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Scott Ellis

Clerk Of Courts, Brevard County

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**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF THE TOWN HOMES OF BREVARD OWNERS ASSOCIATION, INC**

THIS AMENDMENT AND RESTATEMENT is made this 18th day of February, 2005, by TOWN HOMES OF BREVARD OWNERS ASSOCIATION, INC., a Florida not for profit corporation (the "Association").

W I T N E S S E T H :

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions of Town Homes of Brevard Owners Association, Inc. (the "Declaration") is recorded in Official Record Book 1409, Page 729, *et seq.*, Public Records of Brevard County, Florida; and

WHEREAS, the Association desires to amend and restate in its entirety the Declaration; and

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Town Homes of Brevard Owners Association, Inc. has been adopted and approved as provided in Article VIII, Section 3, of the Declaration.

NOW THEREFORE, the Declaration is hereby amended and restated in full as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Town Homes of Brevard Owners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.



Section 4. "Common Area" shall mean all real property maintained by the Association for the common use and enjoyment of the Owners. The Common Area to be maintained by the Association is described in Exhibit "B" attached hereto and incorporated herein by this reference.

Section 5. "Lot" shall mean and refer to each parcel of land within the Properties on which a dwelling is located and intended as a single family residence, which shall be deeded in fee simple to an Owner.

Section 6. "Majority" shall mean and refer to fifty-one percent (51%) of eligible voting Owners unless otherwise specified.

ARTICLE II - PROPERTY RIGHTS

Section 1. Each Owner and members of such Owner's family residing with the Owner, or the tenant of a non-residential Owner, has a non-exclusive right to use the Common Area for the purpose for which it is intended. This right shall pass with title to the Lot owned by the Owner.

Section 2. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two automobile parking spaces, together with the right of ingress and ingress in and upon said parking area. The Association shall permanently assign two parking spaces for each dwelling, one of which shall be covered and one of which shall be open. These parking areas are for the Owners use only and not meant for long-term storage.

ARTICLE III - MEMBERSHIP VOTING RIGHTS

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. The lien created hereunder



will be effective from and after recording a Claim of Lien in the public records of Brevard County, Florida, stating the Lot description, the name of the record Owner, the amount due, and the due date. The lien will remain in effect until all sums due to the Association (including those accruing after the recording of the lien) and related to such Lot, have been fully paid. All Lots shall be transferred subject to the terms and provisions of the continuing lien described in this Section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated on the Properties.

Section 3. Annual Budget and Assessments. The Board of Directors shall approve annual budgets in advance for each fiscal year and the budget shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for operating expenses (including, property and casualty insurance required by Article IX), maintenance expenses, repairs, management expenses, replacement reserve and reasonable reserves for the continued maintenance and operation of any other items deemed necessary for the protection of all Owners. Each Owner shall be liable for the payment to the Association of his or her share of the common expenses as determined in said budget. The Association shall make an annual assessment for each Lot by action of its Board of Directors. One-twelfth (1/12) of the annual assessment shall be due and payable in advance to the Association on the first day of each month.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment, in any fiscal year, only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property relating thereto, provided that any such assessment shall have the assent of a Majority. The Board shall provide to Owners at least thirty (30) days advance notice as to any special assessment being due.

Section 5. Emergency Assessments. In the event of catastrophic loss, the Association's Board of Directors may levy an emergency assessment for the purpose of protecting the interests of all Owners.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Certificates of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days of its due date shall bear a late fee equal to twenty percent (20%) of the assessment due. Any assessment not paid within thirty (30) days of its due date, together with the applicable late fee, shall bear interest from the due date at the rate of



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eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure the lien against the Lot. Interest, costs, and reasonable fees for the attorneys of any such action will be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V - ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural review committee composed of three (3) or more representatives appointed by the Board. The Board of Directors shall be responsible to preserve the conformity and harmony of design of the improvements located on the Properties.

ARTICLE VI - RULES AND REGULATIONS

Section 1. No Lot shall be used except for residential purposes.

Section 2. The number of residents of any Lot shall not exceed four (4).

Section 3. No structure of a temporary character, trailer, mobile home, camping trailer, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are; kept within doors at all times, or kept on leash when outside, and will not be kept, bred, maintained for any commercial purposes. No resident may maintain more than two (2) household pets at the Properties. All dog waste deposited on the Properties must be immediately recovered and properly disposed of by pet owner.



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Section 6. No fence, wall, hedge or shrub planting shall be permitted unless approved by the Board of Directors of the Association or the architectural review committee.

Section 7. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in plastic sanitary containers with a lid within designated trash rooms awaiting timely disposal off premises. All such disposal equipment shall be kept clean and in sanitary condition.

Section 8. Easements for installation and maintenance of utilities and drainage facilities are reserved. No structure, planting or other material shall be allowed to damage or interfere with the installation and maintenance of any such utilities or flow of drainage swales in the easements. The easement areas of each Lot and all improvements in such easements shall be maintained continuously by the Association, except for those improvements for which a public utility or authority is responsible.

Section 9. No building or any part thereof shall be erected on any Lot closer than twenty-five (25) feet from the public road right-of-way.

Section 10. Inoperable automobiles, trucks and other vehicles may not be stored on Lots. Owners are prohibited from making repairs on vehicles on any Lot or adjacent streets. Carports and parking spaces shall be used only for parking operable vehicles and boats up to twenty (20) feet in length.

Section 11. No antennas shall be erected on any roof or exterior wall.

Section 12. No Owner may lease or rent his or her dwelling for a term of less than three (3) months.

Section 13. Except as otherwise provided herein, each Owner shall be responsible for maintaining, repairing and replacing, at the Owner's expense, all portions of the Owner's dwelling. The portions of a dwelling to be maintained, repaired and replaced by the Owner at the Owner's expense shall include, but shall not be limited to: roof; porch enclosures; air conditioning and air handling equipment; all conduits, ducts, plumbing, pipes, wiring and other facilities for the furnishing of utility services; interior fixtures such as electrical and plumbing fixtures; windows, screens, doors, drywall, inside paint and other inside wall finishes and floor coverings.

Section 14. The Association shall be responsible for maintenance of soffit, fascia, gables and kitchen breakfast fronts. The Association will maintain responsibility for all exterior painting with the exception of entrance doors and windows.

ARTICLE VII - PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of



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this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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

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

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII - RIGHTS OF THE ASSOCIATION

Section 1. Enforcement Rights. The Association, its agents and employees, shall have the right, but not the obligation, to enter upon any Lot to cure any violation of these Covenants, including, without limitation, the right to remove any structure which is in violation of these Covenants and to perform maintenance and repair of Lots and improvements. Any such removal, curing, maintenance or repair shall be at the expense of the Owner of the Lot on which the violation has occurred or exists, which expense shall be deemed a special assessment and shall be payable by such Owner to the Association on demand. Entry to remove and cure any violation of these Covenants shall not be a trespass and the Association shall not be liable for any damages on account of the entry. The remedies contained in this Section shall be construed as cumulative of all other remedies provided at law or in equity.

Section 2. Rules and Regulations. The Association shall have the right, power, and authority to promulgate and impose reasonable Rules and Regulations governing and/or restricting the use of any Lot or the Common Area, and to thereafter change, modify, alter, amend, rescind, and augment any of the same; provided, however, that no Rules and Regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such Rules and Regulations so promulgated by the Association shall be applicable to and binding upon the



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Owners and their successors and assigns, as well as all guests or invitees of and all parties claiming by, through, or under such Owner.

Section 3. Remedies. In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the Rules and Regulations of the Association, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event by the date and time stated in the written notice of violation, or if any similar violation is thereafter repeated, the Association may, at its option:

(a) Fine the Owner as provided below and/or suspend, for a reasonable period of time, the voting rights of an Owner (provided, that the Association may suspend the voting rights of an Owner only for the non-payment of regular annual assessments that are delinquent in excess of ninety (90) days); and/or

(b) Commence an action to enforce the performance on the part of the Owner or tenant, or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

(c) Commence an action to recover damages; and/or

(d) Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of twenty percent (20%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable Owner, and shall be due upon written demand by the Association. The Association shall have a lien for any such assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such assessment, and may take such action to collect such assessment or foreclose said lien as in the case and in the manner of any other assessment as provided above. Any such lien shall only be effective from and after the recording of a Claim of Lien in the public records of Brevard County, Florida.

Section 4. Fines and Suspensions.

(a) The length of any suspension and/or the amount of any fine shall be initially determined by the Board, and in the case of a fine shall not exceed \$100.00 per violation, or \$1,000.00 in the aggregate for a continuing violation, or such other amount as is permitted by the law.



(b) Prior to imposing any suspension or fine, the Owner shall be given at least fourteen (14) days written notice of the fact that the Board is considering the imposition of the suspension or fine, including (i) a statement of the provisions of the Declaration, Bylaws or Rules and Regulations which have allegedly been violated, (ii) the proposed length of the suspension or amount of the fine, and (iii) the right of the Owner to request a hearing. If the Owner desires to contest the suspension or fine, the Owner may demand a hearing by written notice to the Board within the statutory time frame after the notice of the suspension or fine, and in that event the Owner shall have the right to a hearing, which shall be held in accordance with the law. The hearing shall be conducted in accordance with any applicable statutory provisions. At the hearing, the Owner shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the suspension or fine previously imposed may be approved, disapproved or modified. If the Owner fails to request a hearing, or fails to attend the hearing, the Owner shall be deemed to have admitted the allegations contained in the notice to the Owner.

(c) Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the decision at the hearing. Any fine levied against an Owner shall be deemed an assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of assessments shall be applicable.

(d) The Board may, and to the extent required by law shall, delegate the right to impose suspension or fines, set the amount thereof, and/or conduct hearings pursuant to this paragraph, to a Committee of the Association.

Section 5. Other Assessments. Any amounts owed by the Owner to the Association as the result of the Association's abating or curing violations of these Covenants or maintaining or repairing Lots or improvements thereon shall be due and payable within ten (10) days from the date of receipt of a statement for such amounts from the Association.

ARTICLE IX – INSURANCE

Section 1. Association's Obligation to Maintain Insurance. The Association will maintain property and casualty insurance upon all improvements located upon the Properties in an amount equal to the maximum insurable replacement value thereof, excluding foundation and excavation costs. It shall also maintain such insurance upon the Common Area as it shall determine to be required or desirable. The Association's Board of Directors shall be responsible for filing any and all insurance claims under any insurance policies maintained by the Association. The Association's Board of Directors shall maintain all funds received from insurance claims in a separate account and shall disburse same as repairs and/or replacements are completed. All insurance funds received in excess of the cost to repair and/or replace any of the property covered by an insurance claim shall belong solely to the Association.



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Section 2. Obligation of Owners to Maintain Insurance. Each Owner shall maintain property and casualty insurance upon the interior of each such Owner's dwelling located on the Properties, including all fixtures located therein, in an amount equal to the maximum insurable replacement value thereof. The costs of the premium for such insurance shall be borne solely by each such Owner. Each Owner shall provide proof of such insurance upon request by the Association.

ARTICLE X - GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. These Covenants shall run with and bind the land submitted or subjected hereto and shall remain in effect for a period of twenty (20) years, after which time they will be automatically extended for periods of ten (10) years, and shall inure to the benefit of and be enforceable by the Association, the Owners and their respective legal representatives, heirs, successors and assigns, unless modified or terminated by duly recorded written instrument executed in conformance with requirements as described below. The Covenants may be modified or terminated only upon an affirmative vote of a Majority of the Owners present or voting by proxy at a meeting duly called for such purposes at which a quorum is present; provided, however, no such Amendment shall affect the right or lien of any institutional mortgagee without such mortgagee's express consent. The Common Area shall not be mortgaged or conveyed without the consent of at least a Majority of the Owners present or voting by proxy at a meeting duly called for such purpose at which a quorum is present.

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SIGNATURE PAGE FOLLOWS]



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IN WITNESS WHEREOF, the undersigned parties have caused their seals and signatures to be affixed the date and year first above written.

ATTEST:

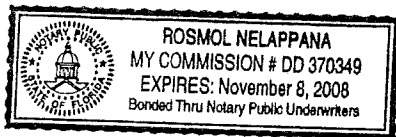
By: Amy L. McKowen
Print Name: Amy L. McKowen
Its Secretary

TOWN HOMES OF BREVARD
OWNERS ASSOCIATION, INC.,
a Florida not for profit corporation

By: Frank J. Van Lengen
Print Name: Frank J. Van Lengen
Its President

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 18 day of February, 2005, by Frank J. Van Lengen of TOWN HOMES OF BREVARD OWNERS ASSOCIATION, INC., a Florida not for profit corporation, on behalf of the corporation. He is personally known to me or has produced FL DL V5452705041900 as identification and did/did not take an oath.



Rosmol Nelappana
Notary Public
Printed Name: Rosmol Nelappana
My commission expires: Nov 8, 2008



EXHIBIT "A"

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All of Lots 3, 4, 5, 16, 17 and 18 and the East 7.66 feet of Lots 6 and 15, Block 2, GREEN FIELD SUBDIVISION, as recorded in Plat Book 14, Page 29, Public Records of Brevard County, Florida.



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EXHIBIT "B"

Easement for Common Elements (Parking Area Between Building 1 and 2) for "The Town Homes, Inc." lying in Government Lot 3, Sec. 30, Twp. 27 S., Rge. 38 E. Being a portion of Lots 3 and 18, Lots 4 and 17 and Lots 5 and 16, Block 2, GREEN FIELD SUBDIVISION as recorded in Plat Book 14, Page 29, Brevard County Public Records, Florida, more particularly described as follows: From the N.E. corner of said Lot 3, Block 2, GREEN FIELD SUBDIVISION, run N. $88^{\circ} 23'35''$ W. along the South Right of Way line of Flug Ave., a distance of 82.33 feet to the point of beginning of the herein described parcel; thence S. $1^{\circ} 36'25''$ W. a distance of 55.0 feet; thence S. $88^{\circ} 23'35''$ E. a distance of 11.0 feet; thence S. $1^{\circ} 36'25''$ W. a distance of 90.0 feet; thence N. $88^{\circ} 23'35''$ W. a distance of 11.0 feet; thence S. $1^{\circ} 36'25''$ W. a distance of 55.0 feet to the North Right of Way line of Palmetto Ave.; thence N. $88^{\circ} 23'35''$ W. along said North Right of Way line a distance of 68.00 feet; thence N. $1^{\circ} 36'25''$ E. a distance of 55.0 feet; thence N. $88^{\circ} 23'35''$ W. a distance of 11.0 feet; thence N. $1^{\circ} 36'25''$ E. a distance of 90.0 feet; thence S. $88^{\circ} 23'35''$ E. a distance of 11.0 feet; thence N. $1^{\circ} 36'25''$ E. a distance of 55.0 feet to the aforesaid South Right of Way line of Flug Ave.; thence S. $88^{\circ} 23'35''$ E. along said South Right of Way line a distance of 68.00 feet to the point of beginning.