

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 5, 2008 ☒ Consent ☐ Regular
 ☐ Workshop ☐ Public Hearing

Department:
Submitted By: Engineering & Public Works
Submitted For: Roadway Production Division

Project No. : 2005600

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Amended and Restated Agreement for a Golf Cart Underpass, as well as certain other elements, within the right-of-way of Indiantown Road with Toll Jupiter Limited Partnership (Developer) and Northern Palm Beach County Improvement District (Northern).

Summary: This Amended and Restated Agreement will transfer responsibility for construction and maintenance of the Golf Cart Underpass from the Developer and Jupiter Country Club Homeowners Association, Inc. (Association), to Northern.

District: 1 (MRE)

Background and Justification: On April 18, 2006, the Board of County Commissioners approved a Maintenance Agreement (R2006-0636) with the Developer and Association concerning the installation of a Golf Cart Underpass on Indiantown Road for Jupiter Country Club. This Amended and Restated Agreement will transfer responsibility for construction and maintenance of the Golf Cart Underpass from the Developer and Association, to Northern.

Attachments:

1. Location Map
2. Amended and Restated Agreement (6 Originals)

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Recommended by: *[Signature]* 1/07/09 *[Signature]*
 Division Director Date

Approved by: *[Signature]* 1/15/08
 County Engineer Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes ☐ No ☒

Budget Account No.:

Fund Agency Organization Object Amount

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

C. Departmental Fiscal Review:

Chief

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

Jim Del 1-23-08
OFMB
SN 1/23/08 CN 1/22/08

Jim J. Hewitt 1/25/08
Contract Administration
This Contract complies with our contract review requirements.

B. Legal Sufficiency:

Monica R. Ott 1/25/08
Assistant County Attorney

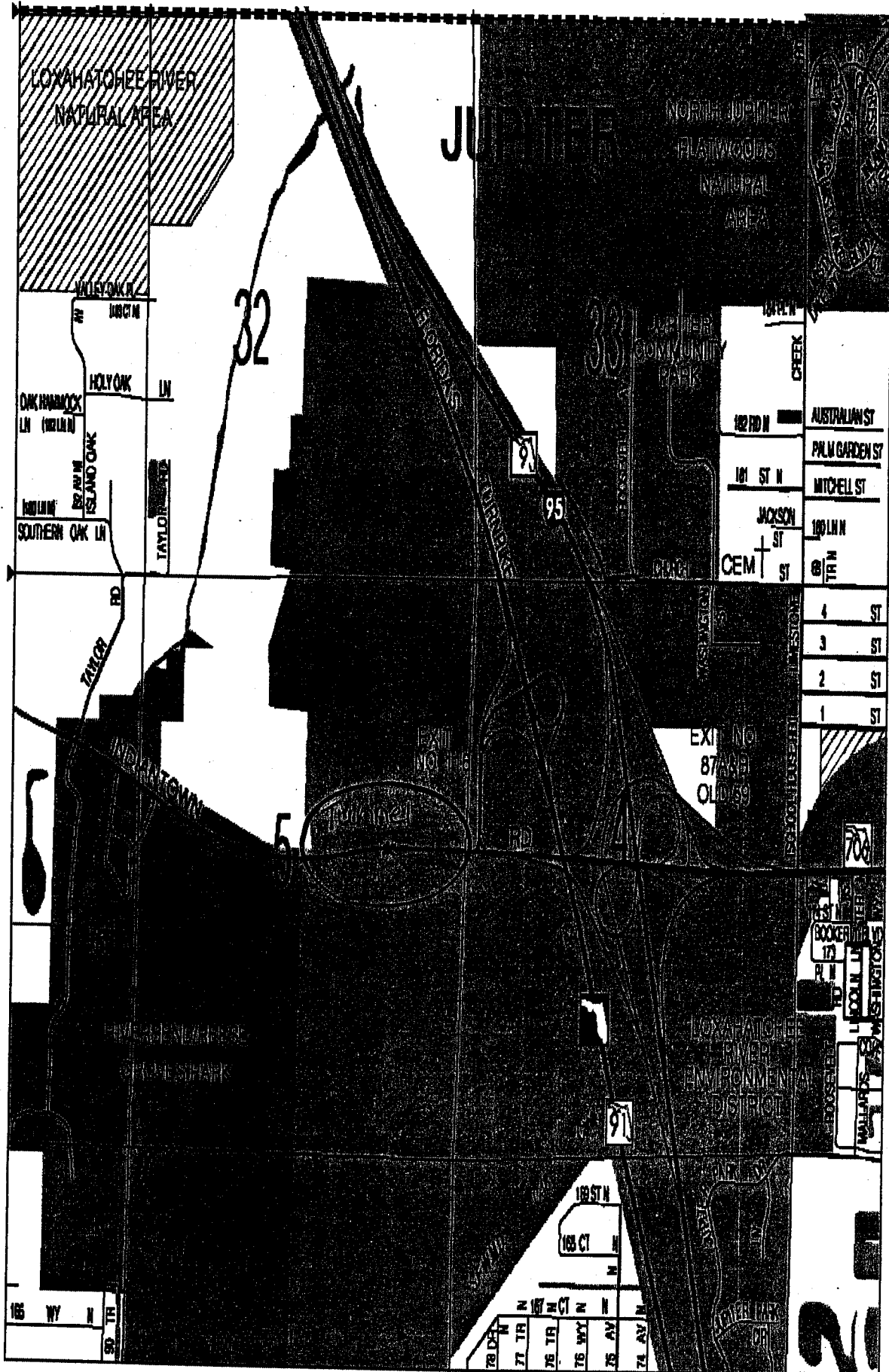
C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.
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LOCATION MAP

Indiantown Rd., One Mile W. of Florida's Turnpike to Florida's Turnpike
Project No. 2005600



**AMENDED AND RESTATED AGREEMENT BETWEEN TOLL
JUPITER LIMITED PARTNERSHIP, NORTHERN PALM BEACH
COUNTY IMPROVEMENT DISTRICT AND THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA
REGARDING A GOLF CART UNDERPASS FOR INDIANTOWN ROAD**

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2008, by and between TOLL JUPITER LIMITED PARTNERSHIP, a Florida limited partnership (hereinafter referred to as the "Developer"), of 12750 Alternate A1A, Palm Beach Gardens, Florida 33410; NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, an independent special district of the State of Florida (hereinafter referred to as the "District"); and the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "County").

RECITALS

WHEREAS, Indiantown Road, westerly of Interstate 95 and the Florida Turnpike, is a County Thoroughfare Road (hereinafter referred to as "Indiantown Road"); and

WHEREAS, Developer is developing real property situated North and South of Indiantown Road and desires to elevate a portion of Indiantown Road to connect said North and South properties by means of a golf cart underpass in order to develop the Jupiter Country Club (hereinafter referred to as the "Development"); and

WHEREAS, IHP Investment Fund III, L.P., a California limited partnership ("IHP"), is the current owner of a majority of the real property upon which Developer is developing the Development; and

WHEREAS, IHP and Developer have entered into an Option and Construction Agreement dated May 12, 2005, as evidenced by that certain Memorandum of Option Agreement, as recorded in Official Records Book 18575, Page 1627 of the Public Records of Palm Beach County, Florida; and

WHEREAS, the Developer and District have agreed to enter into this Agreement with the County for elevation of a portion of Indiantown Road in order to install the above referenced golf cart underpass; and

WHEREAS, the County has previously issued County Permit No. R/W 0132-0906 (the "Permit") to the District, which Permit authorizes the reconstruction of approximately 1,340 lineal feet of Indiantown Road (the "Indiantown Road Improvements") and the installation of a golf cart underpass, including decorative features (the "Golf Cart Underpass") (together such reconstruction and installation works are herein referred to as the "Project"), at no cost and expense to the County; and

WHEREAS, the District hereby agrees to maintain the Golf Cart Underpass, as well as certain other herein specified elements of the Project; and

WHEREAS, County has determined that it is in the best interest of public health, safety, and welfare that the Project be constructed with a particular safety benefit being the elimination of conflicts between pedestrian and motorized traffic; and

WHEREAS, this Agreement is intended to supersede that particular agreement dated April 18, 2006, by and between the Developer, Jupiter Country Club Homeowner Association, Inc. (the "Association"), and the Board of County Commissioners of Palm Beach County (hereinafter referred to as the "Former Agreement").

NOW, THEREFORE, in consideration of the promises, mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Recitals. The above recitals are true and correct to the best of the knowledge of the parties hereto and are incorporated herein by this reference.

Section 2. District Construction Obligations. The District shall, at no cost or expense to the County:

- a) Contract for the design, construction, and construction inspection of the Project pursuant to the Permit;
- b) Obtain any and all permits necessary for the construction and operation of the Project;
- c) Be responsible for any and all change orders associated with the Project and the securing of County approval of a change order in those instances where a modification to the County approved plans for the Project or the Permit is required in order to implement said change order;
- d) Be responsible for the installation of any and all decorative features for the Golf Cart Underpass component of the Project and their maintenance;
- e) Provide "As-Built Record Drawings" for the Golf Cart Underpass and Indiantown Road Improvements components, on a component completion basis, in a format acceptable to the County Engineer within sixty (60) days of final completion of either of said two (2) components construction;
- f) Be responsible for the repair and correction for all Project related construction deficiencies until both the Golf Cart Underpass and Indiantown Road Improvements components of the Project are accepted by County;

Section 3. District Maintenance Obligations. The District agrees that it shall, at no cost to the County:

- a) Provide an inspection and written report of the Project's works and facilities, including recommended remedies if necessary, by a licensed professional Florida structural engineer every five (5) years following the entire Project's acceptance by the County (hereinafter

referred to as a "Five (5) Year Report"). Failure to provide a Five (5) Year Report within thirty (30) days following each five (5) year anniversary date of the County's acceptance of the last completed component of the Project may result in the County securing engineering services to satisfy this condition and seeking reimbursement from the District;

- b) In addition to provision of the Five (5) Year Reports, contract for regular non-invasive annual inspections of the structural integrity of the Project's works, plus properly maintain, in perpetuity, the Golf Cart Underpass component thereof, based upon any County, State, or District provided reports required by this Agreement including implementation of the remedies recommended in a Five (5) Year Report. Failure to regularly inspect on an annual basis, maintain, and/or perform repairs and/or implement recommended remedies included in a Five (5) Year Report for the Golf Cart Underpass component of the Project within thirty (30) days of the District's receipt of notification in writing of the discovery of necessary maintenance, repairs or recommended remedies may result in: (1) the County undertaking the corrective actions and billing the District for the fair and current rates for all labor and materials necessary to perform the work or (2) the County closing and/or removing the Golf Cart Underpass at the District's expense;
- c) Maintain any decorative features within the Golf Cart Underpass component of the Project;
- d) Maintain the drainage system for the Golf Cart Underpass component of the Project;
- e) Obtain any and all permits necessary to maintain or repair the Golf Cart Underpass component of the Project, including specifically a Right-of-Way Permit from the County for any required maintenance or any proposed structural alteration or repair pertaining to the Golf Cart Underpass component of the Project within the Indiantown Road rights-of-way;
- f) Permit governmental inspectors at the Project at the discretion of the governmental inspecting agency;
- g) Following the District's receipt of an advance thirty (30) day written notification from the County of the County's intent to commence construction operations on or within the Indiantown Road rights-of-way, to remove any decorative features within the Golf Cart Underpass component of the Project that may be damaged as a result of such County activity within the Indiantown Road rights-of-way;
- h) Provide record drawings for any structural alterations to the Golf Cart Underpass component of the Project in a manner acceptable to the County Engineer within sixty (60) days following final completion of such structural alterations; and
- g) Commence the repair and correction of any Golf Cart Underpass component deficiency identified by any governmental authority or as required by the County Engineer within sixty (60) days of receipt written notification unless notified that the deficiency affects the health, safety, or welfare of the public in which event the repair shall commence promptly and without delay.

Section 4. Developer Obligations. On or before County's acceptance of the Project, the Developer shall grant or cause to be granted a perpetual twenty (20) foot wide maintenance easement to the District and County in a form acceptable to the District and County (hereinafter referred to as the "Easement") along the walls and tunnel entrance of the Golf Cart Underpass component of the Project paralleling and adjacent to the northerly and southerly Indiantown Road right-of-way lines

or at such other location(s) as may be agreed to by the parties. The Easement shall provide driveway access for maintenance and inspection purposes at the north and south ends of said walls and tunnel entrance by governmental entities and their designees, contractors and agents.

Section 5. County Obligations. County shall:

- a) Review and accept Project related plans once all County engineering comments are addressed for both the Project's initial construction and any proposed change order(s), maintenance, or modification(s) thereof;
- b) Provide prompt review and comments for Project related inspection reports as received from the State of Florida and the District. The comments will address the County's concurrence with the recommendations for maintenance, repair, or remedial activities;
- c) Request a bridge number from the State of Florida Department of Transportation to facilitate Bridge Maintenance and Inspection (BMI) by the State of the Golf Cart Underpass component of the Project;
- d) Review all permitting requests for Project related maintenance or modifications in accordance with standard County engineering policies and practices;
- e) Have the right but not the obligation to maintain all facilities, except any utilities owned by a third party located within the County's Indiantown Road right-of-way, contained within the County standard 200' typical section over the Golf Cart Underpass component of the Indiantown Road component of the Project, including the Project's drainage system; and
- f) Provide a minimum of thirty (30) calendar day advance written notice to the District for planned construction or maintenance within the Indiantown Road right-of-way, in order for the District to remove any decorative features of the Golf Cart Underpass component of the Project that may be damaged by County operations within the Indiantown Road right-of-way. County shall not be responsible for any damages to same.

Section 6. Upon Completion and Acceptance of a component of the Project by the County:

- a) The District shall be responsible for the repair, maintenance and replacement of any decorative feature of the Golf Cart Underpass component of the Project.
- b) The District shall not be permitted to open cut Indiantown Road in order to repair, replace or maintain the waterproofing system Golf Cart Underpass component of the Project without a County permit and unless such action is deemed reasonably necessary by the County Engineer in order to protect: (i) the health, safety or welfare of the public or (ii) Indiantown Road right-of-way improvements.
- c) The District shall be responsible for the provision of such remedial acts as are needed in order to correct or address any leaking or seepage of water in or into the Golf Cart Underpass component of the Project.
- d) Nothing contained herein shall prohibit the District from entering into agreements with others for their provision of maintenance and repairs to the Golf Cart Underpass, provided the District remains as the primary obligor for such correction or remedial activities.

Section 7. Indemnification. Subject to and without waiver of the provisions of Section 768.28, Florida Statutes and its sovereign immunity rights and privileges, the District recognizes that it is an independent contractor, and not an agent or servant of the County or its Board of County Commissioners; therefore, in the event a claim or lawsuit is brought against the County, its officers, employees, servants, or agents, relating to any aspect of the Project which is the responsibility of the District, the District hereby agrees to indemnify, save and hold harmless the County, its officers, employees, servants or agents, and to defend same from any such claims, liabilities, causes of action and judgments of any type whatsoever arising out of or relating to the existence of the Golf Cart Underpass component of the Project or the proper performance by the District of its obligations as may relate to this Agreement. The District agrees to pay all costs, in connection with such claims liabilities or suits except as may be incurred due to the negligence or tortuous acts or omissions of the County or its agents.

Section 8. General Liability Insurance. Throughout the Term (as hereinafter specified) of this Agreement, the District shall maintain in force Commercial General Liability Insurance, including coverage for personal injury, property damage, and contractual liability to support the indemnification clause contained in this Agreement. Such insurance shall be in the amount of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) combined single limit, and coverage shall be evidenced by a certificate which contains not less than a thirty (30) day notice of cancellation to the County of non-renewal or any adverse change in coverage except that there may be a ten (10) day notice of cancellation to the County for nonpayment of insurance premiums. In addition to the above, the District must evidence the following minimum requirements in all Project related construction contracts with contractors:

- a) Workers' Compensation coverage in accordance with Florida Statutes;
- b) Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), The County shall be included in the coverage as an additional insured; and
- c) Payment and Performance bonds for the total amount of the Project related improvements as required under and in accordance with Section 255.05, Florida Statutes.

Section 9. Term. This Agreement shall commence as of its above reflected dated date and continue throughout the construction and subsequent existence of the Project's works and facilities.

Section 10. Governing Law. This Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. This Agreement shall not be construed against the party who drafted it as all parties have consulted experts and attorneys of their choice. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

Section 11. Attorney's Fees and Costs. The parties agree that in the event it becomes necessary for a party to defend or institute legal proceedings as a result of the failure of another party to comply with the terms, covenants and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorney's fees and court costs through all trial and appellate levels.

Section 12. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement

and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 13. Agreement. This Agreement contains the entire agreement between the parties. No right, duties or obligations of the parties shall be created unless specifically set forth in this Agreement will not be binding and valid unless in writing and executed and approved by the parties or their successors or assigns.

Section 14. Amendment. No modification or amendment of this Agreement shall be of any legal force or effect unless in writing and executed by all parties.

Section 15. Binding Agreement. This Agreement shall inure to the benefit of and shall bind the parties, their successors and assigns.

Section 16. Assignment. The following assignment and assumption provisions shall apply to this Agreement:

(a) The Developer may assign its obligations under this Agreement to IHP.

(b) The District may assign its construction obligations under this Agreement to the Developer or IHP.

(c) The District may assign its maintenance, repair and replacement obligations under this Agreement to the Developer or Association, together with all liability and contractual obligations relating thereto, including those to or in favor of the County.

(d) An assignment to other than one of the above listed entities may only be done upon the prior written consent of all other parties hereto, which consent shall not be unreasonably withheld.

(e) Any of the above assignments shall be required to comply with the following: (i) each assignment must be in writing, dated and signed by the assignor and assignee, (ii) an assignment must clearly and without ambiguity identify the nature of the obligation being assigned by the assignor and the assumption of such obligation by the assignee, (iii) all of the terms, conditions and obligations set forth herein applicable to the obligation being assigned, shall inure to the benefit of and shall bind the applicable assignee, and (iv) a copy of the fully executed assignment shall be promptly transmitted to all of the parties via electronic conveyance, followed within ten (10) business days thereafter with physical delivery of a fully executed counterpart original of the assignment.

(f) The assignee of any assignment by the District of any of the obligations or provisions of this Agreement, shall by the acceptance of such assignment thereby assume all of the indemnification obligations under Section 7 hereof as to said assigned obligation or provision.

Section 17. Waiver. Failure to enforce any provision of this Agreement by a party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

Section 18. Notices. Any notice, request, demand, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand-delivered, telecopied, sent by Federal Express or comparable overnight mail service, or by U.S. registered or certified mail, return receipt requested, postage prepaid to a party at their respective addresses below.

As to County: Omelio A. Fernandez, P.E., Director
Engineering and Public Works Operations
160 Australian Avenue, Suite 503
West Palm Beach, FL 33406

and: Marlene R. Everitt, Assistant County Attorney
County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to Developer: Toll Brothers, Inc.
12750 Alternate A1A
Palm Beach Gardens, FL 33410
Attn: Donald Barnes

As to Association: Jupiter Country Club Homeowners Association, Inc.
3970 W. Indiantown Road
Jupiter, FL 33478

As to District: Northern Palm Beach County Improvement District
359 Hiatt Drive
Palm Beach Gardens, FL 33418
Attn: Executive Director

Section 19. Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

Section 20. Effective Date. This Agreement shall be dated and become effective when executed by all parties and approved by the Board of County Commissioners of Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as follows:

EXECUTED by COUNTY this _____ day of _____, 2008.

ATTEST:
Sharon R. Bock, Clerk & Comptroller
Circuit Court

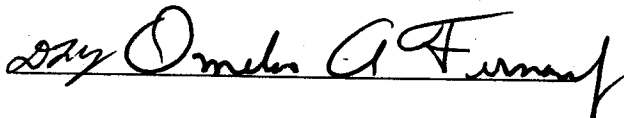
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COMMISSIONERS

Deputy Clerk

Addie L. Greene, Chairperson

[SEAL]

APPROVED AS TO TERMS AND
CONDITIONS:



APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Assistant County Attorney

EXECUTED by DEVELOPER this 3 day of October, 2007.

TOLL JUPITER LIMITED PARTNERSHIP
A Florida limited partnership

By: TOLL GP CORP, a Florida corporation
General Partner

By: [Signature]
Print Name: Ronald Blum
Title: Vice President

EXECUTED by DISTRICT this 26th day of September, 2007.

ATTEST:

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

By: [Signature]
Print Name: O'NEAL BARDIN, Jr.
Title: Secretary

By: [Signature]
Marilyn Jacobs, Vice-President
NPBCID Board of Supervisors

[DISTRICT SEAL]

h:\c&p clients\northern\46 unit of development\agreements\supplemented restated agreement.doc

Consent and Authorization

The undersigned, IHP INVESTMENT FUND III, L.P., a California limited partnership ("IHP"), as owner of some or all of the property upon which Jupiter Country Club is being developed (the "Property"), does hereby authorize TOLL JUPITER LIMITED PARTNERSHIP, a Florida limited partnership, and its agents and designees, to undertake the obligations of this Agreement between Toll Jupiter Limited Partnership, Northern Palm Beach County Improvement District and the Board of County Commissioners of Palm Beach County, Florida.

Dated: November 15, 2007

WITNESSES:

Cynthia Reyes (AS TO BOTH)
Name: Cynthia Reyes

Sharon L. Pozos (AS TO BOTH)
Name: Sharon L. Pozos

IHP INVESTMENT FUND III, L.P.,
A California limited partnership

By: Institutional Housing Partners III, L.P.,
a California limited partnership,
Its General Partner

By: IHP Capital Partners,
a California corporation,
Its General Partner

By: Brian P. McGowan
Brian P. McGowan
Chief Operating Officer

By: Patricia G. White
Patricia G. White
Senior Vice President



Acknowledgement and Consent

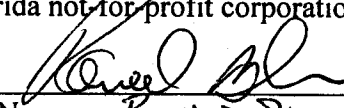
The undersigned, JUPITER COUNTRY CLUB PROPERTY OWNER'S ASSOCIATION, INC., a Florida not-for-profit corporation, does hereby consent to the terms, provisions and understandings set forth in the attached Amended and Restated Agreement, including specifically the Association's identification as a possible assignee and its deletion as a party under the Former Agreement dated April 18, 2006.

Dated: _____

ATTEST:

JUPITER COUNTRY CLUB PROPERTY
OWNER'S ASSOCIATIONS, INC.,
a Florida not-for-profit corporation

By: _____
Secretary

By: 
Print Name: Ronald Blum
Title: Vice President

[CORP. SEAL]