A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A LOAN IN THE AMOUNT NOT TO EXCEED \$2,000,000.00 FROM COMMUNITY BANK OF BROWARD FOR THE PURPOSE OF THE ACQUISITION OF CERTAIN LAND; APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH COMMUNITY BANK OF BROWARD; PROVIDING FOR THE REPAYMENT OF THE LOAN FROM CERTAIN LEGALLY AVAILABLE NON AD VALOREM REVENUES OF THE TOWN; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE MAKING OF SUCH LOAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches, Florida (the "Town"), a municipal corporation, is duly created and existing pursuant to the Constitution and laws of the State of Florida (the "State"); and

WHEREAS, it is hereby determined that a need exists to borrow funds to finance or refinance the cost of the acquisition of the project or projects set forth on Exhibit A attached hereto (the "Project"); and

WHEREAS, it is determined to be in the best interest of the Town to borrow funds from Community Bank of Broward (the "Lender") to finance the cost of the Project, and to repay such borrowing (the "Loan") by issuing the Town's Promissory Note, Series 2002, in a principal amount not to exceed \$2,000,000 (the "Note").

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

SECTION 1: AUTHORITY. This Resolution is adopted pursuant to Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2: PROJECT. The financing of the acquisition of the Project is hereby approved.

SECTION 3: NEGOTIATED LOAN. Due to the nature of the financing, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Lender in substantial accordance with the Lender's Commitment Letter (the "Commitment Letter") attached hereto as Exhibit "B" is hereby found to be in the best interest of the Town. The provisions of this Resolution and the hereinafter

described Loan Agreement shall control to the extent of any conflict with the Commitment Letter.

SECTION 4: LOAN AMOUNT. The Loan shall be evidenced by a Loan Agreement between the Town and the Lender (the "Loan Agreement") in substantially the form attached hereto as Exhibit "C", including the form of the Note attached as Exhibit "I" thereto. The principal amount of Loan shall not exceed \$2,000,000. In order to secure the Town's obligations under the Loan Agreement and the Note, the Town is authorized to pledge to the Lender the Town's revenues received from franchise fees and utility taxes and, if required by the Lender, to annually budget and appropriate from its legally available non ad valorem revenues an amount sufficient to pay all amounts due to the Lender under the Loan Agreement and the Note, all as more particularly described in the Loan Agreement and the Note.

SECTION 5: AUTHORIZED OFFICERS. The Mayor and the Town Administrator are hereby authorized and directed to execute and deliver the Loan Agreement in substantially the form attached hereto as Exhibit "C", including the form of the Note attached as Exhibit "I" thereto, with such changes, insertions and omissions as may be approved by the Mayor and Town Administrator, the execution thereof being conclusive evidence of such approval.

SECTION 6: OTHER INSTRUMENTS. The Mayor, the Town Administrator, the Town Clerk or any other appropriate officers of the Town are hereby authorized and directed to execute any and all certifications or other instruments or documents required by this Resolution, the Loan Agreement or any other document required by the Lender as a prerequisite or precondition to making the Loan (including but not limited to the execution of all tax documents relating to the tax exempt status of the Loan), and any such representations and agreements made therein shall be deemed to be made on behalf of the Town. All action taken to date by the officers of the Town in furtherance of the issuance of the Note and the making of the Loan is hereby approved, confirmed and ratified.

SECTION 7: ADDITIONAL INFORMATION. The Loan Agreement shall not be executed and delivered unless and until the Town has received all information required by Section 218.385, Florida Statutes.

SECTION 8: EXECUTION. The Mayor, Town Administrator, and Town Attorney are hereby authorized to execute such documents as may be necessary to effectuate the purpose and intent of this Resolution.

SECTION 9: EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 12th day of September, 2002.

Mecca Fink, Mayor

Atte Town Clerk Arielle) Haz

Approved as to Form and Correctness:

Gary A. Poliakoff, J. D., Town Attorney

EXHIBIT A

PROJECTS

Including, but not limited to the acquisition of land.

EXHIBIT C

FORM OF LOAN AGREEMENT

733021_1.DOC

EXHIBIT B

COMMITMENT LETTER

RESOLUTION NO. 2002-72

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A LOAN IN THE AMOUNT NOT TO EXCEED \$2,000,000.00 FROM COMMUNITY BANK OF BROWARD FOR THE PURPOSE OF THE ACQUISITION OF CERTAIN LAND; APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH COMMUNITY BANK OF BROWARD; PROVIDING FOR THE REPAYMENT OF THE LOAN FROM CERTAIN LEGALLY AVAILABLE NON AD VALOREM REVENUES OF THE TOWN; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE MAKING OF SUCH LOAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches, Florida (the "Town"), a municipal corporation, is duly created and existing pursuant to the Constitution and laws of the State of Florida (the "State"); and

WHEREAS, it is hereby determined that a need exists to borrow funds to finance or refinance the cost of the acquisition of the project or projects set forth on Exhibit A attached hereto (the "Project"); and

WHEREAS, it is determined to be in the best interest of the Town to borrow funds from Community Bank of Broward (the "Lender") to finance the cost of the Project, and to repay such borrowing (the "Loan") by issuing the Town's Promissory Note, Series 2002, in a principal amount not to exceed \$2,000,000 (the "Note").

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

SECTION 1: AUTHORITY. This Resolution is adopted pursuant to Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2: PROJECT. The financing of the acquisition of the Project is hereby approved.

SECTION 3: NEGOTIATED LOAN. Due to the nature of the financing, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Lender in substantial accordance with the Lender's Commitment Letter (the "Commitment Letter") attached hereto as Exhibit "B" is hereby found to be in the best interest of the Town. The provisions of this Resolution and the hereinafter

described Loan Agreement shall control to the extent of any conflict with the Commitment Letter.

SECTION 4: LOAN AMOUNT. The Loan shall be evidenced by a Loan Agreement between the Town and the Lender (the "Loan Agreement") in substantially the form attached hereto as Exhibit "C", including the form of the Note attached as Exhibit "I" thereto. The principal amount of Loan shall not exceed \$2,000,000. In order to secure the Town's obligations under the Loan Agreement and the Note, the Town is authorized to pledge to the Lender the Town's revenues received from franchise fees and utility taxes and, if required by the Lender, to annually budget and appropriate from its legally available non ad valorem revenues an amount sufficient to pay all amounts due to the Lender under the Loan Agreement and the Note, all as more particularly described in the Loan Agreement and the Note.

SECTION 5: AUTHORIZED OFFICERS. The Mayor and the Town Administrator are hereby authorized and directed to execute and deliver the Loan Agreement in substantially the form attached hereto as Exhibit "C", including the form of the Note attached as Exhibit "I" thereto, with such changes, insertions and omissions as may be approved by the Mayor and Town Administrator, the execution thereof being conclusive evidence of such approval.

SECTION 6: OTHER INSTRUMENTS. The Mayor, the Town Administrator, the Town Clerk or any other appropriate officers of the Town are hereby authorized and directed to execute any and all certifications or other instruments or documents required by this Resolution, the Loan Agreement or any other document required by the Lender as a prerequisite or precondition to making the Loan (including but not limited to the execution of all tax documents relating to the tax exempt status of the Loan), and any such representations and agreements made therein shall be deemed to be made on behalf of the Town. All action taken to date by the officers of the Town in furtherance of the issuance of the Note and the making of the Loan is hereby approved, confirmed and ratified.

SECTION 7: ADDITIONAL INFORMATION. The Loan Agreement shall not be executed and delivered unless and until the Town has received all information required by Section 218.385, Florida Statutes.

SECTION 8: EXECUTION. The Mayor, Town Administrator, and Town Attorney are hereby authorized to execute such documents as may be necessary to effectuate the purpose and intent of this Resolution.

SECTION 9: EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 12th day of September, 2002.

Mecca Fink, Mayor Finh

wn Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J. D., Town Attorney

1 certify that this is a true + correct copy of this Resolution 2002-72, dated September 19, 2002 By Town Clerk, Arielle Haze Tyner. ature

EXHIBIT A

PROJECTS

Including, but not limited to the acquisition of land.

EXHIBIT B

COMMITMENT LETTER

RESOLUTION NO. 2002-72(a)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE DEVELOPMENT OF A PUBLIC SAFETY FACILITY AT 172 AVENUE AND GRIFFIN ROAD; SPECIFYING A FUNDING APPROACH; NAMING THE FACILITY "JOHNNY DOLLAR PUBLIC SAFETY BUILDING" AND PROVIDING AN EFFECTIVE DATE

WHEREAS, on April 12, 2001, the Town Council approved Resolution 2001-48 for the purchase of property from the South Broward Drainage District; and

WHEREAS, the agreement authorized by Resolution 2001-48 stipulates that the Town shall provide a volunteer fire facility within five years of purchase. Failure to provide said facility would enable the South Broward Drainage District with the ability to acquire at no cost the purchased property; and

WHEREAS, on April 11, 2002, the Town Council approved agenda item #7, which authorized the Town Administrator to negotiate a funding agreement with the County for a volunteer fire facility; and

WHEREAS, on June 13, 2002, the Town Council approved a plat for the development of a volunteer fire facility located at 172 Avenue and Griffin Road; and

WHEREAS, the Town Council approved the change of the name of the plat to be Public Safety Facility; and

WHEREAS, it is in the best interest of the Town to provide public welfare and public safety protection for the residents; and

WHEREAS, the Town should establish an intent and funding policy for the development of a Public Safety Facility.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1: The above referenced recitals are true and correct and are incorporated herein by reference.

Section 2: The Town Council affirms that it is in the best interest of the Town of Southwest Ranches to provide a Public Safety Facility to be located at 172 Avenue and Griffin Road.

Section 3: The Town Administrator is hereby authorized to take such actions as he may deem necessary and appropriate to secure funding for the construction of a Public Safety Facility; it being the desire of the Town Council that the primary source of funding be obtained through grants and/or contributions from other municipalities as well as County, State and/or Federal funding resources.

Section 4: Prior to committing to the construction of a Public Safety Facility, the Town Administrator shall bring before the Town Council for its approval an artist's conceptualization of the proposed facility, along with a set of plans and specifications, and a budget for construction of the facility, as well as the funding resources.

Section 5: The Town Council does hereby specify that the name to be associated and used for this facility shall be "Johnny Dollar Public Safety Building."

Section 6: That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 12th day of September 2002.

Vecca Fint

Mecca Fink, Mayor

Attest/

Arielle Haze I yner, town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney

731825_1.DOC

Community Bank DRAFT

September 11, 2002

John Canada, Town Manager Town of Southwest Ranches 6589 SW 60th Avenue Southwest Ranches, FI 33331

Dear John:

We are pleased to advise you that Community Bank of Broward ("Bank") has approved the following loan ("Loan") to the Town of Southwest Ranches. ("Borrower"), and by your acceptance of this commitment, you agree to accept the loan based upon the following terms and conditions:

	e and conditions:
Borrower:	Town of Southwest Ranches
V Loan:	\$2,000,000 Commercial Term Loan
V Terms;	Monthly interest payments based upon WSJ prime rate plus .25% (currently 5.0%). Repayment will be based upon monthly payments of interest only for two years with a two-year note maturity.
V Purpose:	To provide funds to purchase land for a public park or for re-sale. The subject property consists of a 30-acre tract of land. It is located along SW 193 Lane, South of SW 51 Manor, approximately ½ mile south of Griffin Road.
✓ Collateral:	The loan will be secured by a Covenant to Budget and Appropriate and a pledge of franchise fees and utility fee revenues and a security agreement.
Closing Date:	The loan described herein shall be closed by the Bank within Forty-Five (45) days from date of your acceptance of this commitment, unless extended in writing by the Bank in its sole discretion.
Prepayment:	Prepayment during the term of the loan shall be permitted at any time, without penalty.
Origination Fee:	None
Other Terms an Conditions:	nd
1. The loa Appropr	in will be evidenced by a promissory note ("Note"), a Covenant to Budget and itate, a pledge of franchise fees and utility fee revenues and a security agreement

Appropriate, a pledge of franchise fees and utility fee revenues and a security agreement and such other documents as the bank or bank Counsel may require. The closing attorney for the Bank will be: Adorno and Yoss, P.A. 1551 Forum Place West Palm Beach, Florida.

3111 North University Drive, Suite #1000, Coral Springs, Florida 33065	(954) 346-3338	(954) 346-3354 Fux -
CommunityBankolBroward.com		

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3.

On a semi-annual basis, no later than 90 days after the end of each accounting period, or more often if requested by the Bank, the Borrower (including affiliated business entities) shall submit to the bank the internally-prepared financial statements. Annually, the Town shall submit its audited financial statement to the bank.

The Borrower shall be responsible for the payment of all closing costs incurred with respect to the Loan, including, but not limited to all recording fees, documentary stamps, intangibles taxes, documentation preparation fee, Bank's attorney's fees and all other expenses incurred by the Bank in connection with the issuance of this Commitment and the closing of the Loan. The Borrower recognizes and accepts the legal responsibility for the payment of all such costs, whether or not the Loan is actually closed or funded.

The occurrence of any one of the following events shall, at the option of the Bank, constitute an "event of default" under this Commitment: (a) the failure of the Borrower to comply with any terms or conditions of this Commitment; (b) the dissolution, merger or consolidation of the Borrower; (c) the filing by or against the Borrower in bankruptcy or the adjudication or insolvency or bankruptcy under any reorganization arrangement, readjustment of debt, dissolution, liquidation or similar proceeding under any federal or state statute; (d) the determination by the Bank that a material adverse change has occurred in the financial condition of the Borrower heretofore furnished to Bank, or from the condition of the Borrower to close the Loan on or before closing date. Upon the occurrence of any "event of default" prior to the closing of the Loan, the Bank may, at its option, terminate this Commitment without notice to the Borrower.

- 4. Unless otherwise extended in writing by the Bank, this Commitment, <u>if not</u> <u>accepted and returned to Bank within seven days of the date of this Commitment,</u> <u>shall terminate.</u>
- 5. Borrower understands and acknowledges that a law firm of the Bank's choice represents the bank, and does not represent the Borrower in this transaction. The services performed on behalf of the bank by bank's counsel are performed for the bank only.
- 6. The Bank and the Borrower confirm that this Commitment contains their complete understanding concerning this transaction as of the date hereof and it supercedes all prior agreements between the bank and Borrower. No provisions of this Commitment shall be amended, waived or modified except by written instruments signed by Bank and Borrower. This Commitment shall be governed by the laws of the State of Florida.
- 7. This Commitment will become effective and binding upon Borrower's acceptance, and the terms and conditions hereof shall survive the closing of the Loan, except as may be expressly modified in any of the Loan closing documents. The Borrower must comply with the terms and conditions of this Commitment throughout the term of the Loan, including any extension thereof, except to the extent that the Commitment may conflict with or be superseded by any document executed by both Borrower and Bank subsequent to the date hereof.
- 8. The Borrower shall not assign this Commitment without the prior written consent of the bank. Any assignment or conveyance without such authorization shall be null and void.
- 9. Borrower shall look solely to the Bank and not to any officer, director or employee for performance under this Commitment.
- 10. Town of Southwest Ranches may not use franchise fees and utility fee revenues as collateral for or repayment of any other loan without written approval from CBB.

- 11. Satisfactory letter of opinion from the Town's attorney stating the Town's eligibility to borrow, such opinion letter to be acceptable to Bank's Counsel and bank counsel's review
- 12. An agreement to appropriate funds to pay the loan.

We appreciate the opportunity to provide this financing and to provide for your banking needs.

Sincerely, Community Bank of Broward

By: Steven Schultz

Vice President

Acknowledged and accepted this _____day of _____, 2002.

Town of Southwest Ranches

Ву_____

FORM OF LOAN AGREEMENT

733021_1.DOC

LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of this 20th day of September, 2002, by and between COMMUNITY BANK OF BROWARD, a Florida banking corporation ("Lender"), and the TOWN OF SOUTHWEST RANCHES, a Florida municipal corporation (the "Town").

In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. As used herein, unless the context otherwise requires:

"Act" means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Resolution No. 2002-72 adopted by the Town on September 12, 2002, and other applicable provisions of law.

"Agreement" means this Loan Agreement between Lender and the Town, as it may be amended from time to time.

"Annual Budget" means the annual budget prepared by the Town for each Fiscal Year in accordance with Section 9 below and in accordance with the laws of the State of Florida.

"Business Day" means any day which is not a Saturday, Sunday or legal holiday in Broward County, Florida.

"Chief Financial Officer" means the chief financial officer of the Town as defined in Section 218.403, Florida Statutes.

"Clerk" means the Town Clerk or any Deputy Clerk of the Town.

"Code" means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Costs of the Project" means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

"Dated Date" means the date of issuance of the Note.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Town pursuant to general law.

"Franchise Fees" means the amounts received by the Town from Florida Power & Light Company ("FPL") and Comcast Cablevision of Broward County, Inc. ("Comcast") and their respective successors and assigns, pursuant to Ordinance No. 2003, accepted by FPL on August 28, 2000, and that certain Assignment Agreement between Broward County and the Town, consented to by Comcast, or otherwise.

"Governing Body" means the Town Council of the Town, or its successor in function.

"Lender" means Community Bank of Broward, a Florida banking corporation, the initial purchaser of the Note.

"Mayor" means the Mayor of the Town and such other person as may be duly authorized to act on the Mayor's behalf.

"Non-Ad Valorem Revenues" means all revenues of the Town derived from any source other than ad valorem taxation on real or personal property, which are legally available to make the payments required under this Agreement.

"Noteholder" or "Holder" means the registered owner (or its authorized representative) of the Notes.

"Note" means the Series 2002 Promissory Note authorized to be issued by the Town in the aggregate principal amount not to exceed \$2,000,000, the form of which is attached as Exhibit "I" hereto.

"Project" means the acquisition of land as more particularly described in Resolution 2002-71, adopted by the Governing Body on September 12, 2002.

"Public Service Tax" means the taxes levied and collected by the Town imposed by Ordinances 2000-7 and 2001-3 of the Town or otherwise on the purchase of electricity, water, sewer, metered or bottled gas, telephone service, telegraph service and cable television service sold or used in the Town pursuant to Section 166.231, Florida Statutes.

"Resolution" means Resolution 2002-72, adopted by the Governing Body on September 12, 2002, authorizing the issuance of the Note, as the same may from time to time be amended, modified or supplemented.

"State" means the State of Florida.

"Town" means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

"Town Administrator" means the Town Administrator of the Town and such other person

as may be duly authorized to act on his or her behalf.

SECTION 2. PURCHASE AND SALE OF NOTE. Subject to and in accordance with the provisions of this Agreement, the Town agrees to issue, and Lender agrees to purchase, the Note. The Town shall use the proceeds from the sale of the Note to finance the Project and for no other purpose.

SECTION 3. DESCRIPTION OF NOTE.

A. The Note shall be issued in one (1) typewritten certificate and shall be dated the Dated Date. The Note shall bear interest from the Dated Date at an initial rate of 5.00%. The interest rate on the Note shall be automatically adjusted to the interest rate listed in the previous edition of the <u>Wall</u> <u>Street Journal</u> as the "Prime Rate", plus 0.25%, as such rate may change from time to time. Principal of the Note will be payable two years from the Dated Date. Accrued interest on the Note will be payable on the 20th day of each month, beginning October 20, 2002. Interest on the Note shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

B. <u>Details of the Note</u>. Details of the Note shall be as provided in the form of Note attached Exhibit "I" hereto. The Note shall be in registered form, contain substantially the same terms and conditions as set forth in Exhibit "I" hereto, shall be payable in lawful money of the United States of America, and the principal thereof, interest thereon and any other payments thereunder shall be payable by check, wire, draft or bank transfer to the Holder at such address as may be provided in writing by such Holder to the Town Administrator. So long as the Note shall remain outstanding, the Town shall maintain and keep books for the registration and transfer of the Note.

The Note shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code of the State of Florida, subject to the provisions for registration of transfer contained in this Agreement and in the Note.

The Note may be assigned as to principal and interest by Lender, or any assignee or successor-in-interest of Lender. Such assignment shall only be effective, and the Town obligated to pay such assignee, upon written notice of assignment being provided to the Town Administrator at 6589 SW 60th Avenue, Southwest Ranches, Florida 33331 (or such future address as may serve as the address of the Town); provided, however, the written notice of assignment must be received by the Town Administrator no later than the close of business on the fifth Business Day prior to a payment date in order to carry the right to receive the interest and principal payment due on such payment date. The Town may charge the registered owner of the Note for the registration of every such assignment of the Note sufficient to reimburse it for any tax, fee or any other governmental charge required to be paid, except for any such governmental charge imposed by the Town, with respect to the registration of such assignment, and may require that such amounts be paid before any such assignment of the Note shall be effective.

In addition, the Town acknowledges and agrees that the Lender may assign or convey

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participation interests in the Note to other financial institutions, either before or subsequent to the Dated Date.

SECTION 4. EXECUTION OF NOTE. The Note shall be executed in the name of the Town by the Mayor and the seal of the Town shall be imprinted, reproduced or lithographed on the Note and attested to by the Town Administrator. Both the Mayor and the Town Administrator shall execute the Note manually, and not by facsimile. If any officer whose signature appears on the Note ceases to hold office before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes. In addition, the Note may bear the signature of, or may be signed by, such persons as at the actual time of execution of the Note shall be the proper officers to sign the Note although at the date of the Note or the date of delivery thereof such persons may not have been such officers.

SECTION 5. NOTE MUTILATED, DESTROYED, STOLEN OR LOST. If the Note is mutilated, destroyed, stolen or lost, the Town may, in its discretion (i) deliver a duplicate replacement Note, or (ii) pay a Note that has matured or is about to mature. A mutilated Note shall be surrendered to and canceled by the Town Administrator or its duly authorized agent. The Holder must furnish the Town or its agent proof of ownership of any destroyed, stolen or lost Note; post satisfactory indemnity; comply with any reasonable conditions the Town or its agent may prescribe; and pay the Town's or its agent's reasonable expenses.

Any such duplicate Note shall constitute an original contractual obligation on the part of the Town whether or not the destroyed, stolen, or lost Note be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien on, and source of and security for payment from, the funds pledged to the payment of the Note so mutilated, destroyed, stolen or lost.

SECTION 6. PROVISIONS FOR REDEMPTION. The Note may be prepaid in whole or in part at any time prior to maturity without premium or penalty in the manner provided in the form of Note attached as Exhibit "I" hereto.

SECTION 7. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN. The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and secured solely in the manner described in Section 8 hereof, in the manner and to the extent herein provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Franchise Fees, the Public Service Tax or other Non-Ad Valorem Revenues. The Holder shall have no lien upon the Project.

SECTION 8. PLEDGE OF REVENUES; COVENANT TO BUDGET AND APPROPRIATE.

A. <u>Pledge of Franchise Fees and Public Service Tax</u>. The payment of the principal of, premium, if any, and interest on the Note shall be secured forthwith equally and ratably by an irrevocable lien on and pledge of the Franchise Fees and the Public Service Tax, prior and superior to all other liens or encumbrances on the Franchise Fees or the Public Service Tax, and the Town hereby irrevocably pledges the Franchise Fees and the Public Service Tax to the payment of the principal of, premium, if any, and interest on the Note as the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax to the payment of the Franchise Fees and the Public Service Tax to the payment of the principal of, premium, if any, and interest on the Note as the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax shall be cumulative to the extent not paid, and shall continue until the Note has been paid in full.

The Town covenants that for so long as the Note shall remain unpaid, it will continue to impose the Franchise Fees and the Public Service Tax, and will not amend or repeal the provisions of the resolutions, ordinances and/or agreements of the Town that impose the Franchise Fees or the Public Service Tax as of the date hereof so as to reduce the rate at which the Franchise Fees or the Public Service Tax is imposed or the services or commodities subject to Franchise Fees or the Public Service Tax, or otherwise modify the proceedings of the Town relevant to the Franchise Fees or the Public Service Tax in any manner so as to impair or adversely affect the ability of the Town to impose and collect the Franchise Fees or the Public Service Tax.

The Town represents that the Franchise Fees and the Public Service Tax are not pledged or encumbered in any manner. The Town further represents that the revenues generated by the Franchise Fees and the Public Service Tax are estimated to be sufficient to pay the principal of, premium, if any, and interest on the Note as the same shall become due.

B. <u>Covenant to Budget and Appropriate</u>. In addition to the foregoing, the Town hereby covenants to budget and appropriate in its Annual Budget, by amendment if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay the principal of and interest on the Note coming due in such Fiscal Year, until the Note has been paid in full. Such covenant to budget and appropriate such non-Ad Valorem Revenues shall be cumulative to the extent not paid, and continue until such Non-Ad Valorem Revenues in amounts sufficient to make all payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town which. generate Non-Ad Valorem Revenues.

SECTION 9. OPERATING BUDGET; FINANCIAL STATEMENTS. Before the first day of each Fiscal Year, the Governing Body shall prepare, approve and adopt in the manner prescribed by law, a detailed Annual Budget. Such Annual Budget shall provide for revenues sufficient to comply with the Town's obligations hereunder, including any unsatisfied obligations from prior Fiscal Years. The budget for each Fiscal Year shall provide that the Franchise Fees and Public Service Tax revenues shall be at least 1.25 times the principal and interest due on the Note in such Fiscal Year. The Town shall annually provide to Lender a copy of the Annual Budget and the Town's audited financial statements prepared in accordance with law, each within thirty (30) days of its completion. The Town shall also provide the Lender internally prepared semi-annual financial statements no later than ninety (90) days after the end of each March 31 and September 30, or more

often if requested by the Lender.

SECTION 10. ISSUANCE OF ADDITIONAL OBLIGATIONS PROHIBITED. The Town will not issue any obligations or incur any liability payable from or secured by the Franchise Fees or the Public Service Tax and having a right to payment therefrom, whether prior to, on a parity with or subordinate to, the right to payment therefrom of the Note, without the written consent of the Lender, which may be given or withheld in the Lender's sole discretion.

SECTION 11. MODIFICATION, AMENDMENT OR SUPPLEMENT. No modification, amendment or supplement of this Agreement may be made except by written instrument executed by Holder and the Town.

SECTION 12. EVENTS OF DEFAULT; REMEDIES.

A. <u>Events of Default</u>. Any one or more of the following events shall be an "Event of Default":

- (i) The Town shall fail to pay the principal of or interest on the Note when due;
- (ii) The Town shall default under any obligation for the repayment of money;

(iii) The Town shall (a) admit in writing its inability to pay its debts generally as they become due, (b) file (or have filed against it and not dismissed within 90 days) a petition in bankruptcy or take advantage of any insolvency act, (c) make an assignment for the general benefit of creditors, (d) consent to the appointment of a receiver for itself of for the whole or any substantial part of its property, or (e) be adjudicated a bankrupt; or

(iv) The Town shall default in the due and punctual performance of any of its covenants, conditions, agreements and provisions contained herein, in the Resolution or in the Note, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Town by the Lender; provided that such default shall not be an Event of Default if the Town within such 30 day period commences and carries out with due diligence to completion (although not necessarily within such thirty (30) day period) such action as is necessary to cure the sane.

B. <u>Remedies on Default</u>. If an Event of Default shall have occurred and be continuing, the Lender may proceed to protect and enforce its rights hereunder by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or for enforcement of any proper legal or equitable remedy as such Lender shall deem most effectual to protect and enforce the rights aforesaid.

No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

No delay or omission of the Lender to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or an acquiescence therein; and every power and remedy given by this article may be exercised from time to time, and as often as may be deemed expeditious by the Lender.

SECTION 13. CLOSING COSTS. The Town shall be responsible for paying all fees and costs in connection with the issuance of the Note, including, but not limited to, the fees and costs of Lender's counsel.

SECTION 14. WAIVER OF JURY TRIAL. LENDER AND THE TOWN HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE RESOLUTION, THIS AGREEMENT, THE NOTE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

SECTION 15. SEVERABILITY. If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement or of the Note issued hereunder, which remaining covenants, agreements and provisions shall remain in full force and effect.

SECTION 16. NO THIRD-PARTY BENEFICIARIES. Except as herein otherwise expressly provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and a subsequent holder of or the holder of a participation interest in the Note issued hereunder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the holder from time to time of the Note issued hereunder.

SECTION 17. CONTROLLING LAW; MEMBERS OF TOWN NOT LIABLE. The Town agrees that all covenants, stipulations, obligations and agreements of the Town contained in the Resolution, this Agreement and the Note shall be covenants, stipulations, obligations and agreements of the Town to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. Lender agrees and acknowledges that no covenant, stipulation, obligation or agreement contained in the Resolution, this Agreement or the Note shall be a covenant, stipulation, obligation or agreement of any present or future member, agent, officer or employee of the Town or the Governing Body of the Town in his or her individual capacity, and that neither the members or officers of the Governing Body of the Town nor any official executing the Note shall be liable personally on the Note or shall be subject to any personal liability or accountability by

reason of the issuance or the execution of the Note by the Town or such members thereof.

SECTION 18. COMMITMENT LETTER SUPERSEDED. The provisions of this Agreement and the Note supersede the Commitment Letter from Lender to the Town dated September 11, 2002, to the extent of any inconsistency between the provisions hereof and thereof.

SECTION 19. EFFECTIVE DATE. This Agreement shall take effect immediately upon being executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

TOWN OF SOUTHWEST RANCHES

BY: <u>Mecca Finh</u> MECCA FINK, MAYOR

[SEAL]

ATTEST:

JOHN CANADA, TOWN ADMINISTRATOR

Approved as to form and correctness Curl Capit Callotte Becker & Poliakoff, P.A., Town Attorney

COMMUNITY BANK OF BROWARD BY: STEVEN C. SCHULTZ

VICE PRESIDENT

EXHIBIT "I"

(Form of Note)

REGISTERED No. R- 1

REGISTERED \$2,000,000.00

UNITED STATES OF AMERICA STATE OF FLORIDA TOWN OF SOUTHWEST RANCHES PROMISSORY NOTE, SERIES 2002

Initial Interest Rate:

Maturity Date:

Dated Date:

September 20, 2002

5.00%

September 20, 2004

REGISTERED OWNER: COMMUNITY BANK OF BROWARD

TWO MILLION DOLLARS PRINCIPAL AMOUNT:

KNOW ALL MEN BY THESE PRESENTS, that the Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida (hereinafter called the "Town") for value received, hereby promises to pay to the Registered Owner identified above, or to registered assigns or legal representatives, but solely from the revenues hereinafter mentioned, on the dates hereinafter provided, the Principal Amount identified above, and to pay, solely from such revenues, interest on the Principal Amount remaining unpaid from time to time, at the interest rate per annum identified above, subject to adjustment as hereinafter provided (the "Bond Rate"), until the entire Principal Amount has been repaid. Principal of and interest on this Note will be paid by bank wire, check, draft or bank transfer delivered to the Registered Owner hereof at his address as it appears on the registration books of the Town at the close of business on the fifth Business Day (as defined in the hereinafter described Agreement), of the month next preceding the interest payment date (the "Record Date").

The interest rate on this Note shall be automatically adjusted to the interest rate listed in the previous edition of the Wall Street Journal as the "Prime Rate", plus 0.25 %, as such rate may change from time to time.

Interest on this Note shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

Payments of accrued interest will be due on this Note on the 20th day of each month, beginning October 20, 2002. The principal of the Note will be due September 20, 2004.

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Each date when principal and/or interest on this Note is due is a "Payment Date." If any Payment Date is not a Business Day, the payment otherwise due on such Payment Date shall be due on the preceding Business Day.

Any payment of principal hereof or interest hereon not paid when due shall bear interest from the due date until paid at the Bond Rate.

This Note is the entire authorized issue of notes in the aggregate principal amount of \$2,000,000, issued to finance the acquisition of the Project (as defined in the Agreement), pursuant to the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town, and Resolution No. 2002-72, adopted by the Town Council of the Town on September 12, 2002 (collectively, the "Act"), and a Loan Agreement between the Town and Community Bank of Broward dated September 20, 2002 (the "Agreement").

This Note and the interest hereon are secured by and are payable from a prior lien upon and pledge of the Franchise Fees and the Public Service Tax (both as defined in the Agreement), in the manner and to the extent provided in the Agreement. This Note and the interest hereon are further secured by the Town's covenant to budget and appropriate in each of its Fiscal Years (as defined in the Agreement) from Non-Ad Valorem Revenues (as defined in the Agreement) amounts sufficient to pay the principal of and interest on this Note coming due in such Fiscal Year, until the Note has been paid in full. Reference is hereby made to the Agreement for the provisions, among others, relating to the terms and security for the Note, the custody and application of the proceeds of the Note, the rights and remedies of the Registered Owner of the Note, and the extent of and limitations on the Town's rights, duties and obligations, to all of which provisions the Registered Owner hereof for himself and his successors in interest assents by acceptance of this Note. All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed thereto in the Agreement.

The interest rate borne by this Note shall be adjusted automatically as of the effective date of any change in the maximum Federal income tax rate applicable to corporations, presently 35%, to that interest rate which would, based on a certificate of the Lender, result in the same after tax return to the Lender.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE REGISTERED OWNER OF THIS NOTE THAT SUCH REGISTERED OWNER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON

ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE AGREEMENT.

It is further agreed between the Town and the Registered Owner of this Note that this Note and the indebtedness evidenced hereby shall not constitute a lien upon the Project, or any part thereof, or any other tangible personal property of or in the Town. Neither the members of the governing body of the Town nor any person executing the Note shall be liable personally on the Note by reason of its issuance.

This Note shall be subject to prepayment at the option of the Town in whole or in part on any date at a price equal to the principal amount being prepaid plus accrued interest thereon. In the event of any partial prepayment of this Note, each partial payment shall be applied first to accrued interest hereon, and then to principal.

The registration of this Note may be assigned upon the registration books upon delivery to the Town Administrator accompanied by a written instrument or instruments of assignment in the form provided herein, duly executed by the owner of this Note or by his attorney-in-fact or legal representative, containing written instructions as to the details of assignment of this Note, along with the social security number or federal employer identification number of such assignee. In all cases of an assignment of this Note, the Town shall at the earliest practical time in accordance with the provisions of the Agreement enter the change of ownership in the registration books. The Town may charge the owner of such Note for the registration of every such assignment of a Note an amount sufficient to reimburse it for any tax, fee or any other governmental charge required (other than by the Town) to be paid with respect to the registration of such assignment, and may require that such amounts be paid before any such assignment of a Note shall be effective.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable hereto, and that the issuance of the Note does not violate any constitutional or statutory limitation or provision.

THE REGISTERED OWNER, BY ITS ACCEPTANCE OF THIS NOTE, AND THE TOWN, BY ITS ACCEPTANCE OF THE PROCEEDS OF THE NOTE, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OR DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

IN WITNESS WHEREOF, the Town of Southwest Ranches, Florida has issued this Note and

has caused the same to be executed by the manual signature of the Mayor, and attested by the manual signature of the Town Administrator and its corporate seal or a facsimile thereof to be affixed or reproduced hereon, all as of the 20th day of September, 2002.

(SEAL)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Mayor

ATTEST:

Town Administrator

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises.

Dated:__

SOCIAL SECURITY NUMBER OR FEDERAL IDENTIFICATION NUMBER OF ASSIGNEE NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Note in every particular, without enlargement or alteration or any change whatever.

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with the right of survivorship and not as tenants in common

UNIFORM TRANS MIN ACT - _____ Custodian for _____(Cust.) (Minor) under Uniform Transfers to Minors Act of _____.

(State)

Additional abbreviations may also be used though not in the above list.

LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of this 2002, by and between COMMUNITY BANK OF BROWARD, a Florida banking corporation ("Lender"), and the TOWN OF SOUTHWEST RANCHES, a Florida municipal corporation (the "Town").

In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. As used herein, unless the context otherwise requires:

"Act" means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Resolution No. 2002-_____adopted by the Town on September 12, 2002, and other applicable provisions of law.

"Agreement" means this Loan Agreement between Lender and the Town, as it may be amended from time to time.

"Annual Budget" means the annual budget prepared by the Town for each Fiscal Year in accordance with Section 9 below and in accordance with the laws of the State of Florida.

"Business Day" means any day which is not a Saturday, Sunday or legal holiday in Broward County, Florida.

"Chief Financial Officer" means the chief financial officer of the Town as defined in Section 218.403, Florida Statutes.

"Clerk" means the Town Clerk or any Deputy Clerk of the Town.

"Code" means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Costs of the Project" means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

"Dated Date" means the date of issuance of the Note.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Town pursuant to general law.

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EXMIBIT "C"

"Franchise Fees" means the amounts received by the Town from Florida Power & Light Company ("FPL") and Comcast Cablevision of Broward County, Inc. ("Comcast") and their respective successors and assigns, pursuant to Ordinance No. 2003, accepted by FPL on August 28, 2000, and that certain Assignment Agreement between Broward County and the Town, consented to by Comcast, or otherwise.

"Governing Body" means the Town Council of the Town, or its successor in function.

"Lender" means Community Bank of Broward, a Florida banking corporation, the initial purchaser of the Note.

"Mayor" means the Mayor of the Town and such other person as may be duly authorized to act on the Mayor's behalf.

"Non-Ad Valorem Revenues" means all revenues of the Town derived from any source other than ad valorem taxation on real or personal property, which are legally available to make the payments required under this Agreement.

"Noteholder" or "Holder" means the registered owner (or its authorized representative) of the Notes.

"Note" means the Series 2002 Promissory Note authorized to be issued by the Town in the aggregate principal amount not to exceed \$2,000,000, the form of which is attached as Exhibit "1" hereto.

"Project" means the acquisition of land as more particularly described in Resolution _____, adopted by the Governing Body on

"Public Service Tax" means the taxes levied and collected by the Town imposed by Ordinances 2000-7 and 2001-3 of the Town or otherwise on the purchase of electricity, water, sewer, metered or bottled gas, telephone service, telegraph service and cable television service sold or used in the Town pursuant to Section 166.231, Florida Statutes.

"Resolution" means Resolution 2002-___, adopted by the Governing Body on September 12, 2002, authorizing the issuance of the Note, as the same may from time to time be amended, modified or supplemented.

"State" means the State of Florida.

"Town" means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

"Town Administrator" means the Town Administrator of the Town and such other person

as may be duly authorized to act on his or her behalf.

SECTION 2. PURCHASE AND SALE OF NOTE. Subject to and in accordance with the provisions of this Agreement, the Town agrees to issue, and Lender agrees to purchase, the Note. The Town shall use the proceeds from the sale of the Note to finance the Project and for no other purpose.

SECTION 3. DESCRIPTION OF NOTE.

A. The Note shall be issued in one (1) typewritten certificate and shall be dated the Dated Date. The Note shall bear interest from the Dated Date at an initial rate of 5.00%. The interest rate on the Note shall be automatically adjusted to the interest rate listed in the previous edition of the <u>Wall</u> <u>Street Journal</u> as the "Prime Rate", plus 0.25%, as such rate may change from time to time. Principal of the Note will be payable two years from the Dated Date. Accrued interest on the Note will be payable on the 18th day of each month, beginning October 18, 2002. Interest on the Note shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

B. <u>Details of the Note</u>. Details of the Note shall be as provided in the form of Note attached Exhibit "I" hereto. The Note shall be in registered form, contain substantially the same terms and conditions as set forth in Exhibit "I" hereto, shall be payable in lawful money of the United States of America, and the principal thereof, interest thereon and any other payments thereunder shall be payable by check, wire, draft or bank transfer to the Holder at such address as may be provided in writing by such Holder to the Town Administrator. So long as the Note shall remain outstanding, the Town shall maintain and keep books for the registration and transfer of the Note.

The Note shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code of the State of Florida, subject to the provisions for registration of transfer contained in this Agreement and in the Note.

The Note may be assigned as to principal and interest by Lender, or any assignee or successor-in-interest of Lender. Such assignment shall only be effective, and the Town obligated to pay such assignee, upon written notice of assignment being provided to the Town Administrator at 6589 SW 60th Avenue, Southwest Ranches, Florida 33331 (or such future address as may serve as the address of the Town); provided, however, the written notice of assignment must be received by the Town Administrator no later than the close of business on the fifth Business Day prior to a payment date in order to carry the right to receive the interest and principal payment due on such payment date. The Town may charge the registered owner of the Note for the registration of every such assignment of the Note sufficient to reimburse it for any tax, fee or any other governmental charge required to be paid, except for any such governmental charge imposed by the Town, with respect to the registration of such assignment, and may require that such amounts be paid before any such assignment of the Note shall be effective.

In addition, the Town acknowledges and agrees that the Lender may assign or convey

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participation interests in the Note to other financial institutions, either before or subsequent to the Dated Date.

SECTION 4. EXECUTION OF NOTE. The Note shall be executed in the name of the Town by the Mayor and the seal of the Town shall be imprinted, reproduced or lithographed on the Note and attested to by the Town Administrator. Both the Mayor and the Town Administrator shall execute the Note manually, and not by facsimile. If any officer whose signature appears on the Note ceases to hold office before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes. In addition, the Note may bear the signature of, or may be signed by, such persons as at the actual time of execution of the Note shall be the proper officers to sign the Note although at the date of the Note or the date of delivery thereof such persons may not have been such officers.

SECTION 5. NOTE MUTILATED, DESTROYED, STOLEN OR LOST. If the Note is mutilated, destroyed, stolen or lost, the Town may, in its discretion (i) deliver a duplicate replacement Note, or (ii) pay a Note that has matured or is about to mature. A mutilated Note shall be surrendered to and canceled by the Town Administrator or its duly authorized agent. The Holder must furnish the Town or its agent proof of ownership of any destroyed, stolen or lost Note; post satisfactory indemnity; comply with any reasonable conditions the Town or its agent may prescribe; and pay the Town's or its agent's reasonable expenses.

Any such duplicate Note shall constitute an original contractual obligation on the part of the Town whether or not the destroyed, stolen, or lost Note be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien on, and source of and security for payment from, the funds pledged to the payment of the Note so mutilated, destroyed, stolen or lost.

SECTION 6. PROVISIONS FOR REDEMPTION. The Note may be prepaid in whole or in part at any time prior to maturity without premium or penalty in the manner provided in the form of Note attached as Exhibit "I" hereto.

SECTION 7. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN. The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and secured solely in the manner described in Section 8 hereof, in the manner and to the extent herein provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Franchise Fees, the Public Service Tax or other Non-Ad Valorem Revenues. The Holder shall have no lien upon the Project.

SECTION 8. PLEDGE OF REVENUES; COVENANT TO BUDGET AND APPROPRIATE.

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A. <u>Pledge of Franchise Fees and Public Service Tax</u>. The payment of the principal of, premium, if any, and interest on the Note shall be secured forthwith equally and ratably by an irrevocable lien on and pledge of the Franchise Fees and the Public Service Tax, prior and superior to all other liens or encumbrances on the Franchise Fees or the Public Service Tax, and the Town hereby irrevocably pledges the Franchise Fees and the Public Service Tax to the payment of the principal of, premium, if any, and interest on the Note as the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax hall be completed on the Public Service Tax hall be completed on the Public Service Tax hall be completed by the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax hall be completed by the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax hall be completed by the same shall become due. Such pledge of the Franchise Fees and the Public Service Tax hall be completed by the same shall become due.

The Town covenants that for so long as the Note shall remain unpaid, it will continue to impose the Franchise Fees and the Public Service Tax, and will not amend or repeal the provisions of the resolutions, ordinances and/or agreements of the Town that impose the Franchise Fees or the Public Service Tax as of the date hereof so as to reduce the rate at which the Franchise Fees or the Public Service Tax is imposed or the services or commodities subject to Franchise Fees or the Public Service Tax, or otherwise modify the proceedings of the Town relevant to the Franchise Fees or the Public Service Tax in any manner so as to impair or adversely affect the ability of the Town to impose and collect the Franchise Fees or the Public Service Tax.

The Town represents that the Franchise Fees and the Public Service Tax are not pledged or encumbered in any manner. The Town further represents that the revenues generated by the Franchise Fees and the Public Service Tax are estimated to be sufficient to pay the principal of, premium, if any, and interest on the Note as the same shall become due.

B. <u>Covenant to Budget and Appropriate</u>. In addition to the foregoing, the Town hereby covenants to budget and appropriate in its Annual Budget, by amendment if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay the principal of and interest on the Note coming due in such Fiscal Year, until the Note has been paid in full. Such covenant to budget and appropriate such non-Ad Valorem Revenues shall be cumulative to the extent not paid, and continue until such Non-Ad Valorem Revenues in amounts sufficient to make all payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town which. generate Non-Ad Valorem Revenues.

SECTION 9. OPERATING BUDGET; FINANCIAL STATEMENTS. Before the first day of each Fiscal Year the Governing Body shall prepare, approve and adopt in the manner prescribed by law, a detailed Annual Budget. Such Annual Budget shall provide for revenues sufficient to comply with the Town's obligations hereunder, including any unsatisfied obligations from prior Fiscal Years. The budget for each Fiscal Year shall provide that the Franchise Fees and Public Service Tax revenues shall be at least 1.25 times the principal and interest due on the Note in such Fiscal Year. The Town shall annually provide to Lender a copy of the Annual Budget and the Town's audited financial statements prepared in accordance with law, each within thirty (30) days of its completion. The Town shall also provide the Lender internally prepared semi-annual financial statements no later than ninety (90) days after the end of each March 31 and September 30, or more

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often if requested by the Lender.

SECTION 10. ISSUANCE OF ADDITIONAL OBLIGATIONS PROHIBITED. The Town will not issue any obligations or incur any liability payable from or secured by the Franchise Fees or the Public Service Tax and having a right to payment therefrom, whether prior to, on a parity with or subordinate to, the right to payment therefrom of the Note, without the written consent of the Lender, which may be given or withheld in the Lender's sole discretion.

SECTION 11. MODIFICATION, AMENDMENT OR SUPPLEMENT. No modification, amendment or supplement of this Agreement may be made except by written instrument executed by Holder and the Town.

SECTION 12. EVENTS OF DEFAULT; REMEDIES.

A. <u>Events of Default</u>. Any one or more of the following events shall be an "Event of Default":

(i) The Town shall fail to pay the principal of or interest on the Note when due;

(ii) The Town shall default under any obligation for the repayment of money;

(iii) The Town shall (a) admit in writing its inability to pay its debts generally as they become due, (b) file (or have filed against it and not dismissed within 90 days) a petition in bankruptcy or take advantage of any insolvency act, (c) make an assignment for the general benefit of creditors, (d) consent to the appointment of a receiver for itself of for the whole or any substantial part of its property, or (e) be adjudicated a bankrupt; or

(iv) The Town shall default in the due and punctual performance of any of its covenants, conditions, agreements and provisions contained herein, in the Resolution or in the Note, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Town by the Holder of the Note; provided that such default shall not be an Event of Default if the Town within such 30 day period commences and carries out with due diligence to completion (although not necessarily within such thirty (30) day period) such action as is necessary to cure the same.

B. <u>Remedies on Default</u>. If an Event of Default shall have occurred and be continuing, the Holder may proceed to protect and enforce its rights hereunder by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or for enforcement of any proper legal or equitable remedy as such Holder shall deem most effectual to protect and enforce the rights aforesaid.

No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

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No delay or omission of a Holder to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or an acquiescence therein; and every power and remedy given by this article may be exercised from time to time, and as often as may be deemed expeditious by a Holder.

SECTION 13. CLOSING COSTS. The Town shall be responsible for paying all fees and costs in connection with the issuance of the Note, including, but not limited to, the fees and costs of Lender's counsel.

SECTION 14. WAIVER OF JURY TRIAL. LENDER AND THE TOWN HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE RESOLUTION, THIS AGREEMENT, THE NOTE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

SECTION 15. SEVERABILITY. If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement or of the Note issued hereunder, which remaining covenants, agreements and provisions shall remain in full force and effect.

SECTION 16. NO THIRD-PARTY BENEFICIARIES. Except as herein otherwise expressly provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and a subsequent holder of or the holder of a participation interest in the Note issued hereunder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the holder from time to time of the Note issued hereunder.

SECTION 17. CONTROLLING LAW; MEMBERS OF TOWN NOT LIABLE. The Town agrees that all covenants, stipulations, obligations and agreements of the Town contained in the Resolution, this Agreement and the Note shall be covenants, stipulations, obligations and agreements of the Town to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. Lender agrees and acknowledges that no covenant, stipulation, obligation or agreement contained in the Resolution, this Agreement or the Note shall be a covenant, stipulation, obligation or agreement of any present or future member, agent, officer or employee of the Town or the Governing Body of the Town in his or her individual capacity, and that neither the members or officers of the Governing Body of the Town nor any official executing the Note shall be liable personally on the Note or shall be subject to any personal liability or accountability by

014519.0001/W8012961_1/9/11/2002 06:13 PM

reason of the issuance or the execution of the Note by the Town or such members thereof.

SECTION 18. COMMITMENT LETTER SUPERSEDED. The provisions of this Agreement and the Note supersede the Commitment Letter from Lender to the Town dated September ____, 2002, to the extent of any inconsistency between the provisions hereof and thereof.

SECTION 19. EFFECTIVE DATE. This Agreement shall take effect immediately upon being executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

TOWN OF SOUTHWEST RANCHES

BY: ____

MECCA FINK, MAYOR

[SEAL]

ATTEST:

JOHN CANADA, TOWN ADMINISTRATOR

Approved as to form and correctness

Becker & Poliakoff, P.A., Town Attorney

COMMUNITY BANK OF BROWARD

BY:

STEVEN C. SCHULTZ VICE PRESIDENT

014519.0001/W8012961_1/9/11/2002 06:13 PM

EXHIBIT "I"

(Form of Note)

REGISTERED No. R- 1 REGISTERED \$2,000,000.00

UNITED STATES OF AMERICA STATE OF FLORIDA TOWN OF SOUTHWEST RANCHES PROMISSORY NOTE, SERIES 2002

Initial Interest Rate:

Maturity Date:

September 18, 2004

Dated Date:

September 18, 2002

5.00%

<u>REGISTERED OWNER:</u> COMMUNITY BANK OF BROWARD

PRINCIPAL AMOUNT: TWO MILLION DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that the Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida (hereinafter called the "Town") for value received, hereby promises to pay to the Registered Owner identified above, or to registered assigns or legal representatives, but solely from the revenues hereinafter mentioned, on the dates hereinafter provided, the Principal Amount identified above, and to pay, solely from such revenues, interest on the Principal Amount remaining unpaid from time to time, at the interest rate per annum identified above, subject to adjustment as hereinafter provided (the "Bond Rate"), until the entire Principal Amount has been repaid. Principal of and interest on this Note will be paid by bank wire, check, draft or bank transfer delivered to the Registered Owner hereof at his address as it appears on the registration books of the Town at the close of business on the fifth Business Day (as defined in the hereinafter described Agreement), of the month next preceding the interest payment date (the "Record Date").

The interest rate on this Note shall be automatically adjusted to the interest rate listed in the previous edition of the <u>Wall Street Journal</u> as the "Prime Rate", plus 0.25 %, as such rate may change from time to time.

Interest on this Note shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

Payments of accrued interest will be due on this Note on the 18th day of each month, beginning October 18, 2002. The principal of the Note will be due September 18, 2004.

014519.0001/W8012961_1/9/11/2002 06:13 PM

I-1

Each date when principal and/or interest on this Note is due is a "Payment Date." If any Payment Date is not a Business Day, the payment otherwise due on such Payment Date shall be due on the preceding Business Day.

Any payment of principal hereof or interest hereon not paid when due shall bear interest from the due date until paid at the Bond Rate.

This Note is the entire authorized issue of notes in the aggregate principal amount of \$2,000,000, issued to finance the acquisition of the Project (as defined in the Agreement), pursuant to the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town, and Resolution No. 2002-___, adopted by the Town Council of the Town on September 12, 2002 (collectively, the "Act"), and a Loan Agreement between the Town and Community Bank of Broward dated September 18, 2002 (the "Agreement").

This Note and the interest hereon are secured by and are payable from a prior lien upon and pledge of the Franchise Fees and the Public Service Tax (both as defined in the Agreement), in the manner and to the extent provided in the Agreement. This Note and the interest hereon are further secured by the Town's covenant to budget and appropriate in each of its Fiscal Years (as defined in the Agreement) from Non-Ad Valorem Revenues (as defined in the Agreement) amounts sufficient to pay the principal of and interest on this Note coming due in such Fiscal Year, until the Note has been paid in full. Reference is hereby made to the Agreement for the provisions, among others, relating to the terms and security for the Note, the custody and application of the proceeds of the Note, the rights and remedies of the Registered Owner of the Note, and the extent of and limitations on the Town's rights, duties and obligations, to all of which provisions the Registered Owner hereof for himself and his successors in interest assents by acceptance of this Note. All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed thereto in the Agreement.

The interest rate borne by this Note shall be adjusted automatically as of the effective date of any change in the maximum Federal income tax rate applicable to corporations, presently 35%, to that interest rate which would, based on a certificate of the Lender, result in the same after tax return to the Lender.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE REGISTERED OWNER OF THIS NOTE THAT SUCH REGISTERED OWNER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON

014519.0001/W8012961_1/9/11/2002 06:13 PM

I-2

ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE AGREEMENT.

It is further agreed between the Town and the Registered Owner of this Note that this Note and the indebtedness evidenced hereby shall not constitute a lien upon the Project, or any part thereof, or any other tangible personal property of or in the Town. Neither the members of the governing body of the Town nor any person executing the Note shall be liable personally on the Note by reason of its issuance.

This Note shall be subject to prepayment at the option of the Town in whole or in part on any date at a price equal to the principal amount being prepaid plus accrued interest thereon. In the event of any partial prepayment of this Note, each partial payment shall be applied first to accrued interest hereon, and then to principal.

The registration of this Note may be assigned upon the registration books upon delivery to the Town Administrator accompanied by a written instrument or instruments of assignment in the form provided herein, duly executed by the owner of this Note or by his attorney-in-fact or legal representative, containing written instructions as to the details of assignment of this Note, along with the social security number or federal employer identification number of such assignee. In all cases of an assignment of this Note the Town shall at the earliest practical time in accordance with the provisions of the Agreement enter the change of ownership in the registration books. The Town may charge the owner of such Note for the registration of every such assignment of a Note an amount sufficient to reimburse it for any tax, fee or any other governmental charge required (other than by the Town) to be paid with respect to the registration of such assignment, and may require that such amounts be paid before any such assignment of a Note shall be effective.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable hereto, and that the issuance of the Note does not violate any constitutional or statutory limitation or provision.

THE REGISTERED OWNER, BY ITS ACCEPTANCE OF THIS NOTE, AND THE TOWN, BY ITS ACCEPTANCE OF THE PROCEEDS OF THE NOTE, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OR DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

IN WITNESS WHEREOF, the Town of Southwest Ranches, Florida has issued this Note and

014519.0001/W8012961_1/9/11/2002 06:13 PM

has caused the same to be executed by the manual signature of the Mayor, and attested by the manual signature of the Town Administrator and its corporate seal or a facsimile thereof to be affixed or reproduced hereon, all as of the _____day of September, 2002.

(SEAL)

TOWN OF SOUTHWEST RANCHES, FLORIDA

Mayor

ATTEST:

Town Administrator

014519.0001/W8012961_1/9/11/2002 06:13 PM

I-4

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto the within Note and all rights irrevocably thereunder, and hereby constitutes and appoints attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises.

Dated:___

SOCIAL SECURITY NUMBER OR FEDERAL IDENTIFICATION NUMBER OF ASSIGNEE

NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Note in every particular, without enlargement or alteration or any change whatever.

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with the right of survivorship and not as tenants in common

UNIFORM TRANS MIN ACT - ____ _____ Custodian for _____(Cust.) (Minor) under Uniform Transfers to Minors Act of

(State)

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Additional abbreviations may also be used though not in the above list.

014519.0001/W8012961_1/9/11/2002 06:13 PM

I-5

REGISTERED No. R-1

SPECIMEN

REGISTERED \$2,000,000.00

UNITED STATES OF AMERICA STATE OF FLORIDA TOWN OF SOUTHWEST RANCHES PROMISSORY NOTE, SERIES 2002

Initial Interest Rate:

Maturity Date:

Dated Date:

5.00%

September 20, 2004 September 20, 2002

COMMUNITY BANK OF BROWARD **REGISTERED OWNER:**

PRINCIPAL AMOUNT: TWO MILLION DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that the Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida (hereinafter called the "Town") for value received, hereby promises to pay to the Registered Owner identified above, or to registered assigns or legal representatives, but solely from the revenues hereinafter mentioned, on the dates hereinafter provided, the Principal Amount identified above, and to pay, solely from such revenues, interest on the Principal Amount remaining unpaid from time to time, at the interest rate per annum identified above, subject to adjustment as hereinafter provided (the "Bond Rate"), until the entire Principal Amount has been repaid. Principal of and interest on this Note will be paid by bank wire, check, draft or bank transfer delivered to the Registered Owner hereof at his address as it appears on the registration books of the Town at the close of business on the fifth Business Day (as defined in the hereinafter described Agreement), of the month next preceding the interest payment date (the "Record Date").

The interest rate on this Note shall be automatically adjusted to the interest rate listed in the previous edition of the Wall Street Journal as the "Prime Rate", plus 0.25 %, as such rate may change from time to time.

Interest on this Note shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

Payments of accrued interest will be due on this Note on the 20th day of each month, beginning October 20, 2002. The principal of the Note will be due September 20, 2004.

Each date when principal and/or interest on this Note is due is a "Payment Date." If any Payment Date is not a Business Day, the payment otherwise due on such Payment Date shall be due on the preceding Business Day.

1

203082.0001/W8013359_1/9/19/2002 10:13 AM

Any payment of principal hereof or interest hereon not paid when due shall bear interest from the due date until paid at the Bond Rate.

This Note is the entire authorized issue of notes in the aggregate principal amount of \$2,000,000, issued to finance the acquisition of the Project (as defined in the Agreement), pursuant to the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town, and Resolution No. 2002-72, adopted by the Town Council of the Town on September 12, 2002 (collectively, the "Act"), and a Loan Agreement between the Town and Community Bank of Broward dated September 20, 2002 (the "Agreement").

This Note and the interest hereon are secured by and are payable from a prior lien upon and pledge of the Franchise Fees and the Public Service Tax (both as defined in the Agreement), in the manner and to the extent provided in the Agreement. This Note and the interest hereon are further secured by the Town's covenant to budget and appropriate in each of its Fiscal Years (as defined in the Agreement) from Non-Ad Valorem Revenues (as defined in the Agreement) amounts sufficient to pay the principal of and interest on this Note coming due in such Fiscal Year, until the Note has been paid in full. Reference is hereby made to the Agreement for the provisions, among others, relating to the terms and security for the Note, the custody and application of the proceeds of the Note, the rights and remedies of the Registered Owner of the Note, and the extent of and limitations on the Town's rights, duties and obligations, to all of which provisions the Registered Owner hereof for himself and his successors in interest assents by acceptance of this Note. All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed thereto in the Agreement.

The interest rate borne by this Note shall be adjusted automatically as of the effective date of any change in the maximum Federal income tax rate applicable to corporations, presently 35%, to that interest rate which would, based on a certificate of the Lender, result in the same after tax return to the Lender.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE REGISTERED OWNER OF THIS NOTE THAT SUCH REGISTERED OWNER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE AGREEMENT.

2

203082.0001/W8013359_1/9/19/2002 10:13 AM



It is further agreed between the Town and the Registered Owner of this Note that this Note and the indebtedness evidenced hereby shall not constitute a lien upon the Project, or any part thereof, or any other tangible personal property of or in the Town. Neither the members of the governing body of the Town nor any person executing the Note shall be liable personally on the Note by reason of its issuance.

This Note shall be subject to prepayment at the option of the Town in whole or in part on any date at a price equal to the principal amount being prepaid plus accrued interest thereon. In the event of any partial prepayment of this Note, each partial payment shall be applied first to accrued interest hereon, and then to principal.

The registration of this Note may be assigned upon the registration books upon delivery to the Town Administrator accompanied by a written instrument or instruments of assignment in the form provided herein, duly executed by the owner of this Note or by his attorney-in-fact or legal representative, containing written instructions as to the details of assignment of this Note, along with the social security number or federal employer identification number of such assignee. In all cases of an assignment of this Note, the Town shall at the earliest practical time in accordance with the provisions of the Agreement enter the change of ownership in the registration books. The Town may charge the owner of such Note for the registration of every such assignment of a Note an amount sufficient to reimburse it for any tax, fee or any other governmental charge required (other than by the Town) to be paid with respect to the registration of such assignment, and may require that such amounts be paid before any such assignment of a Note shall be effective.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable hereto, and that the issuance of the Note does not violate any constitutional or statutory limitation or provision.

THE REGISTERED OWNER, BY ITS ACCEPTANCE OF THIS NOTE, AND THE TOWN, BY ITS ACCEPTANCE OF THE PROCEEDS OF THE NOTE, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OR DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

203082.0001/W8013359_1/9/19/2002 10:13 AM

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ____ the within Note and all rights thereunder, hereby irrevocably constitutes and appoints and _attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises. Dated:____ gnature of this SOCIAL SECURITY NUMBER OR ust correspond with FEDERAL IDENTIFICATION NUMBER it appears upon the OF ASSIGNEE Note in every particular, fout enlargement or alteration

[Form of Abbreviations]

or any change whatever.

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with the right of survivorship and not as tenants in common

UNIFORM TRANS MIN ACT - _____ Custodian for _____(Cust.) (Minor) under

Uniform Transfers to Minors Act of

(State)

Additional abbreviations may also be used though not in the above list.

5

203082.0001/W8013359_1/9/19/2002 10:13 AM

IN WITNESS WHEREOF, the Town of Southwest Ranches, Florida has issued this Note and has caused the same to be executed by the manual signature of the Mayor, and attested by the manual signature of the Town Administrator and its corporate seal or a facsimile thereof to be affixed or reproduced hereon, all as of the 20th day of September, 2002.

~ TOWN OF SOUTHWEST RANCHES, FLORIDA Mayor

ATTES wn Adminis orm and correctness Approve Becker & Poliakoff, P.A., Town Attorney

(SEAL)

203082.0001/W8013359_1/9/19/2002 10:13 AM

ISSUER CERTIFICATE

The undersigned officers of the Town of Southwest Ranches, Florida (the "Issuer") DO HEREBY CERTIFY THAT:

1. They are the duly elected, qualified and acting incumbents of their respective offices of the Issuer, as set forth after their signatures hereto, and as such are familiar with its books and corporate records.

1. The Issuer is a body corporate and politic duly organized, existing and in good standing under and by virtue of the laws of the State of Florida, and as such has all requisite power and authority to issue debt and to carry on its business as now being conducted.

2. The following are the duly elected, qualified and serving Mayor and members of the Town Council of the Issuer who hold the offices appearing opposite each such member's name:

	004
Mecca FinkMayorMarch, 2Freddy FisikelliVice MayorMarch, 2Aster KnightCouncil MemberMarch, 2Forest BlantonCouncil MemberMarch, 2Don MainesCouncil MemberMarch, 2	2004 2006 2006

The Town Council is the legislative body of the Issuer. John Canada is the duly appointed, qualified and serving Town Administrator of the Issuer, Arielle Haze Tyner is the duly appointed, qualified and serving Town Clerk of the Issuer and Becker & Poliakoff, P.A. is the duly appointed, qualified and serving Town Attorney of the Issuer.

All of the above persons have duly filed their oaths or affirmations of office and filed bonds or undertakings in the amount and manner required by law.

3. Included in the transcript of which this certificate forms a part is a true, correct and complete copy of Resolution No. 2002-71 adopted by the Issuer on September 12, 2002, authorizing the Town to purchase certain real property located along SW 193rd Lane, south of SW 51st Manor, approximately 1 mile north of Griffin Road, to be used for public purposes (the "Project"). Also included in the transcript of which this certificate forms a part is a true, correct and complete copy of Resolution No. 2002-72 adopted by the Issuer on September 12, 2002 (the "Resolution") authorizing the Issuer to enter into a Loan Agreement (the "Loan Agreement") with Community Bank of Broward (the "Bank") and to issue its not to exceed \$2,000,000 Promissory Note, Series 2002 (the "Note"), which was adopted by at least a majority of the members of the Town Council of the Issuer at a meeting duly called and held at which a requisite number of members of the Town Council of the Issuer were present and acting throughout. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

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4. The Loan Agreement and the Note were authorized by the Resolution and are in substantially the same form and text as approved for execution by the Resolution. The Loan Agreement and the Note have been duly authorized, executed, authenticated, issued and delivered and constitute legal, valid, binding and enforceable obligations of the Issuer in accordance with their terms and in conformity with the provisions of the Constitution and laws of the State of Florida. The proceeds of the Note will be used to acquire the Project.

5. The Issuer is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness may be incurred, and no event has occurred and is continuing under the provisions of any such instrument which, with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder. The Issuer is not in default in the performance of any of the covenants and obligations assumed by it under the Loan Agreement.

6. The Issuer is not in violation of any existing law, court or administrative regulation, decree or order and is not in default in the performance of any material obligations to be performed by the Issuer under any agreement, indenture, lease or other instrument to which the Issuer is subject or by which it or any of its assets are bound. The adoption of the Resolution and the execution, delivery and due performance of the Loan Agreement and the Note, and the compliance by the Issuer with the provisions thereof, will not conflict with or constitute on the part of the Issuer a breach of or a default under the Issuer's Charter or Code of Ordinances or under any existing law, court or administrative regulation, decree or order or any agreement, indenture, lease or other instrument to which the Issuer is subject or by which the Issuer or any of its assets are bound. The issuance of the Note, together with all other obligations of the Issuer, will not exceed any limit prescribed by the Constitution or statutes of the State of Florida.

7. No approval, consent, or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (a) the issuance and sale of the Note by the Issuer to the Bank, and (b) the execution or delivery of or compliance by the Issuer with the terms and conditions of the Loan Agreement or the Note. The consummation of the transactions set forth in this paragraph in the manner and under the terms and conditions as provided in the Resolution and the Loan Agreement will comply with all applicable federal, state or local laws and any rules and regulations promulgated by any regulatory authority or agency.

9. (a) The Issuer has duly imposed the Public Service Tax (as defined in the Loan Agreement) pursuant to Ordinance No. 2000-7 enacted September 7, 2000, and Ordinance No. 2001-03 enacted December 14, 2000, true and correct copies of which are attached as Exhibit "A" hereto, and which are in full force and effect on this date. The Note constitutes the only indebtedness of the Issuer in any manner secured by or payable from the Public Service Tax.

(b) The Issuer has duly entered into agreements for the collection of Franchise Fees (as defined in the Loan Agreement) from Florida Power & Light Company ("FPL") pursuant to Ordinance No. 2000-3 enacted August 24, 2000 and accepted by FPL on August 28, 2000, and from Comcast Cablevision of Broward County, Inc.("Comcast") pursuant to an Assignment Agreement between the Issuer and Broward County, consented to by Comcast, dated August 29,

014519.0001/W8013125_2/9/13/2002 04:21 PM 2

2000, true and correct copies of which are attached as Exhibit "B" hereto, and which are in full force and effect on this date. The Note constitutes the only indebtedness of the Issuer in any manner secured by or payable from the Franchise Fees.

10. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the knowledge of the undersigned, threatened against or affecting the Issuer, (a) restraining or enjoining the issuance or delivery of the Note; (b) contesting or questioning in any way the terms and provisions of the Resolution or the Loan Agreement; (c) questioning or challenging the legality, enforceability or validity of the legislation referred to in Section 9 above, or the authority of the Issuer to impose or collect the Public Service Tax or the Franchise Fees or (d) in any manner questioning the proceedings and authority under which the Note is issued or affecting the validity of the same or the security therefor or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Resolution and the Loan Agreement or would materially affect the ability of the Issuer to comply with the terms of the Loan Agreement or the Note.

11. Neither the existence of the Issuer nor the title of the present officials or members to their respective offices are being contested and no authority or proceedings for the issuance of the Notes have been modified, repealed, revoked or rescinded.

12. The seal which has been impressed upon the Note and upon this certificate is the legally adopted, proper and only official seal of the Issuer.

13. The interest rate on the Note, assuming the Note is a "taxable bond" as defined in Section 159.823(8), <u>Florida Statutes</u>, is in compliance with the requirements of Section 159.825 (1) (d), <u>Florida Statutes</u>.

14. The Issuer has duly performed all of its obligations under the Resolution and the Loan Agreement to be performed by it at or before the date hereof. All representations and warranties of the Issuer contained in the Resolution and the Loan Agreement are true and correct as of the date hereof as if made on this date.

15. All proceedings of the Issuer at which the authorization and sale of the Note were considered were conducted in compliance with the provisions of all applicable state and local public meetings laws. The undersigned have not, and to the best knowledge of the undersigned no member of the Town Council, while meeting together with any other member or members of the Town Council, reached any conclusion as to the actions taken by the Town Council with respect to the Loan Agreement or the Note, the security therefor, the application of the proceeds therefrom or any other material matters with respect to the Loan Agreement or the Note, except at duly noticed meetings of the Town Council.

16. The undersigned does not, and to the best knowledge of the undersigned no member of the Town Council has or holds any employment or contractual relationship with the Bank, the initial purchaser of the Note, except as fully and fairly disclosed in compliance with the provisions of Section 112.3143, <u>Florida Statutes</u>.

014519.0001/W8013125_2/9/13/2002 04:21 PM 3

17. There has been no material adverse change in the financial position of the Issuer, as presented in its financial audit for its fiscal year ended September 30, 2001, since the date of such audit. All of the financial information provided by the Issuer to the Bank is accurate and correct as of the date hereof.

WITNESS our hands and the corporate seal of the Issuer as of the 20th day of September, 2002.

TOWN OF SOUTHWEST RANCHES

Link By:_ Mecca Fink

[SEAL]

Mayor By: Arielle Haze Town Clerk

By:

John Canada Town Administrator

Approved as to form: Cawl Copi Cellice Becke + Poliakoff, P.A.



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ORDINANCE NO. 2001-3

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING ORDINANCE NO. 2000-2 LEVYING A TAX ON EACH AND EVERY PURCHASE OF ELECTRICITY, METERED OR BOTTLED GAS AND FUEL OILS; SETTING WHEN PAYABLE; ESTABLISHING DUTY OF SELLER TO COLLECT AND SUBMIT RETURN AND FAILURE OF PURCHASER TO PAY; SPECIFYING RECORDS REQUIRED; INSPECTION AND AUDIT; PROVIDING EXEMPTIONS; COMPUTATION OF TAX AND PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

WHEREAS, the Town Council of the Town of Southwest Ranches adopted Ordinance No. 2000-2 levying a tax on each and every purchase of electricity, metered or bottled gas and fuels oils, on August 24, 2000; and

WHEREAS, the Town Council has expressed its intent to amend Ordinance No. 2000-2 to implement a 4¢ per gallon tax on fuel oils in order to comply with Section 166.231(1)(b), Florida Statutes.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AS FOLLOWS:

Section 1. That Section 1(a) of Ordinance No. 2000-2 is hereby amended to include a 4° per gallon tax on fuel oils and shall read as follows:

Levy; when payable.

(a) There is hereby levied by the Town against each and every purchaser or person using electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) and fuel oils, within the corporate limits of the Town, a public services tax at a rate of ten percent (10%) on the payments received by the seller (not exceeding four cents (\$0.04) per gallon for purchases of fuel oil. The tax shall be paid by the purchaser for the use of the Town, to the seller of such fuel oils, at the time of paying the charge therefor to the seller thereof, but not less than monthly.

Section 2. Inclusion in Town Code.

This ordinance, upon passage, shall become a part of and incorporated within the Town Code.

Section 3. Conflict.

SOUTHWEST RANCHES\ORDINANCE\Amending Ordinance 2000-2\110900.121400.ks

Page 1 of 2

EXHIBIT "A"

That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict are hereby repealed to the extent of such conflict.

Section 4. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 5. Effective date.

This ordinance shall become effective upon passage.

PASSED ON FIRST READING on November 9, 2000.

PASSED ON SECOND READING on December 14, 2000.

Mecca Fink, Mayor

Attest: Katherine

Tyner Interim Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney

SOUTHWEST RANCHES\ORDINANCE\Amending Ordinance 2000-2\110900.121400.ks

Page 2 of 2

ORDINANCE NO. 2000-7

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA LEVYING A TAX ON EACH AND EVERY PURCHASE OF TELECOMMUNICATIONS SERVICES; SETTING WHEN PAYABLE; ESTABLISHING DUTY OF SELLER TO COLLECT AND SUBMIT RETURN AND FAILURE OF PURCHASER ΤΟ PAY; SPECIFYING RECORDS REQUIRED; INSPECTION AND AUDIT; PROVIDING EXEMPTIONS; COMPUTATION OF TAX AND PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN **EFFECTIVE DATE THEREFOR.**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA THAT THE FOLLOWING ORDINANCE IS CREATED IN ACCORDANCE WITH THE TOWN CHARTER:

<u>Section 1:</u> Levy; when payable.

There is hereby levied by the Town a tax on the purchase of telecommunication services as defined in Section 203.012 of the Florida Statutes, which originates and terminates in the State of Florida, at a rate of seven percent (7%) of the total amount charged for any telecommunications services provided within the Town, or if the location of the telecommunications services cannot be determined, the total amount billed for such telecommunications services to a telephone or telephone number, a telecommunications number or device, a service address, or customers' billing address located within the Town, excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company. Telecommunications services as defined in section 203.012(5)(b) of the Florida Statutes shall be taxed only on the monthly recurring customer service charges excluding variable usage charges.

<u>Section 2.</u> Duty of seller to collect, report, and pay; failure of purchaser to pay.

(a) It shall be the duty of every seller of telecommunications services to collect from the purchaser, for the use of the Town, the tax hereby levied, at the time of collecting the selling price charged for each transaction, and to report and pay over, on or before the twentieth day of each month, unto the Town treasurer and collector of the Town, all such taxes levied and collected during the preceding month. It shall be unlawful for any seller to collect the price of any purchase of telecommunication services without at

SOUTHWEST RANCHES\ORDINANCES\Telecom Public Service Tax\082400\090700.ks

Page 1 of 4

the same time collecting the tax hereby levied in respect to such purchase or purchases, unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser.

(b) Every seller subject to the tax under this Chapter shall file a return with the Town each month. The return shall identify the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from the Town concerning the seller's administration of the tax.

(c) Any seller failing to collect such tax at the time of collecting the price of any purchase, where the seller has not elected to assume and pay such tax, shall be liable to the Town for the amount of such tax in like manner as if the same had been actually paid to the seller, and the Town Administrator of the Town shall cause to be brought all suits and actions and shall take all proceedings in the name of the Town as may be necessary for the recovery of such tax. The seller shall not be liable for the payment of such tax upon uncollectable bills.

(d) For the purpose of compensating the seller of telecommunication services, the seller shall be allowed one percent (1%) of the amount of tax collected and due to the Town in the form of a deduction from the amount collected for remittance. The deduction shall be allowed as compensation for the keeping of records; and for the collection of the tax and remitting the same. This deduction shall not be allowed in the event of an untimely return, unless the seller has in writing requested and been granted an extension of time for filing such return.

Section 3. Records required; inspection; audit.

(a) Sellers of telecommunication services taxable in accordance with this chapter shall provide to the Town, upon sixty (60) days written notice of intent to audit by the Town, access to all applicable records as defined in 166.234, Fla. Stat. for such telecommunication services, except an extension of this 60-day period shall be granted if reasonably requested by the provider. The seller may at its option waive the 60-day notice requirement.

(b) Each seller of services taxable under this chapter shall preserve applicable records relating to such taxes. However, a seller is not required to retain duplicative or redundant records.

(c) The Town may assess and collect from the seller the reasonable travel expenses incurred by or charged by the Town in connection with performing an audit of the seller's books and records if the seller received timely notice requesting access to such books and records in accordance with subsection (a) and the seller failed or refused

SOUTHWEST RANCHES\ORDINANCES\Telecom Public Service Tax\082400\090700.ks

Page 2 of 4

to allow such access and did not propose an alternative date on which the audit was to commence, or if the seller and the Town agreed in writing to an alternative date on which the audit was to commence but the seller then failed or refused to permit reasonable access to its books and records on the alternative date.

(d) The audit shall be conducted in accordance with Florida Statutes, including the determination of tax due, refund due and assessment of interest and penalties. Any information received by the Town in connection with an audit by the Town of any such sellers' records is confidential and is not subject to the provisions of Section 119.07(1), Fla. Stat., and in accordance with section 166.23l(9)(c), Fla. Stat.

Section 4. Exemption.

(a) The purchase of telecommunications services by any entity required to be exempt pursuant to 166.231(5), Fla. Stat., from payment of the tax under this ordinance is hereby exempt from the public service tax levied by this ordinance.

(b) The purchase of telecommunications services for use in the conduct of a telecommunications services for hire or otherwise for resale are exempt from the tax imposed by this ordinance.

<u>Section 5.</u> Penalty.

(a) Failure to pay any tax when due or failure to file any required return, shall result in the assessment of interest at the rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid.

(b) Failure to pay any tax when due or failure to file any required return, shall result in the assessment of a penalty of five percent (5%) per month of the delinquent tax, not to exceed a total penalty of twenty-five percent (25%). In no event shall the penalty for failure to file a return be less than \$15.00.

(c) In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100 percent (100%) of the tax.

<u>Section 6.</u> Inclusion in Town Code.

This ordinance, upon passage, shall become a part of and incorporated within the Town Code.

SOUTHWEST RANCHES\ORDINANCES\Telecom Public Service Tax\082400\090700.ks

Page 3 of 4

<u>Section 7.</u> Conflict.

That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict are hereby repealed to the extent of such conflict.

Section 8. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

<u>Section 9.</u> Effective date.

This ordinance shall become effective October 1, 2000.

PASSED ON FIRST READING on August 24, 2000.

PASSED ON SECOND READING on September 7, 2000.

Mecca Fink, Mayor

Attest:

V. Selch Katherin

Katherine V. Selchan Interim Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D. Interim Town Attorney

SOUTHWEST RANCHES\ORDINANCES\Telecom Public Service Tax\082400\090700.ks

Page 4 of 4

ORDINANCE NO. 2000-3

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF SOUTHWEST RANCHES AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (herein called the "Grantee"), for the period of 30 years from the effective date hereof, the non-exclusive right, privilege and franchise (herein called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (herein called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Southwest Ranches, Florida, and its successors (herein called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon along, over and across said public rights-of-way, provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to fulfill its service obligations to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed in public rights-of-way before or after the effective date hereof unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 1 of 6

by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time, commensurate with the nature and extent of the work being performed and surrounding circumstances, be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

<u>Section 3.</u> Grantee shall indemnify and save harmless Grantor from and against all claims, suits, actions, damages, or causes of action rising during the term of this agreement for any personal injury, loss of life or damage to property sustained by reason or as a result of the use by the Grantee of the electric facilities for which this franchise agreement is entered into, or by the Grantee's agents, employees, subcontractors, and all other persons, and from and against any orders judgments or decrees, which may be entered relating thereto, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or by reason of the defense of any such claim suit or action; provided, however, Grantor shall not be indemnified against any such loss or damage occasioned solely by the negligence of Grantor, its agents, employees or subcontractors. Nothing in this agreement shall be deemed to affect the Grantor's rights, privileges and immunities as set forth in Florida Statute Section 768.28.

<u>Section 4.</u> All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 60 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries, during the Grantee's monthly billing period ending 30 days prior to each such payment, will equal 5.5 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers within the incorporated areas of the Grantor or the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 5.5 percent of such revenues for any monthly billing period of the Grantee.

<u>Section 6.</u> If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Broward County, Florida having at that time a population equal to or less than 50,000, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6 percent of the Grantee's residential, commercial and industrial revenues under the same terms and conditions as specified in Section 5 hereof, the Grantee, upon written request of the Grantor, shall negotiate and

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 2 of 6

enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other Broward County municipality, provided, however, that such new franchise agreement shall include benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with the other Broward County municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

<u>Section 7.</u> As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute electric capacity and/or energy from any person to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or energy generated by or on behalf of the Grantor at one location to the Grantor from engaging with other persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or energy from any other person1 the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions that have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 60 days to evaluate the offer and, if the Grantee agrees to meet or beat the other person's offer, the Grantor shall be obligated to continue to purchase from the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to meet or beat the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

<u>Section 8.</u> If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 3 of 6

determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 9. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action, which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 10. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right in the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

<u>Section 11.</u> Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 4 of 6

traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise. Grantee shall notify the Grantor in writing of any such breach and the Grantor shall remedy such breach as soon as practicable, taking into account the Grantee's service obligations to its customers, and otherwise within no later than 30 days. Should the breach not be remedied within the appropriate time period specified, the Grantee shall be entitled to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 12. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this section shall not be conducted by any third party employed by the Grantor whose fee for conducting such audit is contingent on findings of the audit.

<u>Section 13.</u> The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 14. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

<u>Section 15.</u> All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 16. As a condition precedent to the taking effect of this ordinance the Grantee shall have filed its acceptance hereof with the Grantor's Clerk on or before August 28, 2000, and the effective date of this ordinance shall be August 28, 2000.

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 5 of 6

ACCEPTANCE OF ELECTRIC FRANCHISE ORDINANCE NO. <u>2000</u>3 BY FLORIDA POWER & LIGHT COMPANY

Town of Southwest Ranches, Florida

MAY. 31. 2001 2: 20PM BECKER&POLIAKOF FTL-

August 28, 2000

212

NO.029

Florida Power & Light Company does hereby accept the electric franchise

in the Town of Southwest Ranches, Florida, granted by Ordinance No. <u>2000-3</u>,

being:

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF SOUTHWEST RANCHES, AND PROVIDING FOR AN EFFECTIVE DATE.

which was passed and adopted on August 22, 2000.

This instrument is filed with the Town Clerk of the Town of Southwest Ranches, Florida, in accordance with the provisions of Section 15 of said Ordinance.

ATTEST Assistant Secretary

FLORIDA POWER & LIGHT COMPAN Vice President

I HEREBY ACKNOWLEDGE receipt of the above Acceptance of Electric Franchise Ordinance No. $\frac{2000}{3}$ by Florida Power & Light Company, and certify that I have filed the same for record in the permanent files and records of the Town of Southwest Ranches, Florida on this $\frac{28}{100}$ day of $\frac{1000}{100}$, 2000.

Town Clerk Town of Southwest Ranches, Florida

PASSED ON FIRST READING on August 8, 2000.

PASSED ON SECOND READING on August 24, 2000.

Mecca Fink, Mayor

Attest:

Katherine V. Selchan Katherine V. Selchan, Interim Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney

SOUTHWEST RANCHES\ ORDINANCE\FPL Franchise\080800\082400.ks

Page 6 of 6

ASSIGNMENT AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF SOUTHWEST RANCHES

consented to by

COMCAST CABLEVISION OF BROWARD COUNTY, INC.

of

CABLE TELEVISION FRANCHISE

This is an Assignment Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "ASSIGNOR,"

and

TOWN OF SOUTHWEST RANCHES, a municipal corporation of the state of Florida, hereinafter referred to as "ASSIGNEE,"

and

Consented to by COMCAST CABLEVISION OF BROWARD COUNTY, INC., a Delaware corporation, hereinafter referred to as "Comcast" or the "FRANCHISEE."

WHEREAS, pursuant to Broward County Ordinance No, 77-21, effective May 10, 1977; as amended by Ordinance No. 79-5, effective March 5, 1979; Ordinance No. 83-60, effective September 1, 1983; Ordinance No. 85-7, effective March 5, 1985; Ordinance No. 85-68, effective December 2, 1985; Ordinance No. 88-08, effective February 22, 1988; and Resolution 1998-113, effective March 3, 1998 (collectively the "Franchise"), ASSIGNOR granted a non-exclusive cable television franchise (the "Franchise Rights and Obligations") to FRANCHISEE for the service areas specified in Exhibit "A" to this Assignment Agreement, within the unincorporated areas of Broward County (the "Service Areas"); and

WHEREAS, portions of the Service Areas were subsequently incorporated into the Town of Southwest Ranches; and

WHEREAS, the ASSIGNOR wishes to assign, and the ASSIGNEE wishes to acquire, the Franchise Rights and Obligations for the Service Areas within the ASSIGNEE's municipality under the terms stated herein; and

WHEREAS, the FRANCHISEE desires to consent to the assignment of its Franchise Rights and Obligations from ASSIGNOR to ASSIGNEE for the Service Areas, NOW, THEREFORE,

ASSIGNEE and FRANCHISEE hereby release ASSIGNOR from all claims related to this assignment and in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, ASSIGNOR and ASSIGNEE agree, and FRANCHISEE consents, as follows:

- 1. ASSIGNOR hereby grants, bargains, sells, conveys, transfers, assigns, and sets over to ASSIGNEE its entire rights and duties under the Franchise and Franchise Rights and Obligations for that portion of the Service Areas within ASSIGNEE's municipality specified in Exhibit A.
- 2. ASSIGNEE hereby accepts, assumes, and undertakes all of the duties, obligations, and rights of the ASSIGNOR under the Franchise Rights and Obligations for the Service Areas assigned, and agrees to hold the ASSIGNOR harmless for any claim or demand made thereunder involving the Service Areas assigned.
- 3. FRANCHISEE consents to the assignment of the Franchise Rights and Obligations from ASSIGNOR to ASSIGNEE as set forth herein.
- 4. The parties agree that this Assignment Agreement only applies to the annexed Service Areas, and that the Franchise Rights and Obligations of FRANCHISEE for any and all other areas remaining in the unincorporated area of Broward County shall continue to be subject to the authority of ASSIGNOR. The ASSIGNOR, ASSIGNEE, and FRANCHISEE agree that to the full extent possible the assigned Service Areas shall be treated as separate and apart from the remaining franchise areas in the unincorporated area of Broward County.
- 5. This Assignment Agreement shall become effective October 1, 2000.

IN WITNESS WHEREOF, the parties have made and executed this Assignment Agreement on the respective dates under each signature: ASSIGNOR through its Board of County Commissioners, signing by and through its Chair or Vice Chair, authorized to execute same, the ASSIGNEE, signing by and through its Mayor, duly authorized to

execute same, and FRANCHISEE, signing by and through its Vice President, duly authorized to execute same.

CABLE TELEVISION FRANCHISE ASSIGNMENT AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES, AND CONSENTED TO BY COMCAST CABLEVISION OF BROWARD COUNTY, INC.

<u>ASSIGNOR</u>

ATTEST:

County Administrator and Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida



BROWARD COUNTY, by and through its Board of County Commissioners

By Suzanne N. Gunzburger, Chair day of , 20<u>00</u>.

Approved as to form by Office of County Attorney for Broward County, Florida EDWARD A. DION, County Attorney Governmental Center, Suite 423 115 South Andrews Avenue Fort Lauderdale, FL 33301 Telephone: 954-357-7600 Telecopier: 954-357-7641

8/15/00 Ω By Lariy Lymas-Johnson

Deputy County Attorney

CABLE TELEVISION FRANCHISE ASSIGNMENT AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES, AND CONSENTED TO BY COMCAST CABLEVISION OF BROWARD COUNTY, INC.

ASSIGNEE

ATTEST:

V. Selcha

Katherine V. Selchan Interim Town Clerk

TOWN OF SOUTHWEST RANCHES

By 11 (Print Name)

Mayor of the Town of Southwest Ranches

12 day of <u>Aucust</u>, 20<u>00</u>.

Approved as to Form: By_ PoliAkulf J.D. (Print Name)_ GAR A. Town Attorney

FRANCHISEE

WITNESSES:

LEL:wp 7/14/00 southwestranches.a01 #00-99.02

COMCAST CABLEVISION OF BROWARD COUNTY, INC.

By:

Craig Snedeker General Manager

CABLE TELEVISION FRANCHISE ASSIGNMENT AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES, AND CONSENTED TO BY COMCAST CABLEVISION OF BROWARD COUNTY, INC.

EXHIBIT A

DESCRIPTION TOWN OF SOUTHWEST RANCHES

ANNEXATION AREA

Prolongation of the East line of Tract A of ABUNDANT LIVING MINISTRIES according to the plat thereof as recorded in Plat Book 139, Page 13, of the Public Records of Broward County, Florida; The next Three (3) courses being on the municipal boundary of the City of Pembroke Pines as established by Ordinance Numbers 868 and 908; Thence North, on said East line of Tract A and its Southerty prolongation to the intersection with the North line of the South one-half (S 1/2) of Tract 56 in Section 3, Township 51 South,

Range 40 East as shown on EVERGLADES SUGAR AND LAND COMPANY SUBDIVISION, according to the plat thereof as recorded in Plat Book 2, Page 39, of the Public Records of Dade County, Florida; Thence West, on the North line of the South one-half (S 1/2) of Tracts 54, 55 and said Tract 56, all in Section 3 and as shown on said EVERGLADES SUGAR AND LAND COMPANY SUBDIVISION To the Northwest corner of said South one-half

S 1/2) of Tract 54;

Thence South, on the West line of said Tract 54 and its Southerly prolongation to the intersection with said South line of Section 3;

Thence (on the municipal boundary of the City of Pembroke Pines as established by Ordinance Number 362) Westerly on the South line of said Section 3, Township 51 South, Range 40 East, to the Southwest Corner of said Section 3, said point also being the Southeast Corner of

Section 4;

The next Seven (7) courses being on the municipal boundary of the Town of Davie as established by Ordinance Number 86-14; Thence Northerly on the West line of said Section 3, said line also being the East line of said Section 4 and on the East line of said Section 33, said line also being the West line of said Section 34 to a point on the North line of the Southeast one-quarter (SE 1/4) of said

Section 33;

Thence Westerly on said North line of the Southeast one-quarter (SE 1/4) of said Section 33 to an intersection with the Northerly prolongation of the East boundary of Tract 64 in said Section 33 of FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1, as recorded in Plat Book 2, Page 17, of

the Public Records of Dade County, Florida; Thence Southerly on said Northerly prolongation and said East boundary of Tract 64 to the Southeast corner of said Tract 64;

Thence Westerly on the South line of said Tract 64 to the intersection with the Easterly right-of-way line of Interstate 75; Thence Northerly on the said Easterly right-of-way line of Interstate 75 to the intersection with the South line of the plat of REGENCY as recorded in Plat Book 121, Page 48, of the Public Records of Broward County,

Florida;

Thence Easterly on the said South line of the plat of REGENCY and its Easterly prolongation to the intersection with the East line of Section 33, Township 50 South, Range 40 East; Thence Northerly on the East line of said Section 33 and the East line of Section 28, Township 50 South, Range 40 East to a point on the centerline of the South Florida Water Management District Canal C-11 (South New River Canal);

Thence (on the municipal boundary of the Town of Davie as established by Ordinance Number 74-44) Easterly on the centerline of the South Florida Water Management District

Canal C-11 (South New River Canal) to an intersection with the East line of Section 26, Township 50 South, Range 40 East; The next Ten (10) courses being on the municipal boundary of Cooper City as established by Ordinance Numbers 87-10-2, 87-10-3 and 89-5-8;

Thence Southerly on the said East line of said Section 26 to an intersection with the South right-of-way line of the South Florida Water Management District Canal C-11 (South New River

Canal);

Thence Westerly on said South right-of-way line to an intersection with a line 660 feet West of and parallel with the East line of said Section

26;

Thence Southerly on said parallel line to an intersection with the South line of said Section 26, said line also being the North line of Section 35, Township 50 South, Range 40

East;

Thence Westerly on the said South line of Section 26 and said North line of Section 35 to the Northwest corner of said Section 35, Township 50 South, Range 40 East; Thence Southerly on the West line of said Section 35 to the Southwest corner of the