

RESOLUTION NO. 2007 - 014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA ENTERING INTO A NEW THREE YEAR LEASE AGREEMENT WITH THE SOUTH BROWARD DRAINAGE DISTRICT (SBDD) FOR THE PROPERTY LOCATED AT 6589 SW 160th AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO A NEW LEASE TO COVER THE PERIOD COMMENCING JUNE 28, 2006 THROUGH JUNE 27, 2009; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches' Town Hall is situated on property owned by the South Broward Drainage District (SBDD); and

WHEREAS, the SBDD contends that that the Town's current lease with the SBDD expires on June 27, 2006; and

WHEREAS, the Town Council of the Town of Southwest Ranches and SBDD's Board of Supervisors met in advertised joint meetings on October 26, 2006, on November 8, 2006, and again on November 20, 2006, to negotiate the terms of a new lease; and

WHEREAS, the SBDD has agreed to extend the Town's lease of the property for an additional three (3) years, commencing on June 28, 2006 and ending on June 27, 2009; and

WHEREAS, it has been determined that it is in the best interest of the Town to continue leasing the current Town Hall site for an additional three year period; and

WHEREAS, the Town is desirous of entering into this new lease, pursuant to the terms listed therein.

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 hereby approves a new three year lease agreement with the South Broward Drainage District to lease the property generally located at 6589 SW 160th Avenue.

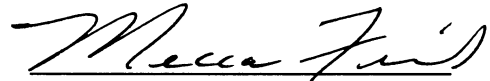
Section 3. The Town Council of the Town of Southwest Ranches hereby approves a new Lease Agreement, between the Town of Southwest Ranches and the South Broward Drainage District (SBDD), attached hereto in substantially the same form as Exhibit "A," for continued use of the temporary Town Hall site, commencing on June 28, 2006 and terminating on June 27, 2009, for a total cost of \$115,000.

Section 4. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into a Lease Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

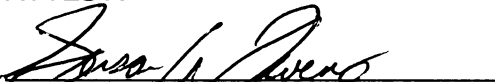
Section 5. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 20th day of November 2006, on a motion by Council Member Steve Breitkreuz and seconded by Council Member Jeff Nelson.

Fink	<u>Y</u>	Ayes	<u>4</u>
Maines	<u>Y</u>	Nays	<u>0</u>
Breitkreuz	<u>Y</u>	Absent	<u>1</u>
Knight	<u>ABSENT</u>	Abstaining	<u>0</u>
Nelson	<u>Y</u>		


Mecca Fink, Mayor

ATTEST:


Susan A. Owens, Town Clerk

Approved as to Form and Correctness:


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

FTL_DB: 1021458_1

This instrument prepared by:
Douglas R. Bell, Esquire
800 East Broward Boulevard
Suite 601
Fort Lauderdale, Florida 33301

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this ____ day of _____, 2006, by and between **South Broward Drainage District**, a political subdivision of the State of Florida established under Chapter 98-524, Laws of Florida, (the "Drainage District" or the "District"), and Town of Southwest Ranches, a not for profit Florida municipality (the "Town").

WHEREAS, Drainage District is the Owner of certain real property located at 6591 Southwest 160th Avenue, in the Town of Southwest Ranches, County of Broward, and State of Florida (the "Property") more particularly described as:

Tract "A" of SOUTH BROWARD DRAINAGE DISTRICT, according to the Plat thereof, recorded in Plat Book 144, Page 12 of the Public Records of Broward County, Florida.

and,

WHEREAS, Town is currently utilizing up to seven (7) modular facilities which shall be considered personalty owned by the Town ("Modular Units") as its temporary Town Hall on the Property; and

WHEREAS, on June 28, 2001, the Drainage District and the Town entered into a lease agreement wherein the Drainage District agreed to allow the Town to place the modular facilities on the Property for use as a temporary Town Hall for a period of three (3) years; and

WHEREAS, on June 28, 2004, the Drainage District and the Town entered into a lease agreement to allow the Town to continue utilizing the District's Property for a period of two (2) years or from June 28, 2004 until June 27, 2006; and

WHEREAS, the June 28, 2004 Lease Agreement terminated on the 27th day of June, 2006; and

WHEREAS, the Town has requested Drainage District to allow the Town to continue utilizing the Property for its temporary Town Hall for a period of three (3) years, or from June 28, 2006 until this Lease Agreement terminates on June 27, 2009; and

WHEREAS, the Town and the District agree to the terms of this Lease Agreement; and

WHEREAS, the Drainage District has agreed to allow the Town to utilize the Property, where The Modular Units are currently located, for its temporary Town Hall for a period not to exceed three (3) years beginning on June 28th, 2006 and terminating on June 27, 2009.

NOW, THEREFORE, in consideration of the premises and Ten and No/100 (\$10.00) Dollars and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Town and Drainage District, each intending to be legally bound, do hereby represent, warrant, covenant and agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Town may utilize that portion of the Property where the existing Modular Units are currently located, (hereinafter referred to as the "Leased Premises") for a period not to exceed three (3) years from June 28, 2006 until its termination on June 27, 2009 ("Lease Term"). During the Lease Term, the Town, its agents, employees, guests and invitees shall also have the use of the driveway, parking lot and walkways located within the Property for ingress and egress to the Modular Units and for parking purposes for same. The District maintenance area located at the west end of the Property is excluded herefrom.

3. Drainage District shall incur no costs or liability of any nature arising out of the presence and use of the Town Hall facilities on the Property. To the extent that any permits or approvals are required for said Town Hall facilities, the Town shall be solely responsible for obtaining same. To the extent that the Drainage District's insurance costs are increased to insure against any potential property damage or liability associated with the Town Hall facilities being placed for use on the Property or the Town's use of the Drainage District meeting room, the Town shall reimburse the Drainage District for any increase in the cost of its insurance. In addition, Town shall obtain insurance with coverage in a minimum amount of \$1,000,000.00, to provide coverage for property damage or liability associated with the Town Hall facilities being located and used on the Drainage District's Property; and in the event said insurance is insufficient to cover any resulting claims, the Town shall, to the extent provided by law, be solely responsible for all liability or damage caused by the placement or use of the Town Hall facilities on the Drainage District's Property and damages caused by the Town's use of the Drainage District meeting room.

4. Drainage District is hereby released from any claim of any nature relative to the physical condition of the Town Hall facilities, including but not limited to, damage occurring while the Town Hall facilities are located on or used on the Property.

5. The Town acknowledges that the Property is being provided by Drainage District "as is" with no representation by the Drainage District as to the suitability of this Property for the placement or use of the Town Hall facilities.

6. The Town shall, within ninety (90) days after the expiration of the Lease Term, or earlier termination pursuant to paragraph 10, remove all Modular Units and debris and shall restore the Property to its original condition prior to preparation of site for the Modular Units. If the Modular Units are relocated on the Property in accordance with paragraph 10 of this Lease Agreement, the Town shall, within ninety (90) days of relocation, restore to its original condition prior to preparation of the site for the Modular Units, that portion of the Leased Premises which the District, in its sole discretion, designates at the time of said relocation.

7. Public access to the Town Hall through the Property's current entrance shall be available between the hours of 7:30 A.M. and 6:00 P.M. weekends and holidays excluded subject to paragraph 17. The Town staff (Administration and Council Members) shall have access to the Property at all other hours necessary for the full and efficient operation of the Town.

8. Town shall be solely responsible for utility costs for the Leased Premises and for any improvements to the Property which may be required by any other governmental agency as a direct result of placement of the Modular Units on the Property.

9. If Drainage District incurs any costs or legal expenses as a result of the Town's use of the Property, the Town shall reimburse the Drainage District for said costs and legal expenses within 30 days of receiving written notice and an invoice for same.

10. Notwithstanding any other provision of this Lease Agreement, should the Drainage District determine that it needs to expand its existing buildings located on the Property into the area where the Modular Units are located, the Town shall have one year from the date of receiving written notice of the District's need to expand, to either terminate this Lease Agreement or relocate the Modular Units to another location on the Property, as designated by the District. Should notice to remove the Town Hall facilities be given to Town by Drainage District, said notice will be given to the Town prior to the twenty fourth (24th) month of this Lease. In the event the Town Hall facilities are relocated on the Property, this agreement will be modified. Notwithstanding the provisions set forth above, after the initial

year of the Lease Term, the Town shall have the right to terminate this Lease Agreement. If this Lease Agreement is terminated pursuant to this paragraph, the Town will be reimbursed a portion of the Rent, based upon a proration of a total rental amount of \$100,000.00 over a three (3) year period.

11. In the event of any litigation involving this Agreement, the prevailing party shall be entitled to legal fees and costs from the non-prevailing party. Notwithstanding the above, in the event the Drainage District incurs any expense, including attorney's fees: (A) collecting any sum of money due under this Lease; (B) In evicting the Town; or (C) Because of any non-compliance with this Lease Agreement by the Town, the Town, will owe to and reimburse Drainage District for all of such expenses incurred, including attorney's fees prior to and during litigation, if any.

12. Subject to paragraph 27, the Drainage District reserves the right to sell any portion of the Property during the term of this Agreement; and if the Drainage District exercises this provision, the Town shall remove the Town Hall facilities within one years notice from the Drainage District. However, this provision will not apply if the portion of the Property sold is not being utilized by the Town for its Town Hall administrative facilities.

13. The Town shall secure the Modular Units in such a fashion that they will be secured based upon modular facilities permit requirements and the Florida Building Code requirements. In any event, the Town shall be responsible for the cost of maintaining and repairing all damage to the Modular Units, the Property or the Drainage District's buildings and other Drainage District improvements located on the Property caused by or due to the Town Hall facilities having been placed on the Property.

14. The Town Administrator or other authorized Town representative shall be available 24 hours per day, seven days per week, in the event the Drainage District has any questions regarding the Town Hall facilities.

15. The Town shall keep the Property clean and clear of any debris which is the result of the Town Hall facilities being located on the Property.

16. The Town, at its sole cost and expense, shall: (A) Maintain the existing entryway into the Drainage District's Board room through the north wall of the Drainage District's Board of Supervisors meeting room, (B) Maintain a walkway to the Town Hall facilities from the existing east parking lot, (C) Expand the east parking lot if the Town, in its

sole discretion, determines it is necessary, and (D) maintain landscaping previously installed by the Town.

The Drainage District shall have the right to review, approve and reject the plans for any and all improvements and modifications proposed by the Town to insure compatibility with the Drainage District's existing building and Property design.

17. The Town shall be allowed to utilize the District Board meeting room for the Town Council meetings twice a month. The District shall be provided with the time and date that the Town intends to use this room, at least fifteen (15) days prior to its scheduled use. Currently, the Town Council intends to use the Board room on the 1st and 2nd Thursday's of each month from 6:00 P.M. until midnight. Any other use of this room requested by the Town shall be coordinated with the District's Director. The District's Director shall have the sole discretion to permit any other use of the Board room by the Town and except for the Town Council meetings stated above, any use of the Board room by the District shall take priority over any requested use by the Town. The District Director shall impose such conditions on the Town's use of this room as the District Director determines in his sole discretion. The Town shall be responsible for and shall indemnify District for any and all damage which may occur to the Board room or claims for injuries which may occur to persons within the Board room and the Property during the Town's use of the Board room. The District Board meeting room shall be the only portion of the District's buildings which the Town may utilize.

18. Due to the Town's existing connection to the Drainage District's administration building, each entity will continue to maintain its own independent security system. The two entities will not be able to access each others main complex.

The Drainage District shall be compensated on a pro-rata share for wear/tear, cleaning and utilities for the Board room.

19. If the Drainage District determines that "live" security is required for the premises during Town meeting times, it will be the responsibility of the Town to provide and pay for that service.

20. Rent. Upon execution of this Lease Agreement, Town shall pay the sum of One Hundred Fifteen Thousand and 00/100 Dollars (\$115,000.00) to Drainage District as the non-refundable(except as stated in paragraph 10) three year lease payment.

21. Security Deposit. Upon execution of this Lease Agreement the Town shall pay

to the Drainage District a Security Deposit in the amount of Fifty Thousand and no/100 Dollars (\$50,000) which will be refunded, less any expenses incurred by the District in restoring the Property and/or in removing the Town Hall Facilities, subject to paragraph 6 above. The Security Deposit shall be refunded within thirty (30) days after compliance with the provisions of paragraph 6 relating to the restoration of the Property following the removal of the Modular Units.

22. The Town shall pressure clean and paint the Modular Units used as the Town Hall within ninety (90) days of execution of this Lease Agreement.

23. If the District votes to de-annex the Property from the Town within twelve (12) months of the earlier of the end of the Lease Term or when the Town vacates the Leased Premises, the Town agrees to support without reservation or additional condition the deannexation of the District's Property from the Town into the Town of Davie or City of Pembroke Pines. The District agrees to request annexation into the Town of Davie as its first option and if the annexation into the Town of Davie is not approved by the Florida Legislature, the Town of Davie and the District, then to request annexation into the City of Pembroke Pines as its 2nd option.

24. The Town agrees not to object if the District decides not to renew the Town's lease in 2009. In addition, the District has no obligation to renew this Lease Agreement.

25. The Town agrees not to object to, or support or encourage anyone else to object to legislation proposed by the District to change the Districts method of taxation to an Ad Valorem Tax method of taxation, the proposed increase in the threshold amount which require advertising for competitive bids and the proposed housekeeping legislation which the District has submitted for approval at the 2007 legislative session. In addition, the Town agrees not to object to, or support, or encourage anyone else to object to legislation for deannexation of the District's Property from the Town after expiration of this Lease Agreement or any new lease that the District may enter into with the Town for the Property. Notwithstanding the above, the Town reserves the right to express its views/ opinions as to the effect of the District's proposed change in method of taxation from a stated amount per unit/acre to an ad valorem tax after said change is approved by the State Legislature for placement on the ballot and consideration by the registered voters of the District.

26. The Leased Premises will be used solely for the purpose of housing the Town's

administrative offices and for conducting the day to day business activities of The Town and related governmental purposes. Any use of the Leased Premises not consistent with the conducting of Town business and governmental activities, shall not be permitted. Town shall not sub-lease or assign its rights under this Lease Agreement.

27. Option to Purchase. If the District determines that all or a portion of the Property is to be sold, the Town will be given a right of first refusal to match any offer received by the District. In this event, the Town shall have fourteen days following receipt by certified mail, Federal Express or hand delivery to exercise Town's right of first refusal. If District does not receive notice by certified mail, Federal Express or hand delivery that Town has exercised its Option to Purchase within fourteen days following Town's receipt of said notice, the Town's right of first refusal shall expire and be of no further force or effect. In any event, the Town shall not be precluded from submitting an offer to District for purchase of that portion of the Property that District has offered for sale. This Option to Purchase shall survive this lease.

28. Within one hundred twenty (120) days of execution of this Lease Agreement, the District agrees to record a Declaration of Covenants and Restrictions ("Declaration") on the Property which will provide that the Property may only be used for low density Governmental use, compatible with the surrounding residential community and which will prevent the District from rezoning, developing or selling the Property for commercial use. In addition to the restrictions set forth above, the Declaration shall contain the following provisions: (1) that the covenants and restrictions contained in the Declaration shall run with the land; and (2) that the Declaration may not be altered, amended or terminated without the written approval of a super majority (majority plus one) of both the District's Board of Supervisors and the Town of Southwest Ranches Town Council. The District shall provide the Town with a copy of the recorded Declaration within thirty (30) days of recording said Declaration in the Public Records of Broward County, Florida.

29. If the Town retains possession of the Property, or any part thereof, beyond the end of the lease term, the Town shall pay Drainage District for all damages consequential as well as direct, sustained by reason of the Town's holdover. The provisions of this paragraph shall not limit or in any way impair or waive Drainage District's right to possession, right of re-entry or any other right or remedy given hereunder or pursuant to law.

30. Drainage District shall not be liable for any damage or injury to the Town, to the Town's employees and invitees, to the Town Hall facilities, to the Leased Premises, or to anything therein from water, wind, or the elements or because of the action of any other tenant or any person not under the direct control of the Drainage District, or from a failure of Drainage District to perform any of Drainage District's duties hereunder unless the Town has given written notice of such alleged Drainage District's failure and Drainage District has failed to take reasonable action to cure the failure. The Town agrees that it will obtain business interruption insurance, and that no claim or alleged claim for damages against Drainage District will be the basis for any set-off or credit against rent. The Town shall provide proof of renewal of all required insurance at least ten (10) days prior to expiration of said insurance.

31. The following notice is required by Fla. Stat. § 404.056(5): Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

32. This Lease Agreement constitutes the full understanding and agreement of the parties and supersedes all oral or prior agreements. No modifications or changes to this Lease Agreement shall be effective unless the same are made in writing and signed by both the Town and Drainage District.

33. The Town agrees that it will not manufacture or dispose of any Hazardous Substance (as hereinafter defined) on the Property or on any adjacent land, or store or use any such Hazardous Substances on the Property or on such adjacent land in such quantities, concentrations, forms or levels, or otherwise in a manner which is in violation of any applicable environmental laws. Hazardous Substance means any toxic or hazardous waste, pollutants or substances, including without limitation, asbestos, PCB's, petroleum products or by-products, substances defined or listed a hazardous substance, toxic substance, toxic pollutant, or similarly identified substance or mixture, in or pursuant to any environmental law, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, § 42 U.S.C. 9601, et. seq., the Hazardous Materials Environmental Transportation Act, § 49 U.S.C.1802, et. seq., The Resource Conservation and Recovery Act, § 42 U.S.C.6901, et. seq., The Toxic Substance Control Act of 1978, as

amended, § 15 U.S.C. 2601, et. seq., and the Clean Water Act, § 33 U.S.C.446, et. seq., as amended. Should the Town violate the foregoing, the Town will promptly undertake remedial action to cure any pollution or detrimental effect on the Property and will indemnify and hold Drainage District harmless for any liability, loss, expense, reduction in property value or other effect arising to Drainage District. Without limiting the survival of other Lease Agreement terms, the Town specifically agrees that its responsibility for remedial action and indemnification will survive the expiration of this Lease Agreement.

34. Nothing contained herein shall be deemed to constitute a waiver by Drainage District or Town of any limitations of their liability that is accorded Drainage District and Town by virtue of § 768.28, Florida Statutes, or any subsequent enacted similar law.

35. Within ninety (90) days of execution of this Lease Agreement by the Town, the Town shall provide the Drainage District with a copy of the fully executed Preannexation Agreement which was approved by the District on March 29, 2001 by District Resolution No. 2001-04 and delivered to the Town for execution. If Town is unable to locate a copy of the signed Preannexation Agreement within said ninety (90) days, Town will execute a new one.

36. In addition to the above, the Town agrees to the following:

A. The exterior paint color of the Modular Units shall be approved by The District.

B. The Town shall landscape the Town Hall facilities and maintain the appearance of Town Hall area.

C. The Town shall provide pressure cleaning services for sidewalks located on the Property as requested.

D. The Town shall construct a one (1") inch thick asphalt concrete driveway with minimum eight (8") inch limerock base on south field at gated entrance. This driveway shall be twenty-four (24') feet wide and extend from the paved portion of S.W. 160th Avenue to one (1') foot inside of the gate. Radius at the roadway shall be fifteen (15') feet.

37. The District shall provide Town with a key to front gate.

38. This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which constitute one and the same instrument.

39. Invalid Provisions. If any one or more of the provisions of this Lease Agreement

shall for any reason be held to be invalid, unenforceable or illegal in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease Agreement, and this Lease Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth.

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

41. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations required under this Lease Agreement or by law by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally served, or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reasonably reliable courier service providing overnight or sooner delivery, postage prepaid, or by facsimile, followed by delivery of hard copy and addressed as follows:

To Town: Town of Southwest Ranches
6589 SW 160th Avenue
Southwest Ranches, FL 33331
Attn: Town Administrator
Facsimile: 954-434-1490

To District: South Broward Drainage District
Attention: Leo Schwartzberg
District Director
6591 S.W. 160th Avenue
Southwest Ranches, FL 33331
Facsimile: 954-680-3339

The effective date of delivery of any such notice or other item shall be: (a) the date of personal service; (b) the delivery date on the return receipt; or (c) the day of deposit, postage prepaid, with a reasonably reliable courier service providing overnight or sooner delivery, whichever is applicable. The parties may designate any other address for the service of notices by furnishing same in accordance with this subsection.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, Drainage District and Town have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

"Drainage District"
(SOUTH BROWARD DRAINAGE DISTRICT)

Witness Signature

Thomas F. Gill, President

Witness Printed Name

Attest:

Witness Signature

Jack McCluskey, Secretary

Witness Printed Name

"Town"
(TOWN OF SOUTHWEST RANCHES)

Witness Signature

Mecca Fink, Mayor

Witness Printed Name

Witness Signature

Witness Printed Name

Attest:

Susan Owens, Town Clerk

Approved as to Form and Correctness:

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

.....
LEASE AGREEMENT BETWEEN SOUTH BROWARD DRAINAGE DISTRICT
AND TOWN OF SOUTHWEST RANCHES

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