ORDINANCE NO. 2011-010

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, PROVIDING FOR THE REGISTRATION OF ABANDONED RESIDENTIAL PROPERTIES AND OTHER MATTERS RELATING TO ABANDONED REAL PROPERTY; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR MAINTENANCE REQUIREMENTS; PROVIDING FOR SECURITY REQUIREMENTS; PROVIDING FOR ENFORCEMENT, CODIFICATION, CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the TOWN OF LOXAHATCHEE GROVES (hereinafter referred to as the ("Town")) recognizes an increase in the number of vacant and abandoned properties located throughout the Town; and

WHEREAS, the presence of vacant and abandoned properties can lead to a decline in property value, create attractive nuisances and lead to general decrease in neighborhood and community aesthetic; and

WHEREAS, the presence of vacant and abandoned properties discourages buyers from purchasing property within the Town; and

WHEREAS, many vacant and abandoned properties are the responsibility of out-of-state lenders and trustees who fail to adequately secure and maintain such properties; and

WHEREAS, the Town Council deems it to be in the Town's best interests to provide for the maintenance of abandoned real property; and

WHEREAS, the Town Council has a vested interest in protecting the Town against the devaluation caused by vacant and abandoned properties and concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties located within the Town.

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NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are hereby incorporated herein and made a part hereof.

Section 2. The Town Council of the Town of Loxahatchee Groves hereby enacts the following, entitled "Registration of Abandoned Property," as follows:

Sec. _____. Abandoned Real Property

Purpose and Intent.

It is the purpose and intent of the Town Council to establish a process to limit and reduce the amount of abandoned real property located within the Town. It is the Town Council's further intent to specifically establish an abandoned residential property program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Sec. _____. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned personal property means wrecked or derelict property located upon abandoned real property which has been left abandoned and unprotected from the elements and shall include wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture and any other similar article.

Abandoned real property means any property that is vacant, including any vacant properties under a current Notice of Default and/or Notice of Mortgagee's Sale, pending Tax Assessors Lien Sale and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Accessible property means a property that is accessible through a compromised/breached gate, fence, wall, etc.

Accessible structure means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Evidence of vacancy means any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, accumulation of abandoned personal property, as defined herein, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the borrower defaults.

Enforcement officer means any law enforcement officer, building official, zoning inspector or code enforcement officer employed within the Town.

Nominal salvage value means the value an article of abandoned or derelict property which a reasonably prudent person would believe the fair market value of the property, taking into consideration its useful life, earning capacity Town or replacement cost, less depreciation and items of general or special depreciation, would be greater than the costs of salvage including the removal, transportation, storage and sale of same.

Private property means all lands and improvements other than public lands and improvements.

Residential building means any improved real property, or portion thereof, situated in the Town, designed or permitted to be used for dwelling purposes, and shall include the buildings and structures located on such improved real property.

Vacant means any building/structure that is not legally occupied.

Sec. . Applicability.

This article shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional

remedy available to the Town above and beyond any other state, county and/or local provisions for same.

Sec. ___. Public nuisance.

All abandoned real property, and abandoned personal property thereon, is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the Town.

Sec. ___. Registration of Abandoned Real Property

(a) Any mortgagee, who holds a mortgage on real Property located within the Town, shall make a determination of vacancy of the property that is the security for the mortgage, upon default by the mortgagor, prior to the issuance of a Notice of Default. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the issuance of a Notice of Default, register the property with the Town Manager, or his or her designee, on forms provided by the Town.

(b) Should property that is occupied, but in default, become abandoned, the mortgagee shall, within ten (10) days of making such determination, register the property with the Town Manager, or his or her designee, on forms provided by the Town.

(c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee and, in the case of a corporation or out-of-area mortgagee, the local property management company responsible for the security and maintenance of the property.

(d) An annual registration fee in the amount of $150.00 shall accompany the registration form. The annual registration fee shall be due on each anniversary date of the initial registration.

(e) This section shall also apply to abandoned real properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(f) Abandoned real properties subject to this section shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.

(g) Any person or corporation that has registered an abandoned real property under this section must report any change of information contained in the registration within ten (10) days of the change.

Sec. ___. Maintenance Requirements.

(a) Abandoned real property shall be kept free of weeds, overgrown brush, dead vegetation. trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers. notices, except those required by federal, state, or local law, discarded personal items included, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

(b) Abandoned real property shall be maintained free of abandoned personal property as defined herein. All abandoned real property located upon abandoned real property shall be subject to notice and removal as provided for herein.

(c) Abandoned real property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

(d) Visible front and side yards shall be maintained to the neighborhood standard at the time registration was required.

(e) Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing of required landscape and removal of all trimmings.

(f) Pools and spas shall be kept in working order so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the Town Code of Ordinances and Florida Building Code, as amended from time to time.

(g) Failure of the owner, including mortgagee, or once the title is transferred to the mortgagee or beneficiary of a mortgage, that entity, to properly maintain the abandoned real property may result in a violation of the Town Code and citation by the Town's code enforcement officers. Pursuant to a finding

and determination by the Town's Special Magistrate, the Town may take the necessary action to ensure compliance with this section.

(h) Placement of abandoned personal property upon abandoned real property is prohibited.

(i) Notification procedure for abandoned personal property upon abandoned real property. When an enforcement officer ascertains that an article of personal property having nominal salvage value lies abandoned or derelict upon abandoned real property, that officer shall:

(1) Cause a notice to be placed upon such abandoned property in the substantially following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY THIS PROPERTY, TO WIT:

(setting forth brief description)

LOCATED AT:

(setting forth brief description of location) is:

IMPROPERLY STORED AND IS IN VIOLATION OF

(setting forth ordinance or violation violated)

AND MUST BE REMOVED WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE OTHERWISE IT SHALL BE PRESUMED TO BE ABANDONED PROPERTY AND WILL BE REMOVED AND SOLD OR DESTROYED BY ORDER OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, DATED THIS:

(setting forth the date of posting of notice);

SIGNED (setting forth name, title, address and telephone number of enforcement officer.)

Such notice shall be not less than eight inches by ten inches and be sufficiently weatherproof to withstand normal exposure to the elements.

(2) The enforcement officer shall also make reasonable effort to ascertain the name and address of the owner of the abandoned personal or real property and, if such address is reasonably available, the officer shall mail by certified mail a copy of the notice to the owner on or before the date of posting the above-described notice on the abandoned personal property.

(3) The enforcement officer shall mail by certified mail a copy of the above-described notice to the owner of the abandoned real property upon which the abandoned personal property is located, as shown by the real estate tax records used by the county or registration records in the Town on or before the date of posting such notice.

(4) If at the end of ten days after posting notice under this article, the owner or any person interested in such abandoned personal property described in the notice has not removed same, the enforcement officer may cause the article of abandoned personal property to be removed and destroyed, and the salvage value, if any, of such article shall be retained by the local government to be applied against the cost of removal and destruction thereof.

(5) Before sale or destruction, any owner or lienholder of the abandoned personal property shall be permitted to regain possession thereof upon proof of ownership or lien rights entitling the lienholder to possession, upon payment of storage charges and all expenses incurred by the enforcement officer and/or the Town.

(j) Nothing in this section shall be deemed to apply to abandoned personal property authorized to be left on private property properly operated, licensed and zoned in the Town for the purpose of accepting abandoned property.

Sec. ___. Security Requirements

(a) Abandoned real property shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property and/or structure. Broken windows shall be secured by re-glazing or boarding of the window.

(c) If abandoned real property is owned by a corporation and/or out of area mortgagee, a local property management company shall be contracted to perform inspections no less than once a month to verify compliance with the requirements of this section, and any other applicable laws.

(d) Abandoned real property shall be posted with the name and twenty-four (24) hour contact phone number of the local property management company. The posting shall be no less than 18" x 24". and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:

TO REPORT PROBLEMS OR CONCERNS CALL:

The posting shall be placed on the interior of a window facing the street to the front of the property, or secured to the exterior of the building/structure facing the street to the front of the property and on a stake of sufficient size to support the posting in a location that is visual from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

(e) The local property management company shall inspect the abandoned real property no less than once a month to ensure that the property is in compliance with this chapter.

(f) Failure of the mortgagee, or once the title is transferred to the mortgagee or beneficiary of a mortgage, that entity, to properly maintain the abandoned real property may result in a violation of the Town Code and citation by the Town's Code Enforcement Department. Pursuant to a finding and determination by the Town's Code Enforcement Board or Special Magistrate, the Town may take the necessary action to ensure compliance with this section.

Sec. ___. Additional Authority

The Town Manager shall have authority to require the owner, the mortgagee or, once the title is transferred to the mortgagee or beneficiary of a mortgage, that entity, to implement additional maintenance and/or security measures including, but not limited to, securing any and all door, window or other openings, employment of an on-site security guard, or other measures as may be reasonably required to prevent a decline of the property.

Sec. ___. Adoption of rules; expenditure of funds; declaration of Town purpose.

The Town Council is authorized and empowered to adopt rules and regulations and expend Town funds as may be reasonably necessary and available to carry out the terms of this article, the expenditure of such funds being declared a proper Town purpose.

Section 3. It is the intention of the Town Council of the TOWN OF LOXAHATCHEE GROVES, Florida that the provisions of this ordinance shall become and be made a part of the Town of Loxahatchee Groves Code of Ordinances. The sections of this ordinance may be re-numbered or re- lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

Section 5. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not

affecting the validity of the remaining portions or applications remaining in full force and effect.

Section 6. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS _21st__ DAY OF _____June___, 2011.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS __5th___ DAY OF __July__, 2011.

TOWN OF LOXAHATCHEE GROVES,

FLORIDA

ATTEST:

Mayor David Browning

Ann Harper, Town Clerk

Vice Mayor Ryan Liang

Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

Council Member Ron Jarriel

Michael D. Cirullo, Jr., Town Attorney

Council Member Jim Rockett

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