

Section 1. Common Law and Statutory Powers. The Sub-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 Declaration.

Section 2. Necessary Powers. The Sub-Association shall have all of the powers reasonably necessary to implement its purpose, including, but not limited to, the following:

- A. To operate and manage the Sub-Association Property and the Common Property in accordance with the purpose and intent contained in the Declaration;
- B. To make and collect Assessments against Members to defray the Common Expenses;
- C. To use the proceeds of Assessments in the exercise of its powers and duties;
- D. To maintain, repair, replace and operate the Common Property and to maintain the landscaping and lawns of each Parcel, and of the sprinkler system for the Property;
- E. To reconstruct Improvements upon the Property after casualty and to further improve the Property;
- F. To make and amend By-Laws for the Sub-Association and regulations respecting the use of the Property;
- G. To pay all taxes and other assessments which are liens against the Common Property;
- H. To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws and the Rules and Regulations for the use of the Property;
- I. To provide for management and maintenance and to authorize a management entity to assist the Sub-Association in carrying out its powers and duties by performing such functions as the collection of Assessments, preparation of records, enforcement of rules and maintenance of the Common Property. For purposes of landscaping, maintenance and repair of the Common Property, and for the maintenance of the landscaping and lawns of each Parcel, and of the sprinkler system, the Sub-Association shall employ the same management entity as is employed by the Association. The Sub-Association shall, however, retain at all times the powers and duties granted it by common law, Florida Statutes and local

ordinances including, but not limited to, the making of Assessments, the promulgation of rules, and the execution of contracts on behalf of the Sub-Association.

J. To possess, enjoy and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, and deal in real and personal property.

Section 3. Funds and Title to Properties. All funds and title to all properties acquired by the Sub-Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provisions of the Declaration. No part of the income, if any, of the Sub-Association shall be distributed to the Members, directors, or officers of the Sub-Association.

Section 4. Limitations. The powers of the Sub-Association shall be subject to and be exercised in accordance with the provisions of the Declaration.

#### **ARTICLE IV**

#### **MEMBERSHIP**

Qualification for, and admission to, membership in the Sub-Association shall be regulated by the Declaration and the By-Laws of the Sub-Association.

#### **ARTICLE V**

#### **BOARD OF DIRECTORS**

The affairs of the Sub-Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than nine (9) directors. Until such time as Declarant relinquishes control of the Sub-Association, as described in the Declaration, Declarant shall have the right to appoint all members of the Board of Directors and to approve the appointment of all officers of the Sub-Association and no action of the membership of the Sub-Association shall be effective unless, and until, approved by the Declarant. Further, until turnover of control by Declarant, as aforesaid, no director or officer need be a Member of the Sub-Association. After turnover of control of the Sub-Association, and so long as Declarant owns any property within Breakers West, Declarant shall have the right to appoint one (1) member of the Board of Directors; such director need not be a Member of the Sub-Association, however, all other directors and all officers must be Members of the Sub-Association. The number of directors constituting the initial Board is three (3) and they shall serve until such time as Declarant relinquishes control of the Sub-Association or until replaced by Declarant. Commencing with the first annual meeting of Members following the date on which Declarant relinquishes control of the Sub-Association, the directors shall be elected by the Members of the Sub-Association at the annual meeting, except that Declarant shall have the right to appoint one (1) member of the Board of Directors, as described hereinabove. The Declarant shall be entitled at any time, and from time to time, to

remove or replace any director originally appointed by the Declarant. The Declarant may waive or relinquish in whole or in part any of its rights to appoint any one or more of the directors it is entitled to appoint. The following persons shall constitute the initial Board of Directors:

<u>Name</u>	<u>Address</u>
Jerry E. Aron	Gunster, Yoakley, Criser & Stewart, P.A. First National Bank Building Palm Beach, Florida 33480
Henry Barnes	8954 Okeechobee Boulevard West Palm Beach, Florida 33411
Thomas Sansbury	8954 Okeechobee Boulevard West Palm Beach, Florida 33411

## **ARTICLE VI**

### **OFFICERS**

Officers shall be elected by the Board of Directors at the annual meetings of the Directors, as provided in the By-Laws. Until such time as Declarant relinquishes control of the Sub-Association, as provided in the Declaration, however, Declarant shall have the right to approve all of the officers elected. The initial officers shall consist of a President, Vice-President, Secretary and Treasurer. The following persons shall serve as Officers until the first election:

<u>Name</u>	<u>Title</u>
Thomas Sansbury	President
Jerry E. Aron	Vice-President
Henry Barnes	Secretary/Treasurer

## **ARTICLE VII**

### **INDEMNIFICATION OF OFFICERS AND DIRECTORS**

Every Director and Officer of the Sub-Association shall be indemnified by the Sub-Association as provided in the Declaration.



**ARTICLE VIII**  
**INCORPORATOR**

The name and address of the incorporator of the Sub-Association is:

<u>Name</u>	<u>Address</u>
Jerry E. Aron, Esq.	Gunster, Yoakley, Criser & Stewart, P.A. First National Bank Building Palm Beach, Florida 33480

**ARTICLE IX**  
**BY-LAWS**

The By-Laws of the Sub-Association may be adopted, amended, altered or rescinded as provided therein; provided, however, that at no time shall the By-Laws conflict with these Articles of Incorporation or the Declaration and provided further that no amendment, alteration or rescission may be made which affects the rights or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected, and provided further that no amendment, alteration or rescission, of the By-Laws shall be made without the Association's prior written approval. Until such time as Declarant relinquishes control of the Sub-Association, no amendments to the By-Laws shall be effective unless Declarant shall have joined in and consented thereto in writing. Any attempt to amend, alter or rescind contrary to these prohibitions shall be of no force or effect.

**ARTICLE X**  
**AMENDMENTS**

These Articles of Incorporation of the Sub-Association may be amended, altered or rescinded as provided in the Florida Not for Profit Corporation Act, provided however, that no such amendments shall conflict with the terms of the Declaration or adversely affect the rights of Declarant, without Declarant's prior written approval; and provided further that no amendment, alteration or rescission may be made which affects the rights or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected, and provided further that no amendment, alteration or rescission of these Articles shall be made without the Association's prior written approval. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

**RESTATED BY-LAWS**  
**OF**  
**SPRAY COTTAGES**  
**HOMEOWNERS ASSOCIATION, INC.**  
**A Not-for-Profit Corporation Under**  
**the Laws of the State of Florida**

**ARTICLE I**

**IDENTITY**

Section 1. The name of this corporation is SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Corporation" or "Sub-Association".

Section 2. The initial principal office of the Corporation is 8954 Okeechobee Boulevard, West Palm Beach, Florida 33411.

Section 3. The seal of the Sub-Association shall bear the name of the Sub-Association, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation, an impression of which is as follows:

Section 4. All terms used herein which are defined in that certain Declaration of Covenants and Restrictions for Spray Cottages as it may be amended from time to time (the "Declaration"), shall have the same meaning herein as therein.

**ARTICLE II**

**PURPOSES**

This Sub-Association is organized to serve as the instrumentality of Owners in the Property for the purpose of controlling and regulating use of the amenities therein; of promoting, assisting, and providing adequate and proper maintenance of the Property for the benefit of all Owners therein; the maintenance of the land and facilities; to exercise all powers and discharge all responsibilities granted to it as a corporation under the laws of the State of Florida, its Articles of Incorporation, these By-Laws, and the Declaration; to acquire, hold, convey and otherwise deal with real and/or personal property in the Sub-Association's capacity as a homeowners association; and, to otherwise engage in such additional lawful activities for the benefit, use, convenience and enjoyment of its Members as it may deem proper.

### ARTICLE III

#### DIRECTORS AND OFFICERS

Section 1.     Directors

A.     The affairs of the Sub-Association shall be managed by a Board of Directors which shall consist of not less than three (3), nor more than nine (9) members. The initial Board shall consist of the individuals named in the Articles of Incorporation of the Sub-Association, who shall serve until such time as the Declarant relinquishes control of the Sub-Association, as described in the Declaration, or until replaced by the Declarant. After relinquishment of control of the Sub-Association, and so long as Declarant owns any property within Breakers West, Declarant shall have the right to appoint one (1) member of the Board of Directors. Such Director need not be a Member of the Sub-Association.

B.     At the first annual meeting of Members immediately succeeding the date upon which Declarant relinquishes control of the Sub-Association, and at each annual meeting thereafter, the Board of Directors shall be elected by the Members of the Sub-Association, except that Declarant shall have the right to appoint one (1) member of the Board of Directors, as described hereinabove.

C.     Directors shall be elected as follows: Prior to each annual meeting, the Board of Directors shall appoint a Nominating Committee consisting of three (3) Members, using such procedures as the Board may establish. The Nominating Committee shall nominate one person for each vacancy to be filled at that annual meeting, and each Board member shall be provided with a list of the nominations at least one (1) day prior to the annual meeting. Other nominations may be made from the floor. The election shall be by written ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled.

D.     There shall be no cumulative voting.

E.     The organizational meeting of the newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

F.     No Director shall receive or be entitled to any compensation for his services as Director, but shall be entitled to reimbursement for all expenses incurred by him as such, if incurred upon the authorization of the Board.

G.     Until such time as Declarant relinquishes control of the Sub-Association, no Director or officer need be a Member of the Sub-Association. Thereafter, all Directors and officers (except those appointed by Declarant) must be Members of the Sub-Association.

Section 2. Officers. The executive officers of the Sub-Association shall be: President, Vice President, Secretary and Treasurer, and such other officers as the Board of Directors may appoint. The officers named in the Articles of Incorporation shall serve until replaced by Declarant or until the first regular meeting of the Board, whichever shall occur first. Officers elected at the first meeting of the Board shall hold office until the next annual meeting of the Directors, or until their successors shall have been appointed and shall qualify. So long as Declarant retains the right of appointment of all members of the Board of Directors, no officer appointed by the Board shall serve the Sub-Association until such time as Declarant approves the appointment. Upon the appointment of an officer by the Board of Directors, whether the appointment occurs at the annual meeting or otherwise, the Board shall forthwith submit the name of such newly appointed officer or officers, as the case may be, in writing to Declarant. Declarant shall approve or disapprove said officer, or officers, within twenty (20) days after receipt of said name or names. In the event Declarant fails to act within such time period, such failure shall be deemed approval by Declarant.

Section 3. Resignation, Vacancy, Removal.

A. Resignation: Any Director or officer of the Sub-Association may resign at any time, by instrument in writing. Resignations shall take effect at the time specified therein, and if no time is specified, resignations shall take effect at the time of receipt by the President or Secretary of the Sub-Association. The acceptance of a resignation shall not be necessary to make it effective.

B. Director Vacancy: When a vacancy occurs on the Board of Directors, the vacancy shall be filled by Declarant until such time as Declarant relinquishes control of the Sub-Association. Subsequent to the annual meeting of the Members next succeeding the date upon which Declarant relinquishes control of the Sub-Association, a vacancy occurring on the Board of Directors shall be filled by the remaining members of the Board at their next meeting by electing a person who shall serve until the next annual meeting of Members, except that Declarant shall have the right to replace any Director, appointed by Declarant after turnover of control, who resigns, is removed by Declarant, or who, for any other reason, ceases to be a member of the Board of Directors.

C. Officer Vacancy: When a vacancy occurs in an office for any reason before an officer's term has expired, the office shall be filled by the Board of Directors at its next meeting by electing a person to serve for the unexpired term or until a successor has been elected by the Board of Directors and shall qualify. So long as Declarant has or retains the right of appointment of all members of the Board of Directors, no officer appointed hereunder shall serve the Sub-Association until such time as Declarant has approved the appointment, in accordance with the procedure set forth hereinabove.

D. Removal: Any officer may be removed with or without cause by a majority vote of the full Board of Directors at a meeting of Directors called at least in part for the purpose of considering such removal. Any officer or Director may be removed with or without cause, and for any reason, upon a petition in writing by a majority of the Members of the Sub-Association approved at a meeting of members called at least in part for this purpose, by a two-

thirds (2/3) vote of the membership; provided, however, that removal by a vote of the membership shall not apply so long as Declarant has the right to appoint all members of the Board of Directors. The petition calling for the removal of such officer or Director shall set forth a time and place for the meeting of Members, and notice shall be given to all Members of such special meeting of the Members at least ten (10) days prior to such meeting in the manner provided in these By-Laws for the giving of notices of special meetings. At any such meeting, the officer or Director whose removal is sought shall be given the opportunity to be heard. In addition, during the period of time during which Declarant has or retains the right of appointment of all members of the Board of Directors, any officer or member of the Board of Directors may be removed with or without cause by Declarant at its discretion. Further, after turnover of control of the Sub-Association, Declarant shall have the right to remove, with or without cause, members of the Board of Directors which are appointed by Declarant, pursuant to Section 1, Article III of these By-Laws.

Section 4. Indemnification of Directors and Officers.

Every Director and officer of the Sub-Association shall be indemnified by the Sub-Association against liability and expenses which he may incur by reason of his being or having been a Director or officer in accordance with the terms of the Articles of Incorporation of the Sub-Association (hereinafter referred to as the "Articles of Incorporation"), and the Declaration.

**ARTICLE IV**

**POWERS AND DUTIES OF THE SUB-ASSOCIATION  
AND THE EXERCISE THEREOF**

The Sub-Association shall have all powers granted to it by common law, Florida Statutes, the Declaration, the Articles of Incorporation, and these By-Laws, all of which shall be exercised by its Board of Directors unless the exercise thereof is otherwise restricted in the Declaration, these By-Laws or by law; the powers of the Sub-Association shall include, but not be limited to, the following:

1. All of the powers specifically provided for in the Declaration and in the Articles of Incorporation.
2. The power to levy and collect Assessments against Parcels, as provided for in the Declaration.
3. The power to expend monies collected for the purpose of paying the Common Expenses of the Sub-Association.
4. The power to purchase equipment, supplies and material required for the maintenance, repair, replacement, operation and management of the Common Property and the maintenance of the landscaping and lawns of all Parcels and the sprinkler system for the Property.

5. The power to purchase insurance of any nature in such amounts or with such companies as the Board of Directors shall deem necessary and appropriate.
6. The power to employ the personnel required for the operation of the Sub-Association and the Common Property, and the maintenance of the landscaping and lawns of all Parcels and the sprinkler system for the Property.
7. The power to pay utility bills for utilities serving the Common Property.
8. The power to contract for the management of the Sub-Association and to delegate to its contractor as manager, all of the powers and duties of the Sub-Association, except those matters which must be approved by Members.
9. The power to make reasonable rules and regulations and to amend them from time to time.
10. The power to improve the Common Property, subject to the limitations of the Declaration.
11. The power to enforce by any legal means the provisions of the Articles of Incorporation, the By-Laws, the Declaration and the Rules and Regulations promulgated by the Sub-Association.
12. The power to collect delinquent Assessments by suit or otherwise, and to abate nuisances and enjoin or seek damages from Owners for violation of the provisions of the Declaration, the Articles of Incorporation, these By-Laws or the Rules and Regulations.
13. The power to pay all taxes and assessments which are liens against the Common Property.
14. The power to control and regulate the use of the Common Property, and to promote and assist adequate and proper maintenance of the Common Property.
15. The power to borrow money and the power to select depositories for the Sub-Association's funds, and to determine the manner of receiving, depositing, and disbursing those funds and the form of check and the person or persons by whom the same shall be signed, when not signed as otherwise provided by these By-Laws.
16. The power to acquire real and personal property for the benefit and use of its Members and to dispose of the property in accordance with the Declaration and the Articles of Incorporation.
17. The power to enter into a long term contract with any person, firm, corporation or management entity of any nature or kind, to provide for the maintenance, operation, repair and upkeep of the Common Property, and for the maintenance of the landscaping and lawns of all

Parcels and the sprinkler system for the Property, and of any facilities on lease to the Sub-Association or otherwise provided for the Members' usage. For purposes of landscaping, maintenance and repair of the Common Property, and for the maintenance of the landscaping and lawns of all Parcels and the sprinkler system for the Property, the Sub-Association shall employ the same management entity as is employed by the Association. The cost of the management entity's fee shall be a Common Expense, collected pursuant to Article 6 of the Declaration.

18. The power to establish additional officers and/or Directors of the Sub-Association and to appoint all officers, except as otherwise provided herein.

19. The power to appoint such committees as the Board of Directors may deem appropriate.

20. The power to possess, employ and exercise all powers necessary to implement, enforce and carry into effect the powers above described, including the power to acquire, hold, convey and deal in real and personal property.

21. The power to deal with the Association on all matters which affect the Property, the Members, the Owners, or the Sub-Association.

22. The power to appoint an individual to represent the Sub-Association on the Board of Directors of the Association and to replace such individual.

## **ARTICLE V**

### **DUTIES OF OFFICERS**

Section 1. President. The President shall be the chief executive officer of the Sub-Association and shall:

A. Act as presiding officer at all meetings of Members of the Sub-Association and of the Board of Directors.

B. Call special meetings of the Board of Directors.

C. Sign, with the Secretary or Treasurer if the Board of Directors so requires, all checks, contracts, promissory notes, leases, deeds and other instruments on behalf of the Sub-Association, except those which the Board of Directors specifies may be signed by other persons.

D. Perform all acts and duties usually required of an executive to ensure that all orders and resolutions of the Board of Directors are carried out.

E. Appoint committees and act as ex-officio member of all committees, and render an annual report at the annual meeting of Members.

Section 2. Vice President. The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

Section 3. Secretary. The Secretary shall have the following duties and responsibilities:

A. Attend all regular and special meetings of the Members of the Sub-Association and of the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done.

B. Have custody of the corporate seal and affix the same when necessary or required.

C. Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings, keep membership books, and receive all applications for membership.

D. Perform such other duties as the Board of Directors may determine and on all occasions in the execution of his duties, act under the superintendence, control and direction of the Board of Directors.

E. Have custody of the minute book of the meetings of the Board of Directors and Members, and act as transfer agent of the corporate books.

Section 4. Treasurer. The Treasurer shall:

A. Attend all meetings of the membership and of the Board of Directors.

B. Receive such monies as shall be paid into his hands for the account of the Sub-Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and be custodian of all securities, contracts, leases and other important documents of the Sub-Association which he shall keep safely deposited.

C. Supervise the keeping of accounts of all financial transactions of the Sub-Association in books belonging to the Sub-Association, and deliver such books to his successor. He shall prepare and distribute to all of the members of the Board of Directors prior to each annual meeting, and whenever else required, a summary of the financial transactions and condition of the Sub-Association from the preceding year. He shall make a full and accurate report on matters and business pertaining to his office to the Members at the annual meeting, and make all reports required by law. He shall prepare the annual budget, and present it to the Board of Directors for its consideration.



D. The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the Sub-Association as a Common Expense. In the event the Sub-Association enters into a management agreement, it shall be proper to delegate such of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

## ARTICLE VI

### MEMBERSHIP AND VOTING

Section 1. Qualification for Membership. The qualification for membership, and the manner of admission to membership and termination of such membership, shall be as follows: A person or entity shall automatically become a Member of the Sub-Association upon acquisition of fee simple title to any Parcel, by filing a deed therefor in the Public Records of Palm Beach County, Florida. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred or conveyed by operation of law, at which time membership, with respect to the Parcel conveyed, shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of property subject to the Declaration. No person or entity holding an interest of any type or nature whatsoever in a Parcel only as security for the performance of an obligation, shall be a member of the Sub-Association. Declarant, by including additional property within the imposition of the Declaration, may cause additional membership in the Sub-Association and may designate the ownership basis for such additional membership. The Declarant shall be a member of the Sub-Association from and after the date of recordation of the Declaration, which membership shall continue so long as Declarant owns any Parcels within Spray Cottages.

Section 2. Voting. The Sub-Association shall have one (1) class of voting membership. Each Member, including Declarant, shall be entitled to one (1) vote for each Parcel owned by such Member as to matters on which the membership shall be entitled to vote, which vote may be exercised or cast by that member in person or by proxy. All proxies, in order to be valid, must be filed with the Secretary of the Sub-Association by 3:00 P.M. on the day prior to the date of any meeting of the Sub-Association. A proxy shall be valid and entitle the holder thereof to vote until the Secretary shall have received a written revocation of such proxy executed by the grantor of such proxy, or until the death or legal incompetence of the grantor. Any member who owns more than one (1) Parcel shall be entitled to exercise or cast one (1) vote for each such Parcel. When more than one (1) person owns a Parcel, all such persons shall be Members of the Sub-Association; provided, however, that the vote of such Owners shall be exercised as provided hereinbelow, and that in no event shall more than one (1) vote be cast with respect to each Parcel. If more than one (1) person, a corporation, or other entity, owns a Parcel, they shall file a certificate with the Secretary of the Sub-Association naming the person authorized to cast votes for said Parcel. If the certificate is not on file, the Owner(s) shall not be qualified to vote and the vote of such Owner(s) shall not be considered nor shall the presence of such Owner(s) at a meeting be considered in determining whether the quorum requirement has been met. If a Parcel shall be owned by husband and wife as tenants by the entirety, no certificate need be filed with the Secretary naming the person authorized to cast votes for said

Parcel, and either spouse, but not both, may vote in person or by proxy and be considered in determining whether the quorum requirement has been met at any meeting of the members, unless prior to such meeting, either spouse has notified the Secretary in writing that there is a disagreement as to who shall represent the Parcel at the meeting, in which case the certificate requirements set forth above shall apply.

## ARTICLE VII

### MEETINGS

#### Section 1. Meetings of Members.

A. Place of Meetings: All meetings of the Sub-Association shall be held at the office of the Sub-Association, or may be held at such time and place in Palm Beach County, Florida, as shall be stated in the notice thereof.

B. Annual Meetings: Annual Members' meetings shall be held upon a date appointed by the Board of Directors, within one year subsequent to the filing of the Articles of Incorporation of the Sub-Association with the Secretary of State, and in each calendar year thereafter. No meeting shall be held on a legal holiday. The meeting shall be held at such time as the Directors shall appoint from time to time. The purpose of such meetings shall be the election of Directors and the transaction of other business authorized to be transacted by Members. The order of business shall be as determined by the Board of Directors.

C. Special Meetings: Special Meetings shall be held whenever called by the President or by a majority of the Board of Directors and must be called by the Secretary, upon receipt of a written request from Members of the Sub-Association holding a majority of the total votes of the membership. Business transacted at all special meetings shall be confined to the objects and actions to be taken, as stated in the notice of the meeting.

D. Quorum: A quorum for the transaction of business at the annual meeting or any special meeting shall consist of a majority of the total votes of the membership, being present either in person or by proxy, but the Members present at any meeting although less than a quorum, may adjourn the meeting to a future date.

E. Voting Required to Make Decisions: When a quorum is present at any meeting, the vote of a majority of the Members' votes present in person or by proxy shall decide any question brought before the meeting, unless the Declaration, the Articles of Incorporation, these By-Laws or any applicable statute provides otherwise.

#### Section 2. Directors' Meetings.

A. Annual Meeting: The annual meeting of the Board of Directors shall be held immediately following the adjournment of the annual meeting of Members. The

Board of Directors may establish a schedule of regular meetings to be held at such place as the Directors may designate. Regular meetings may be held without notice.

B. Special Meetings: Special meetings of the Board of Directors may be called by the President, upon notice to each Director to be delivered by telephone, mail or in person. Special meetings may also be called on written request of two (2) Directors. All notices of special meetings shall state the purpose, time and place of the meeting.

C. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at such meeting at which a quorum is present, shall be the acts of the Board of Directors except where approval by a greater number is required by the Declaration, the Articles of Incorporation or these By-Laws. At any meeting at which a quorum is not present, the presiding officer may adjourn the meeting from time to time, and at any such adjourned meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice.

D. Joinder: The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of such Director for the purpose of determining a quorum.

E. Written Action: Any action required to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing setting forth the action so to be taken, signed by all of the Directors, is filed in the minutes of the proceedings of the Board. Such consent shall have the same effect as a unanimous vote.

F. Presiding Officer: In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

G. Telephone Meeting: Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating member can hear and be heard by all other participating members.

H. Order of Business: The order of business at Directors' meetings shall be as determined by the Board of Directors.

## **ARTICLE VIII**

### **NOTICE OF MEMBERS MEETINGS**

Section 1. Annual Meeting. Written notice of the annual meeting of Members shall be served upon or mailed to each Member entitled to notice, at least ten (10) days, and no more than sixty (60) days, prior to the meeting. Such notice shall be hand delivered or mailed to each Member at his address as it appears on the books of the Sub-Association. Proof of such mailing may be given by the affidavit of the person giving the notice.

Section 2. Special Meeting. Written notice of a special meeting of Members stating the time, place and object of such meeting shall be served upon or mailed to each Member at least two (2) days, and no more than sixty (60) days, prior to such meeting.

Section 3. Waiver. Nothing herein is to be construed to prevent Members from waiving notice of meetings or acting by written agreement without meetings.

## **ARTICLE IX**

### **PROCEDURE**

Robert's Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and By-Laws of the Sub-Association or with the Statutes of the State of Florida.

## **ARTICLE X**

### **ASSESSMENTS AND MANNER OF COLLECTION**

The Board of Directors shall have the power to levy and enforce Assessments against Parcels and Owners and to collect Association Assessments from Parcels and Owners, as set forth in the Declaration.

## **ARTICLE XI**

### **FISCAL MANAGEMENT**

Section 1. Fiscal Year. The fiscal year of the Sub-Association shall be the calendar year; provided, however, that the Board of Directors is authorized to change to a different fiscal year at such time as the Board deems it advisable.

Section 2. Depositories. The funds of the Sub-Association shall be deposited in such accounts in Palm Beach County, Florida, as may be selected by the Board of Directors, including checking and savings accounts in one (1) or more banks and/or savings and loan associations, Certificates of Deposit, U.S. Treasury Bills and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. Sub-Association funds shall be withdrawn only over the signature of the Treasurer, the President or such other persons as the Board may authorize. The Board may require more than one (1) signature on checks and bank drafts. The funds shall be used only for corporate purposes.

Section 3. Fidelity Bonds. Fidelity bonds may be required at the discretion of the Board of Directors from all officers and employees of the Sub-Association, and from any

contractor handling or responsible for corporate funds. The premiums for such bonds shall be paid by the Sub-Association as a common Expense.

Section 4. Records. The Sub-Association shall maintain accounting records according to good practice which shall be open to inspection by Members at reasonable times. Such records shall include a record of receipts and expenditures and accounts for each Member, which accounts shall designate the name and address of the Member, the due dates and amount of each Assessment, the amounts paid upon the account, and the balance due. A register for the names of all Institutional Mortgagees who have notified the Sub-Association of their liens, and to which lienholders the Sub-Association will give notice of default if required, shall also be maintained.

Section 5. Annual Statement. The Board of Directors shall present annually to the Members a full and clear statement of the business and condition of the Sub-Association, as prepared by an independent accountant.

Section 6. Insurance. The Sub-Association shall procure, maintain and keep in full force and effect, such insurance as may be required by the Declaration to protect the interests of the Sub-Association and the Members.

Section 7. Expenses. The receipts and expenditures of the Sub-Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices.

Section 8. Budget. The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the Common Expenses, and to provide and maintain funds for the accounts established by the Board of Directors, in accordance with good accounting practices.

## **ARTICLE XII**

### **ADMINISTRATIVE RULES AND REGULATIONS**

The Board of Directors may, from time to time, adopt Rules and Regulations governing the details of the operation and use of the Common Property, provided that the Rules and Regulations shall be equally applicable to all Members and uniform in application and effect.

## **ARTICLE XIII**

### **VIOLATIONS AND DEFAULTS**

In the event of a violation of any of the provisions of the Declaration, these By-Laws, the Rules and Regulations adopted by the Sub-Association or the Articles of Incorporation, the Sub-Association and/or Breakers West Property Owners' Association, Inc. (the "Association") shall have all rights and remedies provided by law, including without limitation (and such remedies

shall be cumulative) the right to sue for damages, the right to injunctive relief, and, in the event of a failure to pay Assessments, fines, Association Assessments or Association Fines, or to abide by the architectural restrictions in the Declaration, the right to foreclose its lien as provided in the Declaration; and in every such proceeding, the Owner at fault shall be liable for court costs and the Sub-Association's or the Association's attorneys' fees, as the case may be. A suit to collect unpaid Assessments, fines, Association Assessments or Association Fines may be prosecuted by the Sub-Association and/or the Association respectively, without waiving the lien securing such unpaid Assessments, fines, Association Assessments or Association Fines.

#### **ARTICLE XIV**

#### **AMENDMENT OF BY-LAWS**

These By-Laws may be amended, altered or rescinded by a majority vote of the Board of Directors at any regular or special meeting; provided, however, that at no time shall the By-Laws conflict with the terms of the Declaration or the Articles of Incorporation. Any Member of the Sub-Association may propose an amendment to the Board, and the Board shall act upon such proposal at its next meeting. Until such time as Declarant relinquishes control of the Sub-Association, all amendments to these By-Laws shall be ineffective unless Declarant shall have joined in and consented hereto in writing. No amendment, alteration or modification of these By-Laws shall be made which affects the rights or privileges of any Institutional Mortgagee, nor may these By-Laws be rescinded without the express, prior written consent of all Institutional Mortgagees so affected. Nor shall any amendment, alteration or modification of these By-Laws be made without the prior consent and joinder of the Association. Any attempt to amend, alter, modify or rescind contrary to these prohibitions shall be of no force or effect.

#### **ARTICLE XV**

#### **DECLARANT'S CONTROL**

Anything contained herein to the contrary notwithstanding, the Declarant shall have the right to retain control of the Sub-Association until the year 2000, or until such earlier time as is determined by Declarant, in the Declarant's sole discretion. So long as Declarant retains control of the Sub-Association, Declarant shall have the right to appoint all members of the Board of Directors and to approve the appointment of all officers of the Sub-Association, and no action of the membership of the Sub-Association shall be effective unless and until approved by the Declarant. Further, during the period of the Declarant's control, the members of the Board of Directors and the officers may be removed, with or without cause, by Declarant, at its discretion. After turnover of control of the Sub-Association and so long as Declarant owns any property within Breakers West, Declarant shall have the right to appoint one (1) member of the Board of Directors; such director need not be a Member of the Sub-Association and may be removed only by the Declarant.

## **ARTICLE XVI**

### **VALIDITY**

If any By-Law, rule, or regulation shall be adjudged invalid, such fact shall not affect the validity of any other By-Law, rule or regulation.

## **ARTICLE XVII**

### **CONSTRUCTION**

These By-Laws and the Articles of Incorporation of the Sub-Association shall be construed, in case of any ambiguity or lack of clarity, to be consistent with the provisions of the Declaration. In the event of any conflict between the terms of the Declaration, the Articles of Incorporation or these By-Laws, the following order of priority shall apply: The Declaration, the Articles of Incorporation and the By-Laws.

It is hereby certified that the foregoing Restated Governing Documents of Spray Cottages Homeowners Association, Inc. were approved for recording by the Board of Directors at a duly called meeting of said Board.

IN WITNESS WHEREOF, the undersigned President and Secretary have executed these Restated Governing Documents this 24 day of March, 2022.

**SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC.,**  
a Florida Not-for-Profit Corporation

Witnesses:

Nicholas Egan  
(signature)  
NICHOLAS EGAN  
(printed name)

[Signature]  
(signature)  
Elizabeth ILIFF  
(printed name)

Zahiyah Aromire  
(signature)  
Zahiyah Aromire  
(printed name)

[Signature]  
(signature)  
Larry Pfeil  
(printed name)

By: [Signature]  
Roger Parlow, President

Attest: [Signature]  
Caterina Iapado, Secretary

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 24 day of March, 2022, by Roger Parlow, as President, and Caterina Iapado, as Secretary, respectively, of SPRAY COTTAGES HOMEOWNERS ASSOCIATION, INC., who are personally known to me or have produced Drivers Lic. as identification and who did take an oath.

Physical Presence:   x  

OR

Online Notarization: \_\_\_\_\_

[Signature]

Notary Public  
State of Florida  
My Commission Expires:

