

RESOLUTION NO. 2009 – 047

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A MUNICIPAL LEASE AGREEMENT WITH TOSHIBA FINANCIAL SERVICES FOR THE LEASE OF TWO (2) COPY MACHINES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO THE LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town currently owns two Ricoh copy machines which are used heavily to conduct the Town's affairs; and

WHEREAS, both copiers are about five years old and require regular maintenance; and

WHEREAS, in order to secure new machines and to get the best possible pricing, the Town sought vendors who already had a contract with the State of Florida to piggyback off of; and

WHEREAS, after reviewing the quotes and other information provided from these vendors it was determined that Toshiba Business Solutions offered the best package, pricing, and service; and

WHEREAS, the lease of these two (2) new copy machines will provide expanded and more reliable service to the Town and is expected to save the Town over \$2,000.00 per year; and

WHEREAS, the Town has determined that the leasing of these two (2) copiers from Toshiba Financial Services is in the best interest of the Town.

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 the Lease Agreement between the Town of Southwest Ranches and Toshiba Financial Services, which is attached hereto as Exhibit "A" and incorporated herein.

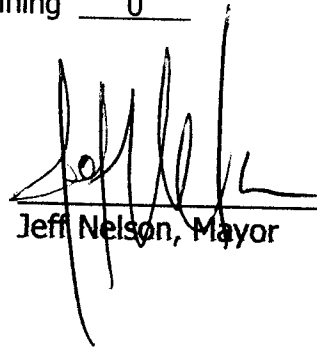
Section 3. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into the Lease Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 4. 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 19th day of March 2009, on a motion by Council Member Aster Knight and seconded by Council Member Freddy Fisikelli.

Nelson	<u>Y</u>
Breitkreuz	<u>Y</u>
Fisikelli	<u>Y</u>
Knight	<u>Y</u>
McKay	<u>Y</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>




Jeff Nelson, Mayor

ATTEST:



Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:



Gary A. Pollakoff, J.D., Town Attorney
FTL_DB: 1177141_1

TOSHIBA

BUSINESS SOLUTIONS

EXHIBIT **A**

True Municipal
Value Lease Agreement

APPLICATION NO. _____

CONTRACT NO. _____

TBS LOCATION: TBSFL- 6401 NOB HILL ROAD, TAMARAC, FL 33321

This document is written in "Plain English". The words **you** and **your** refer to the customer. The words **Lessor, we, us** and **our** refer to Toshiba Financial Services. Every attempt has been made to eliminate confusing language and create a simple, easy-to-read document.

CUSTOMER INFORMATION

FULL LEGAL NAME Town of Southwest Ranches		STREET ADDRESS 6589 SW 160TH Avenue		
CITY Southwest Ranches	STATE FL	ZIP 33331	PHONE 954-434-0008	FAX 954-434-1490
FEDERAL TAX I.D.# 65-1036656		E-MAIL ADDRESS lrickles@swranches.org		

EQUIPMENT SCHEDULE - Please check one of the following:

See the attached Schedule "A" See the attached Pool Billing Schedule See the attached Grouped Pool Billing Schedule

LEASE TERMS

LEASE PAYMENT AMOUNT

SECURITY DEPOSIT

Term in Months 36 (mos.)	36 Payments of \$ 429.22 (Plus Applicable Taxes) Lease Payment Period is Monthly Unless Otherwise Indicated.	\$ n/a (Plus Applicable Taxes)
Payment includes 40,000 B&W pages per month	Overages billed monthly at \$.009 per B&W page	
Payment includes 0 Color pages per month	Overages billed monthly at \$.06 per Color page	

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT, THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

TERMS AND CONDITIONS

- ENTIRE AGREEMENT: This Lease constitutes the entire agreement between the parties regarding the Equipment, and there are no other representations, warranties, promises, guarantees or agreements, oral or written, expressed or implied between the parties hereto with respect to the Lease or the equipment. No modification or amendment hereof shall be binding upon the Lessor unless made in writing and executed on behalf of Lessor by its duly authorized officer or agent.
- LESSEE COVENANTS: the Lessee covenants and warrants that (1) it has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the rental payments scheduled to come due and to meet its other obligations under the Agreement and such funds have not been expended for other purposes; and
(2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Agreement or the ability of the Lessee to make its Base Rental Payments (as set out above); (b) contest or affect the authority for the execution or delivery of, or the validity of, the Agreement; or (c) contest the existence and powers of the Lessee; nor is there any basis for any such action, suit, proceeding or investigation; and
(3) That the equipment will be operated and controlled by the Lessee and will be used for essential government purposes and will be essential for the term of the Agreement.
(4) Lessee has not previously terminated a lease for non-appropriation, except as specifically described in a letter appended hereto.
- SIGNATURES: Each signor (two if monthly payment exceeds \$1,200) warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind Lessee.
Signor(s) for Lessee further warrant(s) its governing body has taken the necessary steps, including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of Lessee authorizing execution of the Agreement has been duly adopted and remains in full force and effect. (Continued on the reverse side)

LESSOR ACCEPTANCE

Toshiba Financial Services _____

DATED _____ LESSOR SIGNATURE _____ TITLE _____

CUSTOMER ACCEPTANCE

DATED _____ CUSTOMER SIGNATURE _____ TITLE _____

see next page

DATED _____ CUSTOMER SIGNATURE _____ TITLE _____

PRINT NAME _____

ACCEPTANCE OF DELIVERY

You certify that all the equipment listed above has been furnished, that delivery and installation has been fully completed and satisfactory. Further, all conditions and terms of this Agreement have been reviewed and acknowledged upon your signing below, your promises herein will be irrevocable and unconditional in all respects.

DATE OF DELIVERY _____ CUSTOMER SIGNATURE _____ TITLE _____

TOWN OF SOUTHWEST RANCHES

By: _____
Jeff Nelson, Mayor

___ day of _____, 2009

ATTEST:

By: _____
Bert Wrains, Interim Town Administrator

___ day of _____, 2009

Susan A. Owens, CMC, Town Clerk

APPROVED AS TO FORM:

Gary A. Poliakoff, J.D. Town Attorney

4. **PURCHASE OPTION:** After making all required payments, CUSTOMER may purchase the equipment for its Fair Market Value (FMV) which will not exceed 15% of the original equipment cost. At any other time, CUSTOMER may purchase the Equipment for the then applicable "Remaining Balance" plus residual.
5. **NON APPROPRIATION:** In the event Customer is in default under the Rental because:
1. Funds are not appropriated for a fiscal period subsequent to the one in which the Rental was entered into which are sufficient to satisfy all of Customer's obligations under the Rental during said fiscal period;
 2. Such non-appropriation did not result from any act or failure to act of Customer;
 3. Customer has exhausted all funds legally available for all payment due under the Rental; and
 4. There is no other legal procedure by which payment can be made to Owner.

Then provided that (a) Customer has given Owner written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence, (b) Owner has received a written opinion from Customer's counsel verifying the same within ten (10) days thereafter; and (c) the Customer does not directly or indirectly purchase, rent or in any way acquire any services or equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Owner, at Customer's expense, Owner' remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance rental payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Owner in its sole discretion may desire, without any duty to account to Customer.

6. **AGREEMENT:** You agree to rent from us the personal property described under "ITEM DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. You authorize us to insert in this Agreement serial numbers and other identification about the Equipment including your proper legal name, as well as other omitted factual matters. This Agreement becomes valid upon execution by us and will begin on the rent commencement date shown and will continue from the first day of the following month for the number of consecutive months shown. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least thirty (30) days before the end of any term. THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO CUSTOMER. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

7. **RENT:** Rent will be payable in installments, each in the amount of the basic rental payment shown. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. The rent payable for the month of rent commencement shall be prorated from the monthly rental amount set forth above. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason, your check is returned for nonpayment, a \$20.00 bad check charge will be assessed.

8. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance (during normal business hours) by the vendor; inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as black toner and developer. Paper must be separately purchased by customer. Color toner, not included in this Agreement will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned. We may charge you a Supply Freight Fee to cover our costs of shipping supplies to you.

9. **OWNERSHIP OF EQUIPMENT:** We are the owner of the equipment and have sole title to the equipment (excluding software). You agree to keep the equipment free and clear of all liens and claims.

10. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU RENT THE EQUIPMENT "AS IS." NO REPRESENTATION OR WARRANTY OF TBS WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER.

11. **LOCATION OF EQUIPMENT:** You will keep and use the equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the Equipment to a location we specify at your expense, in retail resalable condition, full working order, and in complete repair.

12. **LOSS OR DAMAGE:** You are responsible for the risk of loss or for any destruction of or damage to the equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid rental payments for the full rental term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.

13. **COLLATERAL PROTECTION AND INSURANCE:** You agree to keep the equipment fully insured against loss with us as loss payee in an amount not less than replacement cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy from anyone who is acceptable to us and to include us as an insured on the policy. You agree to provide us certificates or other evidence of insurance acceptable to us, before this Agreement begins or, should you wish us to waive this requirement, we will bill you and you will pay a property damage surcharge of up to 0035 of the equipment cost as a result of our administrative costs, credit risk and other costs. We may make a profit on this program. As long as you are current at the time of the loss (intentional acts are not included), the remaining balance owed on the Agreement will be forgiven. You must be current to benefit from this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY INSURANCE COVERAGE ON THIS EQUIPMENT.

14. **INDEMNITY:** We are not responsible for any loss or injuries caused by the installation or use of the equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.

15. **FEES:** You agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law. Any fee we charge may include a profit.

16. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.

17. **DEFAULT AND REMEDIES:** If you do not pay any rental payment or other sum due to us or other party when due or if you break any of your promises in the Agreement or any other agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 15% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we can terminate or cancel this Agreement and require that you pay (1) the unpaid balance of this Agreement (discounted at 6%) through the end of the then current fiscal year; (2) the amount of any purchase option and if none is specified, 20% of the original equipment cost which represents our anticipated residual value in the equipment; (3) and/or return the equipment to us to a location designated by us. We may recover interest on any unpaid balance at the rate of 8% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Owner or its Assignee or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive Customer's rights under Article 2A (508-522) of the UCC.

18. **UCC FILINGS:** You grant us a security interest in the equipment if this agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the equipment.

20. **CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of Owner or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Owner or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Owner or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Owner. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Owner in relation to such matters. You waive trial by jury in any action between us.

21. **ACCEPTANCE:** This Agreement will be binding on Toshiba Financial Services only if Toshiba Financial Services accepts it, as evidenced only by the signature of an authorized representative of Toshiba Financial Services. We will not be deemed to have accepted this Agreement unless (a) Our credit evaluation of Customer is satisfactory and (d) this Agreement does not contain any mathematical error or unauthorized price change. In the event of non-approval, the sole liability of Toshiba Financial Services shall be to refund to You the amount that has been paid to Us by You upon the signing of this Agreement.

22. **REPRESENTATIONS:** You represent and warrant to us that (1) you have the lawful power and authority to enter into this rental, and (2) the individuals signing this Agreement have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business, and (6) you will take any action we reasonable request to protect our rights in the Equipment.

23. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance (during normal business hours) by vendor; inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as black toner and developer. Paper must be separately purchased by customer. Color toner, not included in this Agreement will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned. We may charge you a Supply Freight Fee to cover our costs of shipping supplies to you.

24. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base usage charge per copy and the per copy charge over the base minimum by a maximum of 15% of the existing charge.

25. **UPGRADE/DOWNGRADE PROVISION:** AFTER INCEPTION OF THE AGREEMENT AND UPON YOUR REQUEST, WE MAY REVIEW YOUR COPY VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING TO ACCOMMODATE YOUR NEEDS.

26. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the "Effective Date" of this Agreement will be the tenth (10th) day of the month following installation. Customer agrees to pay a prorated amount for the period between the installation date and the Effective Date. This payment for the transition period will be based on the base minimum usage payment prorated on a 30 day calendar month and will be added to the Customer's first invoice.

23393 - 09/19/2007

TOWN OF SOUTHWEST RANCHES**SCHEDULE A**

Color Copier (Model: eStudio3530c)	36 Month Lease
Configuration: Reversing auto doc feeder, 2- 550 sheet paper trays, Large capacity paper feeder, print/scan enabled, fax board	
Lease:	\$233.83
Maintenance: Includes 40,000 Mono copies. Overages billed at .009 per page	\$60.54
Color Usage:	.06 per page
eCopy ScanStation Op: Includes ScanStation & 10- User Pack eCopy Desktop licenses for Windows XP, 3 Year Maintenance & Support	\$134.85
TOTAL:	\$429.22

CUSTOMER ACKNOWLEDGEMENT:

*

Customer Signature_____
Date

*

Print Name

TOWN OF SOUTHWEST RANCHES

By: _____
Jeff Nelson, Mayor

___ day of _____, 2009

ATTEST:

By: _____
Bert Wrains, Interim Town Administrator

___ day of _____, 2009

Susan A. Owens, CMC, Town Clerk

APPROVED AS TO FORM:

Gary A. Poliakoff, J.D. Town Attorney

4. **PURCHASE OPTION:** After making all required payments, CUSTOMER may purchase the equipment for its Fair Market Value (FMV) which will not exceed 15% of the original equipment cost. At any other time, CUSTOMER may purchase the Equipment for the then applicable "Remaining Balance" plus residual.

5. **NON APPROPRIATION:** In the event Customer is in default under the Rental because:

1. Funds are not appropriated for a fiscal period subsequent to the one in which the Rental was entered into which are sufficient to satisfy all of Customer's obligations under the Rental during said fiscal period;
2. Such non-appropriation did not result from any act or failure to act of Customer;
3. Customer has exhausted all funds legally available for all payment due under the Rental; and
4. There is no other legal procedure by which payment can be made to Owner.

Then provided that (a) Customer has given Owner written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence; (b) Owner has received a written opinion from Customer's counsel verifying the same within ten (10) days thereafter; and (c) the Customer does not directly or indirectly purchase, rent or in any way acquire any services or equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Owner, at Customer's expense, Owner' remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance rental payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Owner in its sole discretion may desire, without any duty to account to Customer.

6. **AGREEMENT:** You agree to rent from us the personal property described under "ITEM DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. You authorize us to insert in this Agreement serial numbers and other identification about the Equipment including your proper legal name, as well as other omitted factual matters. This Agreement becomes void upon execution by us and will begin on the rent commencement date shown and will continue from the first day of the following month for the number of consecutive months shown. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least thirty (30) days before the end of any term. THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO CUSTOMER. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

7. **RENT:** Rent will be payable in installments, each in the amount of the basic rental payment shown. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. The rent payable for the month of rent commencement shall be prorated from the monthly rental amount set forth above. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason, your check is returned for nonpayment, a \$20.00 bad check charge will be assessed.

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9. **OWNERSHIP OF EQUIPMENT:** We are the owner of the equipment and have sole title to the equipment (excluding software). You agree to keep the equipment free and clear of all liens and claims.

10. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU RENT THE EQUIPMENT "AS IS." NO REPRESENTATION OR WARRANTY OF TBS WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER.

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13. **COLLATERAL PROTECTION AND INSURANCE:** You agree to keep the equipment fully insured against loss with us as loss payee in an amount not less than replacement cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy from anyone who is acceptable to us and to include us as an insured on the policy. You agree to provide us certificates or other evidence of insurance acceptable to us, before this Agreement begins or, should you wish us to waive this requirement, we will bill you and you will pay a property damage surcharge of up to .0035 of the equipment cost as a result of our administrative costs, credit risk and other costs. We may make a profit on this program. As long as you are current at the time of the loss (intentional acts are not included) the remaining balance owed on the Agreement will be forgiven. You must be current to benefit from this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY INSURANCE COVERAGE ON THIS EQUIPMENT.

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15. **FEES:** You agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law. Any fee we charge may include a profit.

16. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.

17. **DEFAULT AND REMEDIES:** If you do not pay any rental payment or other sum due to us or other party when due or if you break any of your promises in the Agreement or any other agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 15% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we can terminate or cancel this Agreement and require that you pay (1) the unpaid balance of this Agreement (discounted at 6%) through the end of the then current fiscal year; (2) the amount of any purchase option and if none is specified, 20% of the original equipment cost which represents our anticipated residual value in the equipment; (3) and/or return the equipment to us to a location designated by us. We may recover interest on any unpaid balance at the rate of 8% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Owner or its Assignee or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive Customer's rights under Article 2A (508-522) of the UCC.

18. **UCC FILINGS:** You grant us a security interest in the equipment if this agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the equipment.

20. **CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of Owner or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Owner or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Owner or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Owner. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Owner in relation to such matters. You waive trial by jury in any action between us.

21. **ACCEPTANCE:** This Agreement will be binding on Toshiba Financial Services only if Toshiba Financial Services accepts it, as evidenced only by the signature of an authorized representative of Toshiba Financial Services. We will not be deemed to have accepted this Agreement unless (a) Our credit evaluation of Customer is satisfactory and (d) this Agreement does not contain any mathematical error or unauthorized price change. In the event of non-approval, the sole liability of Toshiba Financial Services shall be to refund to You the amount that has been paid to Us by You upon the signing of this Agreement.

22. **REPRESENTATIONS:** You represent and warrant to us that (1) you have the lawful power and authority to enter into this rental, and (2) the individuals signing this Agreement have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business, and (6) you will take any action we reasonable request to protect our rights in the Equipment.

23. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance (during normal business hours) by vendor; inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as black toner and developer. Paper must be separately purchased by customer. Color toner, not included in this Agreement will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned. We may charge you a Supply Freight Fee to cover our costs of shipping supplies to you.

24. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base usage charge per copy and the per copy charge over the base minimum by a maximum of 15% of the existing charge.

25. **UPGRADE/DOWNGRADE PROVISION:** AFTER INCEPTION OF THE AGREEMENT AND UPON YOUR REQUEST, WE MAY REVIEW YOUR COPY VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING TO ACCOMMODATE YOUR NEEDS.

26. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the "Effective Date" of this Agreement will be the tenth (10th) day of the month following installation. Customer agrees to pay a prorated amount for the period between the installation date and the Effective Date. This payment for the transition period will be based on the base minimum usage payment prorated on a 30 day calendar month and will be added to the Customer's first invoice.

23393 - 09/19/2007

TOWN OF SOUTHWEST RANCHES

SCHEDULE A

Configuration: Reversing auto doc feeder, 2- 550 sheet paper trays, Stand	
Lease:	\$98.00
Maintenance: Includes 5,000 Mono copies. Overages billed at .0098 per page	\$49.00
TOTAL:	\$147.00

CUSTOMER ACKNOWLEDGEMENT:

*

Customer Signature

Date

*

Print Name