

RESOLUTION NO. 45-11

A RESOLUTION OF THE TOWN OF JUPITER, FLORIDA, PROVIDING FOR THE TRANSFER OF CERTAIN NEWHAVEN HOMEOWNERS ASSOCIATION (HOA) ROAD RIGHTS OF WAY AND ASSOCIATED ROADWAY, DRAINAGE AND PEDESTRIAN INFRASTRUCTURE, FROM THE HOA TO THE TOWN, THROUGH APPROVAL OF A SPECIAL WARRANTY DEED, A BILL OF SALE, A RIGHT-OF-WAY MAINTENANCE AGREEMENT, AND A STREET LIGHTING AGREEMENT

WHEREAS, Divosta Homes is the developer of the Newhaven 7A & 7B subdivisions, and Divosta has constructed the right of way roadway, pedestrian, lighting, landscaping, irrigation and drainage improvements within Newhaven 7A & 7B at Abacoa, and has transferred certain of the rights of way and associated infrastructure to Newhaven at Abacoa Homeowners Association (HOA); and

WHEREAS, the Town of Jupiter is a municipality of the State of Florida within such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the HOA desires to transfer to the Town of Jupiter, certain of the HOA road rights of way, and the associated roadway, pedestrian, and drainage improvements within the Newhaven 7A & 7B subdivisions, by Special Warranty Deed, Bill of Sale, Right of Way Maintenance Agreement, and Street Lighting Agreement; and

WHEREAS, the Town of Jupiter has previously agreed to accept certain rights of way and associated roadway, pedestrian, and drainage improvements within certain road rights of way and easements dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, and the Town has inspected the improvements and has determined they meet the Town's standards; and

WHEREAS, the Town of Jupiter deems it in the best interests of the public to accept for public right of way purposes, certain of the rights of way and associated roadway, pedestrian, and drainage improvements, within these road rights of way and certain abutting easements dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project

WHEREAS, the HOA shall remain responsible under separate agreement with Florida Power & Light, for the capital, maintenance, energy and operating costs of the street lights within Newhaven 7A & 7B, and the Association has prepared a street lighting agreement between the Town and the HOA, providing for the Town to reimburse the HOA on a quarterly basis for the energy and maintenance costs of the street lights within the road rights of way dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, and

NOW, THEREFORE, be it resolved by the Town Council of the Town of Jupiter, Florida:

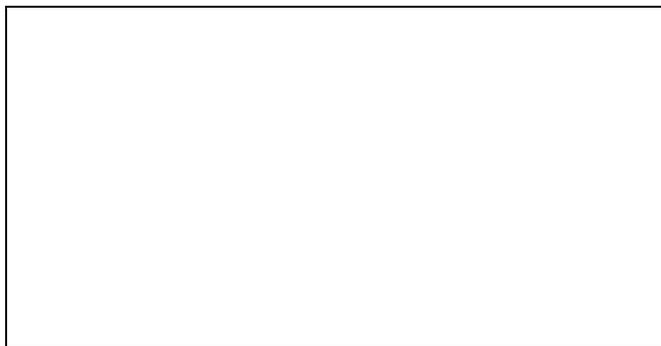
Section 1. The Special Warranty Deed, incorporated herein by reference, providing for the fee simple transfer of the certain road rights of way dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, is hereby approved for recordation.

Section 2. The Bill of Sale, incorporated herein by reference, providing for the transfer to the Town, certain roadway, pedestrian, and drainage improvements located within road rights of way and easements dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, is hereby approved, and the Mayor, Town Attorney and Town Clerk are hereby authorized to execute the Bill of Sale on behalf of the Town.

Section 3. The Right of Way Maintenance Agreement, incorporated herein by reference, for the infrastructure within certain road rights of way and easements dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, is hereby approved and the Mayor, Town Attorney and Town Clerk are hereby authorized to execute the agreement on behalf of the Town.

Section 4. The Street Lighting Agreement, incorporated herein by reference, providing for the Town's reimbursement of the maintenance and energy costs for street lighting in certain road rights of way dedicated to HOA by the recorded plats for Newhaven 7A & 7B subdivision project, is hereby approved, and the Mayor, Town Attorney and Town Clerk are hereby authorized to execute the agreement on behalf of the Town.

Section 5. This Resolution shall take effect immediately upon adoption.



SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made the _____ day of _____, 2011 by the 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", to the Town of Jupiter, a Florida municipal corporation, hereinafter referred to as "Town". (Wherever used herein the terms "Association" and "Town" include all the parties to this instrument, and the heirs, legal representatives and assigns of individuals, and the successors and assigns.)

WITNESS: That the Association, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration to it in hand paid by Town, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Town, all that certain land situate in Palm Beach County, Florida, more particularly described in the attached Exhibit A.

TOGETHER with all of the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND Association, for itself and for its successors and assigns, does hereby covenant with Town that it will defend the same against the lawful claims of all persons claiming by, through or under the Grantor.

IN WITNESS WHEREOF, the Association has signed and sealed these presents the day and year first above written.

WITNESSED & ATTESTED TO BY:

EXECUTED BY:

Print Name _____

Print Name _____

Title: _____

Print Name_____

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by _____, _____, of _____, a Florida corporation, on behalf of the corporation. The subscribing party is personally known to me.

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 Deed:

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 Deed:

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

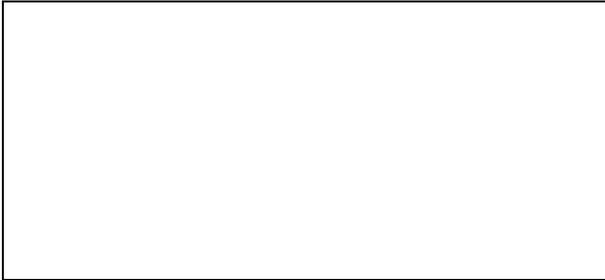
The following Tract B & D alley rights of way are not included in this Deed:

Tract B - Black Olive Lane	Tract B - Sugar Apple Way
Tract B - Sabal Lane	Tract B - Tiger Lily Way
Tract D - Bird of Paradise	Tract D - Ixora Lane
Tract D - Copperleaf Way	Tract D - Bay Cedar Way

Tract D - Red Bay Lane

Tract D - Loquat Lane

SAMPLE



BILL OF SALE

THIS BILL OF SALE made this ____ day of _____, 2011, the NewHaven at Abacoa Homeowners Association, a Florida not for profit corporation, established pursuant to Chapter 617 of the Florida Statutes, hereinafter referred to as "Seller", and the Town Of Jupiter, a Florida municipal corporation, hereinafter referred to as "Buyer". (Wherever used herein the terms "Seller" and "Buyer" include all the parties to this instrument, and the heirs, legal representatives and assigns of individuals, and the successors and assigns.

WITNESS, that the Seller, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration to it in hand paid by Buyer, the receipt whereof is hereby acknowledged, hereby delivers, grants, bargains, sells, transfers, aliens, remises, releases, conveys and confirms unto the Buyer, the following goods and chattels, located in the County of Palm Beach and State of Florida, to wit:

Roadway, pedestrian, stormwater drainage system, and related improvements described in Attachment A, and located in the road rights of way and drainage easements defined in as Attachment B

TO HAVE AND TO HOLD the same unto the Buyer, its executors, administrators, successors and assigns forever, Seller, for itself, its successors and assigns, does hereby covenant to and with the Buyer, its successors and assigns, that Seller is the lawful owner of the said goods and chattels; that the same are free from all encumbrances; that Seller has good right to sell the same as aforesaid; and, that Seller will Warrant and defend the sale of the said property, goods and chattels hereby made, unto the Buyer, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Seller has hereunto set their hands and seal this ____ day of _____, 2011.

WITNESSED & ATTESTED TO BY:

Print Name _____

EXECUTED BY:

Print Name _____
Title: _____

State of Florida, County of Palm Beach

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by _____, a Florida corporation, on behalf of the corporation. The subscribing party is personally known to me.

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____

[NOTARY SEAL]

BUYER – TOWN OF JUPITER

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]

The improvements which are the subject of this Bill of Sale, are as follows:

1. **Reference:** All of the following references regarding plans sheets and descriptions are those plans listed below, which to the extent applicable, are incorporated herein by reference.
 - a. NewHaven - 7A at Abacoa - Paving, Grading & Drainage Plans, prepared by Lawson Noble and Webb, Inc.
 - b. NewHaven – 7B at Abacoa - Paving, Grading & Drainage Plans, prepared by Lawson Noble and Webb, Inc.
2. **Locations:** All of the subject improvements lie within the right of way tracts, drainage easements, or NPBCID Greenway Tracts as defined in Exhibit B and in the Referenced Engineering Plans.
3. **Description of Improvements:** Those roadway improvements, pedestrian improvements and stormwater drainage improvements listed below and lying within the Exhibit B areas, and subject to exclusions noted below:

roadway subgrade	roadway base rock
roadway asphalt	curbing
signage	striping
sidewalks	stormwater inlets & grates
stormwater pipe	stormwater manholes
stormwater outfall pipes or structures	
- Exhibit C provides tabulated listing(s) with estimated unit costs, quantities and total costs of all of the improvements subject to this Bill of Sale.
4. **Exclusions:** Regardless of any language herein to the contrary, expressly excluded from the above description of improvements accepted by the Town, are the following items that may be established within the above described “Locations”, all of which shall remain the perpetual ownership and maintenance responsibility of the Seller and/or their successors and assigns:
 - a. Trees, Landscaping and Sod
 - b. Irrigation System
 - c. Paver Brick systems in vehicle areas or pedestrian areas, including any header curb, base, sand and directly related or abutting elements that may be adversely affected by the failure or demise of the paver system
 - d. Decorative or Specialty traffic control or street name signage and posts
 - e. Monument signage
 - f. Decorative pedestrian railing
 - g. Decorative columns
 - h. Fencing or walls
 - i. Sidewalks, drainage, walls, and other improvements located in Buffer tracts, Public Access tracts, Common Use tracts, Open Space tracts and pedestrian easements, as dedicated to the HOA on the 3 NewHaven plats.
 - j. Traffic calming device and related signage on Marlberry Circle near Bougainvillea Drive
 - k. Surface water management lakes, greenways and retention areas
 - l. Culvert End Walls and rip rap

EXHIBIT B
Page 1 of 2

The infrastructure improvements subject to this Bill of Sale are located in the following Access, Utility and Drainage “right of way” Tracts, Drainage Easements, or NPBCID Permit areas.

A. Access, Utility and Drainage “right of way” Tracts

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 Bill of Sale:

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 Bill of Sale:

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 Bill of Sale:

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

Tract D	Bird of Paradise	Tract D	Ixora Lane
Tract D	Copperleaf Way	Tract D	Bay Cedar Way
Tract D	Red Bay Lane	Tract D	Loquat Lane

EXHIBIT B
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- B. Drainage Easements dedicated to the New Haven HOA, as established in the Three (3) NewHaven plats noted above, exclusive of any such drainage easements as may only serve drainage of the Association's alley rights of way.
- C. Development permit(s) issued by NPBCID as related to stormwater management system discharge pipes within the limits of NPBCID Greenway and/or Water Management Tracts within or abutting the limits of the three (3) NewHaven plats noted above, and exclusive of any permitted elements related to drainage outfall pipes as may only serve the drainage of the Association's alley rights of way.

NOTE – This exhibit is to provide a tabulated listing(s) with estimated unit costs, quantities and total costs of all of the improvements subject to this Bill of Sale

SAMPLE



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

THIS AGREEMENT TO INSTALL AND MAINTAIN IMPROVEMENTS IN NEWHAVEN ROAD RIGHTS-OF-WAY (the "Agreement") is made this ____ day of _____, 2011, by and between the 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").

RECITALS

WHEREAS, the development known as NewHaven 7A and 7B was constructed on lands ("Property"); legally described as all of the Plats titled NewHaven – 7A AT ABACOA, recorded in PB 82 Pages 137-144, NewHaven – 7B – PHASE I AT ABACOA, recorded in PB 84 Pages 113-119, and NewHaven– 7B – PHASE 2 AT ABACOA, recorded in PB 89 Pages 100-105; of the Public Records of Palm Beach County, Florida, attached hereto and made a part hereof by reference; and

WHEREAS, the implementation of the Towns policy that "growth pays for growth" has caused a varied mix of responsibilities for maintaining publicly accessible right of way infrastructure throughout Town, based on circumstances and considerations associated with each land subdivision development order, 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, sidewalks, storm drainage 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 storm drainage conveyance systems in neighborhoods that provide publicly accessible roadways, and

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

WHEREAS, in order to enhance the beauty and public area amenities of NewHaven 7A and 7B,, landscaping materials (sod, trees and plantings), irrigation lines and facilities, specialty or decorative signage & posts, monument signage, decorative railing, fencing, decorative columns, traffic calming devices, and paver brick pedestrian “systems”, hereinafter referred to as “Special Right of Way (ROW) Improvements”, were installed in certain right of way tracts that were dedicated by plat to the Association, as listed in Exhibit A, hereinafter referred to as “Right of Way”, and

WHEREAS, as part of the Town’s agreement to take ownership of certain rights-of-way and certain infrastructure therein, pursuant to the Association’s conveyance of a Special Warranty Deed and a Bill of Sale, and to perpetually maintain those certain rights-of-way and certain infrastructure improvements therein, the Association has agreed to perpetually maintain the Special ROW Improvements.

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 Town hereby represents that upon recordation of the Special Warranty Deed and the Bill of Sale from the Association to the Town, that it is the fee simple owner of the right of way property described in **Exhibit “A”** (hereinafter referred to as the “Property”), attached hereto and made part hereof, and of certain infrastructure improvements therein; 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 which will establish the Association’s and the Town’s infrastructure maintenance responsibilities within the Property.

2. **Agreement of Town to Maintain** The Town shall maintain the roadway and parking area pavement system (subgrade, base and asphalt), roadway curbing, concrete sidewalks, striping, standard signage, and drainage facilities located in the “Right of Way / Easement Areas” defined in Exhibit A unless noted otherwise by specific plat dedications, easement stipulations, or the Bill of Sale from Association to the Town, without requiring monetary contribution from the Association.

3. **Agreement of Association to Maintain.** The Association shall, at its sole cost and expense, be responsible for designing, permitting, installing, maintaining, repairing, replacing, and operating the Special ROW Improvements, as specified herein which are within the Property. The Association shall perform its obligations described herein, in a manner so as to minimize damage, disruption and inconvenience to other properties, including the Property and the Town’s rights-of-way which may be disturbed or affected by the Association’s actions. In the event the Association’s maintenance or actions should damage the Property, the Association shall be responsible for restoring it 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 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 shall provide the Association with courtesy written notice of the violation(s) and will specify the nature of each violation. If the Association fails to remedy such violation(s) within 30 days after receipt of written notice from the Town, then the violation(s) shall be directed to the Town Code Enforcement Division for an enforcement proceeding. In such cases, the Town shall have the right, but not the obligation, to

maintain the Special ROW Improvements, and shall be entitled to be reimbursed by the Association for all costs and fees incurred by the Town in its maintenance of the Special ROW Improvements including, the reasonable expenses and fees incurred by the Town as a result of the time the Town staff, its attorneys and consultants have committed to enforcing the requirement of the Association to maintain the Special ROW Improvements, or in maintaining same.

4. **Accumulated Depreciation Contribution and Reversion for Non-Payment.** The Association shall pay to the Town \$121,043 as consideration for the Town's assumption of the ownership, maintenance, and operational responsibilities for the facilities identified in Section 2 above. The Association shall make 10 annual payments of \$12,104.30, each annual payment being due on or before October 1st beginning October 1, 2011 and ending October 1, 2020. The Association's failure to pay the Accumulated Depreciation Contribution in any given year shall be a breach of the 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 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, (b) the ownership of the rights of way and of the infrastructure previously turned over by the Association to and accepted by the Town pursuant to this Agreement shall revert back to the Association upon the Town's conveyance of the appropriate legal instruments; and thereafter the Association shall be responsible for the maintenance responsibilities assumed by the Town pursuant to this Agreement, and (c) the Association shall forfeit to the Town any Accumulated Depreciation previously paid .

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. **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.

7. **Covenant to Run with the Land.** This Agreement and the covenants contained herein, shall be perpetual and non-exclusive, shall be binding upon the Association and the Town. The Association shall not perform any actions which may in any way interfere with or impede the Town's duties and obligations under this Agreement, or the exercise of the rights granted to the Association under this Agreement or which may violate the terms of this Agreement.

8. **Recordation in Public Records of Palm Beach County, Florida.** Upon full execution by the parties, this Maintenance Agreement and **Exhibit A**, attached hereto, shall be recorded by Town in the Public Records of Palm Beach County, Florida with the Association to pay the costs of recording. The

Town shall provide the Association with a certified copy of the recorded instrument following recordation.

9. **Miscellaneous Terms.**

a. **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.

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

c. **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.

d. **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.

e. **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.

f. **Recitals.** Recitals set forth hereinabove and the exhibits attached hereto shall be deemed incorporated into and a part of this Agreement.

g. **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.

h. **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.

i. 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.

j. 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 the Town of any provisions or breach of any provision of this Agreement shall not operate or be construed to forfeit any of the Town's rights or a waiver or forbearance of any other provision of this Agreement or of any future breach of this provision so waived.

k. 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.

l. Counterparts and Facsimile. 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. If this Agreement is executed and transmitted by facsimile, such facsimile copy shall be deemed an original for all purposes and shall be binding on the parties as such.

m. 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.

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 Homeowners Association, are hereby accepted on behalf of the NEWHAVEN At Abacoa Homeowners Association 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]

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

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, as described below, 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:

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, as described below, 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:

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

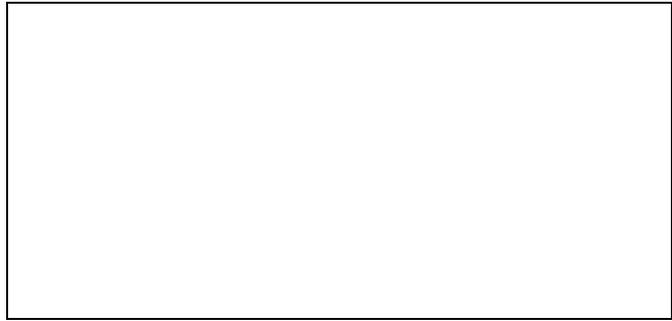
The following Tract B & D alley rights of way are not included in this Agreement:

Tract B - Black Olive Lane	Tract B - Sugar Apple Way
Tract B - Sabal Lane	Tract B - Tiger Lily Way
Tract D - Bird of Paradise	Tract D - Ixora Lane
Tract D - Copperleaf Way	Tract D - Bay Cedar Way

Tract D - Red Bay Lane

Tract D - Loquat Lane

SAMPLE



**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

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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:

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Tract A - Queensland Lane	Tract A - Coral Vine Lane
Tract A - Eugenia Lane	Tract A - Ficus Lane
Tract A - Bottlebrush Lane	

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Tract B	Poinciana Drive
Tract D	Bougainvillea Drive
Tract D	Sycamore Drive

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Tract B - Sabal Lane	Tract B - Tiger Lily Way

SAMPLE

SAMPLE

SAMPLE