



**AGREEMENT TO INSTALL AND MAINTAIN IMPROVEMENTS
IN
ROAD RIGHTS-OF-WAY**

THIS AGREEMENT TO MAINTAIN IMPROVEMENTS IN ROAD RIGHTS-OF-WAY (the “Agreement”) is made this ____ day of _____, 20__, by and between the _____ Homeowner’s Association (“Association”), and the TOWN OF JUPITER, a municipal corporation of the State of Florida (“Town”).

WHEREAS, the subdivision known as _____ was constructed on lands legally described as all of the Plat of _____ as recorded in Plat Book _____, at Page _____, of the Public Records of Palm Beach County, Florida, attached hereto and made a part hereof (“Property”); and

WHEREAS, the implementation of the Town’s policy that “growth pays for growth” has caused a varied mix of circumstances regarding the responsibilities when development orders were granted for maintaining infrastructure in the Town sometimes resulting in different developers entering into unique right-of-way ownership and maintenance arrangements with the Town, or the County for subdivisions or areas annexed into the Town; and

WHEREAS, the Town has recognized that these agreements and the inconsistent manner in which the infrastructure elements, such as roadways, street trees, sidewalks, storm water conveyance systems, landscaped medians, lighting and street signage were delivered and maintained may have resulted in an inequitable distribution of costs to residents within subdivisions in different locations in the Town; and

WHEREAS, the Town Council has determined that a completely equitable distribution of costs is not achievable; and

WHEREAS, in order to address the inequitable distribution of infrastructure maintenance costs, the Town shall deliver its basic level of service, or the minimum service the Town provides for its key structural elements, for roadways, sidewalks and stormwater conveyance systems in neighborhoods that provide publicly accessible roadways; and

WHEREAS, the Town and the Association have agreed that there should be an equitable sharing of the burden of maintaining the infrastructure within the subdivision; and

WHEREAS, the Association agrees to maintain, in accordance with the Town's standards and practices (a current copy of which is attached hereto as an exhibit) the Special ROW Improvements, as described below, for the term of this Agreement.

WHEREAS, the Town agrees to maintain, in accordance with the Town's standards and practices, the Standard ROW Improvements, so described below, for the term of this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association and the Town agree as follows:

1. **Representation of Ownership.** The Association hereby represents that it is the owner, by warranty deed, quit claim deed, easement, or plat dedication, or is otherwise legally responsible for the maintenance of the right-of-way described in **Exhibit "A"**, attached hereto and made part hereof; that it has the right to enter into this Agreement, and that the person signing this Agreement has the authority to sign and execute this Agreement on behalf of the Association. The Association and its successors-in-interest to the Owner's Property are referred to herein as the "Owner".

2. **Agreement of Town to Maintain** The Town shall be responsible for designing, permitting, installing, maintaining, repairing, replacing, and operating any existing or new Standard ROW Improvements located in the ROW/Easement Areas, which shall mean and include the roadway pavement system (subgrade, base and asphalt), roadway curbing, concrete sidewalks, striping, signage, and traffic control devices (e.g. – traffic signals, stop signs, etc.), and drainage facilities located in the ROW/Easement Areas" herein described in Exhibit "A" unless noted otherwise without requiring monetary contribution from the Association except as described in Section 4. The Town shall perform its obligations described herein, in a manner so as to minimize damage, disruption and inconvenience to the other properties, including Association property and Association member's property, which may be disturbed or affected by the Town's actions; such properties shall be restored to the condition thereof prior to such entry, damage or disruption (e.g. sod adjacent to sidewalks that have been replaced). This shall not be construed to require the Town to restore or relocate improvements or facilities identified in Section 3 that conflict with the Town's obligations (e.g. paver brick "systems" disrupted due to roadway repairs).

3. **Agreement of Association to Maintain.** The Association shall be responsible for designing, permitting, installing, maintaining, repairing, replacing, and operating any existing or new Special ROW improvements located in the ROW/Easement Areas which shall mean and include the drainage retention facilities, landscaping materials (sod, trees and plantings), irrigation lines and facilities, specialty signage and decorative posts, monument signage, handrail or decorative railing, decorative columns, and paver brick "systems" unless noted otherwise without requiring monetary contribution from the Town. The Association shall perform its obligations described herein, in a manner so as to minimize damage, disruption and inconvenience to the other properties, including Town property and right-of-ways, which may be disturbed or affected by the Association's actions; such properties shall be restored to the condition thereof prior to such entry, damage or disruption. All installation, maintenance, repair, replacement and operation of the Special ROW Improvements shall be performed in a first class condition and manner and shall comply with all permits now or hereafter issued for the Special ROW Improvements and with all applicable governmental permits, approvals, laws, codes and requirements, including ordinances and regulations of the Town, and with the Town's Engineering Division standards. In the event that the Association fails to maintain the Special ROW Improvements in accordance with the ordinances and regulations of the Town, the Town may provide the Owner with courtesy written notice of

the violation(s) and shall specify the nature of each violation. If the Owner fails to remedy such violation(s) within thirty (30) days after receipt of written notice from the Town, then the violation(s) shall be directed to the Town Code Enforcement Division for enforcement proceedings. Should the Town determine that it is in the public's best interest, the Town shall have the right, but not the obligation, to maintain the Special ROW Improvements, and shall be reimbursed by the Owner for all costs and fees incurred including, the reasonable cost of the time of Town staff, attorneys and consultants, if any, for the maintenance of the improvements.

4. **Accumulated Depreciation Contribution.** The Association shall pay to the Town the sum of \$_____ in exchange for the Town's assumption of maintenance and operational responsibilities for the facilities identified in Section 2. The Association shall make annual payments of \$_____ due October 1st, beginning October 1, 2011 and ending October 1, 2020. Failure to provide the Accumulated Depreciation Contribution in accordance with this Section shall be considered a breach of this Agreement unless cured. The parties hereto agree that upon written notice from the Town, the Association shall have 30 days to cure any such breach. Should the breach of the Agreement not be cured within 30 days from the date of the Town's written notification of the breach, the Town may be unilaterally entitled to the following remedies: a) the immediate termination of this Agreement and b) the Association's forfeiture of any Accumulated Depreciation previously paid to the Town.

5. **Association to Indemnify the Town.** The Association shall indemnify, defend, and hold the Town, and its officers, agents, employees, elected and appointed officials, and independent contractors, harmless, from and against, any and all claims, demands, actions, suits, losses, damages, expenses, judgments (including court costs and reasonable attorney's fees at all levels) and claims of liability, which may arise out of, or are alleged to have arisen out of, the Association's installation, maintenance, repair, operation, use, occupancy of the Special ROW Improvements, and all claims arising directly or indirectly, from the Association's use and maintenance of the Special ROW Improvements, including but not limited to, the contractual liabilities of the Association arising out of this Agreement. The indemnity obligation herein shall survive the termination of this Agreement.

6. **Town to Indemnify the Association.** The Town shall indemnify, defend, and hold the Association, its officers and directors, agents, employees, members, and independent contractors harmless, from and against, any and all claims, demands, actions, suits losses, damages, expenses, judgments (including court costs and reasonable attorney's fees at all levels) and claims of liability, which may arise out of, or are alleged to have arisen out of the Town's installation, maintenance, repair, operation, use, or occupancy of the Standard ROW Improvements. This agreement to indemnify shall not be construed to, nor does it waive the sovereign immunity protection afforded to the Town pursuant to Fla.Stat. Section 768. The indemnity obligation herein shall survive the termination of this Agreement, but only for incidents that occurred during the term of this Agreement.

7. **Hazardous Materials.** The Association represents that it has no knowledge of any substance, chemical, or waste (collectively "substance") upon or within the Property, that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation, and that there is no known violation of any such law or regulation existing within or upon the Property at the time of execution of this Agreement.

8. **Term.** The Association agrees to maintain any existing and install and maintain any new Special ROW Improvements in perpetuity. The Town agrees to maintain any existing and install and maintain any new Standard ROW Improvements for a period of 5 year(s). This Agreement implements a

pilot “Equity” Program for the Town’s assumption of maintenance of Standard ROW Improvements. Thereafter, the Agreement shall be automatically renewed annually unless and until one party shall give the other party one year’s written notice of its intention to terminate the Agreement. Should either party terminate this Agreement, the Accumulated Depreciation Contribution paid to the Town shall be reimbursed to the Association.

9. **Binding Agreement.** This Agreement, when duly executed by the parties will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors and assigns.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

11. **Venue.** Any action or proceeding of any kind arising out of or related to this Agreement shall be brought in the appropriate State or Federal Court for Palm Beach County, Florida. The parties hereto irrevocably consent to service, jurisdiction, and venue in the courts of Palm Beach County, Florida, for any litigation arising from this Agreement and waive any other venue to which any of them might be entitled.

12. **Headings/Interpretation.** The word or phrase appearing at the commencement of sections or subsections are included only as a guide to the contents thereof and are not to be construed as controlling, enlarging or restricting the language or meaning of the text.

13. **Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any entity or circumstance shall be to any extent held invalid or unenforceable, the remainder of this Agreement or the application of such terms, covenants, and conditions to entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Recitals.** All recitals, including all defined terms, set forth hereinabove and exhibits attached hereto shall be deemed incorporated into and a part of this Agreement.

15. **Construction.** This Agreement will not be construed more strictly against one party than against any other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

16. **Attorneys’ Fees.** If any litigation is instituted for the purpose of enforcing or interpreting any provision of this Agreement, the prevailing party or parties, as determined by the court having jurisdiction, shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred, including reasonable attorneys’ fees and expenses and court costs at the pretrial level, the trial level, and in connection with all appellate and bankruptcy proceedings. Fees for paralegals and other legal support personnel shall be a recoverable expense in accordance with the preceding sentence.

17. **Waiver of Jury Trial.** THE PARTIES HERETO WAIVE ANY RIGHTS ANY OF THEM MAY HAVE TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT AND AGREE THAT THEY SHALL NOT ELECT A TRIAL BY JURY. THE PARTIES HERETO HAVE SEPARATELY, KNOWINGLY AND VOLUNTARILY GIVEN THIS WAIVER OF RIGHT TO TRIAL BY JURY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

18. **Modification/Waiver.** No change, modification, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon any party hereto, unless reduced to writing and signed by such party. Waiver or forbearance by either party of any provisions or breach of any provision of this Agreement shall not operate or be construed to forfeit any of said party's rights or a waiver or forbearance of any other provision of this Agreement or of any future breach of this provision so waived.

19. **Notices.** All notices required or permitted by this Agreement will be in writing and hand delivered or sent by facsimile, express mail, overnight delivery service or registered or certified mail, with return receipt requested and postage prepaid, to the addresses of the parties set forth below or to such other addresses as the parties may designate in writing. Notices will be deemed delivered: (i) if hand delivered, transmitted by facsimile, sent by express mail or overnight courier service, when received by the recipient; or (ii) if sent by mail, three (3) days after deposit in the United States mail, with sufficient prepaid postage affixed to carry same to its destination.

20. **Counterparts.** This Agreement may be executed in as many counterparts as is deemed necessary or appropriate. Each such counterpart will constitute an original and all counterparts together shall be deemed one agreement.

21. **Third Parties.** Unless expressly stated to the contrary in this Agreement, nothing contained in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party as a third party beneficiary or otherwise.

22. **Force Majeure.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the dates hereinafter set forth.

HOMEOWNERS ASSOCIATION

The terms and conditions of the foregoing Agreement, to the extent the same are binding upon the _____, are hereby accepted on behalf of the _____ by _____ as its duly authorized representative this _____ day of _____, 20____.

Printed Name & Title: _____

Signature: _____

Date: _____

ATTEST:

By: _____

_____, Secretary

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, President of the _____. He is personally known to me or has produced a Florida drivers license as identification and did not take an oath.

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

[NOTARY SEAL]

THE TOWN OF JUPITER

The terms and conditions of the foregoing Agreement, to the extent the same are binding upon the Town, are hereby accepted on behalf of the Town of Jupiter by _____ as its duly authorized representative this _____ day of _____, 20__.

BY: _____
Karen Golonka, Mayor

ATTESTED BY: _____
Sally M. Boylan, Town Clerk

(TOWN SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Thomas J. Baird
Town Attorney

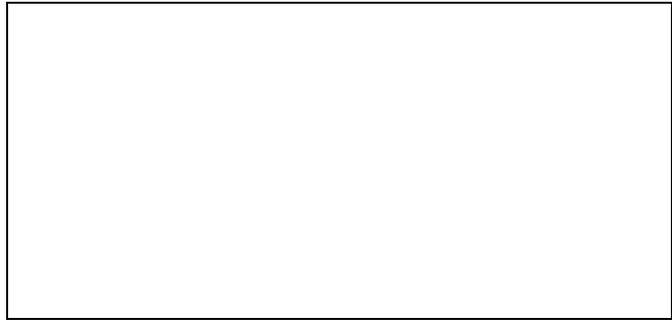
The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by **KAREN J. GOLONKA**, Mayor of the Town of Jupiter. She is personally known to me or has produced a Florida drivers license as identification and did not take an oath.

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

[NOTARY SEAL]



**AGREEMENT FOR REIMBURSEMENT OF MAINTENANCE
AND OPERATION COSTS FOR STREET LIGHTING BETWEEN
NEWHAVEN AT ABACOA HOMEOWNERS ASSOCIATION
AND THE TOWN OF JUPITER**

THIS AGREEMENT FOR REIMBURSEMENT of Maintenance and Operation Costs for Street Lighting (“Agreement”) is executed this _____ day of _____, 2011, between NewHaven at Abacoa Homeowners Association, a Florida not for profit corporation, established pursuant to Chapter 617 of the Florida Statutes, hereinafter referred to as (“Association”), and the Town of Jupiter, a municipal corporation of the State of Florida (“Town”).

WHEREAS, Abacoa Homes Inc., a Florida Corporation, was the developer of NewHaven 7A and 7B located within Jupiter, Florida; and

WHEREAS, pursuant to Ordinance No. 47-95 and Section 17-112 of the Code of Laws and Ordinances of Jupiter, Florida (“Ordinance”) Abacoa Homes, Inc. was responsible for providing street lighting as part of the development of NewHaven, and

WHEREAS, the Association in fulfillment of the Abacoa Homes Inc. obligation to provide street lighting within NewHaven, has contracted with the Florida Power & Light Company (“F.P.L.”) to maintain and power street lights on certain road rights of way within NewHaven as defined in **Exhibit “A”** (attached hereto and made a part hereof), and

WHEREAS, the Association is currently responsible for the capital, maintenance, and operation costs for the street lighting of the public roads within NewHaven 7A and 7B; and

WHEREAS, the Association meets the eligibility requirements of Section 2 of the Ordinance thereby making it eligible for the Town to assume financial responsibility for the maintenance and operation costs of the street lighting on public roads within NewHaven 7A and 7B, through a reimbursement from the Town to the Association; and

WHEREAS, pursuant to the Ordinance; the Town is empowered to assume the financial responsibility for the maintenance and operation costs for street lighting in developments or subdivisions whose roads are dedicated as public roads;

NOW THEREFORE, for Ten (\$10.00) Dollars and the additional consideration of the Town's assuming financial responsibility for the maintenance and operation costs of the street lighting of the public accessible roads within NewHaven 7A and 7B, and of the promises made by the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties do covenant and agree as follows:

Section 1. The whereas clauses contained above are true and correct and incorporated herein by reference.

Section 2. Reimbursement - The Town hereby agrees, after inspection and written acceptance of the street lighting and road improvements, to reimburse the Association quarterly as described in Section 3 below, for the electric power and maintenance costs charged by Florida Power & Light Company ("FPL") to the Association for only those street lights located within the public road right of way in NewHaven 7A and 7B. **Exhibit B** provides a listing of the FPL pole numbers, and associated street names for the lights that area subject to this agreement. FPL's street lighting and power plans for NewHaven 7A and 7B are attached as **Exhibit C**.

Section 3. The reimbursement amount shall be only for such maintenance and energy as is shown on the FPL's rate schedule SL-1 and any changes thereto as approved by the Public Service Commission for the lamp size shown in lumens or watts, a copy of the current schedule is attached hereto and incorporated in **Exhibit "D"**. The amount shown shall exclude any taxes and franchise fees. All invoices to the Town will be at the end of the quarter being invoiced.

Section 4. Notwithstanding the Town's reimbursement to the Association for street lighting maintenance and energy costs, the Association shall still be responsible for the following:

- a. The Association shall be responsible for any and all costs of trimming trees, shrubbery, or other landscaping within NewHaven 7A and 7B which may be required to enhance, improve, or otherwise compliment or be of aesthetic, safety or other beneficial effect to the Town for the street lights accepted under this Agreement.
- b. The Association shall be responsible for periodic inspection, and for prompt notification of FPL to correct any deficiencies identified through the inspection, whether issues are identified by a resident, the Association or the Town.

Section 5. Right to Modify - The Association and Town hereby expressly reserve the right to annul, waive, amend, rescind, or modify any of the restrictions, conditions, agreements or provisions contained herein, by the Parties' mutual execution of a written amendment to this Transfer Agreement.

Section 6. Entire Agreement - This instrument represents the entire agreement between the parties, and there are no promises or understandings other than those stated herein.

Section 7. Governing Law and Venue - This Agreement and all actions or transactions

contemplated by it shall be governed by and construed and enforced with the law of the State of Florida. Venue shall be in Palm Beach County.

Section 8. Construction - The preparation of this Agreement is considered a joint effort of the parties and accordingly this Agreement shall not be construed more severely against one of the parties than the other.

Section 9. Severability - If any part of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

Section 10. Headings - The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

Section 11. Counterparts - This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12. Any changes or amendments of any kind to this agreement shall be made in writing and executed by both parties. No party shall have the right to unilaterally make any change or agreement.

Section 13. Attorneys' Fees. If any litigation is instituted for the purpose of enforcing or interpreting any provision of this Agreement, the prevailing party or parties, as determined by the court having jurisdiction, shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred, including reasonable attorneys' fees and expenses and court costs at the pretrial level, the trial level, and in connection with all appellate and bankruptcy proceedings. Fees for paralegals and other legal support personnel shall be a recoverable expense in accordance with the preceding sentence.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the dates hereinafter set forth.

HOMEOWNERS ASSOCIATION

The terms and conditions of the foregoing Agreement, to the extent the same are binding upon the NewHaven At Abacoa HOA, are hereby accepted on behalf of the NewHaven At Abacoa HOA by _____ as its duly authorized representative this ____ day of _____, 2011.

Printed Name & Title: _____

Signature: _____

Date: _____

ATTEST:

By: _____

_____, Secretary

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, President of the _____. He is personally known to me or has produced a Florida drivers license as identification and did not take an oath.

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

[NOTARY SEAL]

THE TOWN OF JUPITER

The terms and conditions of the foregoing Agreement, to the extent the same are binding upon the Town, are hereby accepted on behalf of the Town of Jupiter by _____ as its duly authorized representative this _____ day of _____, 2011.

BY: _____
Karen Golonka, Mayor

ATTESTED BY: _____
Sally M. Boylan, Town Clerk

(TOWN SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Thomas J. Baird
Town Attorney

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by **KAREN J. GOLONKA**, Mayor of the Town of Jupiter. She is personally known to me or has produced a Florida drivers license as identification and did not take an oath.

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

[NOTARY SEAL]

SAMPLE

Portions of Tracts E and F, of the Plat titled NEWHAVEN – 7A AT ABACOA, recorded in PB 82 Pages 137-144; of the Public Records of Palm Beach County, Florida, as described below:

Tract E	Date Palm Drive.
Tract E	Jacaranda Drive
Tract E	Redwod Drive
Tract F	Cherry Laurel Drive
Tract F	Bishopwood Drive
Tract F	Hawthorn Drive
Tract E	Day Lily Drive (south of Iris Drive)
Tract E	Sweet Bay Circle (west of Day Lily Dr and Newhaven Dr)

The following Tract E and Tract F alley rights of way are not included in this Agreement:

Tract E - Lantana Lane	Tract E - Ligustrum Lane
Tract E - Wedelia Way	Tract E & F - Croton Way
Tract F - Crepe Myrtle Lane	Tract F - Oleander Lane
Tract F - Zamia Way	Tract F - Mandevillea Way

Portions of Tract A, of the Plat titled NEWHAVEN – 7B – PHASE I AT ABACOA, recorded in PB 84 Pages 113-119; of the Public Records of Palm Beach County, Florida, as described below:

Tract A	Marlberry Circle.
Tract A	Honeysuckle Drive
Tract A	Satin Leaf Drive
Tract A	Paradise Circle

The following Tract A alley rights of way are not included in this Agreement:

Tract A - Fox Trail Way	Tract A - Lysiloma Lane
Tract A - Queensland Lane	Tract A - Coral Vine Lane
Tract A - Eugenia Lane	Tract A - Ficus Lane
Tract A - Bottlebrush Lane	

Portions of Tract B & D, of the Plat titled NEWHAVEN – 7B – PHASE 2 AT ABACOA, recorded in PB 89 Pages 100-105; of the Public Records of Palm Beach County, Florida, as described below:

Tract B & D	Marlberry Circle.
Tract B & D	Honeysuckle Drive
Tract B	Poinciana Drive
Tract D	Bougainvillea Drive
Tract D	Sycamore Drive

The following Tract B & D alley rights of way are not included in this Agreement:

Tract B - Black Olive Lane	Tract B - Sugar Apple Way
Tract B - Sabal Lane	Tract B - Tiger Lily Way

SAMPLE

SAMPLE

SAMPLE