

**RESOLUTION NO. 2013 - 042**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING THE RENEWAL AND MODIFICATION OF ITS EXISTING EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000.00, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, LOAN NOTE AND SUCH OTHER LOAN DOCUMENTS DEEMED NECESSARY; TO REPAY SUCH NOTE; PROVIDING FOR A BUDGET AMENDMENT TO FY 2012-2013; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Town has an existing Emergency Line of Credit ("LOC") with Community Bank of Broward in the maximum principal amount of \$3,000,000.00, which matures on June 30, 2013; and

**WHEREAS**, the Town Council has determined that it is appropriate and necessary to renew the LOC to provide interim financing to meet recovery costs relating to a declared state of emergency; and

**WHEREAS**, Community Bank of Broward submitted a Commitment Letter to the Town dated May 2, 2013 to provide for the renewal and modification of the existing LOC, which is attached hereto and made a part hereof and marked Exhibit "A" (the "Commitment Letter"); and

**WHEREAS**, the Town desires to approve the renewal and modification of the LOC in the amount of \$4,500,000.00 and upon the terms set forth in this Resolution.

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

**SECTION 1. ADOPTION OF RECITALS.** The above-referenced recitals are true and correct, and are incorporated herein by reference.

**SECTION 2. 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, Florida, and other applicable provisions of law.

"Bank" means Community Bank of Broward, the initial purchaser of the Note, and its successors and assigns.

"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 renewal Note.

"Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by The Town of Southwest Ranches, Broward County, the Governor of the State, or the President of the United States.

"Draw Period" means date beginning on the effective date of the Line of Credit Agreement and expiring on June 30, 2018.

"FEMA" means the Federal Emergency Management Agency.

"FEMA Proceeds" means all amounts received by the Town from FEMA for Costs of the Project.

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

"Legally Available Non-Ad Valorem Revenues" means all revenues of the Town derived from any source whatsoever, other than utility taxes and ad valorem taxation on real and personal property, which are legally available to make the payments of principal and interest on the Note, but only after provision has been made by the Town for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town, or which are legally mandated by applicable law.

"Maturity Date" means June 30, 2018.

"Mayor" means the Mayor of the Town or, in the Mayor's absence, the Vice-Mayor, or such other persons as may be duly authorized to act on the Mayor's behalf.

"Note" means the Town's renewal Emergency Line of Credit Note, authorized to be issued by the Town in the aggregate principal amount not to exceed \$4,500,000.00.

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

"Pledged Revenues" means the FEMA Proceeds and/or the State Proceeds.

"Project" means expenditures for extraordinary, nonrecurring items the Town desires or needs to undertake subsequent to and as a result of a Disaster, and costs related thereto.

"Resolution" means this Resolution, as the same may from time to time be amended, modified or supplemented.

"State" means the State of Florida.

"State Proceeds" means all amounts received by the Town from the State or any agency or division thereof for Costs of the Project.

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

"Town Administrator" means the Town Administrator or other chief executive officer of the Town.

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

"Town Financial Administrator" means the Town Financial Administrator or other chief financial officer of the Town

**SECTION 3. AUTHORITY FOR RESOLUTION.** This Resolution is enacted pursuant to the provisions of the Act. The Town has ascertained and hereby determined that enactment of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Town in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Town herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Town.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Town with the Holder, and shall be deemed to be and shall constitute a contract between the Town and the Holder from time to time of the Note. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the benefit, protection and security of the Holder of the Note in accordance with the terms hereof.

**SECTION 5. LINE OF CREDIT AGREEMENT.** The Mayor and the Town Administrator or Town Financial Administrator are hereby authorized to execute and deliver a Line of Credit Agreement on behalf of the Town, and the Town Clerk is authorized to place the Town's seal thereon and attest thereto, the form and content of which shall be approved by the Town Administrator or Town Financial Administrator and Town Attorney as they may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Town.

**SECTION 6. AUTHORITY FOR ISSUANCE OF NOTE.** Subject and pursuant to the provisions hereof and of the Line of Credit Agreement, a note to be known as "Town of Southwest Ranches, Florida, Emergency Line of Credit Note" is hereby authorized to be issued in an aggregate principal amount not to exceed \$4,500,000.00 Million Dollars (Four Million Five Hundred Thousand Dollars) for the purpose of financing the Costs of the Project.

**SECTION 7. DESCRIPTION OF NOTE.** The Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date thereof and shall mature not later than the Maturity Date. Draws will be permitted to be made on the Note from time to time in accordance with the Line of Credit Agreement, up to the maximum principal amount of \$4,500,000.00. The Note shall bear interest, based on the principal amount outstanding from time to time, at the rate set forth in the Line of Credit Agreement, with such rate to be adjusted as set forth therein. The outstanding principal of and unpaid and accrued interest on the Note shall be payable on the Maturity Date or earlier redemption without any penalty.

**SECTION 8. PLEDGE OF PLEDGED REVENUES; COVENANT TO BUDGET AND APPROPRIATE.** The Note shall be secured by, and the Town hereby grants to the Holders, a lien on and pledge of all the Pledged Revenues, as more particularly set forth in the Line of Credit Agreement. To the extent the Pledged Revenues are not sufficient to repay the Note when due, the Town covenants to budget and appropriate Legally Available Non – Ad Valorem Revenues, not including utility taxes, in such amount as may be necessary to repay the Note when due, as more particularly set forth in the Line of Credit Agreement.

**SECTION 9. 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 by the Town's pledge of the Pledged Revenues and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues, in the manner and to the extent herein, in the Line of Credit Agreement and in the Note 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 Pledged Revenues or Legally Available Non-Ad Valorem Revenues not including utility taxes,, all in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. The Holders shall have no lien upon any real or tangible personal property of the Town.

**SECTION 10. AWARD OF NOTE BY NEGOTIATED SALE.** Because of the nature of the Note, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Bank in substantial accordance with the Commitment Letter, which letter is attached hereto as Exhibit "A", is hereby found to be in the best interests of the Town; provided, however, that the provisions of this Resolution and the Line of Credit Agreement shall control to the extent of any conflict with the Commitment Letter.

**SECTION 11. BANK QUALIFIED ISSUE.** The Town hereby designates the Note to be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code unless, as to the calendar year in which the Note is issued, the Town cannot reasonably anticipate on the date of issuance of the Note that the amount of tax-exempt obligations (other than obligations not taken into account for purposes of determining the Town's status as a "qualified small issuer") will not exceed the maximum amount permitted under Section 265(b) of the Code for such calendar year.

**SECTION 12. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Resolution may be modified, amended or supplemented by the Town from time to time prior to the Town entering into the Line of Credit Agreement. Thereafter, no modification, amendment or supplement of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the Holder.

**SECTION 13. GENERAL AUTHORITY.** The Governing Body hereby authorizes the Mayor, Town Administrator, Town Financial Administrator, Town Attorney and Town Clerk to execute such other documents as may be necessary to effect the borrowing contemplated by this Resolution.

**SECTION 14. BUDGET AMENDMENT.** In accordance with the Town Charter and the budget adopted in Ordinance No. 2012-09, the budget is hereby amended by increasing the Debt Service fund revenue account 201-0000-399-39900 in the amount of

\$37,000.00 and increasing the Debt Service expense account 201-5200-517-73100 in the amount of \$37,000.00 as well as increasing the General Fund revenue account 001-0000-399-39900 in the amount of \$7,000.00 and increasing the General Fund expenditure/transfer to debt service fund account 001-3900-581-91201 in the amount of \$7,000.00.

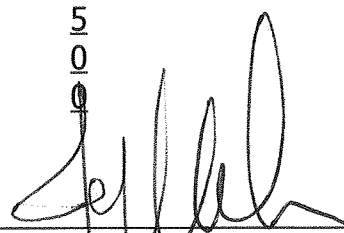
**SECTION 15. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.

**SECTION 16. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 17. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** this 9<sup>th</sup> day of May, 2013 on a motion made by Vice Mayor Breitkreuz and seconded by Council Member McKay.


Nelson	<u>YES</u>	Ayes	<u>5</u>
McKay	<u>YES</u>	Nays	<u>0</u>
Breitkreuz	<u>YES</u>	Absent	<u>0</u>
Fisikelli	<u>YES</u>		
Jablonski	<u>YES</u>		

  
\_\_\_\_\_  
Jeff Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Erika Santamaria, CMC, Town Clerk

Approved as to Form and Correctness

  
\_\_\_\_\_  
Keith M. Poljakoff, Esq., Town Attorney  
ACTIVE: 4690253\_1

**EXHIBIT "A"**

COMMITMENT LETTER  
FROM COMMUNITY BANK OF BROWARD  
DATED MAY 2, 2013

ACTIVE: 4690253\_1



**BANK QUALIFIED LOAN MODIFICATION/RENEWAL OF EXISTING  
EMERGENCY LINE OF CREDIT**

May 2, 2013

**Martin D. Sherwood**  
**Town Financial Administrator**  
**Town of Southwest Ranches**  
6589 SW 160th Avenue  
Southwest Ranches, FL 33331

Re: Up to \$4,500,000 Term Loan Modification/Renewal

Dear Mr. Sherwood,

We are pleased to advise you that Community Bank of Broward ("Bank") has approved the following loan Modification/Renewal ("Loan"), and by your acceptance of this commitment, you agree to accept the loan Modification/Renewal based upon the terms and conditions outlined below:

**Borrower:** Town of Southwest Ranches (Town)  
**Lender:** Community Bank of Broward (Bank)  
**Loan:** Up to \$4,500,000 Revolving Line of Credit with a draw period until June 30, 2018, with maturity date of June 30, 2018. The loan is tax exempt.

*CBB would make an initial advance not to exceed \$250,000; however all subsequent draw requests must be accompanied by either an application for State or Federal funds or evidence of a Declaration of Emergency by Local, State or Federal Authorities. A Request will be funded within Three (3) business days.*

**Line Renewals:** At maturity further five (5) year renewal periods may be considered in the Bank's sole discretion. Such renewals, if approved, would be documented as additional Modification to the current Line of Credit. This will avoid the higher costs associated with closing an entirely new line of credit. At the time of the renewal, the Borrower would be responsible for a Bank fee of sixteen (16) basis points per year plus the Bank's actual legal fee's associated with the renewal/modification.

**Bank Fee:** \$12,000 fee for (\$1,500,000 commitment) or \$24,000 fee for (\$3,000,000 commitment) or \$36,000 fee for (\$4,500,000 commitment) The fee indicated is to be paid in full upon execution of the Loan Modification.

A handwritten signature, possibly "M. Sherwood", is written in black ink and circled with a hand-drawn oval.



**Interest Rate and Terms:**

Monthly payments of interest only priced at Wall Street Journal Prime, minus .25%, with a note term of up to 5-years. If the borrowing were determined not to be tax exempt then the rate would be subject to change.

**Purpose:**

To fund emergency repairs/damages in the event of a natural disaster, such as a hurricane, or other emergency.

**Security/  
Collateral:**

The line would be secured by a pledge of FEMA or State funds to the extent they can be pledged and/or covenant to budget and appropriate.

**Closing Date:**

The loan described herein shall be closed by the Bank not later than June 13, 2013, unless extended in writing by the Bank in its sole discretion.

**Prepayment**

**Penalty:**

Prepayment during the term of the loan shall be permitted at any time, without penalty.

**Other Terms and Conditions:**

1. The loan will be evidenced by a promissory note ("Note"), a Covenant to Budget, security agreement and such other documents as the Bank or Bank Counsel may require. **The closing attorney for the Bank will be:**

Morris "Skip" Miller, Esq.  
Greenspoon Marder, P.A.  
Tel. #561-838-4556 / Fax #561-514-3456

2. On an annual basis, no later than 180 days after the end of each accounting period, or more often if requested by the Bank, the Borrower (including affiliated entities) shall submit to the Bank the internally-prepared financial statements. Annually, the Town shall submit its audited financial statement to the Bank.
3. 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 or with other terms of the current loan; (b) the dissolution, merger or consolidation of the Borrower; (c) the filing by or against the Borrower of a petition 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 suspension or discontinuance of the Borrower's, or (e) the failure 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, if not accepted and returned to Bank on or before May 26, 2013, shall terminate.**
5. Borrower understands and acknowledges that the 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. All closing costs for this Modification are the responsibility of the Borrower and shall be paid at closing.

6. The Bank and the Borrower confirm that this Commitment contains their complete understanding concerning this Modification as of the date hereof 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 for Modification of the existing line of credit 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 and with other terms of the current loan throughout the term of the Loan, including any Modification 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. Borrower shall look solely to the Bank and not to any officer, director or employee or any Loan Participant for performance under this Commitment.
9. Other Closing Conditions:
  1. Written Bond Counsel opinion that the transaction is tax exempt & written evidence of approval of the borrowing by Bond Counsel.
  2. Satisfactory letter of opinion from the Town's attorney stating the Town's eligibility and approval to borrow, acceptable to the Bank and/or it's attorney in form and content. This requirement shall only be a condition of the loan if the line of credit is increased above \$3,000,000, which is the amount of the existing line of credit.
  3. Town shall have ability to "reborrow" and "redraw" during the term of the loan.
  4. Federal Tax Certificate changed from \$5 million in bonds to \$10 million.
  5. ALL OTHER TERMS OF THE CURRENT LOAN WILL REMAIN UNCHANGED.
  6. THE TERMS AND CONDITIONS ARE SUBJECT TO FINAL APPROVAL FROM THE Bank's LOAN COMMITTEE.
  7. Other documents or conditions as Bank Counsel may reasonably require.

Kindly acknowledge your acceptance of this Commitment and return the original to the undersigned. The Bank and Borrower mutually agree that, in the absence of the original document, facsimile signatures will be acceptable.

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

Very truly yours,

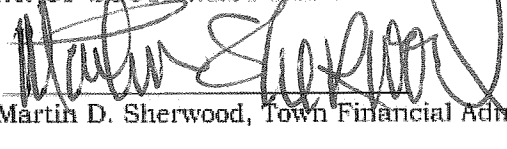
Community Bank of Broward

By: 

Bruce K. Lundgren, Chief Credit Officer

Acknowledged and accepted this 9<sup>th</sup> day of MAY, 2013.

**TOWN OF SOUTHWEST RANCHES**

By:   
Martin D. Sherwood, Town Financial Administrator