



Southwest Ranches Town Council

REGULAR MEETING

Agenda of September 30, 2014

Southwest Ranches Council Chambers
7:00 PM TUESDAY

13400 Griffin Road
Southwest Ranches, FL 33330

Mayor
Jeff Nelson

Vice-Mayor
Gary Jablonski

Town Council
Steve Breitkreuz
Freddy Fisikelli
Doug McKay

Town Administrator
Andrew D. Berns

**Town Financial
Administrator**
Martin Sherwood, CPA CGFO

Town Attorney
Keith M. Poliakoff, J.D.

Town Clerk
Russell C. Muñiz, MMC

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (954) 434-0008 for assistance no later than four days prior to the meeting.

- 1. Call to Order/Roll Call**
- 2. Pledge of Allegiance**
- 3. Proclamation - Domestic Violence Awareness Month**

Quasi-Judicial Hearings

Please be advised that the following items on the Council agenda are quasi-judicial in nature. All witnesses who will testify on any item in this portion of the Agenda will be sworn. Participants who are members of the general public need not be sworn and will not be subject to cross-examination if they are not sworn. However, the Council shall not assign un-sworn testimony the same weight or credibility as sworn testimony in its deliberations.

The applicant has the burden of proof. After the applicant's concluding remarks, the hearing will be closed and no additional testimony, material or argument will be allowed unless the Council chooses to request additional testimony. The members of the Town Council will then deliberate.

All evidence relied upon by reasonably prudent persons in the conduct of their affairs may be considered in these proceedings, regardless of whether such evidence would be admissible in a court. Hearsay evidence may supplement or explain other evidence, but shall not alone support a conclusion unless it would be admissible over objection in court. The material in the Town Council agenda will be considered as evidence without authentication.

Anyone representing an organization must present written evidence of his or her authority to speak on behalf of the organization in regard to the matter under consideration. Each person who appears during a public hearing shall identify himself or herself and give their address, and if appearing on behalf of an organization state the name and mailing address of the organization. The Council may, on its own motion or at the request of any person, continue the hearing to a fixed date, time and place.

No notice shall be required if a hearing is continued to a fixed date, time and place. Any Applicant shall have the right to request and be granted one continuance; however, all subsequent continuance shall be granted at the discretion of the Council and only upon good cause shown.

- 4. Ordinance – 2nd Reading - AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE REZONING OF APPROXIMATELY 1.06 ACRES FROM RURAL ESTATE DISTRICT TO COMMUNITY FACILITY DISTRICT, GENERALLY LOCATED 600 FEET SOUTH OF GRIFFIN ROAD ON THE WEST SIDE OF SW 130TH AVENUE, MORE PARTICULARLY DESCRIBED AS THE SOUTH 173.00 FEET OF THE NORTH 844.00 FEET OF SECTION 26, TOWNSHIP 50 SOUTH, RANGE 40 EAST, LYING SOUTH OF SOUTH NEW RIVER CANAL, LESS THE EAST 2631.70 FEET AND LESS THE WEST 2331.66 FEET, LESS THE EAST 50.00 FEET THEREOF (SOUTH FLORIDA HINDU TEMPLE, 5000 SW 130TH AVENUE, APPLICATION #RZ-017-12); PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS;**

PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. {Tabled from the August 28, 2014 Town Council Meeting}

End of Quasi-Judicial Items

5. Public Comment

- All Speakers are limited to 3 minutes.
- Public Comment will last for 30 minutes.
- All comments must be on non-agenda items.
- All Speakers must fill out a request card prior to speaking.
- All Speakers must state first name, last name, and mailing address.
- Speakers will be called in the order the request cards were received.
- Request cards will only be received until the first five minutes of public comment have concluded.

6. Board Reports

7. Council Member Comments

8. Legal Comments

9. Administration Comments

10. Resolution - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH WHITELEAF LLC DBA TRAFFIC SOLUTIONS IN THE AMOUNT OF \$111,553.57 FOR STRIPING AND SIGNAGE IMPROVEMENTS IN COUNTRY ESTATES ALONG SW 185TH WAY, 186TH AVENUE, AND 188TH AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

11. Resolution - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A LEASE AGREEMENT WITH CANON FINANCIAL SERVICES, INC. AND A CUSTOMER AGREEMENT WITH CANON SOLUTIONS AMERICA, INC. FOR A WIDE FORMAT MULTI-FUNCTION PRINTER, COPIER, AND SCANNER; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

12. Resolution – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT AND RELATED PRODUCTS AND SERVICES FOR THE COUNTRY ESTATES FISHING HOLE PARK FROM GAMETIME DIVISION OF PLAYCORE, INC./DOMINICA RECREATION PRODUCTS, FOR AN AMOUNT NOT TO EXCEED \$20,886.86; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

13. Discussion/Motion – Gary Poliakoff Tribute

14. Approval of Minutes

a. Minutes for August 28, 2014 – Regular Council Meeting**15. Adjournment**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

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PROCLAMATION

Domestic Violence Awareness Month

WHEREAS, domestic violence is one of the most wide-spread problems in our society which affects women, men, and children of all racial, social, religious, ethnic and economic groups and can have a huge range of consequences if it is not dealt with and in some cases has even led to death; and

WHEREAS, ramifications of domestic violence are staggering and the tragedy of domestic violence touches all our lives by weakening families, leaving emotional scars as devastating as physical ones and creating a destructive cycle of violence where those who were abused as children may become abusers themselves; and

WHEREAS, although great strides have been taken to educate people about domestic violence an average of three women die each day in America; one in four women and one in thirteen men will experience domestic violence in their lifetime; and domestic violence still often goes unreported; and

WHEREAS, are asking everyone to play an active role in preventing and ending domestic violence by stepping up to stop or report violence when they see it and to commit to making sure that no one suffers alone; and

WHEREAS, Women In Distress of Broward County, Inc. is the only nationally accredited, state-certified, full service domestic violence center, serving Broward County, through a 24-hour Crisis Intervention Hotline and emergency shelter, as well as offering counseling and support for victims and their children; and

WHEREAS, we call on the residents of the **Town of Southwest Ranches** to speak out against domestic violence and support local efforts to assist victims of these crimes in finding the help and healing they need.

NOW, THEREFORE, I, **Jeff Nelson, Mayor** of the **Town of Southwest Ranches** along with the **Town Council**, do hereby proclaim the month of October as

DOMESTIC VIOLENCE AWARENESS MONTH

In the **Town of Southwest Ranches** and encourage victims, their loved ones and concerned citizens to help raise awareness of this serious issue.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the **Town of Southwest Ranches** be affixed this 30th day of September.



JEFF NELSON, MAYOR

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Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628

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Town Council
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Andrew Berns, *Town Administrator*
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Martin Sherwood, *Town Financial Administrator*
Russell C. Muñiz, MMC, *Town Clerk*

COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THRU: Andy Berns, Town Administrator

FROM: The Mellgren Planning Group

DATE: September 30, 2014

SUBJECT: SUPPLEMENTAL REPORT FOR REZONING APPLICATION No. RZ-017-12, SOUTH FLORIDA HINDU TEMPLE (SFHT)

RECOMMENDATION: If the Town Council approves the Application, it should do so with the following stipulations:

- a. Execution of the Declaration of Restrictive Covenants (DRC) and Unity of Title Agreement by parties authorized to do so pursuant to an Opinion of Title to be produced by the property owner and found acceptable by the Town Attorney.
- b. No building permit shall be issued for the Property until a plat has been processed and recorded, and a site plan has been approved by the Town.
- c. Applicant shall pay to the Town of Southwest Ranches an amount equal to the total expenses incurred by the Town in the processing and finalizing of this application, prior to the issuance of the first building permit. This includes, but may not be limited to, expenses for engineering, planning, legal, advertising, five (5%) percent administrative fee, and any related expenses that the Town has or will incur as a direct cost of this application.
- d. Revise the conceptual site plan to show two (2) rows of staggered trees along SW 130th Avenue, pursuant to the terms of the DRC.

PREVIOUS ACTION

August 28, 2014 –The Town council voted to defer consideration until September 30th at the request of the Applicant, in order to provide the Applicant sufficient time to meet with the Florida Department of Transportation, District 4 Staff, regarding elimination or modification of the existing driveway access onto SW 130th Avenue.

July 10, 2014 – The Town Council conducted a third public hearing and subsequently deferred final action on the application until August 28, 2014 in order to facilitate potential resolution of the neighborhood's traffic concerns.

March 7, 2013 – The Town Council deferred final action on second reading of the application to a date and time uncertain in order to provide the applicant and the adjacent neighborhood additional opportunity to discuss concerns.

February 7, 2013 - The Town Council approved Application No. RZ-017-12 on first reading subject to the conditions of approval recommended in the staff report, with the following additional stipulations that the petitioner has now incorporated into the declaration of restrictive covenants, attached.

- Increase the height of the perimeter wall from 6 feet to 8 feet.
- Emergency access gate to be opaque.
- Existing house shall be used only for storage upon rezoning.
- Town shall have the right to inspect the existing house to ensure it is being used only for storage as of March 1, 2013.
- Temple shall remove all exotic trees under the power lines by June 1, 2013.

CHANGES TO APPLICATION SUBSEQUENT TO THE MARCH 7, 2013 PUBLIC HEARING

In the months following the Town Council deferral of second reading, the Town Administrator met with residents of the immediate neighborhood in order to obtain additional feedback. The Town Administrator then shared the residents' concerns and ideas with SFHT representatives. In April, 2014, the SFHT submitted a revised proposal.

The revised proposal addresses a key resident concern: that the height and mass of the building would not be residential in character. By reducing the second story from 5,700 square feet to 2,800 square feet (a 50 percent reduction), the size of the second floor will be comparable to that of a large, two-story single-family home. The revised proposal also reduces the maximum height of the building from 32 feet to 28 feet.

In reducing the size of the proposed building's second story (technically to be considered a mezzanine on the new plan), SFHT proposes to expand the ground floor from 5,700 square feet as originally proposed to 7,000 square feet in order to maintain a similar building size to that originally proposed. The total community center building area on the proposed plan is 11,200 square feet, which represents a 200 square-foot reduction from the original plan.

SFHT also agreed to:

- Erect an ornamental metal fence along SW 130th Avenue with landscaping, in lieu of a concrete wall.
- Minimize use of the rezoning parcel driveway by construction traffic.
- Bring all existing parking lot lighting into conformance with the Town's Dark Sky Ordinance.

Please refer to the original agenda report (attached) for the numerous commitments the SFHT had made before second reading in March, 2013.

SUMMARY OF RESIDENT FEEDBACK

The Town Administrator met with residents of 130th Avenue and SW 52nd Street on several occasions. Staff synthesized the feedback into several recommendations for the applicant to consider. Staff met with and discussed the recommendations with the applicant.

Common resident concerns:

1. Traffic on SW 130th Avenue.
2. Insufficient parking.
3. Additional special events, and location of same further into the neighborhood on the site of the proposed community center building.
4. Construction equipment using SW 130th Avenue to access the site.
5. Nonresidential sale of the new building.
6. Landscape buffer design.
7. Lighting intrusion.
8. Noise from patio activity behind the existing temple building.
9. Further expansion conflicts with original representations made when the original site plan was approved.
10. Additional signage.
11. Possible reduction of property values.

DISCUSSION OF RESIDENT FEEDBACK

✚ Resident comments are listed below in *italics*. Staff analysis follows each comment.

1. Traffic on SW 130th Avenue.

- (i) *Resident(s) stated that they already experience traffic congestion from the existing temple facility, which they would like to see ameliorated, and are concerned that expansion will only exacerbate this condition.*

The addition of a community center can be expected to result in additional events and activities that generate traffic at times and/or in volumes that are additional to current operations. The amount of traffic to and from the site at any time will be limited by available parking. Operation of the SFHT facilities in a manner that results in illegally parked cars will be subject to enforcement.

The Institute of Traffic Engineers (ITE) *Trip Generation Manual, 9th Edition* predicts that peak hour (weekend) use of the Property after the expansion would increase 57 percent, from 188 trips to 294 trips. However, the ITE data do not correlate traffic generation with the composition of building space at a place of worship, and therefore has limited value. Moreover, the parking facility—even as proposed to be expanded—cannot accommodate this predicted increase in vehicles. The predicted traffic increase would require an additional 106 parking spaces, whereas only 41 additional spaces can be provided, noting that the existing parking facility is fully utilized during peak periods. Accordingly, the use of the property will be subject to restrictions governing concurrent use of the facilities as part of site plan approval, which will effectively limit the amount of additional peak hour traffic that will be generated. All nonresidential facilities in the Town are subject to code enforcement action should the number of parked cars exceed the number of legal parking spaces onsite.

- ❖ Staff suggested that the SFHT consider closing the SW 130th Avenue driveway to departing traffic after large events, which would address residents' existing complaint that departing traffic clogs SW 130th Avenue and disobeys the stop sign posted at the exit. SFHT has not accepted this recommendation.

Note: The adequacy of the existing left turn lane on Griffin Road will be reevaluated by Broward County Highway Construction and Engineering Division at the time of platting.

- (ii) *Resident(s) stated that some vehicles seeking to enter the temple facility via SW 130th Avenue inadvertently miss the entrance, and turn around in residents' driveways, representing an intrusion into the residential neighborhood.*

The SFHT is proposing new signage adjacent to the SW 130th Avenue entrance that should decrease the number of missed turns into the facility (see No. 10 for further discussion). Residents objected to additional ground signs, so the SFHT has agreed that no new ground sign will be permitted unless the SFHT presents the Town Council with a specific signage proposal that is of a size and design that is acceptable to the Town Council, after review and comment by residents of SW 130th Avenue and SW 52nd Street.

- (iii) *Resident(s) stated that SFHT should hire BSO traffic details to ensure that exiting vehicles obey the stop sign, and to smooth traffic operations.*

SFHT responded that it provides active traffic management during special events where traffic exceeds weekly levels and off-site parking and shuttles are utilized, but does not believe that it is warranted during weekly peak traffic periods.

- ❖ It is noted that at the time of county plat approval in 1996, the county commission specifically relied on SFHT's commitment on the record that it would hire police to direct traffic if "traffic becomes an impact to the area" (specifically referencing SW 130th Avenue). Based upon resident's complaints in response to the rezoning application, the Town Council could find that peak weekly traffic has become an impact to the neighborhood. Although this representation from 1996 itself is not enforceable, the Town Council may consider this representation in its evaluation of the application for rezoning and expansion of the SFHT.

- (iv) *Resident(s) stated that the SW 130th Avenue driveway into the temple facility is not secondary in terms of traffic volume.*

The original Town staff report characterized the SW 130th Avenue entrance as being secondary in relation to the Griffin Road entrance, given its location on a residential side street and not an arterial roadway. This characterization may not be accurate based upon the distribution of traffic using the two (2) driveways. In the absence of professionally acceptable traffic counts at both driveways, the determination as to which driveway is primary and which is secondary in terms of traffic volumes cannot be made.

- (v) *Resident(s) stated a concern that traffic generated by the expansion will use the existing residential driveway within the rezoning/expansion property, as SFHT traffic already does use this driveway.*

SFHT has already agreed, as part of its voluntary declaration of restrictive covenants ("DRC"), that the residential driveway will be closed to all but emergency vehicle access. All terms of the DRC are enforceable as code requirements, and are subject to additional enforcement remedies set forth in the DRC.

2. Parking.

- i. *Resident(s) stated a concern that parking in the 130th Avenue swale will get worse if the SFHT expands, as it is adding a relative few parking spaces compared to the size of the proposed building.*

SFHT closed the gap in the hedge in response to earlier complaints, and will install a 6-foot ornamental fence with landscaping that will prevent direct access to the

preferred east entrance via SW 130th Street. Furthermore, as a condition of site plan approval, SFHT will not be permitted to schedule events and activities in the two buildings that would at any time require a greater number of parking spaces than are available. Again, “overparking” (more cars than legal spaces) is a ULDC violation and is subject to Town enforcement.

SFHT has installed two (2) “No Parking” signs on the west side of SW 130th, and is required to install four (4) more pursuant to the terms of the DRC, including the east side of the street. All signs will be required to conform to the specifications of standard roadway traffic control signs and include towing language.

3. **Special events.** *Resident(s) stated a concern about disruptive noise and traffic during special events. A bloodmobile parked on the 130th Avenue swale was also mentioned.*

SFHT has agreed in the DRC not to hold any outdoor activity on the community center parcel unless the Town has issued a special event permit. The frequency and duration of outdoor special events is limited by Sec. 035-040 to six (6) events annually. SFHT is required, as a condition of an outdoor event permit for the existing Temple property, to provide for traffic direction and off-site parking.

4. **Construction access.** *Resident(s) commented that construction equipment and related traffic should not be allowed to use 130th Avenue to access the proposed community center construction site.*

The residents’ concern appears to be the potential for enduring a prolonged period of construction traffic, perhaps spanning years, should construction progress be tied to ongoing fundraising for each new phase of building and site construction. To address the concern, SFHT has agreed in the DRC to direct construction traffic to use the Griffin Road entrance to the facility unless use of the rezoning parcel driveway is necessary for the safety of congregants during Temple services and events (i.e. at defined times when construction typically does not take place). In order to further address the concern, the opaque gate that SFHT is required to construct (before issuance of building permits for the new community center) must remain closed when not being used for ingress and egress of construction equipment.

5. **Scale of new building.** *Resident(s) stated a concern that the proposed community center building will be larger and higher than the code would allow for a residential structure, and it will look institutional.*

A two-story single-family residence on the subject property can currently be built to exceed 18,000 square feet in area and up to 35 feet in height with a 50-foot front setback and 25-foot side setback. SFHT is proposing to construct 11,200 square feet under roof with a partial second story (25% of the total building area), maximum height of 28 feet, an 81.5-foot front setback, and a 50-foot south side setback.

Staff requested that SFHT consider giving at least the second story of the community center building a residential appearance, using design techniques to reduce the mass of the second story and use a residential-style hip or gable roof. Discussion ensued, and SFHT resisted such a stipulation because of the vagueness of “residential appearance” and a concern that culturally significant aspects of its architecture could be compromised.

However, subsequent to the March 7, 2013 public hearing, SFHT determined that it would reduce the size of the second story from 5,600 square feet to 2,800 square feet and instead increase the building footprint to make up the difference. This revised building massing is more consistent with that of a large single-family residence.

- 6. Landscape buffer design.** *Resident(s) stated that they should have input on the design of the buffer (some feel that it is insufficient; some commented that the drainage retention ponds that would be located behind the masonry wall won't benefit the residents because they won't be able to see it, and some residents did not want an 8-foot wall along SW 130th Avenue).*

The landscape buffer design is subject to site plan approval by the Town Council. Residents will be able to review and comment on the proposed buffer design and materials at that time. In response to resident comments, SFHT is substituting an ornamental metal fence for the masonry wall along SW 130th Avenue, and limiting its height to 6 feet, and reducing the height of the future wall on the south property line from eight (8) feet to six (6) feet.

- 7. Lighting.** *Resident(s) are concerned that the site lighting will be brighter than would be permitted in a residential area.*

Lighting fixtures must be full cut-off (shielded on all four sides) and set back at least 50 feet or twice the height of the fixture (an incentive for lower fixtures). All existing lighting must also come into compliance with code requirements for cut-off fixtures prior to issuance of a building permit for the community center building.

- 8. Patio activity.** *Resident(s) complained that the covered patio behind the temple building is used as a place of frequent congregation, including music.*

The covered patio was approved and constructed for outdoor congregation. During several site visits to SFHT, staff observed gatherings on the patio, although noise was either not audible or minimally audible from the street.

- 9. Further expansion.** *Resident(s) are concerned that SFHT can continue to expand into their neighborhood. Resident(s) are concerned that the SFHT is growing into a regional facility that is beyond the scale that the SFHT represented to county government officials when it was originally approved.*

SFHT clearly is, and will be, a larger facility than was originally represented to the Broward County Board of County Commissioners when it obtained approvals in 1996. Several residents of SW 130th Avenue attended one or more of the Commission public hearings and recall these representations, however the representations were not binding upon the property.

The proposed expansion would bring the total site area to 4.6 acres. The Comprehensive Plan limits the size of community facilities to five (5) acres in area, meaning that SFHT could still potentially acquire an additional 0.4 acre for further expansion. Any future building expansion within the existing 4.6 acres of SFHT property would be subject to Town Council amendment of the DRC.

- 10. Additional signage.** *Resident(s) do not want additional temple identification signage on 130th Avenue.*

SFHT is not permitted to erect a monument or other ground sign along SW 130th Avenue pursuant to the DRC unless the Town Council approves the sign based upon its size, design and placement, after considering the input of residents living on SW 130th Avenue and SW 52nd Street. The Town Council may decline to approve a ground sign, and instead allow an alternative sign such as a sign attached to a perimeter fence column.

- 11. Taxes.** *Resident(s) are concerned that the rezoning will remove the proposed community center parcel from the tax rolls.*

The rezoning subject property is already owned by the SFHT, and already receives a property tax exemption as a not-for-profit entity.

12. Property values. *Resident(s) are concerned that the SFHT expansion will lower their property values because of the expansion deeper into their neighborhood.*

The lowering of property value is a common concern among residential property owners when a rezoning is proposed. There are land uses and aspects of development design (height, setbacks, design, access location, etc.) that are incompatible with single-family residential neighborhoods that can be expected to reduce property values.

A place of worship is not a land use that is presumptively incompatible with a single-family neighborhood, and in some contexts, is seen as a desirable amenity. This is one reason that the land use plans of Broward County and its municipalities permit community facilities within the low-density residential land use plan designations. Compatibility of a place of worship with an adjacent single-family neighborhood in a quasi-suburban setting is largely determined by the juxtaposition and orientation of the facility to the neighborhood, physical scale of the buildings in relation to their distance from property lines and extent of buffering, the size of the principal assembly area—which correlates to the amount of traffic that can be potentially generated, access locations, building design, the amount of landscaping (and maintenance thereof), and the concentration of community facilities in an area.

For these reasons, the Town limits the size of a place of worship and most other community facilities to five (5) acres, restricts their location to arterial road frontages, limits their access to arterial roads (unless the facility pre-existed the adoption of these requirements), restricts maximum height to thirty-five (35) feet and Floor Area Ratio to 0.25, requires a 50-foot yard abutting residential zoning and use, prohibits day care centers and schools, and requires dispersal of community facilities within the Town.

All of the preceding protections and limitations do not guarantee that residential property values will be unaffected by the location of a place of worship. In the case of SFHT, the facility already exists, and an incremental yet significant expansion is proposed. The expansion does extend approximately one-third further into the adjacent neighborhood. As a result, SFHT has made several commitments intended to offset any impact the expansion would have on the neighborhood, including building height, building placement, massing design, screening and buffering, use, signage, and lighting. Compatibility with adjacent uses is one of the criteria for evaluating whether or not to grant a petition for rezoning. Staff finds that the restrictions and commitments that are set forth in the DRC and Conceptual Site Plan substantially address the compatibility of the proposed expansion with the neighborhood, and should improve certain existing conditions by virtue of improvements that SFHT is committing to make. Nevertheless, Staff does not have sufficient information to determine whether or not the expansion will reduce the values of abutting and adjacent properties.

Fiscal Impact

N/A

Staff Contact

Jeff Katims, AICP, CNU-A – Deputy Town Planner

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COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THRU: Andy Berns, Town Administrator

FROM: The Mellgren Planning Group

DATE: June 25, 2014

SUBJECT: SUPPLEMENTAL REPORT FOR REZONING APPLICATION No. RZ-017-12, SOUTH FLORIDA HINDU TEMPLE (SFHT)

RECOMMENDATION: If the Town Council approves the Application, it should do so with the following stipulations:

- a. Execution of the Declaration of Restrictive Covenants and Unity of Title Agreement by parties authorized to do so pursuant to an Opinion of Title to be produced by the property owner and found acceptable by the Town Attorney.
- b. No building permit shall be issued for the Property until a plat has been processed and recorded, and a site plan has been approved by the Town.
- c. Applicant shall pay to the Town of Southwest Ranches an amount equal to the total expenses incurred by the Town in the processing and finalizing of this application, prior to the issuance of the first building permit. This includes, but may not be limited to, expenses for engineering, planning, legal, advertising, five (5%) percent administrative fee, and any related expenses that the Town has or will incur as a direct cost of this application.

PREVIOUS ACTION

February 7, 2013 - The Town Council approved Application No. RZ-017-12 on first reading subject to the conditions of approval recommended in the staff report, with the following additional stipulations that the petitioner has now incorporated into the declaration of restrictive covenants, attached.

- Increase the height of the perimeter wall from 6 feet to 8 feet.
- Emergency access gate to be opaque.
- Existing house shall be used only for storage upon rezoning.
- Town shall have the right to inspect the existing house to ensure it is being used only for storage as of March 1, 2013.
- Temple shall remove all exotic trees under the power lines by June 1, 2013.

March 7, 2013 – The Town Council deferred final consideration of the application on second reading to a date and time uncertain in order to provide the applicant and the adjacent neighborhood additional opportunity to discuss concerns.

CHANGES TO APPLICATION SUBSEQUENT TO THE MARCH 7, 2013 PUBLIC HEARING

In the months following the Town Council deferral of second reading, the Town Administrator met with residents of the immediate neighborhood in order to obtain additional feedback. The Town Administrator then shared the residents' concerns and ideas with SFHT representatives. In April, 2014, the SFHT submitted a revised proposal.

The revised proposal addresses a key resident concern: that the height and mass of the building would not be residential in character. By reducing the second story from 5,700 square feet to 2,800 square feet (a 50 percent reduction), the size of the second floor will be comparable to that of a large, two-story single-family home. The revised proposal also reduces the maximum height of the building from 32 feet to 28 feet.

In reducing the size of the proposed building's second story (technically to be considered a mezzanine on the new plan), SFHT proposes to expand the ground floor from 5,700 square feet as originally proposed to 7,000 square feet in order to maintain a similar building size to that originally proposed. The total community center building area on the proposed plan is 11,200 square feet, which represents a 200 square-foot reduction from the original plan.

SFHT also agreed to:

- Erect an ornamental metal fence along SW 130th Avenue with landscaping, in lieu of a concrete wall.
- Minimize use of the rezoning parcel driveway by construction traffic.
- Bring all existing parking lot lighting into conformance with the Town's Dark Sky Ordinance.

Please refer to the original agenda report (attached) for the numerous commitments the SFHT had made before second reading in March, 2013.

SUMMARY OF RESIDENT FEEDBACK

The Town Administrator met with residents of 130th Avenue and SW 52nd Street on several occasions. Staff synthesized the feedback into several recommendations for the applicant to consider. Staff met with and discussed the recommendations with the applicant.

Common resident concerns:

1. Traffic on SW 130th Avenue.
2. Insufficient parking.
3. Additional special events, and location of same further into the neighborhood on the site of the proposed community center building.
4. Construction equipment using SW 130th Avenue to access the site.
5. Nonresidential sale of the new building.
6. Landscape buffer design.
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8. Noise from patio activity behind the existing temple building.
9. Further expansion conflicts with original representations made when the original site plan was approved.
10. Additional signage.
11. Possible reduction of property values.

DISCUSSION OF RESIDENT FEEDBACK

✚ Resident comments are listed below in *italics*. Staff analysis follows each comment.

1. Traffic on SW 130th Avenue.

- (i) *Resident(s) stated that they already experience traffic congestion from the existing temple facility, which they would like to see ameliorated, and are concerned that expansion will only exacerbate this condition.*

The addition of a community center can be expected to result in additional events and activities that generate traffic at times and/or in volumes that are additional to current operations. The amount of traffic to and from the site at any time will be limited by available parking. Operation of the SFHT facilities in a manner that results in illegally parked cars will be subject to enforcement.

The Institute of Traffic Engineers (ITE) *Trip Generation Manual, 9th Edition* predicts that peak hour (weekend) use of the Property after the expansion would increase 57 percent, from 188 trips to 294 trips. However, the ITE data do not correlate traffic generation with the composition of building space at a place of worship, and therefore has limited value. Moreover, the parking facility—even as proposed to be expanded—cannot accommodate this predicted increase in vehicles. The predicted traffic increase would require an additional 106 parking spaces, whereas only 41 additional spaces can be provided, noting that the existing parking facility is fully utilized during peak periods. Accordingly, the use of the property will be subject to restrictions governing concurrent use of the facilities as part of site plan approval, which will effectively limit the amount of additional peak hour traffic that will be generated. All nonresidential facilities in the Town are subject to code enforcement action should the number of parked cars exceed the number of legal parking spaces onsite.

- ❖ Staff suggested that the SFHT consider closing the SW 130th Avenue driveway to departing traffic after large events, which would address residents' existing complaint that departing traffic clogs SW 130th Avenue and disobeys the stop sign posted at the exit. SFHT has not accepted this recommendation.

Note: The adequacy of the existing left turn lane on Griffin Road will be reevaluated by Broward County Highway Construction and Engineering Division at the time of platting.

- (ii) *Resident(s) stated that some vehicles seeking to enter the temple facility via SW 130th Avenue inadvertently miss the entrance, and turn around in residents' driveways, representing an intrusion into the residential neighborhood.*

The SFHT is proposing new signage adjacent to the SW 130th Avenue entrance that should decrease the number of missed turns into the facility (see No. 10 for further discussion). Residents objected to additional ground signs, so the SFHT has agreed that no new ground sign will be permitted unless the SFHT presents the Town Council with a specific signage proposal that is of a size and design that is acceptable to the Town Council, after review and comment by residents of SW 130th Avenue and SW 52nd Street.

- (iii) *Resident(s) stated that SFHT should hire BSO traffic details to ensure that exiting vehicles obey the stop sign, and to smooth traffic operations.*

SFHT responded that it provides active traffic management during special events where traffic exceeds weekly levels and off-site parking and shuttles are utilized, but does not believe that it is warranted during weekly peak traffic periods.

- ❖ It is noted that at the time of county plat approval in 1996, the county commission specifically relied on SFHT's commitment on the record that it would hire police to direct traffic if "traffic becomes an impact to the area" (specifically referencing SW 130th Avenue). Based upon resident's complaints in response to the rezoning application, the Town Council could find that peak weekly traffic has become an impact to the neighborhood. Although this representation from 1996 itself is not enforceable, the Town Council may consider this representation in its evaluation of the application for rezoning and expansion of the SFHT.

- (iv) *Resident(s) stated that the SW 130th Avenue driveway into the temple facility is not secondary in terms of traffic volume.*

The original Town staff report characterized the SW 130th Avenue entrance as being secondary in relation to the Griffin Road entrance, given its location on a residential side street and not an arterial roadway. This characterization may not be accurate based upon the distribution of traffic using the two (2) driveways. In the absence of professionally acceptable traffic counts at both driveways, the determination as to which driveway is primary and which is secondary in terms of traffic volumes cannot be made.

- (v) *Resident(s) stated a concern that traffic generated by the expansion will use the existing residential driveway within the rezoning/expansion property, as SFHT traffic already does use this driveway.*

SFHT has already agreed, as part of its voluntary declaration of restrictive covenants ("DRC"), that the residential driveway will be closed to all but emergency vehicle access. All terms of the DRC are enforceable as code requirements, and are subject to additional enforcement remedies set forth in the DRC.

2. Parking.

- i. *Resident(s) stated a concern that parking in the 130th Avenue swale will get worse if the SFHT expands, as it is adding a relative few parking spaces compared to the size of the proposed building.*

SFHT closed the gap in the hedge in response to earlier complaints, and will install a 6-foot ornamental fence with landscaping that will prevent direct access to the preferred east entrance via SW 130th Street. Furthermore, as a condition of site plan approval, SFHT will not be permitted to schedule events and activities in the two buildings that would at any time require a greater number of parking spaces than are available. Again, "overparking" (more cars than legal spaces) is a ULDC violation and is subject to Town enforcement.

SFHT has installed two (2) "No Parking" signs on the west side of SW 130th, and is required to install four (4) more pursuant to the terms of the DRC, including the east side of the street. All signs will be required to conform to the specifications of standard roadway traffic control signs and include towing language.

- 3. Special events.** *Resident(s) stated a concern about disruptive noise and traffic during special events. A bloodmobile parked on the 130th Avenue swale was also mentioned.*

SFHT has agreed in the DRC not to hold any outdoor activity on the community center parcel unless the Town has issued a special event permit. The frequency and duration of outdoor special events is limited by Sec. 035-040 to six (6) events annually. SFHT is required, as a condition of an outdoor event permit for the existing Temple property, to provide for traffic direction and off-site parking.

4. **Construction access.** *Resident(s) commented that construction equipment and related traffic should not be allowed to use 130th Avenue to access the proposed community center construction site.*

The residents' concern appears to be the potential for enduring a prolonged period of construction traffic, perhaps spanning years, should construction progress be tied to ongoing fundraising for each new phase of building and site construction. To address the concern, SFHT has agreed in the DRC to direct construction traffic to use the Griffin Road entrance to the facility unless use of the rezoning parcel driveway is necessary for the safety of congregants during Temple services and events (i.e. at defined times when construction typically does not take place). In order to further address the concern, the opaque gate that SFHT is required to construct (before issuance of building permits for the new community center) must remain closed when not being used for ingress and egress of construction equipment.

5. **Scale of new building.** *Resident(s) stated a concern that the proposed community center building will be larger and higher than the code would allow for a residential structure, and it will look institutional.*

A two-story single-family residence on the subject property can currently be built to exceed 18,000 square feet in area and up to 35 feet in height with a 50-foot front setback and 25-foot side setback. SFHT is proposing to construct 11,200 square feet under roof with a partial second story (25% of the total building area), maximum height of 28 feet, an 81.5-foot front setback, and a 50-foot south side setback.

Staff requested that SFHT consider giving at least the second story of the community center building a residential appearance, using design techniques to reduce the mass of the second story and use a residential-style hip or gable roof. Discussion ensued, and SFHT resisted such a stipulation because of the vagueness of "residential appearance" and a concern that culturally significant aspects of its architecture could be compromised.

However, subsequent to the March 7, 2013 public hearing, SFHT determined that it would reduce the size of the second story from 5,600 square feet to 2,800 square feet and instead increase the building footprint to make up the difference. This revised building massing is more consistent with that of a large single-family residence.

6. **Landscape buffer design.** *Resident(s) stated that they should have input on the design of the buffer (some feel that it is insufficient; some commented that the drainage retention ponds that would be located behind the masonry wall won't benefit the residents because they won't be able to see it, and some residents did not want an 8-foot wall along SW 130th Avenue).*

The landscape buffer design is subject to site plan approval by the Town Council. Residents will be able to review and comment on the proposed buffer design and materials at that time. In response to resident comments, SFHT is substituting an ornamental metal fence for the masonry wall along SW 130th Avenue, and limiting its height to 6 feet, and reducing the height of the future wall on the south property line from eight (8) feet to six (6) feet.

- 7. Lighting.** *Resident(s) are concerned that the site lighting will be brighter than would be permitted in a residential area.*

Lighting fixtures must be full cut-off (shielded on all four sides) and set back at least 50 feet or twice the height of the fixture (an incentive for lower fixtures). All existing lighting must also come into compliance with code requirements for cut-off fixtures prior to issuance of a building permit for the community center building.

- 8. Patio activity.** *Resident(s) complained that the covered patio behind the temple building is used as a place of frequent congregation, including music.*

The covered patio was approved and constructed for outdoor congregation. During several site visits to SFHT, staff observed gatherings on the patio, although noise was either not audible or minimally audible from the street.

- 9. Further expansion.** *Resident(s) are concerned that SFHT can continue to expand into their neighborhood. Resident(s) are concerned that the SFHT is growing into a regional facility that is beyond the scale that the SFHT represented to county government officials when it was originally approved.*

SFHT clearly is, and will be, a larger facility than was originally represented to the Broward County Board of County Commissioners when it obtained approvals in 1996. Several residents of SW 130th Avenue attended one or more of the Commission public hearings and recall these representations, however the representations were not binding upon the property.

The proposed expansion would bring the total site area to 4.6 acres. The Comprehensive Plan limits the size of community facilities to five (5) acres in area, meaning that SFHT could still potentially acquire an additional 0.4 acre for further expansion. Any future building expansion within the existing 4.6 acres of SFHT property would be subject to Town Council amendment of the DRC.

- 10. Additional signage.** *Resident(s) do not want additional temple identification signage on 130th Avenue.*

SFHT is not permitted to erect a monument or other ground sign along SW 130th Avenue pursuant to the DRC unless the Town Council approves the sign based upon its size, design and placement, after considering the input of residents living on SW 130th Avenue and SW 52nd Street. The Town Council may decline to approve a ground sign, and instead allow an alternative sign such as a sign attached to a perimeter fence column.

- 11. Taxes.** *Resident(s) are concerned that the rezoning will remove the proposed community center parcel from the tax rolls.*

The rezoning subject property is already owned by the SFHT, and already receives a property tax exemption as a not-for-profit entity.

- 12. Property values.** *Resident(s) are concerned that the SFHT expansion will lower their property values because of the expansion deeper into their neighborhood.*

The lowering of property value is a common concern among residential property owners when a rezoning is proposed. There are land uses and aspects of development design (height, setbacks, design, access location, etc.) that are incompatible with single-family residential neighborhoods that can be expected to reduce property values.

A place of worship is not a land use that is presumptively incompatible with a single-family neighborhood, and in some contexts, is seen as a desirable amenity. This is one reason that the land use plans of Broward County and its municipalities permit community facilities within the low-density residential land use plan designations. Compatibility of a place of worship with an adjacent single-family neighborhood in a quasi-suburban setting is largely determined by the juxtaposition and orientation of the facility to the neighborhood, physical scale of the buildings in relation to their distance from property lines and extent of buffering, the size of the principal assembly area—which correlates to the amount of traffic that can be potentially generated, access locations, building design, the amount of landscaping (and maintenance thereof), and the concentration of community facilities in an area.

For these reasons, the Town limits the size of a place of worship and most other community facilities to five (5) acres, restricts their location to arterial road frontages, limits their access to arterial roads (unless the facility pre-existed the adoption of these requirements), restricts maximum height to thirty-five (35) feet and Floor Area Ratio to 0.25, requires a 50-foot yard abutting residential zoning and use, prohibits day care centers and schools, and requires dispersal of community facilities within the Town.

All of the preceding protections and limitations do not guarantee that residential property values will be unaffected by the location of a place of worship. In the case of SFHT, the facility already exists, and an incremental yet significant expansion is proposed. The expansion does extend approximately one-third further into the adjacent neighborhood. As a result, SFHT has made several commitments intended to offset any impact the expansion would have on the neighborhood, including building height, building placement, massing design, screening and buffering, use, signage, and lighting. Compatibility with adjacent uses is one of the criteria for evaluating whether or not to grant a petition for rezoning. Staff finds that the restrictions and commitments that are set forth in the DRC and Conceptual Site Plan substantially address the compatibility of the proposed expansion with the neighborhood, and should improve certain existing conditions by virtue of improvements that SFHT is committing to make. Nevertheless, Staff does not have sufficient information to determine whether or not the expansion will reduce the values of abutting and adjacent properties.

Fiscal Impact

N/A

Staff Contact

Jeff Katims, AICP, CNU-A – Deputy Town Planner

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ORDINANCE NO. 2014 -

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE REZONING OF APPROXIMATELY 1.06 ACRES FROM RURAL ESTATE DISTRICT TO COMMUNITY FACILITY DISTRICT, GENERALLY LOCATED 600 FEET SOUTH OF GRIFFIN ROAD ON THE WEST SIDE OF SW 130TH AVENUE, MORE PARTICULARLY DESCRIBED AS THE SOUTH 173.00 FEET OF THE NORTH 844.00 FEET OF SECTION 26, TOWNSHIP 50 SOUTH, RANGE 40 EAST, LYING SOUTH OF SOUTH NEW RIVER CANAL, LESS THE EAST 2631.70 FEET AND LESS THE WEST 2331.66 FEET, LESS THE EAST 50.00 FEET THEREOF (SOUTH FLORIDA HINDU TEMPLE, 5000 SW 130TH AVENUE, APPLICATION #RZ-017-12); PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the South Florida Hindu Temple, Inc. is the owner of the subject property ("Property"), described in Exhibit "A" attached hereto and incorporated herein by reference, has petitioned the Town of Southwest Ranches for a change in the zoning designation for the property from Rural Estate to Community Facility District; and

WHEREAS, the Town Council of the Town of Southwest Ranches, has held two duly advertised public hearings on this rezoning in accordance with Florida law; and

WHEREAS, the property owner has voluntarily proffered, as part of the application for rezoning, certain restrictions and limitations upon the use and development of the Property, attached hereto and incorporated herein by reference as Exhibits "B" and "C"; and

WHEREAS, these restrictions and limitations are intended to maximize the compatibility of such use and development with adjacent properties and to help protect the Town's rural character and lifestyle; and

WHEREAS, the Town Council finds that the application is consistent with the adopted Comprehensive Plan, and satisfies the criteria for the consideration and approval of rezoning applications set forth in the Town of Southwest Ranches Unified Land Development Code.

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

Section 1: Recitals. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2: Zoning change. That in consideration of the proffered restrictions and limitations, attached hereto and incorporated herein by reference as Exhibits "B" and "C", the Town hereby finds that the rezoning is consistent with the Town's Unified Land Development Code and that the zoning map designation of the property described in Exhibit "A", attached

Ordinance No. 2014-____

hereto and incorporated herein by reference, is hereby amended and changed from Rural Estate to Community Facility.

Section 3: Map amendment and recordation. That the Town Administrator or designee shall, immediately following the effective date of this Ordinance, cause this Ordinance to be recorded in the Public Records of Broward County, Florida, and shall cause the Town of Southwest Ranches Official Zoning Map to be updated to reflect this amendment.

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

Section 5: Severability. If any word, phrase, clause, sentence or section of this Ordinance is, for any reason, held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Section 6: Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

PASSED ON FIRST READING this 7th day of February, 2013 on a motion made by _____ and seconded by _____.

PASSED AND ADOPTED ON SECOND READING this __ day of ____, 2014, on a motion made by _____ and seconded by _____.

Nelson _____
Jablonski _____
Fisikelli _____
Breitkreuz _____
McKay _____

Ayes _____
Nays _____
Absent _____
Abstaining _____

Jeff Nelson, Mayor

ATTEST:

Russell Muñiz, MMC, Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff, J.D., Town Attorney
ACTIVE: 4462600_1

Ordinance No. 2014-____

EXHIBIT "A"

The South 173.00 feet of the north 844.00 feet of Section 26, Township 50 South, Range 40 East, lying south of the South New River Canal, less the east 2631.70 feet and less the west 2331.66 feet; less the east 50 feet thereof. (Broward County Property Appraiser Tax Folio Number 504026000174).

Ordinance No. 2014-____

EXHIBIT “B”
Unity of Title Agreement

(Attached)

Ordinance No. 2014-____

EXHIBIT “C”

Declaration of Restrictive Covenants

(Attached)

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To:

Name: Town of Southwest Ranches.

Address:

13400 Griffin Road
Southwest Ranches, Florida 33330

This Instrument Prepared by:

Juan Carlos Arteaga, AIA, NCARB.
A&A Architect, Inc.
Architecture, Urban Planning, Construction
2864 Oakbrook Drive
Weston, Florida 33332

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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made this ____day of _____, 2014 by South Florida Hindu Temple, Inc., a Florida non-profit organization, with a principal address of 13010 W Griffin Road, Town of Southwest Ranches, FL 33330 ("Declarant"); and

WITNESSETH:

WHEREAS, Declarant owns and operates a place of worship, zoned Community Facility District ("CF"), located on 3.548 acres legally described in **Exhibit "A"**, attached hereto and made a part hereof (the "Worship Center Plat"); and

WHEREAS, Declarant also owns a property of approximately 1.056 acres of land, zoned Rural Estate District ("RE") and containing a single-family dwelling, legally described in **Exhibit "A-1"**, attached hereto and made a part hereof (the "Annex Parcel"); and

WHEREAS, Declarant has submitted an application to the Town of Southwest Ranches, a Florida municipal corporation ("Town") to rezone the Annex Parcel from RE to CF in order to construct a community center building for its congregation (the "Application"); and

WHEREAS, the Declarant has proffered a Unity of Title Agreement to the Town, which upon rezoning of the Annex Parcel, will combine and unify the title of the Annex Parcel with that of the Worship Center Plat for a total unified site area of 4.6 acres ("the Unified Property"); and

WHEREAS, the Applicant has proffered a conceptual site plan, attached as **Exhibit "B"**, hereto and made a part hereof ("Conceptual Plan"); and

WHEREAS, Declarant has voluntarily offered to enter into this Declaration to place restrictions on the use and development of the Unified Property in connection with the Application as soon as the application is approved.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, Declarant hereby declares that the Unified Property shall be owned, held, used, and occupied subject to the covenants, restrictions, and regulations hereinafter set forth.

1. **Recitations.** The recitations set forth above are true and correct and are incorporated into this Declaration by this reference.
2. **Conceptual Plan.** The Unified Property shall be developed only in accordance with the Conceptual Plan attached hereto and incorporated herein as Exhibit "B". Development shall be subject to all requirements of the Town of Southwest Ranches Unified Land Development Code ("ULDC"), which may affect the amount, location or configuration of development depicted on the Conceptual Plan. The textual landscaping and screening stipulations herein prevail over the generalized depictions of same shown on the conceptual plan.
3. **Interim Use of Annex Parcel; Inspections.** The use of the existing single-family dwelling on the Annex Parcel for living quarters shall cease immediately upon rezoning of the Annex Parcel. The use of the building shall thereafter be limited to accessory passive storage use only by the Declarant until such time as the building is demolished. No other use of the Annex Parcel shall be permitted until the Town issues a

Certificate of Occupancy for the new community center building. The Town of Southwest Ranches is hereby authorized to inspect the building from time to time to ensure compliance with this paragraph.

4. Permanent Community Center Use of Annex Parcel. Use of the Annex Parcel is permitted only by the owner of the Unified Property, including its congregation membership, and only for the following specified uses in connection with the worship use of the Worship Center Plat and legal occupancy of a new community center building: gathering for cultural events, religious instruction (but not day care or academic instruction), priest's living quarters (not to exceed 1,500 square feet), administrative offices, restrooms, and storage. Any use not specifically listed above is prohibited. Furthermore, no part of the Unified Property shall be leased, and no part shall be utilized by other than the owner of the Unified Property. Notwithstanding the above permitted use, outdoor gatherings within the Annex Parcel shall be prohibited unless the Town has issued an Outdoor Event Permit for the gathering.

5. Perimeter Buffer. Declarant shall erect a buffer along the south, east and west property lines. The buffer along the east property line shall extend the full frontage of the Annex Parcel and at least the portion of the Worship Center Plat south of the SW 130th Avenue parking lot entrance. The buffer shall be erected as shown on the Conceptual Plan, and shall contain the following elements:

- a. *Wall.* An unpierced masonry wall or decorative pre-fabricated panel wall with columns, subject to approval by the Town Council of the Town of Southwest Ranches ("Town Council"), six (6) feet in height along the south and west property lines, and a decorative/ornamental metal fence (ex: aluminum or wrought iron picket) along the SW 130th Avenue frontage of the Worship Center Plat. The fence shall be continuous and unpierced, except for an emergency access gate as shown on the Conceptual Plan. Said access gate shall be six (6) feet in height and shall be opaque. Any masonry wall shall be finished with two (2) courses of stucco and shall be painted a neutral color. Any pre-fabricated panel wall with columns can be of a stamped, colored and texture-treated variety so as to appear site-built of stone or a design approved by the Town Council.
 - i. Since a utility easement exists in between the existing parking lot of the Worship Center Plat and the west property line, Declarant shall request approval from all applicable utilities to allow the wall to encroach within the easement. In the event that the encroachment request is denied, Declarant shall diligently request an easement within the adjoining vacant property to construct and maintain the wall upon said property.
- b. *Exterior trees.* A row of shade trees planted thirty (30) feet on center, located exterior to the wall. This requires that the wall be set back from the property lines in order to accommodate the landscaping regardless of any depictions to the contrary on the Conceptual Plan. Alternatively, along the south and west property lines:
 - i. The Declarant may obtain permission from abutting property owners to locate the landscaping on said properties; or
 - ii. The Declarant can obtain a written waiver from said abutting property owners for the landscaping otherwise required to be placed exterior to the wall facing private property. Any such waiver shall include an acknowledgement by the applicable property owner as to the development plans for the Annex Parcel.
- c. *Interior trees.* A second row of shade trees staggered with the first row, planted thirty (30) feet on center on the interior side of the wall along the south and east (SW 130th Avenue) property lines.
- d. *Exterior hedge.* A continuous hedge shall be planted on the SW 130th Avenue side of the wall and shall be maintained at a height of at least four (4) feet once mature.
- e. *Compliance with ULDC.* All landscape materials and their installation shall comply with the requirements of the ULDC.
- f. *Timing.* No building permit shall be issued for any demolition or construction on the Annex Parcel other than the perimeter buffer, unless the full buffer along the south and SW 130th Avenue property lines shall have been installed and approved on final inspection by the Town at least ninety (90) days prior to issuance of the permit. The buffer along the west property line shall be installed and approved on final inspection by the Town prior to the earlier of: 1) issuance of a certificate of occupancy for the community center building; or 2) one hundred twenty (120) days from the date the town mails notice to SFHT that the adjacent property owner has submitted a site plan application; provided that failure to complete the buffer and receive final inspection within said one hundred twenty (120) days shall be a violation of the terms of conceptual site plan approval, and shall be prosecutable as a violation of the Town's Code.

6. Removal of exotic vegetation. Declarant shall remove all exotic vegetation within all utility easements and under all power lines no later than August 1, 2014. Declarant is responsible for obtaining a Town tree removal permit prior to commencement of this activity.

7. Parking lot lighting. Any new parking lot lighting poles or fixtures shall either be located a minimum of fifty (50) feet from the south and west property lines, or the fixtures shall be set back a distance

equal to at least twice the height of the fixture. All fixtures shall comply with the outdoor lighting restrictions of Article 95 the ULDC. Furthermore, all existing lighting within the Unified Property shall be brought into full compliance with the outdoor lighting restrictions of Article 95 of the ULDC, as required in Sec. 095-050 prior to issuance of a building permit for the proposed community center building.

8. Use of existing driveway on Annex Parcel. The existing driveway on the Annex Parcel shall not be utilized—and the opaque gate across the driveway shall remain in a closed position—except for emergency ingress and egress, and when necessary for the ingress and egress of construction equipment only while a valid building permit is in effect. Declarant agrees to consistently direct construction-related traffic to use the Griffin Road driveway for ingress and egress, except during Temple activities and events when use of the Annex Parcel driveway is necessary for the safety of Temple congregants on the Worship Center Plat premises.

9. Signage. There shall be no ground signage along SW 130th Avenue unless approved by the Town Council at an advertised public hearing after mail notification to each owner of property that accesses either SW 130th Avenue or SW 52nd Street. A freestanding wall sign without changeable copy for “South Florida Hindu Temple”, of a size and design that is determined to be acceptable by the Town Council, shall be permitted in lieu of ground signage at the SW 130th Avenue entrance to the Worship Center Plat, subject to the requirements of Article 70 and clear sight distance requirements.

10. No parking on swale. Declarant shall erect at least three (3) metal “no parking” signs on standard metal posts in the SW 130th Avenue swale on each side of the street with Town “tow-away” signage. Declarant shall obtain approval and permits from Town Engineer prior to installation of signs.

11. Unity of Title. The Unified Property is subject to a Unity of Title recorded in Official Records Book_____, at Page _____ amongst the Public Records of Broward County, Florida. Accordingly, the Unified Property shall be owned and developed by a single owner including, but not limited to, an individual, partnership, corporation, limited liability company, trust or other person or legal entity.

12. Maintenance of the Unified Property. The Unified Property shall be maintained, operated and managed by the Declarant, its successors and/or assigns, in accordance with all applicable governmental laws, rules, ordinances, regulations and code provisions; provided, however, Declarant, its successors and/or assigns, shall be permitted to assign its obligations to maintain, operate and manage the Unified Property to a property association, or a management company.

13. Amendments. This Declaration shall not be modified, amended, released or terminated, except by written instrument, executed by the then owner or owners of the Unified Property, and by Resolution of the Town Council.

14. Recordation and Effective Date. This Agreement shall be recorded in the Public Records of Broward County, Florida, at the sole cost and expense of the Declarant, and the provisions hereof shall constitute a covenant running with the land and shall remain in full force and effect and binding upon the undersigned, its heirs, legal representatives, estate successors, grantees, successors and/or assigns until released as provided for herein. This instrument shall not become effective and shall not be recorded in the Public Records of Broward County, Florida until after approval by the Town of the Application, changing the zoning of the Annex Parcel from RE to CF.

15. These covenants and restrictions during their lifetime shall be for the benefit of, and limitation upon all present and future owners of the Unified Property and for the public welfare.

16. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part hereof invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

17. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions there under or the terms and provisions of this Declaration.

18. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

19. This Declaration shall be construed and shall be enforced in accordance with the laws of the State of Florida in the courts of Broward County, Florida.

20. The prevailing party in any action or suit pertaining to or arising out of enforcement of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the

Court may adjudge to be reasonable for costs and attorney’s fees. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

21. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictive Covenants on the day first above written.

WITNESSES:

South Florida Hindu temple, Inc., a Florida
Non-profit organization

Print Name: _____

By: _____
Print Name: _____

Title: _____

Address: _____

Print Name: _____

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____day of _____, 2014, by _____, the _____ of South Florida Hindu Temple, Inc., a Florida non-profit organization, freely and voluntarily under authority vested in him/her by said corporation. He/She is personally known to me or has produced as identification.

Notary Public

Typed, printed or stamped name of Notary Public

My Commission Expires: _____

EXHIBIT"A"

"Community Worship Plat"

Tract "A" of the Community Worship Center, according to the plat thereof, as recorded in Plat Book 161, Page 39 of the Public Records of Broward County, Florida.

Together with:

EXHIBIT"A-1"

"Annex Parcel"

The South 173.00 feet of the north 844.00 feet of Section 26, Township 50 South, Range 40 East, lying south of the South New River Canal, less the east 2631.70 feet and less the west 2331.66 feet (Broward County Property Appraiser Tax Folio Number 504026000174).

EXHIBIT "B"

CONCEPTUAL SITE PLAN

11788521.1

LEGAL DESCRIPTION:

TRACT "A", COMMUNITY WORSHIP CENTER, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 161, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

TOGETHER WITH:

THE SOUTH 173.00 FEET OF THE NORTH 844.00 FEET OF SECTION 26, TOWNSHIP 50 SOUTH, RANGE 40 EAST, LYING SOUTH OF SOUTH NEW RIVER CANAL, LESS THE EAST 2631.70 FEET AND LESS THE WEST 2331.66 FEET; LESS THE EAST 50.00 FEET THEREOF.

SAID LAND LYING IN BROWARD COUNTY, FLORIDA, CONTAINING 200.695 SQUARE FEET (4.607 ACRES), MORE OR LESS

ZONING DATA

EXISTING ZONING DISTRICT:
RURAL ESTATE

PROPOSED ZONING DISTRICT:
COMMUNITY FACILITY

JUSTIFICATION: THE PLAT SOUTH OF THE COMMUNITY FACILITY DISTRICT BELONGS TO THE SAME OWNER BY ANNEXING THIS LOT TO THE FACILITY PROVIDES A MUCH BETTER BUFFER BETWEEN THE COMMUNITY FACILITY DISTRICT ZONED EXISTING LOT AND THE RURAL ESTATE DISTRICT SOUTH AND WEST OF THE COMMUNITY CENTER. THIS ANNEXATION REQUEST FOR REZONING OF THE SMALL PLOT SOUTH OF THE MAIN COMMUNITY FACILITY PLOT FULLY COMPLIES WITH THE MINIMUM REQUIREMENTS AND THE USE SPECIFIED IN THE UNIFIED LAND DEVELOPMENT CODE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA.

PLOT DATA DESCRIPTION:

LOT SIZE:
MINIMUM REQUIRED: 43,560 SF (1 ACRE)
PLOT SIZE: 46,139.10 SF (1+ ACRES)
FLOOR AREA RATIO:
FAR ALLOWED: 25% (11,534 SF)
FAR PROPOSED: 24% (11,200 SF)
SETBACKS:
NORTH: 0'-0" (MIN REQ'D) - 30'-0" PROPOSED
SOUTH: 50'-0" (MIN REQ'D) - 50'-0" PROPOSED
EAST: 50'-0" (MIN REQ'D) - 81'-6" PROPOSED
WEST: 50'-0" (MIN REQ'D) - 80'-0" PROPOSED
PERVIOUS AREA:
MIN REQUIRED: 18,456 SF (40%)
PROPOSED: 25,570 SF (55%)
FLOOR AREA RATIO:
MAX ALLOWED: 11,534 SF (25%)
PROPOSED: 11,200 SF (24%)
LANDSCAPING:
PROPOSED COMPLETE LANDSCAPE/FENCE BUFFER WHERE ABUTTING DIFFERENT ZONING DISTRICTS

BUILDING DATA:

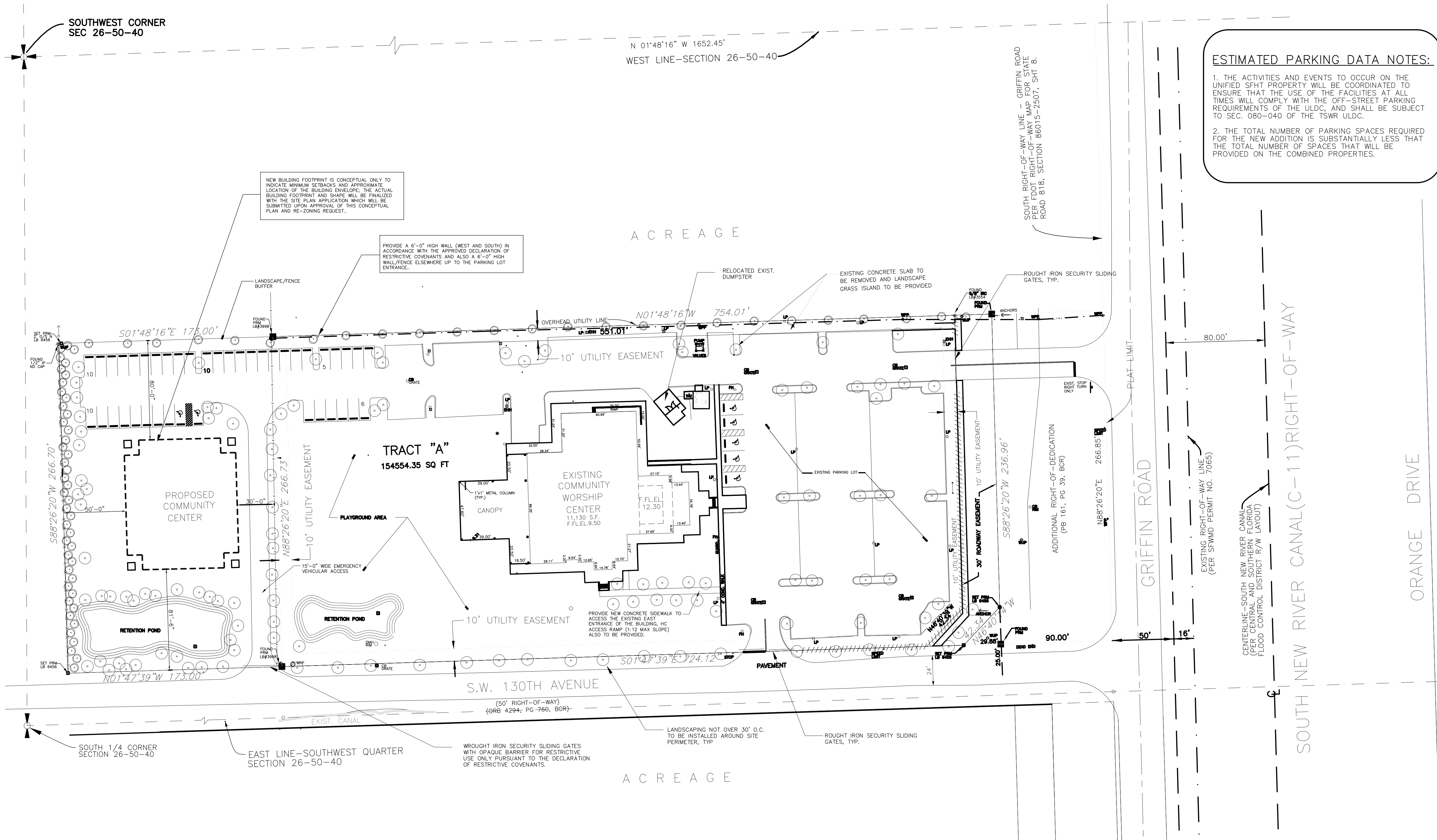
TOTAL BUILDING AREA:
MAX ALLOWED: 11,534 SF
PROPOSED: 11,200 SF
BUILDING HEIGHT:
MAX ALLOWED: 35'-0"
PROPOSED: 28'-0"
NUMBER OF STORIES:
MAX ALLOWED: 3
PROPOSED: 1 + MEZZANINE
TOTAL BUILDING AREA PROPOSED:
TOTAL= 11,200 SF
GROUND FLOOR= 8,400 SF
MEZZANINE= 2,800 SF
ASSEMBLY USE: 4,200 SF
COMMUNITY SERVICES USE: 7,000 SF
TOTAL: 11,200 SF

ESTIMATED PARKING REQUIREMENTS:

OFF-STREET PARKING REQUIREMENTS:
ASSEMBLY/CONGREGATION USE:
1 PER 50 SF OF GROSS FLOOR AREA
4,200/50 = 84 SPACES REQUIRED
MISCELLANEOUS AREAS:
1 PER 200 SF OF GROSS AREA
7,000/200 = 35 SPACES REQUIRED
TOTAL OFF-STREET PARKING REQUIRED:
84 + 35 = 119 PARKING SPACES REQUIRED
OFF-STREET PARKING PROVIDED:
119 SPACES (INCLUDING HC)
NUMBER OF HC REQUIRED SPACES:
AS PER FLORIDA BUILDING CODE, ACCESSIBILITY CHAPTER 2 SCOPING - TABLE 208.2
PARKING SPACES:
119 PARKING SPACES:
MINIMUM 5 HC REQUIRED
5+ HC SPACES PROVIDED
SEE ESTIMATED PARKING DATA NOTES BELOW.

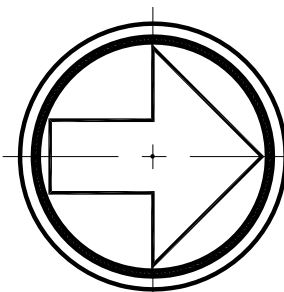
ESTIMATED PARKING DATA NOTES:

1. THE ACTIVITIES AND EVENTS TO OCCUR ON THE UNIFIED SFHT PROPERTY WILL BE COORDINATED TO ENSURE THAT THE USE OF THE FACILITIES AT ALL TIMES WILL COMPLY WITH THE OFF-STREET PARKING REQUIREMENTS OF THE ULDC, AND SHALL BE SUBJECT TO SEC. 080-040 OF THE TSWR ULDC.
2. THE TOTAL NUMBER OF PARKING SPACES REQUIRED FOR THE NEW ADDITION IS SUBSTANTIALLY LESS THAN THE TOTAL NUMBER OF SPACES THAT WILL BE PROVIDED ON THE COMBINED PROPERTIES.



CONCEPTUAL SITE PLAN

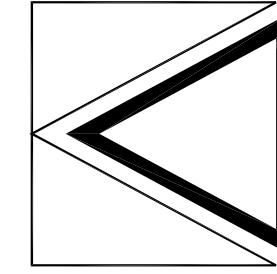
SCALE: 1" = 40'-0"



CONCEPTUAL SITE PLAN CLARIFICATION NOTES:

1. INFORMATION SHOWN ON CONCEPTUAL SITE PLAN DATA APPLIES FOR THE EXPANSION PROPERTY FOR WHICH A REZONING IS REQUESTED. A CONSOLIDATED FINAL SITE PLAN WILL BE PREPARED AND SUBMITTED UPON RE-ZONING APPLICATION APPROVAL BY THE TOWN.
2. THE PARKING REQUIREMENTS AND ACTUAL PARKING STALLS TO BE ADDED WILL BE SUBMITTED AT THE TIME OF SITE AND BUILDING PLAN APPROVAL. THIS INFORMATION IS SHOWN HERE JUST TO ILLUSTRATE THAT FINAL SITE PLAN WILL COMPLY WITH ZONING REQUIREMENTS UTILIZING THE SHARED PARKING PROVISIONS OF SEC. 080-040 OF THE ULDC. CONSTRUCTION OF THE COMMUNITY CENTER WILL BE SUBJECT TO FULL COMPLIANCE WITH TSWR OFF-STREET PARKING REQUIREMENTS.
3. ALL INFORMATION SHOWN HERE IS CONCEPTUAL IN NATURE INTENDED ONLY TO INDICATE CONCEPTUAL BUILDING SETBACKS AND LOCATION; DIMENSIONS ARE APPROXIMATIONS WHICH WILL NOT TO BE EXCEEDED AT FINAL SITE PLAN.
4. FINAL SITE PLAN WILL COMPLY WITH ALL APPLICABLE ZONING AND CODE TOWN REQUIREMENTS.
5. ALL OTHER REQUIREMENTS SPECIFIED ON THE DECLARATION OF RESTRICTIVE COVENANTS SHALL APPLY.

A&A ARCHITECT, INC.
Architecture · Planning · Construction
Florida State Registered Architectural Corporation Lic. No.: AA-0003169
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2864 OAKBROOK DRIVE
WESTON, FL 33332-3414



PROJECT:
SFHT COMMUNITY CENTER
BROWARD COUNTY, FLORIDA
SOUTH WEST RANCHES, FLORIDA

NO.	REVISION	DATE
1	ADD PERIMETER WALL	10/17/12
2	PLANNING COMMENTS	01/10/13
3	SECOND HEARING	04/01/14
4	REV 2ND HEARING	07/02/14

PROJECT NO.:

2012002

ISSUED DATE:
07/23/12

SCALE:
1" = 40'-0"

DRAWN BY:

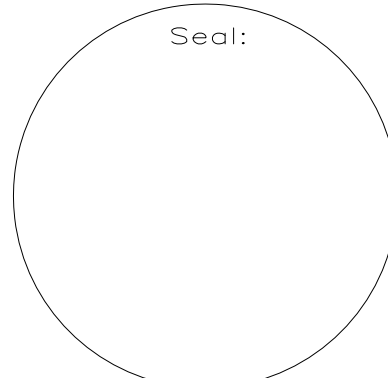
JCA

DRAWING TITLE:
CONCEPTUAL SITE PLAN

SHEET NO.

C-1

JUAN CARLOS ARTEAGA, AIA
FLORIDA REG. AR-0014735



Previous Agenda Backup from first and second readings in 2013



Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628
(305) 434-0008 Town Hall
(305) 434-1490 Fax

Town
Jeff Nels
Steve Breitreuz, V
Doug McKay, Coun
Freddy Fisikelli, Coun
Gary Jablonski, Coun

Andy Berns, Town A
Keith M. Poliakoff, T
Erika Gonzalez-Santamaria, CMC
Martin D. Sherwood, CPA CGFO, Town Financial A

COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THRU: Andy Berns, Town Administrator

FROM: The Mellgren Planning Group

DATE: March 7, 2013

**SUBJECT: REZONING APPLICATION No. RZ-017-12
SOUTH FLORIDA HINDU TEMPLE**

Previous Action

The Town Council approved Application No. RZ-017-12 on February 7, 2013, subject to the conditions in the staff report, with the following additional stipulations that the petitioner has now incorporated into the declaration of restrictive covenants, attached.

- Increase the height of the perimeter wall from 6 feet to 8 feet.
- Emergency access gate to be opaque.
- Existing house shall be used only for storage upon rezoning.
- Town shall have the right to inspect the existing house to ensure it is being used only for storage as of March 1, 2013.
- Temple shall remove all exotic trees under the power lines by June 1, 2013.

Issue

The applicant is requesting rezoning of a 1.06 acre property located immediately south of the South Florida Hindu Temple, from RE, Rural Estate District, to CF, Community Facility District.

Background

The subject property ("Property") is located on the west side of SW 130th Avenue, approximately 700 feet south of Griffin Road. The Property is owned by the South Florida Hindu Temple ("Applicant") and lies directly south of the Community Worship Center plat, also owned by the Applicant. The Property contains one single-family residence on 1.06 net acres, is zoned RE, Rural Estate District, and is designated Rural Estate on the Future Land Use Map. Adjacent parcels are zoned RE and contain single family homes to the south and east, and vacant land to the west. The north side of the Property is contiguous to the existing worship center parcel, which is zoned CF, Community Facility District, and designated Rural Estate on the Future Land Use Map.

The Applicant originally filed for rezoning and proceeded to a public hearing in 2009. The Applicant requested an indefinite tabling after the close of the public hearing in order to consider and address feedback from the public and the Town Council. Feedback generally pertained to potential impacts the rezoning could have on the neighborhood. That application did not include a conceptual plan, impact statement, or Unity of Title Agreement as the current application does, all of which address potential impacts. At the same hearing, the Applicant also requested a site plan modification to allow several modular storage buildings at the existing worship center site. The Applicant tabled the site plan application as well and is no longer requesting the modular buildings.

APPLICATION DETAILS AND ANALYSIS

The Applicant's new application for rezoning includes a conceptual site plan, a Unity of Title Agreement for the Property and the existing worship center, and a voluntary Declaration of Restrictive Covenants. Approval of the rezoning would allow the Temple to use the Property to expand their facilities with the addition of a new community center building, which would house areas for religious instruction, cultural events, administrative offices, the priest's living quarters, restrooms and storage. All other uses, including day care or academic instruction, would not be permitted. The full site, containing both the north and south parcels, would contain a total of 4.6 net acres; less than the 5.0-acre maximum acreage limitation in the Community Facility District.

The Town of Southwest Ranches Unified Land Development Code (ULDC) requires that properties in the CF District have frontage on, and access to, certain roads on the Town's perimeter, including Griffin Road. The primary access to the site is from Griffin Road, with an already existing secondary entrance at SW 130th Avenue. There is an existing driveway currently used for the south parcel, which will be gated and used for emergency access only.

In order to comply with the requirement of having frontage on Griffin Road, the Applicant has executed a Unity of Title Agreement to merge the two properties. The combined site will contain the main Temple building, the proposed community center building, and a shared parking lot and playground.

Improvements

The Applicant's conceptual site plan indicates future improvements on the combined properties. The existing single-family residence on the Property, which is the subject of this rezoning application, would be replaced with a two-story community center building totaling not more than 11,400 square feet in building area. The existing worship center consists of a single-story 11,130 square feet building; the sum of both structures would be less than the maximum allowed floor area in the CF District (approximately 50,000 square feet for the combined properties). The maximum allowed lot coverage would not be exceeded with the addition of the proposed community center building. The conceptual plan also shows an extension of the existing parking lot, with additional spaces to provide parking for the proposed community center. Currently, 41 new parking spaces are being provided; however, this number will be evaluated once specific floor plans of the proposed building are submitted with the site plan application. A new walkway connecting the east entrance of the worship center to the northern parking lot will be added, which is a requirement set forth by the previous rezoning and site plan applications for this site. The site will also feature a new open playground area south of the worship center, and two retention ponds east of the proposed community center building. The ponds will also provide a natural open space buffer from street view and the residential uses on the east side of SW 130th Avenue. Central Broward Water Control District will review the retention ponds at time of site plan approval. The existing dumpster enclosure will be relocated in compliance with setback requirements. An existing walkway that provides pedestrian access from Griffin Road will be removed to allow for additional grassed landscape buffering on the west side of the existing facility.

Perimeter Buffer

The Applicant agreed to erect a buffer along the south, east and west property lines. The buffer along the east property line (SW 130th Avenue) will extend the full frontage of the subject Property and will continue along SW 130th Avenue to the general location of the existing driveway into the worship center parcel. Subject to approval by the Town Council, the buffer will include a masonry wall or decorative pre-fabricated panel wall with columns, six (6) feet in height, uninterrupted except for vehicular driveways. Two rows of shade trees will be planted, with one row interior to the wall, and the other row on the outside of the wall, unless waived in writing by the owners of the abutting properties to the south and west. The SW 130th Avenue buffer will contain both rows of shade trees, and will include a continuous hedge on the outside of the wall.

Note that there is a utility easement along the west side of the existing worship parcel, which requires authorization from the applicable utilities in order for the wall to encroach. Similarly, installation of the trees along the outside of the west side wall may require authorization and acceptance from the adjoining property owner. The Applicant has agreed to make diligent efforts to obtain such authorizations as may be necessary to install the west side buffer.

The Applicant has agreed that no building permit shall be issued for any demolition or construction on the Property (south parcel) other than for the perimeter buffer, unless the full buffer along the south and SW 130th Avenue property lines will have been installed and approved on final inspection by the Town at least ninety (90) days prior to issuance of the permit. The Applicant has also stipulated that the buffer along the west property line shall be installed and approved on final inspection by the Town prior to the earlier of: 1) issuance of a certificate of occupancy for the community center building; or 2) one hundred twenty (120) days from the date the Town mails a notice to South Florida Hindu Temple that the adjacent property owner has submitted a site plan application; provided that failure to complete the buffer and receive final inspection within said one hundred twenty (120) days will be a violation of the terms of conceptual site plan approval, and will be prosecutable as a violation of the Town's Code.

Use

The Applicant has agreed that use of the existing single-family dwelling for living quarters will cease immediately upon rezoning; any continued use of the existing dwelling must be passive (e.g. storage), and there shall be no use of the building that would require a change of occupancy under the Florida Building Code. The driveway currently used for the existing dwelling will be closed except for emergency access and for construction use only while a valid building permit is in effect.

The proposed community center building will be used for cultural event gatherings, religious instruction (but not day care or academic instruction), priest's living quarters (not to exceed 1,500 square feet), administrative offices, restrooms, and storage. Other uses, including day care, will not be permitted. Outdoor activities must first be authorized by issuance of a Town Special Event Permit, and no outdoor event will be permitted on the Property until the perimeter landscape buffer and wall previously described has been installed and has passed final inspection by the Town.

Lighting and Signage

Any lighting of the parking lot will require that the fixtures are located a minimum of fifty (50) feet from the south and west property lines, or set back a distance equal to at least twice the height of the fixture if closer than fifty (50) feet. All fixtures must comply with the outdoor lighting restrictions of the ULDC.

The Temple currently has a single ground sign facing Griffin Road. The Applicant has stipulated that there will be no additional ground signage along SW 130th Avenue. A single sign may be permitted at the existing entrance on SW 130th Avenue, either on the buffer wall or at the top of the proposed wrought iron gate to the parking lot.

Note that both lighting and signage are subject to Town Council approval as part of a site plan review.

Considerations for Request

Consideration of a rezoning request must be in conjunction with the criteria contained in Section 130-030 of the Unified Land Development Code (ULDC). These include consideration of materials provided by the petitioner, the public and the staff report, as well as the following criteria enumerated in the ULDC.

(A) That the request does NOT meet any of the following criteria whereby the request would be considered contract, or spot zoning:

- (1) The proposed rezoning would give privileges not generally extended to similarly situated property in the area.
- (2) The proposal is not in the public's best interest and it only benefits the property owner.
- (3) The proposed zoning request violates the Town's Comprehensive Plan.
- (4) The proposed change will result in an isolated district unrelated to adjacent or nearby districts.

If the Town Council finds that the rezoning request does not meet the foregoing criteria above, then the Council must next evaluate the request in conjunction with the four criteria contained immediately below. In evaluating the four criteria contained in (B) below, the Council shall consider the three criteria contained in (C) below.

(B) A zoning modification may be approved if the applicant can demonstrate by competent substantial evidence that the request is consistent with one of the following four criteria:

- (1) That there exists an error or ambiguity that must be corrected.
- (2) That there exists changed or changing conditions that make approval of the request appropriate.
- (3) That substantial reasons exist why the property cannot be used in accordance with the existing zoning.
- (4) That the request would advance a public purpose, including but not limited to, protecting, conserving, or preserving environmentally critical areas and natural resources.

(C) When determining if one of the four (4) criteria delineated in (B), above, has been satisfied, the following considerations shall be made:

- (1) That the request is compatible with surrounding zoning districts and land uses.
- (2) That the request is consistent with, or furthers the goals, objectives, policies, and the intent of the Town's Comprehensive Plan and the Town's Future Land Use Map.
- (3) That the anticipated impact of the application would not create an adverse impact upon public facilities such as schools and streets.

Fiscal Impact

N/A

Staff Contact

Jeff Katims, AICP, CNU-A – Deputy Town Planner

**TOWN OF SOUTHWEST RANCHES
TOWN COUNCIL AGENDA REPORT**

February 7, 2013

SUBJECT: Rezoning application RZ-017-12

ADDRESS: 5000 SW 130th Avenue
Southwest Ranches, FL 33330

LOCATION: Generally located on the west side of SW 130th Avenue, approximately 700 feet south of Griffin Road

APPLICANT: South Florida Hindu Temple
13010 Griffin Road
Southwest Ranches, FL 33330

AGENT: Dilip Nersian, Secretary
South Florida Hindu Temple, Inc.

REQUEST: FROM: RE, Rural Estate District

TO: CF, Community Facility District

PUBLIC NOTICE: Ad in the *Sun-Sentinel*, sign posting, mail notice

EXHIBITS: Staff Report, Aerial Photograph, Conceptual Site Plan, Unity of Title, Declaration of Restrictive Covenants, notification map and mailing label list, and Lobbyist Registration and Ethics Form for applicant and agent

BACKGROUND

The subject property ("Property") is located on the west side of SW 130th Avenue, approximately 700 feet south of Griffin Road. The Property is owned by the South Florida Hindu Temple ("Applicant") and lies directly south of the Community Worship Center plat, also owned by the Applicant. The Property contains one single-family residence on 1.06 net acres, is zoned RE, Rural Estate District, and is designated Rural Estate on the Future Land Use Map. Adjacent parcels are zoned RE and contain single family homes to the south and east, and vacant land to the west. The north side of the Property is contiguous to the existing worship center parcel, which is zoned CF, Community Facility District, and designated Rural Estate on the Future Land Use Map.

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and address feedback from the public and the Town Council. Feedback generally pertained to potential impacts the rezoning could have on the neighborhood. That application did not include a conceptual plan, impact statement, or Unity of Title Agreement as the current application does, all of which address potential impacts. At the same hearing, the Applicant also requested a site plan modification to allow several modular storage buildings at the existing worship center site. The Applicant tabled the site plan application as well and is no longer requesting the modular buildings.

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- (3) That the anticipated impact of the application would not create an adverse impact upon public facilities such as schools and streets.

STAFF RECOMMENDATION

1. The Council could choose to deny this application finding that the applicant has failed to show by competent substantial evidence that they have met the requirements of the ULDC.
2. The Council could choose to approve this item finding that the applicant has shown by competent substantial evidence that they have met the requirements of the ULDC.
3. The Council could table this item to seek additional information.
4. The Council could choose to approve this item while considering the voluntary stipulations provided by the Applicant and the following conditions:
 - a. Applicant shall pay to the Town of Southwest Ranches an amount equal to the total expenses incurred by the Town in the processing and finalizing of this application, prior to the issuance of the first building permit. This includes, but may not be limited to, expenses for engineering, planning, legal, advertising, five (5%) percent administrative fee, and any related expenses that the Town has or will incur as a direct cost of this application.

- b. The Declaration of Restrictive Covenants and Unity of Title are subject to Town Attorney as to form.
- c. No building permit shall be issued for the Property until a plat has been processed and recorded, and site plan approved by the Town.



A&A ARCHITECT, INC.

Architecture • Planning • Construction

Florida State Registered Architectural Corporation

Lic. No.: AA-0003169

2864 OAKBROOK DRIVE
WESTON, FL 33332-3414

AARCHITECT@NETZERO.NET
TEL. 954-349-6966

October 17, 2012

Mr. Jeff Katims
The Mellgren Planning Group
6535 Nova Drive, Suite 110
Fort Lauderdale, FL 33317

RE: Rezoning Application for the Attached subject Property
From Rural Estate to Community Facility District to complement existing land use

Dear Mr Katims:

I really want to thank you and Ms. Elizabeth Tsouroukdissian for your time and valuable input during our meeting held on October 11, 2012 in order to assist us with the review of the conceptual plan and rezoning application for the subject property located in the Town of Southwest Ranches. As discussed during the meeting, we have corrected and modified the Conceptual Plan and we are attaching the revised plan with this letter. Following is the summary of significant changes:

1. The two-story proposed building is shown with the dotted outline for conceptual plan purposes and a note has been added to clarify that it is not the final building footprint outline, but necessary to indicate proposed setbacks.
2. The existing driveway will be removed and a new 15'-0" wide Emergency Access road for Emergency Vehicles will be provided.
3. Landscape islands have been added for every 10 parking spaces.
4. A 6'-0" high perimeter wall/fence with landscaping has been added around the entire perimeter of the consolidated property.
5. A new walkway will be added to the front of the east building entrance.
6. Existing concrete slab sidewalk on the west side will be removed and replaced with grass and landscaping.
7. This letter also addresses the construction time-line and the intended use of the existing and proposed structure after rezoning approval.

As you know, the South Florida Hindu Temple (SFHT) board has retained my company, A&A Architect, Inc. to represent them with the proposed conceptual plan and to assist them in the efforts for a successful rezoning of the subject property which also follows the conceptual and legal precedents of a Comprehensive Master Plan zoning criteria. This letter supplements and revises our earlier letter dated August 11, 2012 which included other documents such as: 1) application, 2) fee deposit, 3) surveys, 4) proof of ownership and 5) old conceptual plan.

A&A Architect Inc.,
October 17, 2012

1



A&A ARCHITECT, INC.

Architecture · Planning · Construction

Florida State Registered Architectural Corporation

Lic. No.: AA-0003169

2864 OAKBROOK DRIVE
WESTON, FL 33332-3414

AARCHITECT@NETZERO.NET
TEL. 954-349-6966

PROPOSED CONCEPTUAL PLAN:

The SFHT bought the subject property in 2002 with an objective to complement the current use of its existing adjacent property. The current temple building and site does not provide sufficient space; parking spaces and kids' play areas to adequately perform some of the community purposes they want to offer to the community. The conceptual plan proposes the following:

1. A two-story mixed used occupancy building for gathering for cultural events, training, priest's living areas (not to exceed 1,500 SF), administrative offices, restrooms and other spiritual support areas.
2. Perimeter Wall/Fence and landscaping on all sides of the combined property with gates to properly buffer the rural estate residential areas.
3. An Emergency Vehicular Access road from the side street for fire department access, and better traffic movement during emergencies.
4. Additional parking for the combined properties including handicap parking as mandated and required by Code requirements.
5. Relocation of a substantial part of the water retention area from the adjacent property.
6. The proposed development clearly represents and provides an improved buffer zone between the two different zoning districts.

As reflected on the conceptual site plan, the proposed development fully complies and meets all zoning laws and code requirements with regards to pervious/impervious areas, floor area ratios (FAR), building coverage, setbacks from the boundaries, and parking requirements.

CONSTRUCTION TIME-LINE:

Following the approval of the rezoning request, the SFHT plans to begin demolition and start construction within the 6-12 months time frame. The task of preparing the site plan and boundary surveys will start in the next few weeks. Immediately following the approval of the rezoning, we will start the process of combining the titles of the two properties and the application for platting.

INTERIM INTENDED USE:

The existing residential building which is currently used for our priest's living quarters and Sunday classes. The use of this building will cease and desist to exist immediately upon the approval of this rezoning request to avoid any conflicts with the new land use classification and to be in full compliance with all zoning laws and regulations.



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JUSTIFICATION FOR REZONING:

Following the Section 130-030 of the Town of Southwest Ranches Unified Land Development Code for rezoning criteria, we submit the following in support of our request for rezoning the subject property:

I. ALTHOUGH PHYSICALLY ADJACENT TO THE OTHER ZONING DISTRICT PROPERTY CANNOT BE USED IN ACCORDANCE WITH THE EXISTING ZONING – As noted in the application, the property is currently zoned as “RURAL ESTATE DISTRICT” and is adjacent to the property owned by the SFHT, zoned as “COMMUNITY FACILITY”. There is no physical or natural barrier that justifies a different zoning use of the property, and the owner plans to use the property for community purposes for social worthy purposes, including but not limited to education limited to Sunday classes, cultural events, general gathering and worship.

Since the current zoning does not permit such use, this rezoning request is being submitted with the conceptual plan outlining the planned use of the land. The planned use of this property along with the proposed fence and landscaping also creates an effective buffer between the existing COMMUNITY FACILITY and residential RURAL ESTATE DISTRICT.

The attached proposal fully complies and follows the universally accepted criteria for a Comprehensive Master Plan including, but not limited to spot zoning; criteria for the establishment of zoning districts, etc. therefore a positive recommendation from your office prior to the public hearing on the subject matter would be highly appreciated.

II. TO ADVANCE A PUBLIC PURPOSE – This request significantly facilitates advancement of a public purpose. The Hindu community (represented through the SFHT), has been an integral part of the Southwest ranches from 1989 and throughout these years has greatly contributed to the surrounding community with a message of faith, knowledge, peace and harmony. In addition to providing a forum for worship, it has greatly helped to instill and to propagate moral, ethical, religious and human values in people of all ages. The Temple has been at the forefront of a number of community events, free health camps for everyone, charities and assistance with national and international crises (such as 9-11, hurricanes earthquake etc). In its decades of existence, to the best of my knowledge and belief there have been only positive and commendable feedbacks from the community, neighbors, the town and the county.

We all thank you very much for your valuable input and time you granted us for the review of the conceptual plan that as you can see; has successfully incorporated all comments and suggestions your office made during our very productive meeting, which is to be commended.

I am looking forward for the next step in this critically important matter to the community that selected your Town to call it home and play such an important social role.



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TEL. 954-349-6966

Please feel free to contact me anytime via email or at my cellular phone 305-218-8976 with any questions, comments or concerns you might have.

Sincerely,

Juan Carlos Arteaga, AIA, NCARB, CBO, CGC, LEED® AP BD+C
President, A&A Architect

Enclosures

Cc. Dr. ChanderShayker – SFHT Founding Trustee
Dr. Vinod Patel – SFHT Founding Trustee
Mr. NareshBhasin, SFHT Chairperson of Executive Committee
Mr. Naveen Mehan, SFHT Chairperson for Construction Committee
Ms. Smeeta Patel, President of Governing Body
Dr. Ashish Kumar, SFHT Member
File R2012002



Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall
(954) 434-1490 Fax

Town Council
Jeff Nelson, Mayor
Gary Jablonski, Vice Mayor
Steve Breitkreuz, Council Member
Freddy Fisikelli, Council Member
Doug McKay, Council Member

Andy Berns, Town Administrator
Keith M. Poliakoff, Town Attorney
Russell Muñiz, MMC, Town Clerk
Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator

COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THRU: Andy Berns, Town Administrator

FROM: Clete Saunier, Public Works Director

DATE: August 19, 2014

SUBJECT: Award of Contract to Whiteleaf LLC dba Traffic Solutions for
Striping and Signage Along SW 185 Way, SW 186th Avenue and SW
188th Avenue

Recommendation

Staff recommends Council award a contract to Whiteleaf LLC dba Traffic Solutions in the amount of \$111,553.57 for striping and signage along SW 185 Way, SW 186th Avenue and SW 188th Avenue.

Issue

A contractor is needed for striping and signage along SW 185 Way, SW 186th Avenue and SW 188th Avenue.

Background

The Town of Southwest Ranches hired a traffic engineering consultant, Karl Pederson of Traffic Tech, to conduct a traffic study and evaluation addressing the traffic volume and speeding issues within the Country Estates neighborhood. The Town held two public workshops with the Country Estates and Griffin 345 neighborhood homeowner associations to discuss available traffic calming options for the affected communities.

On April 16, 2014, staff advertised IFB 14-003. On May 14, 2014, the Town received one response in excess of the budgeted project estimate. The Town decided to re-advertise the bid as IFB14-006 over a longer duration anticipating a more aggressive, competitive bid response.

In the interim, Staff expedited construction of some improvements by extricating the enhanced speed humps scope from the bid and issued a separate request for quotes from preferred contractors. Weekley Asphalt Paving, Inc., who the Town has a continuing contract for roadway repairs and traffic signs, provided the lowest quote of \$32,250 for the five (5) enhanced speed humps. The Town Council subsequently approved Resolution 2014-0071 authorizing this work.

On August 15, 2014, the Town received two bids in response to IFB 14-006. Staff review of the bids determined that, Whiteleaf LLC dba Traffic Solutions provided the lowest responsive bid.

Fiscal Impact

In anticipation of funding being appropriated in 2015 Municipal Transportation Fund account #101-5100-541-63360 (Striping and Markers), a notice to proceed will not be authorized until after October 1, 2014.

The list of all responses received is below:

Contractor	Response
Whiteleaf LLC dba Traffic Solutions	\$111,553.57
Weekley Asphalt Paving, Inc.	\$122,878.48

Staff Contact

Clete Saunier, Public Works Director

RESOLUTION NO.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH WHITELEAF LLC DBA TRAFFIC SOLUTIONS IN THE AMOUNT OF \$111,553.57 FOR STRIPING AND SIGNAGE IMPROVEMENTS IN COUNTRY ESTATES ALONG SW 185TH WAY, 186TH AVENUE, AND 188TH AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town held several public workshops with the community to address ongoing resident concerns relating to speeding and traffic volume; and

WHEREAS, the Town hired a traffic engineering consultant to evaluate and to make recommendations on the road and traffic conditions along SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, the Town Council believes it is in the best interest of the Town to contract with a professional firm to perform services relating to this project; and

WHEREAS, the Town advertised Invitation for Bid (IFB) # 14-003 for Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, on May 14, 2014, the Town received one bid in response to the advertisement; and

WHEREAS, the Town decided to re-advertise the bid as Invitation for Bid (IFB) #14-006; and

WHEREAS, on August 15, 2014 the Town received two responses to the advertised Invitation for Bid (IFB) # 14-006 for the Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, Whiteleaf LLC DBA Traffic Solutions has provided the lowest responsive and responsible bid; and

WHEREAS, it has been determined to be in the public's best interest to award the bid to Whiteleaf LLC DBA Traffic Solutions; and

WHEREAS, the Town of Southwest Ranches desires to enter into an Agreement with Whiteleaf LLC DBA Traffic Solutions for the traffic calming improvement project at

SW 185 Way, SW 186 Avenue and SW 188 Avenue under the terms and conditions set forth hereinafter.

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 an Agreement between the Town of Southwest Ranches and Whiteleaf LLC DBA Traffic Solutions to provide the striping and signage for the traffic calming improvement project located on SW 185 Way, SW 186 Avenue, and SW 188 Avenue, as outlined in the Invitation for Bid (IFB) #14-006, in the amount of \$111,553.57 as attached hereto as Exhibit "A".

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the 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.

[Signatures on Following Page]

PASSED AND ADOPTED by the Town Council of the Town of Southwest

Ranches, Florida, this ____ day of _____, _____ on a motion by

_____ and seconded by _____.

Nelson _____
Jablonski _____
Breitkreuz _____
Fisikelli _____
McKay _____

Ayes _____
Nays _____
Absent _____
Abstaining _____

Jeff Nelson, Mayor

Attest:

Russell Muñiz, MMC, Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff, Town Attorney

111870095.1

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ATTACHMENT “A”

AGREEMENT

BETWEEN THE

TOWN OF SOUTHWEST RANCHES

AND

WHITELEAF, LLC dba TRAFFIC SOLUTIONS

FOR

TRAFFIC CALMING, SIGNAGE, and MARKINGS IMPROVEMENT
for SW 185th WAY, 186th AVENUE and 188th AVENUE

IFB No. 14-006

AGREEMENT FOR: IFB No. 14-006 Re-Issue Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue

THIS IS AN AGREEMENT (“Agreement”) made and entered into on this ____ day of _____ 2014 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “TOWN”) and Whiteleaf, LLC dba Traffic Solutions (hereinafter referred to as “Contractor”).

WHEREAS, the TOWN desires to select a contractor for the purpose of Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue (“Project”); and

WHEREAS, the TOWN advertised an Invitation for Bids, IFB No. 14-006 on June 17, 2014, (“IFB”); and

WHEREAS, two (2) bids were received by the TOWN on August 15, 2014; and

WHEREAS, the TOWN has adopted Resolution No. 201_- ____ at a public meeting of the Town Council approving the recommended award and has selected Whiteleaf LLC dba Traffic Solutions for award of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the mutual terms and conditions herein, the TOWN and Contractor hereby agree as follows:

Section 1: Scope of Services

- 1.1 The Contractor agrees to perform the duties and responsibilities set forth herein and as defined and described in and/or reasonably inferable Exhibit “A-1” attached to this Agreement and made a part of it by this reference (hereinafter referred to as “Work”). This Agreement, as well as all Exhibits, the IFB, the Contractor’s Bid, including all forms attached thereto, and all addenda, specifications, drawings and plans, shall be hereinafter collectively referred to as the “Contract Documents” and incorporated herein by reference. To the extent of any conflict among the Contract Documents, the more stringent criteria relative to the Contractor’s performance of the Work shall govern over the less stringent criteria.
- 1.2 All Work rendered pursuant to this Agreement by Contractor shall be performed in strict accordance with the applicable standard of care for persons or entities performing similar work in Broward County, Florida. Contractor shall perform the Work in strict accordance with the requirements of this Agreement, all of the other Contract Documents, good construction practices for this type of Work performed in Broward County, Florida and all applicable codes, ordinances, rules, laws and regulations governing the Work, including, but not limited to, the Florida Building Code, along with Broward County Amendments to it.
- 1.3 Contractor acknowledges that it has visited the location of the Work and informed itself of the conditions that exist at the site, including conditions of the facilities and difficulties attending

the execution of the Work and such existing site and local conditions have been accounted for within the Agreement Sum (as defined below). Furthermore, all costs for the proper disposal of excess material generated on site in the performance of the Work have likewise been included and accounted for within the Contract Price (as defined below).

- 1.4 Contractor, in addition to any manufacturer's warranty for materials or equipment, hereby warrants that its Work and all materials will be free of defects and deficiencies for a period of one year(s) from the Final Completion Date (as defined below). If any defects or deficiencies arise within the warranty period, the Contractor shall correct the defect or deficiency at no cost to the TOWN. Nothing herein shall be construed as a waiver, limitation or release of any right or remedy that the TOWN may have for breach of this Agreement, which rights are cumulative and in no way limited by the warranty.

Section 2: Term of this Agreement and Agreement Time

- 2.1 TOWN and Contractor agree that Contractor shall perform all Work under this Agreement for a period of forty-five (45) days or such longer period as may be agreed to by the parties, or otherwise required to achieve Final Completion of the Work.
- 2.2 TOWN shall have the ability to terminate this Agreement as provided in "Section 18: Termination."
- 2.3 No Damages for Delay - Contractor shall not be entitled to any claim for damages against TOWN on account of hindrance or delays from any cause whatsoever. If, however, Contractor is delayed in the prosecution of the Work occasioned by an act of God, or by act or omission on the part of the TOWN, or due to changes ordered in the Work by TOWN which expand the scope and costs of the Work, such act, hindrance, or delay shall only entitle Contractor to receive an extension of time as its sole and exclusive remedy, and Contractor hereby waives any and all other claims against TOWN for damages for such hindrance or delay.
- 2.4 Time being of the essence, TOWN and Contractor agree that Contractor shall perform all Work under this Agreement and achieve Substantial Completion of the Work within thirty (30) calendar days beginning on the date of issuance of the building permit for the Work (the effective date of the Notice to Proceed) as stated in the Notice to Proceed, subject to appropriate extensions of time as provided in this Agreement ("Substantial Completion Date"). Contractor shall achieve Final Completion of the Work within fifteen (15) calendar days of Substantial Completion or no later than forty-five (45) days of the issuance of the Notice to Proceed, whichever date occurs first ("Final Completion Date").
 - 2.4.1 Substantial and Final Completion:
 - 2.4.1.1 Substantial Completion of the Work at the Project shall be defined as the date upon which the last of all of the following events have occurred:

- (i) All necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;
- (ii) Restoration of all utilities to operation that have been affected during performance of the Work;
- (iii) All Work has been completed (except for “punch list” items of Work, if any); and
- (iv) The TOWN’s engineer/architect of record for the project, Clete Saunier, has issued its written acceptance of the Work performed by Contractor and executed and delivered to the TOWN a Certificate of Substantial Completion.

2.4.1.2 Final Completion is defined as the date when all punch list items have been completed as evidenced by the issuance of a written Certification of Final Completion by the Town’s design professional for this Project, and all other conditions precedent to Final Completion as outlined below have been satisfied:

Contractor shall:

- (i) Deliver to the TOWN all warranties, final certifications and similar documentation to confirm that all necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;
- (ii) Complete all Punch List items of Work;
- (iii) Remove temporary facilities from the site, along with construction tools and similar elements;
- (iv) Complete final clean-up including repair, replace and restore any items damaged by Contractor as a consequence of performing Work;
- (v) Deliver to the TOWN confirmation that all permits have been closed; and
- (vi) Confirm that the TOWN’s engineer/architect of record for the Project, Clete Saunier, has issued its written acceptance of the Work performed by Contractor and executed and delivered to the Town a Certificate of Final Completion.

2.4.2 Given that the parties agree that time is of the essence with respect to this Agreement and any breach of same shall go to the essence hereof, and Contractor, in agreeing to achieve Substantial Completion and Final Completion the Work within the time herein mentioned, has taken into consideration and made allowances for all hindrances and delays incident to its Work.

- 2.4.3 Liquidated Damages (“LD’s”) – In the event Contractor does not achieve completion of the Work as defined in Paragraph 2.4.1 above, in whole or in part due to its own fault, the parties hereto acknowledge that any delay beyond the scheduled Completion Dates may cause grave injury and damage to the TOWN by virtue of locating, moving to and paying rent for temporary quarters, loss of use, extension of overhead costs, additional costs of design professionals and otherwise. Accordingly, the calculation of the actual damages to the TOWN would be uncertain and difficult if not impossible to determine. Consequently, if the Contractor has not achieved Substantial Completion of the Work or Final Completion of the Work within the time periods above and has not obtained a written time extension from TOWN for such delay(s), time being of the essence, then the parties hereto agree that as liquidated delay damages, and not as a penalty, the Contractor shall pay to the TOWN an amount equal to **\$100.00** for each day or portion thereof, that the date of Substantial Completion or Final Completion is later than the scheduled Substantial Completion Date set forth above. Contractor shall be entitled to an extension of time and relief from liquidated damages to the extent that additional out of scope work authorized by the TOWN in accordance with a properly executed Change Order affects the critical path of the Contractor’s Project schedule. All such liquidated damage amounts, if any, shall be paid by Contractor to TOWN weekly, immediately upon each such failure of Contractor to comply with the scheduled Substantial Completion Date, as set forth above. In the event that the Contractor fails to make any one or more of the payments to TOWN as required under this Paragraph, the TOWN shall have the right to deduct any and all such amounts from any amounts due or to become due to Contractor under this Agreement.

Section 3: Compensation & Method of Payment

- 3.1 Contractor shall render all Work to the Town under the Agreement for the total not to exceed lump sum price of one hundred eleven thousand, five hundred fifty-three Dollars and fifty-seven cents (\$111,553.57) (“Contract Price”).
- 3.2 In no event shall TOWN be liable for any cost increases or price escalations associated with labor or materials that may arise during the performance of the Work, regardless of any delays in the Work, whether occasioned by TOWN or Contractor, or both. In the event the cost of the Work exceeds the amounts set forth and included in the Contract Price, Contractor shall pay such excess from its own funds and TOWN shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Contract Price pursuant to any written Change Order duly executed by TOWN and Contractor in accordance with the terms and conditions of this IFB and the Contract, and with the same formality and of equal dignity associated with the original execution of the Contract.
- 3.3 TOWN and Contractor agree that payment under the Agreement will be subject to (a) the delivery of an appropriate invoice by Contractor to TOWN, and (b) verification by TOWN that the Work is acceptable and has been performed in strict accordance with the Agreement. Upon verification by TOWN that the invoiced Work has been satisfactorily performed in strict accordance with the Agreement, TOWN shall have thirty (30) days thereafter to pay said invoice, or such undisputed portion as TOWN shall determine in its sole discretion.

- 3.4 Each invoice must be accompanied by supporting documentation and other information reasonably requested by TOWN, including, but not limited to a Partial Release of Lien in the form set forth in Section 713.20, Florida Statutes. Reference herein to Chapter 713, Florida Statutes is for convenience, and shall not be construed as a waiver of sovereign immunity or authority for imposition of liens against public property. Subject to the provisions of Section 218.735, Florida Statutes, each progress payment shall be reduced by 10% retainage. The final retainage will be released after Final Completion of the Project, and after TOWN's receipt of acceptable reports and other project-close out documentation required by the Contract Documents, including but not limited to certification of Contractor's payment to all lower-tiered subcontractors and suppliers providing labor, materials or services on the project, but no earlier than 30 days of the Contractor's last progress payment request.
- 3.5 A final payment invoice must be accompanied by written notice from Contractor that the entire Work is completed. The TOWN's engineer/architect of record will make a final inspection and notify Contractor in writing with a punch list of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete the punch list and remedy deficiencies. Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. The TOWN may refuse payment if (a) the Work is defective or completed Work has been damaged requiring correction or replacement, (b) the TOWN has been required to correct defective Work or complete Work in accordance with the Contract Documents, or (c) because claims have been made against the TOWN on account of Contractor's performance or furnishing of the Work or liens or claims have been filed or asserted in connection with the Work or there are other items entitling the TOWN to a set-off against the amount due. No payment will be made for Work performed by the Contractor to replace defective work; for work which is not shown or ordered in accordance with the Contract Documents; or additional work performed by Contractor without prior written approval of TOWN.

Section 4: Assignment

No assignment of this Agreement or of the Work hereunder by Contractor shall be valid without the express written consent of TOWN, which may be given or withheld, in TOWN's sole discretion. All Work to be performed pursuant to this Agreement shall be performed by the Contractor, and no Work shall be subcontracted to other parties or firms without the written consent and approval of the TOWN Administrator.

Section 5: Contractor's Responsibility for Safety

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work provided pursuant to this Agreement in order to prevent, inter alia, damage, injury or loss to (a) all employees performing the Work and all other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated therein and (c) other property at the site or adjacent thereto. Contractor shall timely provide all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority or other authority with jurisdiction

bearing on the safety of persons and property in order to provide protection from damage injury or loss.

Section 6: Insurance

- 6.1 Throughout the term of this Agreement and for all applicable statutes of limitation periods, Contractor shall maintain in full force and affect all of the insurance coverages as set forth in this Section 6.
- 6.2 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Broward County, Florida, and (c) have a rating of A or better in accordance with A.M. Best's Key Rating Guide.
- 6.3 All Insurance Policies shall name and endorse the following as additional insured:
Town of Southwest Ranches.
- 6.4 All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to TOWN or any other additional insured with respect to claims covered under the policy and (b) Contractor's insurance applies separately to each insured against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by Contractor shall not be acceptable as providing any of the required insurance coverages required in this Agreement.
- 6.5 If the Contractor fails to submit the required insurance certificate(s) in the manner prescribed with the executed Agreement submitted to the TOWN at the time of execution of this Agreement, Contractor shall be deemed in default, and the Agreement shall be rescinded and/or terminated for cause effectively immediately. Contractor hereby waives any prior written notice of rescission and/or termination under this paragraph.
- 6.6 Contractor shall carry the following minimum types of Insurance:
 - A. **WORKER'S COMPENSATION:** Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida (Chapter 440, Florida Statutes) and all applicable federal laws. Contractor shall carry Worker's Compensation Insurance with the statutory limits, which shall include employer's liability insurance with a limit of not less than **Two Hundred Thousand Dollars (\$200,000)** for each accident, and **Two Hundred Thousand Dollars (\$200,000)** for each disease. Policy(ies) must be endorsed with waiver of subrogation against TOWN.
 - B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE:** Contractor shall carry business automobile liability insurance with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the

business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.

- C. **COMMERCIAL GENERAL LIABILITY:** Contractor shall carry Commercial General Liability Insurance with limits of not less than **One Million Dollars (\$1,000,000)** per occurrence combined single limit for bodily injury and property damage and not less than Two Million Dollars (\$2,000,000) in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office, and the policy must include coverages for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, personal injury and explosion, collapse and underground (X-C-U). Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

- 6.7 Contractor shall provide TOWN with a copy of the Certificates of Insurance or endorsements evidencing the types of Insurance and coverages required by this Section 6 prior to beginning the performance of any Work under this Agreement and, at any time thereafter, upon request by TOWN.
- 6.8 Contractor's Insurance Policies shall be endorsed to provide TOWN with at **least thirty (30) calendar days prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits.** Notice shall be sent to:

Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, Florida 33330

And

Keith M. Poliakoff, J.D.
Arnstein & Lehr
200 East Las Olas Boulevard
Suite 1700
Fort Lauderdale, Florida 33301

- 6.9 If Contractor's Insurance policy is a "claims-made" policy, then Contractor shall maintain such Insurance Coverage for a period of the later of five (5) years after the expiration or termination of the Agreement or any extensions or renewals of the Agreement or five (5) years after Final Completion of the Work. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.

- 6.10 If any of Contractor's Insurance policies include a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this Section 6.
- 6.11 The Contractor shall not commence operations, and/or labor to complete any of the Work pursuant to this Agreement until certification or proof of insurance issued directly by the insurance company underwriting department, detailing terms and provisions of coverage, has been received and approved by the TOWN.
- 6.12 If any of Contractor's initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished to TOWN at least thirty (30) days prior to the date of their expiration, and TOWN shall be an additional named insured by endorsement on all of Contractor's renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'S WORK UNDER THE AGREEMENT.**
- 6.14 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 6.15 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 6.16 Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 6.17 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN in any respect. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN's actual notice of such event, but failure to do so shall not impair or adversely affect any claims by TOWN under such policy.
- 6.18 Notwithstanding any other provisions of this Agreement, Contractor's obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

Section 7: Copyrights and Patent Rights

Contractor warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, and/or selling the item(s) ordered or shipped as a result of this Agreement; and Contractor hereby agrees to indemnify, defend and hold harmless Town, its employees, agents, or servants, from and against any and all liability, loss, or expense resulting from any such violation, including attorney's fees and costs (at both the trial and appellate levels).

Section 8: Laws and Regulations

Contractor agrees to abide by all applicable Federal, State, County, and local laws, rules, regulations, ordinances and codes in performing all Work under this Agreement.

Section 9: Taxes and Costs

All federal, state and local taxes relating to the Contractor's Work under this Agreement and, similarly, all costs for licenses, permits, or certifications to perform the Work under this Agreement shall be paid by the Contractor.

Section 10: Indemnification

To the fullest extent permitted by Florida law, including Florida Statutes, Section 725.06, the Contractor shall indemnify, defend and hold harmless the TOWN, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees (at both the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, and persons employed or utilized by the Contractor in the performance of the Contract, and anyone else for whose actions Contractor is responsible. Notwithstanding any other provisions of this Agreement, the Contractor's duty to indemnify and hold the TOWN harmless shall survive the termination or expiration of this Agreement.

Section 11: Non-discrimination

Contractor shall not discriminate against any client, employee or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, and marital status. Contractor shall take affirmative action to ensure that applicants, subcontractors, Independent Contractors, and employees are treated without discrimination in regard to their race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status. Contractor shall comply with all applicable sections of the Americans with Disabilities Act. Contractor agrees that compliance with this Section 11 constitutes a material condition to this Agreement, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period during which any Work is provided. Contractor further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

Section 12: Sovereign Immunity

Nothing in this Agreement is intended nor shall it be construed or interpreted to waive or modify the Town's Sovereign Immunity defense or any other of the Town's immunities and limitations on liability as provided for in the Florida Statutes, as now worded or as may hereafter be amended, and all Florida case law interpreting same.

Section 13: Prevailing Party Attorneys' Fees

In the event either party to this Agreement incurs legal fees, legal expenses or costs to enforce the terms of this Agreement on trial or on appeal at all levels, the prevailing party shall be entitled to recover the reasonable costs of such action so incurred, including, without limitation, reasonable attorney's fees and costs and expert witness fees and costs incurred.

Section 14: No Third Party Beneficiaries

This Agreement is solely for the benefit of the parties hereto, and is not entered into for the benefit of any other person or entity. Nothing in this Agreement shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

Section 15: Funding

The obligation of TOWN for payment to Contractor for the Work is limited to the availability of funds appropriated in a current fiscal period, and continuation of any contractual relationship into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 16: Manner of Performance

Contractor agrees to perform its Work in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. Contractor agrees that the Work provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Contractor agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Contractor further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this Agreement and any applicable warranty period. Failure of Contractor to comply with this Section 16 shall constitute a material breach of this Agreement.

Section 17: Public Records

The TOWN is subject to Chapter 119, Florida Statutes, "Public Records Law." No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Records Law exists and it is cited in the response.

An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation and/or termination of this Agreement by TOWN. To the extent that Contractor has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of the IFB process, Contractor shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

Section 18: Termination

The Agreement may be terminated upon the following events:

- A. **Termination by Mutual Agreement.** In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.
- B. **Termination for Convenience.** This Agreement may be terminated for Convenience by TOWN upon TOWN providing Contractor with **thirty (30) calendar day's** written notice of TOWN's intent to terminate this Agreement for Convenience. In the event that this Agreement is terminated by TOWN for Convenience, Contractor shall be paid ONLY for Work properly performed and approved by the TOWN as of the date this Agreement is terminated and **no other compensation or damages shall be paid to or recovered by Contractor in any legal proceeding against TOWN, including but not limited to consequential damages of any kind including lost profits on Work not yet performed by Contractor.** Upon being notified of Town's election to terminate for convenience, Contractor shall immediately cease performing any further Work or incurring additional expenses. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for TOWN's right to terminate this Agreement for Convenience.
- C. **Termination for Cause.** In the event of a material breach by Contractor, TOWN shall provide Contractor written notice of its material breach. Contractor shall thereafter have **thirty (30) days** from the date of its receipt of such notification to cure such material breach. If Contractor does not cure the material breach within that time period, TOWN may terminate this Agreement effective immediately thereafter. Material breaches shall include, but are not limited to Contractor's:
 - (1) Violations of governing standards, violations of state or federal laws, violation of TOWN's policies and procedures;
 - (2) Performing defective work;

- (3) Failure to adhere to the Project schedule where no approve time extension has been granted by TOWN;
- (4) Failure to supply enough sufficiently skilled workers;
- (5) Abandonment of the Work;
- (6) Any violation of any of the terms and conditions of this Agreement.

In the event that TOWN elects to terminate Contractor for cause as provided for in this Section 18, and TOWN's termination for cause is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination shall automatically be deemed converted to a termination for convenience and Contractor shall be paid solely in accordance with subparagraph (B) of this Section 18.

D. Termination for Lack of Funds. In the event the funds to finance the Work under this Agreement become unavailable, Town may provide Contractor with thirty (30) days written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this scenario. In the event that TOWN elects to terminate Contractor for lack of funds as provided for in this paragraph, and Town's termination for lack of funds is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination shall automatically be deemed converted to a termination for convenience and Contractor shall be paid solely in accordance with subparagraph (B) of this Section 18.

E. Immediate Termination by Town. TOWN, in its sole discretion, may terminate this Agreement immediately and without prior written notice upon the occurrence of any of the following events:

1. Contractor's violation of the Public Records Act;
2. Contractor's insolvency, bankruptcy or receivership;
3. Contractor's violation or non-compliance with Section 11 of this Agreement;
4. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement;
- or
5. Contractor's violation of Section 19 of this Agreement.

Section 19: Public Entity Crimes Information Statement

Pursuant to Florida Statutes, Section 287.133: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list." Violation of this section by Contractor shall result in Town's immediate termination of this Agreement.

Section 20: Use of Awarded Bid by Other Governmental Units

Contractor agrees that this Agreement may be utilized by other governmental entities or units to provide the specified services. TOWN does not become obligated in any way, to pay for or become, in any way, responsible or liable for Contractor's provision of Work or services to any other governmental agency or unit.

Section 21: Change Orders, Modification of Agreement, and Construction Change Directives

Town and Contractor may request changes that would increase, decrease or otherwise modify the Scope of Work to be provided under this Agreement and/or the Completion Dates. Such changes only become part of this Agreement and increase, decrease or otherwise modify the Work, Contract Price, or Completion Dates under this Agreement if evidenced by a written Change Order executed by Town and Contractor, with the same formality and of equal dignity associated with the original execution of the Agreement. In the event the TOWN and Contractor dispute the amount of any adjustment in the Contract Price or Completion Dates, or both, resulting from any change(s) in the Work, the TOWN may nonetheless direct the Contractor in writing to proceed with the change(s) by issuing a Construction Change Directive. Upon receipt of a Construction Change Directive, Contractor shall diligently prosecute the Work described therein and shall otherwise continue its performance of the Work under this Agreement without work stoppage or delay due to the dispute. The subject of a Construction Change Directive may be the basis for a Change Order if later agreed to by the TOWN and Contractor.

Section 22: No Waiver of Rights

Neither the TOWN's review, approval or payment for any of the Work required under this Agreement shall be construed to operate as a waiver of any of TOWN's rights or remedies under this Agreement or of any causes of action arising out Contractor's performance of the Work under this Agreement, and Contractor shall be and remain liable to the TOWN for all damages to the TOWN caused by the Contractor's negligent or improper performance of any of the Work furnished under this Agreement, irrespective of the TOWN's review, approval or payment for any of the Work under this Agreement. The rights and remedies of the TOWN provided for under this Agreement are in addition to all other rights and remedies provided to TOWN by law or in equity.

Section 23: Jurisdiction and Venue

The exclusive venue and jurisdiction for any litigation arising from or relating to the Agreement shall be in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida. This Agreement shall be governed by the substantive laws of the State of Florida.

Section 24: WAIVER OF RIGHT TO JURY TRIAL

BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.

Section 25: Gender

Wherever the context shall so require, all words herein in the masculine gender shall be deemed to include the feminine, and all words herein in the feminine gender shall be deemed to include the masculine. All singular words shall include the plural, and all plural words shall include the singular.

Section 26: Time is of the Essence; Liquidated Damages

Time is of the essence for all of Contractor's obligations under this Agreement. The Town will be entitled to Liquidated Damages as set forth at Section 2.4.3.

Section 27: Days

The terms "days" as referenced in this Agreement shall mean consecutive calendar days.

Section 28: Written Mutual Agreement

This Agreement is binding upon the parties hereto, their successors and assigns and replaces, and supersedes any and all prior agreements, promises, representations or understandings between the parties hereto whether written or oral with respect to the subject matter hereof.

Section 29: No Amendment or Waiver

This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement prior to the initiation of any Work reflecting such change.

Section 30: Severability

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable, in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

Section 31: Resolution of Disputes; Florida Statutes, Chapter 558, F.S. Not Applicable

To prevent litigation, it is agreed by the parties hereto that TOWN Administrator shall solely decide all questions, claims, difficulties and disputes of, whatever nature, which may arise relative to this Agreement, including but not limited to, Contractor's fulfillment of its obligations under this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed, to be done or furnished, under or by reason of, the Agreement. Further, to the extent required or permitted by the agreement between the TOWN and its design professional(s) for this Project, the design professional(s) shall have access to the Work, the right to conduct testing or inspections, to reject non-conforming work, and to review pay applications. The TOWN Administrator's decision shall be reduced to writing, and a copy furnished to the Contractor within a reasonable time following submission to the TOWN of the question, claim, difficulty or dispute as referenced above. The TOWN Administrator's decision shall be final and conclusive unless Contractor provides TOWN with written notice of its objection within seven (7) days after receipt of the TOWN Administrator's decision. Provided that Contractor timely furnishes written notice of its objection, the parties shall endeavor to resolve their disputes through mediation with an agreed upon mediator within sixty (60) days thereafter. The parties shall equally split the cost of mediation. In the event the parties cannot agree to a mediator or the procedures of mediation, the parties shall submit the dispute for mediation through the American Arbitration Association ("AAA"), pursuant to the AAA mediation rules governing construction disputes. Venue for mediation shall be in Broward County, Florida. Attendance at mediation shall be a condition precedent to litigation, and any action filed in violation of this paragraph shall, upon motion of a party, be stayed pending the completion of mediation. Additionally, the parties understand and agree that Florida Statutes, Chapter 558, does not apply to this Agreement or the Work, and that the parties hereby "opt out" of the procedures set forth at Chapter 558, Florida Statutes.

Section 32: Notice

Whenever either party desires to give notice to the other, such notice must be in writing by certified or registered mail, postage prepaid, return receipt requested, hand delivery, or facsimile transmission prior to 5:00 p.m. on the date of transmission (e.d.t. or e.s.t. as applicable), or via overnight express courier service. For the present, the parties designate the following individuals as the respective parties and places for the giving of notice:

If to Town:

Town of Southwest Ranches
Town Administrator
13400 Griffin Road
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, J.D.
Arnstein & Lehr
200 East Las Olas Boulevard
Suite 1700
Fort Lauderdale, Florida 33301

If to Contractor:

Whiteleaf LLC dba Traffic Solutions
3001 Industrial Avenue 3
Fort Pierce, Florida 34946

Section 33: Miscellaneous

- A. Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement by Contractor and all persons or entities employed or otherwise retained by Contractor are and shall remain the property of TOWN. In the event of termination of this Agreement for any reason, any reports, photographs, surveys and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of TOWN and shall be delivered by Contractor to the TOWN Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Contractor shall be withheld until all documents are received by TOWN as provided herein.
- B. Audit and Inspection Rights and Retention of Records.** Town shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Contractor shall preserve and make available, at reasonable times for examination and audit by Town, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of the later of three (3) years after termination or expiration of this Agreement, or Final Completion of the Work, unless Contractor is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or the three (3) year period, whichever is later, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

In addition, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, Contractor shall provide a complete copy of all working papers to the TOWN, prior to final payment by the TOWN under this Agreement.

- C. **Independent Contractor.** Contractor is an independent contractor of TOWN under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the Work and services rendered under this Agreement shall be exclusively and solely those of Contractor. This Agreement shall not constitute or make TOWN and Contractor a partnership or joint venture.
- D. **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Contractor agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Contractor or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this paragraph D of Section 33.

- E. **Contingency Fee.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- F. **Materiality and Waiver of Breach.** TOWN and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this


Agreement and, therefore, is a material term hereof. TOWN's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification or continuing waiver of the terms of this Agreement.

- G. Joint Preparation.** TOWN and Contractor both acknowledge that they have sought and received whatever competent advice and legal counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties over the other.
- H. Drug-Free Workplace.** Contractor agrees that it shall maintain a drug-free workplace.
- I. Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- J. Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- K. Truth-in-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

THIS SECTION INTENTIONALLY LEFT BLANK


IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: TRAFFIC SOLUTIONS, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the ___ day of _____ 20__.

WITNESSES:


DAVED WARNER - MANAGING MEMBER


CHRIS ROBBINS - OPERATION MANG.

CONTRACTOR:

By: 
MARTIN WARNER, MANAGING (title) MEMBER
10th day of SEPTEMBER 2014

TOWN OF SOUTHWEST RANCHES

By: _____
Jeff Nelson, Mayor

____ day of _____ 201__

By: _____
Andrew D. Berns, Town Administrator

____ day of _____ 201__

ATTEST:

Russell Muñiz, MBA, MMC, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Keith M. Poliakoff, Town Attorney

EXHIBIT “A-1”

PROJECT SCOPE OF THE WORK

This project consists and includes all of the following:

GENERAL SPECIFICATIONS:

The item descriptions below are provided for the limited purposes set forth in this Invitation for Bid (IFB) and may not include all items and materials needed to complete the work. The Contractor shall furnish all labor, materials, equipment, and all else necessary to complete the project. Work shall be in strict accordance with applicable Florida Department of Transportation (FDOT) specifications. Descriptions provided for each item below are additional requirements and/or clarifications. The Contractor shall be responsible for costs incidental to the project, e.g., costs for insurance, dewatering and other permit fees, portable toilets (port-a-lets), on-site offices, safety measures, compliance with notification requirements of NPDES, Site restoration, etc.

Item No. 1 ENHANCED SPEED HUMP IMPROVEMENT

This item consists of modifying an existing speed hump to an enhanced speed hump that narrows the roadway over the existing hump. This item includes all work associated with the modification within the limits of the improvement, which is approximately 250 feet in length. The improvement includes, but is not limited to, the cutting and removal of the ends of an existing speed hump; constructing a concrete curb along the new edge to follow the profile of the existing hump, 6 inches above; removing all existing markings; removal of existing signs, if directed by the TOWN; cutting back any vegetation along the edge of the roadway; furnishing and installing new striping, markers, and signage. This item is paid on a lump sum per modification. At the discretion of the TOWN, an Enhanced Speed Hump Improvement may be replaced by a Speed Hump Improvement. The replacement shall be paid based on a quote herein for a similar Speed Hump Improvement.

Item No. 2 SPEED HUMP IMPROVEMENT

This item consists of modifying an existing speed hump to a speed hump with enhanced markings. There are no modifications to the existing asphalt. This item includes all Work associated with the modification within the limits of the improvement, which is approximately 250 feet in length. The improvement includes, but is not limited to, removing all existing markings; removal of existing signs, if directed by the TOWN; cutting back any vegetation along the edge of the roadway; furnishing and installing new striping, markers, and signage. This item is paid on a lump sum per modification.

Item No. 3 MAJOR INTERSECTION IMPROVEMENT

This item consists of the signage and markings improvements on the local road at their intersection with Sheridan Street and Griffin Road. The extent of the improvement is from the intersection to the first speed hump modification. The improvement includes, but is not limited to, removal and/or relocation of existing signs; cutting back of any vegetation from the roadway; and the furnishing and installation of new signage and markings. This item is paid on a lump sum per major intersection.

Item No. 4 LOCAL INTERSECTION MARKINGS

This item consists of improving all existing local intersections currently containing a stop sign. The improvement includes, but is not limited to, removal of existing markings; furnishing a new stop bar and 25 feet of double yellow line. This item is paid on a lump sum per side street intersection.

Item No. 5 LOCAL ROAD MARKINGS

This item includes the double yellow line, double markers, and white edge line for the segments of the local road that lie between speed hump modifications or intersection modifications, or not otherwise covered in another item. This improvement includes, but is not limited to, cutting back of any vegetation from the roadway; the furnishing of all striping and markers. This item is paid on a lump sum basis for each of the three local roadways in this project.

Item No. 6 EXISTING SIGN RESTORATION

This item consists of removal and either disposal or replacement of existing signage and the straightening of leaning sign posts. This item is paid based on a lump sum at the estimated number of signs affected as listed in the proposal. Any additional existing signs replaced, removed, or straightened, other than those covered by another pay item, will be paid based on the number of signs affected at the unit price listed in the proposal.

Item No. 7 MOBILIZATION AND DEMOBILIZATION

This item consists of all effort and costs associated with appearing at the project with manpower, equipment, and material at the project's commencing and all effort and costs associated with leaving the project at the project's overall completion. This item is paid on a one-time lump sum. If the project is temporarily suspended or otherwise phased and the Contractor is required to completely leave the project at the request of the TOWN, and to return at a later date, this item will be paid for the additional mobilization and demobilization. This item includes all clean-up and repairs from the work performed.



Town of Southwest Ranches

13400 Griffin Road
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall
(954) 434-1490 Fax

Town Council
Jeff Nelson, Mayor
Gary Jablonski, Vice Mayor
Steve Breitzkreuz, Council Member
Freddy Fisikelli, Council Member
Doug McKay, Council Member

Andy Berns, Town Administrator
Keith M. Poliakoff, Town Attorney
Russell Muniz, MMC, Town Clerk
Martin D. Sherwood, CPA CGMA, CGFO, Town Financial Administrator

COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THRU: Andy Berns, Town Administrator

FROM: Clete J. Saunier, P.E., Public Works Director

DATE: September 30, 2014

SUBJECT: **Approval of Lease Agreement and Maintenance Agreement for Procuring a Wide Format Multi-Function Printer/Copier/Scanner System with Canon Financial Services, Inc.**

Recommendation

Staff recommends Council approve a 60-month, lease agreement and related equipment service agreement with Canon Financial Services for the procurement of a wide format, multi-function printer / copier / scanner system.

Issue

This request is for a wide format (36 inches) multi-function printer / copier / scanner system. The requested equipment will be used interdepartmentally between the Public Works Department, Town Clerk, Procurement, Code Enforcement, and Planning & Zoning in the electronic processing of wide format documents (e.g., construction drawings, surveys, plans, etc.).

Background

Currently, all wide format documents related to building construction permit applications are submitted in triplicate hard copy sets requiring a voluminous amount of storage space during and after the permit review process. All wide format documents must be retained as public records for many years requiring extensive storage space that is becoming limited at Town Hall. Procurement must print out large quantities of ledger sized paper packets when issuing IFB's that are not full size documents, wasting paper when packets are printed but not used. The Town Clerk's office is limited to utilizing offsite vendors for public records requests for wide format documents which adds an additional cost to residents making such requests.

Procuring this equipment will enhance Staff's ability to conduct electronic review of building and site construction permit applications. Use of the equipment will result in greater efficiency in the plan review process by reducing staff review and filing times and reduced file storage space requirements. The Town Clerk's office will be able to maintain public records retention requirements for wide format documents by scanning and storing them electronically saving significant physical storage space. Records requests service delivery efficiency would be improved by providing records requests for building plans in-house instead of using an offsite vendor to reproduce wide format documents which would save residents time and expense. Code Enforcement will be able to better coordinate approved permit drawings when comparing actual construction work in the field as it progresses. Procurement will be able to issue multiple IFB (full size) plan sets electronically to all interested bidders on Town construction projects. There is also potential for the SWR Historical Society to record and printout wide format historical maps, plans and pictures for historical preservation purposes.

Town Staff reviewed equipment costs based on comparative GSA pricing, technical specifications and performance efficiencies offered by three manufacturers, Canon/Oce', Ricoh and Toshiba/Kip in accordance with SWR procurement policy. Staff also conducted vendor site visits to observe the specified equipment in operation. Staff evaluated and ranked the three manufacturers and determined Canon/Oce' would be the best choice overall for meeting Town Staff needs as outlined above.

Fiscal Impact

Funds are available in the Fiscal Year 2015 budget within the Non-Departmental Expenditures account #001-3900-519-44030 (Equipment/Vehicle Leasing). The annual lease and net maintenance agreement payments will be \$5,974.00 which is in conformance with the proposed funded FY 2015 Budget Book Program Modification (Page 114). The total equipment lease and maintenance payments over the 60-month term is \$29,870.00.

A breakdown of the submitted quotes is provided below:

Manufacturer	Amount (Annual Cost)	Comments
Canon / Oce'	\$5,974.00	Oce' Plotwave 340 B/W Laser Printer / Copier / Color Scanner <u>and</u> Canon ipf 760 Color Inkjet Plotter.
Toshiba / Kip	\$5,172.00	Kip 7170 B/W Laser Printer / Copier / Color Scanner <u>ONLY</u> . A separate color printer/plotter was not available and not included in the annual cost.
Ricoh	\$7,694.64	Ricoh MP CW2200SP Inkjet Color Printer / Copier / Color Scanner.

Staff Contact

Clete J. Saunier, P.E., Public Works Director / Town Engineer
Russell Muniz, Town Clerk

RESOLUTION NO. 2014 - _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A LEASE AGREEMENT WITH CANON FINANCIAL SERVICES, INC. AND A CUSTOMER AGREEMENT WITH CANON SOLUTIONS AMERICA, INC. FOR A WIDE FORMAT MULTI-FUNCTION PRINTER, COPIER, AND SCANNER; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, several departments of the Town, including the Public Works Department, Town Clerk, Procurement, Code Enforcement and Planning & Zoning are required to electronically process wide format documents (e.g., construction drawings, surveys, plans, etc.) and the Town currently uses outside vendors for printing, copying and storing wide format documents; and

WHEREAS, all wide format documents must be retained as public records by the Town, in accordance with the State's retention schedule, and storage at the Town Hall is limited; and

WHEREAS, if the Town had a wide format multi-function printer/copier/scanner, the Town would not have to out-source copying, printing, scanning and storage of said wide format documents; and

WHEREAS, Town Staff reviewed equipment costs based on comparative GSA pricing, technical specifications and performance efficiencies offered by three manufacturers, Canon/Oce', Ricoh and Toshiba/Kip in accordance with the Town's procurement policy and after review and evaluation, staff determined Canon/Oce' would be the best choice overall for meeting Town Staff needs as outlined above.

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. The Town Council hereby approves the leasing of a wide format multi-function printer/copier/scanner from the manufacturer Canon/Oce', pursuant to a Lease Agreement with Canon Financial Services, Inc. and a Customer Agreement with Canon Solutions America, Inc.

SECTION 3. The Mayor the Town Administrator, as attested by the Town Clerk and approved as to legal form and correctness by the Town Attorney, are hereby authorized and directed to enter into a Lease Agreement with Canon Financial Services, Inc. and a Customer Agreement with Canon Solutions America, Inc. for a wide format multi-function printer/copier/scanner, in substantially the form attached hereto as Exhibit "A", with such changes, insertions and omissions as may be necessary to effectuate the intent of this Resolution.

SECTION 4. 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 5. CONFLICTS. All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

SECTION 6. EFFECTIVE DATE. This Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this ____ day of September, 2014, on a motion by

_____, seconded by _____.

Nelson _____
Jablonski _____
Breitkreuz _____
Fisikelli _____
McKay _____

Ayes _____
Nays _____
Absent _____
Abstaining _____

Jeff Nelson, Mayor

ATTEST:

Russell Muñiz, MMC, Town Clerk

Approved as to legal Form and Correctness

Keith M. Poliakoff, Esq., Town Attorney
111887479.1

Canon Solutions America, Inc.

Customer Agreement

Division:	WFPS
Order Type:	Unbundled Lease (Term Lease)
	Hardware

Contract No:	
Agreement No:	411892-03
Rep No:	5273

Customer's Sold To Address	Customer's Ship To Address
Company Name: TOWN OF SOUTHWEST RANCHES	Company Name: -- See Site Surveys --
DBA:	DBA:
Contact Name: Clete Saunier	Contact Name:
Type of Entity: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> LLC (check one)	Address:
Address: 13400 GRIFFIN RD	Address:
City: SOUTHWEST RANCHES County: BROWARD	City: County:
State: FL Zip: 33330-2628 Phone: (954) 343-7444	State: Zip: Phone:

Product/Equipment Supplies Description (Include serial numbers and meter counts when required)	Requested Delivery	Qty.	Pre-pack	Warranty (w/ Days)	List Price	Trade-in / Discount	Installation/ Delivery	Addenda Totals	Total Net Price
A PW340	08/08/2014	1		90					
B SCEXP2		1		90					
C IPF760C		1		365					
D									

Billing Frequency	Agreement Term	Intro or Equipment Rental Data	Special Delivery Charges
Minimum Rental Payment Monthly	Initial Term 60	Minimum Payment	Excess Rigging
		Cost per Copy	Total (Exclusive of Sales/Use Tax & Maint.)
Minimum Maintenance Payment Monthly	Payment No. To	Trade in Equip <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	K-16 Summer Shut-Off (DPS Only)
	Payment No. To	PO Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Copy Allowance Monthly	Payment No. To	Tax Exempt <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	Payment No. To	Supplies Incl. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Service (Also used for Rental Copy Allowances/Charges.)																
Number of Square Foot/Linear Foot/SmartClick/Copies					Allowance	Zone	Service Charge	Service Addend	Excess Meter Charge/SmartClick Charge (Copies will be billed separately)				Service Pricing Fixed			
A	B&W	2000	Clr	0	Scan	0	SQFT	1	\$101.00	\$10.00	B&W	0.04100	Clr	Scan	0	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Months
B	B&W	Unlimited	Clr	0	Scan	0		1	\$40.00		B&W	0	Clr	Scan	0	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Months
C	B&W		Clr		Scan						B&W		Clr	Scan		<input type="checkbox"/> Yes <input type="checkbox"/> No Months
D	B&W		Clr		Scan						B&W		Clr	Scan		<input type="checkbox"/> Yes <input type="checkbox"/> No Months

Acceptance	Optional Service								
Customer Signature acknowledges receipt of 6 (#) documents (See documents listed below) which are incorporated into this document by reference.	After Hours Coverage								
	Opt. Coverage								
	Add'l Service Charge								
	Call Out Charge								
DOCUMENT NAME Customer Agreement Addendum For Additional Product/Equipment Customer Agreement Terms and Conditions Canon imagePROGRAF printer Amendment - LFS Easy PacII Amendment Site Survey Canon Solutions America, Inc. Amendment	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>A</td> <td><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td> </tr> <tr> <td>B</td> <td><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td> </tr> <tr> <td>C</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td>D</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	B	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	C	<input type="checkbox"/> Yes <input type="checkbox"/> No	D	<input type="checkbox"/> Yes <input type="checkbox"/> No
A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
B	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
C	<input type="checkbox"/> Yes <input type="checkbox"/> No								
D	<input type="checkbox"/> Yes <input type="checkbox"/> No								
	Comments Contract Compliance Code: 005 - STATE OF FL-IT HARDWARE - 250-000-03-1 This equipment is leased under a separate lease agreement by Canon Financial Services. Please see addenda for warranty information. Includes \$1,560.00 Account Credit								

Customer Authorized Signature	CSA Authorized Signature
ATTEST:	Date:
TOWN OF SOUTHWEST RANCHES	Accepted by:
By: Jeff Nelson, Mayor	Name (print):
Russell Muñoz, MBA, MMC, Town Clerk	
By: Andrew D. Berns, Town Administrator	Canon Solutions America, Inc. • 5450 N. Cumberland Avenue • Chicago, IL 60656
APPROVED AS TO FORM AND CORRECTNESS Dated this ____ day of ____ 2014	
Keith M. Poliakoff, Town Attorney	
FEIN/ SSN	

By execution hereof, the signer certifies that (s)he has read the entire Agreement, that CSA or its representatives have made no agreements or representations except as set forth herein and that (s)he is duly authorized to execute the Agreement on behalf of Customer.

Customer Agreement Addendum

Agreement No:	411892-03
Rep No:	5273
Branch No:	

Customer: TOWN OF SOUTHWEST RANCHES

Standard warranty: 90 days, Unlimited

Page 80
Form #07A9900 rev 12/18/12

Customer Agreement Addendum

Customer Agreement Addendum

Agreement No:	411892-03
Rep No:	5273
Branch No:	

Customer: TOWN OF SOUTHWEST RANCHES

Standard warranty: 365 days, Unlimited

Page 82
Form #USA9500 rev 12/18/12

Customer Agreement Terms and Conditions

Common Terms

1.0 DEFINITIONS.

- a. **Agreement** means this Customer Agreement and all schedules, amendments, and/or addenda attached hereto or made a part thereof.
- b. **Client Software** means that portion of the Software that resides in, and operates on, the desktop or portable computers in use by Customer or third parties and which provides access to the Server Software and computer system resources shared and used by the Software.
- c. **Confidential Information** means Firmware, Software, Documentation, technical service manuals, service bulletins, databases, customer lists, pricing, results, discounts and/or such other information as is marked as “confidential” by a party hereto.
- d. **Consulting Services** means consulting provided by CSA as relates to the Firmware and/or Software. Consulting Services may be provided by CSA at any time during the term of this Agreement. Consulting Services, if any, and the price therefore are set forth on the Customer Agreement Addendum or on a separate statement of work signed by CSA and Customer.
- e. **Consumables** means toner, developer, paper, photoconductor or ink, as the case may be to be used, in conjunction with or for the Equipment.
- f. **Cover Sheet** means the front page of this Agreement.
- g. **CSA** means Canon Solutions America, Inc.
- h. **Customer** means the business entity defined on the Cover Sheet.
- i. **Documentation** means documents and other materials provided to Customer to support use of Product(s).
- j. **Educational Services** means training provided by CSA as relates to the Product(s), Firmware and/or Software.
- k. **Excess Charge** means charges in Excess of the Square Foot/Linear Foot or SmartClick Allowance specifically set forth on the Cover Sheet.
- l. **Effective Date** means (i) the date the installation is completed; or (ii) for Software which is not installed during the installation of the Equipment, the date the Software is enabled or shipped; or (iii) in the case of conversions or trials, the date specified by CSA.
- m. **Equipment** means printing and/or scanning equipment, including accessories and ancillary equipment each and all of which is identified by model number on the Cover Sheet, excluding NOLI Products.
- n. **Firmware** means software embedded in Equipment in object code form, incidental to operation of the Equipment, licensed by the Equipment manufacturer to Customer or for which CSA has the right to sublicense to Customer.
- o. **Implementation Services** means services relating to the implementation of Firmware and/or Software and which are rendered at or about the time of Equipment installation and may include (but shall not be limited to) review of print applications, validation of hosts and network paths, validation of system configuration(s), and overview of printer/server operation. Implementation Services acquired hereunder, if any, and the costs thereof are set forth on the Customer Agreement Addendum.
- p. **Installation** means the Equipment is ready for commercial operation in accordance with manufacturer’s published specifications.
- q. **Installation Site** means the Customer’s “Ship To” address specified on the Cover Sheet and to which Customer requests that CSA ship the Equipment or Software. Delivery will be made to the Installation Site.
- r. **Maintenance** means the repair and/or replacement of parts, subassemblies, and Firmware to keep the Product(s), and if applicable NOLI Products, in good working order per manufacturer’s or CSA’s written specifications, as the case may be, provided that repairs can be performed in the field. Parts required for repair may be used or remanufactured in accordance with CSA’s specifications. Maintenance may be provided by CSA or a third party subcontracted by CSA.
- s. **NOLI Products** means Non-Océ Listed Items, which may include hardware, software (and specifically Third Party Software), equipment, supplies, service, warranty, network equipment and other items not listed in CSA’s price list and as designated on the Customer Agreement Addendum.
- t. **Parts** means all parts certified by CSA as meeting manufacturers’ and/or CSA specification, as the case may be, and which are required to provide Maintenance to Products. Such certification requirements shall be determined solely by CSA.
- u. **Product** means Equipment, Consumables, Maintenance, Professional Services, Educational Services and Parts provided hereunder, excluding NOLI Products.
- v. **Professional Services** means collectively Implementation Services, Educational Services and Consulting Services each of which as such services relate to Software acquired hereunder. Professional Services, if any, and the rates therefore, are specified in the Customer Agreement Addendum.
- w. **Server Software** means that portion of the CSA Software that resides in, and operates on, the computer systems of Customer which allow access by the Client Software to shared computer system resources, including data files and databases.
- x. **Service Charges** means charges invoiced by CSA for Maintenance Services and/or Software Support and or charges based on use.
- y. **SmartClick™** means a CSA proprietary measurement derived from (1) the amount of toner used; plus (2) the area of media used, for each application printed on the Equipment.
- z. **Software** means all computer software programs provided by CSA, whether embedded in Product(s) or provided via separate media or download; the Software includes, but is not limited to, Firmware, and Third Party Software and software that is set forth in the Customer Agreement Addendum.
- aa. **Software Support** means access to CSA support specialists for operator questions, installation support, explanation of Software features and functionality, network connectivity questions, and other software support issues. Software Support includes making available updates, fixes, minor enhancements and improvements to the current version of the Software and/or Firmware and correcting reproducible errors in Firmware or Software which errors are caused by defects in the software. Software Support does NOT include (i) administration of servers or database products; (ii) support of Firmware or Software installed on equipment using “beta” or operating systems not supported by CSA; (iii) resolution of network errors not directly related to Firmware or Software; or (iv) installation, setup or support of third party products not supported by CSA or software not acquired from CSA. Software Support does not include updates, upgrades and new releases or versions of third party products sold with or used in conjunction with Software.
- bb. **Third Party Software** means software authored by third parties other than CSA and made available by CSA to Customer and which requires Customer to enter into a license agreement directly with the third party software provider. Third Party Software provided hereunder is set forth on the Customer Agreement Addendum.

2.0 This Agreement governs the provision of Products and NOLI Products identified on the Cover Sheet and/or Customer Agreement Addendum and shall be in effect from the earlier to occur of: (i) the date the Agreement, signed by Customer, is countersigned by CSA; or, (ii) shipment of the Product; or, (iii) performance of any Professional Services and/or Maintenance. Once this Agreement becomes effective and legally binding as set forth in this Section, it is non-cancelable. CSA has no responsibility for the decision or effect of the decision of Customer to acquire NOLI Products, even if CSA helps Customer identify, evaluate or select such NOLI Products. Customer and CSA shall sign a separate addendum (“Supplemental Agreement”) in connection with the purchase of such NOLI Products.

3.0 EQUIPMENT. Products shipped hereunder, unless otherwise specifically set forth in the Cover Sheet or Customer Agreement Addendum may, in CSA’s sole discretion, be New/Newly Manufactured, Factory Produced New Model, Like New, Remanufactured, Refurbished or Used. With respect to Wide Format Equipment, CSA may ship (at CSA’s sole discretion) any Equipment type defined above. “Factory Produced New Model” means Equipment that has been disassembled, cleaned, refinished, inoperable components replaced with new or used components. Such Equipment is newly serialized Equipment with new features and/or functions. Customer is the first user of this Equipment, which is fully tested to assure product performance and reliability specifications. “Like New” means Equipment previously on trial, used as a demo unit, shown at a trade show or equipment with nominal foot/copy count. All Like New Equipment has been maintained by CSA, has not been pre-owned by any other party and has a nominal foot/copy count from a controlled pre-production environment. “New/Newly Manufactured” means Equipment that is newly assembled and which may contain a limited number of used components that have been thoroughly inspected and tested to assure product performance and reliability specifications. “Refurbished” means Equipment that has been under CSA maintenance, has been tested to ensure full functionality and reliability to specifications. “Remanufactured” means Equipment that has been disassembled, cleaned, refinished, inoperable components replaced with new or used components and is fully tested to assure product performance and

reliability specifications. Meters have been reset to zero. "Used" means Equipment that has been maintained under CSA's authorized technical standards. Used Equipment is offered without warranty.

4.0 DELIVERY; RISK OF LOSS; INSURANCE. Delivery dates provided for by CSA are estimates only and CSA shall not be liable for delays in delivery due to causes beyond CSA's reasonable control. Customer is responsible for freight, delivery and rigging charges unless otherwise agreed. Notwithstanding any other provision herein and in addition to Service Charges, CSA may assess a fuel surcharge ("Fuel Surcharge") to offset increase in fuel expenses. Risk of loss shall pass to Customer upon delivery to Customer's loading dock. From the time of shipment until Customer's payment obligations have been satisfied, Customer agrees (a) to give CSA prompt written notice of any damage to or loss of the Equipment or any occurrence arising from the possession, use, or operation of the Equipment resulting in death, bodily injury or damage to property; and (b) to maintain, at its expense, comprehensive general liability and property insurance covering the Equipment in an amount at least equal to the Equipment purchase price.

5.0 TITLE; SECURITY INTEREST; TRADE-IN. Customer agrees to immediately notify CSA in writing of any change in Customer's name or address or jurisdiction of organization, or discontinuance of its place or places of business. Prior to payment being made in full, Customer shall not move the Products from the Installation Site without first obtaining prior written consent from CSA. Title to Products (except with respect to Software) shall pass to Customer upon payment in full. CSA shall retain a first priority security interest in the Products and all proceeds thereof until all purchase payments due CSA have been made. As security for the payment of all amounts due to CSA, Customer hereby grants to CSA a purchase money security interest in the Products and all proceeds thereof (including insurance proceeds). To the extent permitted by applicable law, Customer hereby authorizes CSA to file with the appropriate governmental authorities any and all financing statements necessary to evidence or perfect CSA's security interest in the Products including attachments, replacements, substitutions, modifications and additions thereto. Customer agrees to reimburse CSA upon demand for all costs incurred in connection therewith. Customer represents and warrants that any trade-in equipment is free and clear of all liens and encumbrances of any kind and that marketable title shall vest in CSA upon CSA's receipt of the trade-in equipment. Customer shall be responsible for related freight charges and trade-in equipment shall be packed in accordance with the manufacturer's specifications.

6.0 INSTALLATION AND SITE PREPARATION. CSA shall install the Equipment at the Installation Site. In no event shall Installation be later than thirty (30) days after delivery of the Equipment, except if delay is due solely to CSA. Customer shall be ready to timely receive the Equipment and shall have the area at the Installation Site prepared and ready to receive the unit of Equipment or the Software in accordance with CSA's power, environmental and other requirements prior to its delivery, including providing adequate power, analog phone line(s) and computers and/or network connection(s) (if required for the unit of Equipment), lighting, humidity, HVAC, and security. Installation services may be provided by an independent contractor at CSA's discretion. Installation services include uncrating, unpacking, connection to peripherals, power, communication and other utilities, and rendering the Equipment or Software ready for use. All site preparation, including electrical wiring, air conditioning and necessary permits or approvals, is Customer's responsibility. Unless otherwise specified in the Cover Sheet and/or Customer Agreement Addendum, Customer operator training is available from CSA at its training rate in effect at the time of such training pursuant to Section 24.0. Customer must complete a CSA site survey, or equivalent CSA form, prior to installation of any Equipment or Software that will be connected to Customer's computer network. In reliance on this information, CSA will either proceed with the installation, or advise Customer of potential problems that may limit functionality. If such survey has been completed and delivered to CSA, or if there are any changes to Customer's computer network or software, any attempts by CSA to remedy such problems will be at its standard charges then in effect, and CSA makes no representation or warranty that it can remedy such problems.

7.0 PAYMENT AND TAXES. Payment of the purchase price and other charges is due thirty (30) days from the date invoiced. Service Charges are billed for full month periods. If Equipment is installed on other than the first of the month, then Service Charges shall be pro-rated from the install date to the end of the month; in addition, use charges shall be charged based on the meter read for the same period. Once per twelve month period, CSA may adjust pricing for Maintenance Service Charges, or any component thereof, supplies and other materials, by a maximum of fifteen percent (15%). Customer shall pay on demand a late fee equal to the lesser of 1.5% per month or the maximum rate permitted by law, on all overdue payments whether such payments are due prior to or after a notice of default. All payments shall be made at the office of CSA set forth above, or at any other place designated by CSA. Customer shall pay or reimburse CSA for all costs of collection (including reasonable attorneys' fees, litigation expenses and court costs) of any overdue amounts. Customer shall pay or reimburse CSA for all license fees, duties, privilege, sales, use, excise, stamp, and other similar taxes and charges now or hereafter imposed upon this transaction or relating to the ownership, sale, use or operation of Equipment (exclusive of franchise taxes or taxes based upon CSA's net income).

8.0 DEFAULT AND REMEDIES.

- a. Any of the following shall constitute a default by Customer ("Default"):
 - (i) failure to pay any amounts when due and such failure remains unremedied for ten (10) days from the due date; or,
 - (ii) failure to comply with any provisions or perform any of its obligations arising under this Agreement or under any other documents or agreements relating to this Agreement, and such failure remains unremedied by Customer for a period of twenty (20) days.
- b. Upon Default, CSA may exercise any one or more of the following remedies (which remedies shall be cumulative):
 - (i) terminate this Agreement and/or any applicable Schedule;
 - (ii) declare all amounts due from Customer immediately due and payable in full;
 - (iii) secure peaceable repossession and removal of the Products by CSA or its agent without judicial process and sell or lease at such place as CSA may deem advisable and CSA may be the purchaser at any such sale;
 - (iv) require Customer to pay all expenses, including reasonable attorney fees and costs, in connection with the retaking, refurbishing, selling or the like of the Products;
 - (v) exercise any other right or remedy available to it under the Uniform Commercial Code or any other applicable law or proceed by appropriate court action to enforce this Agreement or recover damages for breach thereof. To the extent permitted by applicable law, Customer waives all rights it may have to limit or modify any of CSA's rights and remedies under this Agreement, including but not limited to, any right to require CSA to dispose of the Products or otherwise mitigate its damages.

9.0 WARRANTY. CSA warrants that on completion of Installation, Equipment will be (i) in material conformance with the manufacturer's published specifications, (ii) qualified for CSA's standard maintenance services; (iii) free from material defects in workmanship and materials. All parts found to be defective during installation shall be repaired or replaced at the option of CSA. All parts replaced under this warranty shall become the property of CSA. If a warranty period is marked on the Cover Sheet, then warranty shall continue from Installation for the period set forth on the Cover Sheet. Customer's sole and exclusive remedy for breach of the foregoing warranty shall be to reject the Equipment and cancel the affected Equipment Schedule. In no event shall a breach of this warranty give rise to a claim for damages against CSA. CSA's obligation hereunder is limited to the repair or replacement (at CSA's option) of any Equipment, material or part which does not conform to this warranty. The warranty set forth herein applies only to New/Newly Manufactured, Factory Produced New Models, Remanufactured or Refurbished Equipment and is conditioned upon Customer giving prompt notice to CSA of any discovered defects. CSA is not obligated by this warranty to perform repairs or parts replacement for defects or damage resulting in whole or part from (i) alteration, relocation, repairs, or use of parts, software or services not provided by CSA or its authorized representative, (ii) accident, (iii) abuse, willful misconduct, or negligence; (iv) the acts or omissions of Customer. The repair or replacement of expendable items (for example photoconductor drums, fuser rollers, and inkjet print heads) are not covered by this warranty or Maintenance. The foregoing examples do not comprise a complete list and expendables may vary on different products and CSA shall maintain the complete list of expendable items. **THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.** CSA provides no warranty for NOLI Products. For NOLI Products, Customer may receive a warranty directly from such product or software vendor.

10.0 LIMITATION OF LIABILITY. EXCEPTING AS TO A VIOLATION OF THE SOFTWARE LICENSE TERMS HEREOF BY CUSTOMER, NEITHER PARTY, NOR CSA'S SUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, DATA, REVENUE OR PROFIT, OR FOR INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR DAMAGES SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY ANY THIRD PARTY INCLUDING CUSTOMERS OF CUSTOMER, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. CSA'S MAXIMUM LIABILITY FOR ANY CLAIM FOR DAMAGES RELATING TO ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED: (A) WITH REGARD TO EQUIPMENT, TO THE PURCHASE PRICE OF THE EQUIPMENT; (B) WITH REGARD TO SOFTWARE, TO THE LICENSE FEE OF THE SOFTWARE; (C) WITH REGARD TO MAINTENANCE, TO AN AMOUNT EQUAL TO TWELVE (12) MONTHS OF MONTHLY MAINTENANCE CHARGES FOR THE RELATED EQUIPMENT, SOFTWARE OR SERVICES GIVING RISE TO SUCH DAMAGES; AND (D) WITH REGARD TO PROFESSIONAL SERVICES, TO THE AMOUNT PAID FOR THE PROFESSIONAL SERVICES GIVING RISE TO SUCH DAMAGES.

11.0 INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS. CSA agrees to defend Customer against and hold Customer harmless from, claims, costs (including reasonable and necessary attorney fees), damages, demands judgments and liabilities arising out of the claims of third parties that a Product (but specifically excluding Third Party Software and NOLI Products) infringes such third party's United States patent, copyright or other intellectual property right and CSA agrees to pay the resulting costs, damages and attorneys' fees finally awarded, provided that Customer promptly notifies CSA in writing of the claim and fully cooperates with CSA and CSA has sole control of the defense and all related settlement negotiations. CSA's obligation under this Section is conditioned on Customer's agreement that if such Products (except Third Party Software or NOLI Products, or the use thereof), becomes, or in CSA's opinion is likely to become, the subject of such a claim, Customer shall permit CSA, at CSA's option and expense, either to procure the right for Customer to continue using the Products or to replace or modify the Products so that it becomes non-infringing, and if neither of the foregoing alternatives is available on terms which are reasonable in CSA's judgment, Customer shall return the Product upon the request of CSA. Upon such return, CSA shall refund the applicable Product purchase price paid by Customer, less depreciation deducted on a five year straight-line basis. CSA shall have no liability for any claim based upon or any damages attributable to: (i) the combination, operation or use of the Equipment or Software with equipment or software not supplied or authorized in writing by CSA; (ii) modification of the Equipment or Software; or (iii) Equipment or Software made pursuant to specifications furnished by Customer. The foregoing states the entire obligation and liability of CSA with respect to infringement of patents, copyrights or other intellectual property rights. Customer shall indemnify and hold CSA harmless from and against any liability and expense, including reasonable attorneys' fees incurred by CSA in connection with any claim that the Equipment or Software, or any part thereof, custom made pursuant to specifications furnished by Customer infringes any third party's patent, copyright or other intellectual property right.

12.0 CONFIDENTIALITY. Customer shall maintain the confidentiality of Confidential Information and shall not disclose any Confidential Information to any third party without first having obtained the written approval of CSA. Customer shall not sell, transfer, distribute, disclose or otherwise make available the Confidential Information to any third party and shall secure and protect it from disclosure and shall take such action as is necessary with its employees (including contractors and temporary help) and other persons permitted access to them to satisfy Customer's obligations hereunder. Neither party will use for any purpose, other than performing this Agreement, or disclose to any third party any trade secrets or non-public information of the other party or its affiliates including, but not limited to, marketing information and strategy, marketing models, product information, advertising and promotional copy, pricing information, financial information, customer lists, test results, and all other proprietary information, trade secrets and non-public information. The parties agree to restrict circulation of all of such information within their own organization, except to the extent necessary to perform its obligations, and in no case will any disclosure be made to any third party, unless such disclosure is requested or required in any judicial or administrative proceeding or otherwise required by law. Upon termination of this Agreement, Customer shall either (i) return all Confidential Information to CSA, including the Documentation, and all copies thereof, or (ii) at CSA sole option, certify to CSA in writing that the Confidential Information, including the Documentation, and all copies thereof, has been destroyed. CSA makes no representations as to the destruction of Customer data on returned Equipment that contain Customer data, and shall not otherwise be liable for failure to destroy such Customer data, or for the release of same. Any information on Equipment returned to CSA shall not be considered confidential or proprietary nor shall be subject to applicable agreement provisions pertaining to same. Security software/hardware on products that do not contain standard hard disk drive overwrite capability may be available for purchase. This will enable the Customer to determine the level of security required without intervention from CSA, and to complete erasing of data prior to pick-up.

13.0 NOTICES; CHANGES. Notices, requests or other communications shall be in writing and delivered by (a) United States first class mail, postage prepaid, and addressed to the other party at the address set forth on the face of this Agreement (or to such other address as such party shall have designated by proper notice), (b) personal delivery or (c) commercial overnight delivery service. Such notices will be deemed to have been given on the date when received or acceptance refused. Each party consents to service of process by certified mail at its address above (or such other address as it shall have designated by proper notice) in connection with any legal action brought by the other party. Customer authorizes CSA to fill in descriptive material in the Schedule (including serial numbers) and to correct any errors under the Agreement or Schedule. Upon reasonable notice, provided there is no material adverse effect on performance, CSA shall have the right to change design, colors, materials or specifications of Equipment when it deems necessary.

Software License Terms

14.0 SOFTWARE. In some cases CSA makes available to customers licenses of application software with or without third party support contracts. Such software shall be set forth on the Cover Sheet or Customer Agreement Addendum (the "Listed Software"). Customer is not acquiring title to or any interest in any Listed Software other than a license to use the Listed Software in conjunction with the Equipment. Listed Software is specifically set forth on the Cover Sheet and/or Customer Agreement Addendum. Software embedded in the Equipment is not specifically set forth on the Cover Sheet or Customer Agreement Addendum. If Customer is licensing software that is authored by third parties (for example, Adobe or Onyx software), Customer will enter into a license agreement directly with the licensor of such software. This is typically done during installation and registration of the software.

15.0 FIRMWARE. The license for Firmware is incidental to the operation and use of the Equipment in which it is embedded and the use thereof is limited to the Equipment in which the Firmware is embedded. Firmware support is provided as part of Maintenance. Customer must pay for Maintenance to receive support for Firmware. If Customer discontinues paying for Maintenance, Customer will not receive support, modifications, updates or enhancements for Firmware, however, Customer is permitted to use the Firmware solely with the Product(s) and "as is" with no obligation on the part of CSA with respect to such use or maintenance.

Product & Software Maintenance Terms

The following Product and Software Maintenance Terms are only applicable if Maintenance is being purchased by Customer under this Agreement.

16.0 MAINTENANCE TERMS AND CONDITIONS. Pricing and term for Maintenance purchased by Customer is set forth in the Cover Sheet and/or Customer Agreement Addendum. The following general terms and provisions apply to any and all Maintenance purchased hereunder:

- a. CSA's standard preventive Maintenance services will be provided during CSA's standard business hours (Monday through Friday, 8:30 AM to 5:00 PM local time, excluding CSA recognized holidays). The length and frequency of periods of time required for preventive maintenance are determined by CSA. Preventive Maintenance means testing, adjusting, cleaning and replacement of components scheduled in accordance with the Equipment service specifications. Maintenance performed on weekends, holidays (if available) or between 5PM and 8:30AM (at Customer's request) shall be billed at CSA's holiday rates in effect at the time of such service unless otherwise set forth in the Cover Sheet and/or Customer Agreement Addendum. Corrective Maintenance coverage will be provided as is specifically set forth in the Cover Sheet and/or Customer Agreement Addendum.
- b. Engineering changes, including safety changes, shall be performed as deemed necessary by CSA. If CSA cannot perform a safety modification through no fault of CSA, or, if Customer refuses to permit installation of a safety change or removes any component deemed by CSA as integral to maintaining the safety of the Equipment, CSA may discontinue Maintenance for all Equipment until the problem as identified by CSA is remedied by Customer.
- c. CSA warrants that all material and parts furnished pursuant to its obligations to provide Maintenance hereunder will be in good working order at the time of Installation, and CSA's obligation is limited to the repair or replacement of any material or part which does not conform to this warranty. CSA is not responsible for repairing or replacing parts, nor shall CSA be liable for providing or failing to provide Maintenance, to the extent that such repair or replacement is due to Customer's acts or omissions. All parts replaced during maintenance shall become the property of CSA. Parts used by CSA may, in CSA's sole discretion, be used, reconditioned or remanufactured in accordance with manufacturer's specifications.
- d. Customer shall: (i) provide CSA full, free and safe access to the Equipment for performance of Maintenance by CSA; (ii) allow CSA to store reasonable quantities of maintenance equipment and/or parts on Customer's premises; (iii) provide a suitable environment for the Equipment in accordance with manufacturer's environmental requirements; **(iv) if applicable, report to CSA by the last calendar day of each month, the monthly usage according to the meter reading in footage or images as applicable;** and (v) promptly inform CSA of any Equipment malfunctions or operating problems.
- e. Customer shall NOT interfere with the proper operation of the meter.
- f. If Customer does not report to CSA the monthly usage as required by Section 16.0(d) CSA will estimate any excess Meter Charges and payment will be due from Customer based upon such estimate.
- g. The Maintenance term shall commence upon installation of the Equipment or, if already installed, upon certification by CSA, or, at the conclusion of the Warranty period, if any.
- h. Maintenance shall be automatically renewed for successive one (1) year terms at CSA's then-current charges and under the terms and conditions herein unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of any initial or renewal term. CSA may also notify Customer ninety (90) days in advance of the time of renewal that Maintenance for specific Products covered under this Agreement will not be renewed. Customer may terminate Maintenance in any renewal term upon thirty (30) days prior written notice. If Customer provides notice of Intent to terminate during the first thirty (30) days of Maintenance in a renewal term, Customer shall be responsible for the charges for the period of coverage up until the effective date of termination. After the first thirty (30) days of coverage in any renewal term, Customer may provide notice to terminate Maintenance subject to a termination charge equal to the monthly charges for twelve (12) months or the period of Maintenance remaining in the renewal term, whichever is less. For prepaid agreements, CSA will refund or credit the pro rata price of the remaining term less the applicable termination charge.
- i. CSA shall not be obligated hereunder to provide Maintenance or warranty services determined by CSA to be necessary due to or caused by, in whole or part: (i) failure to continually provide a suitable environment in accordance with CSA's requirements; (ii) neglect, misuse, or use of the Equipment for purposes other than for which it was designed, or failure to operate the Equipment in accordance with CSA's or manufacturer's operating instructions or within manufacturer's specifications; (iii) accident, disaster, including effects of water, wind, lightning, or transportation; terrorism, vandalism or burglary; (iv) alteration of Equipment, including any deviation from Equipment design, unless previously authorized in writing by CSA; (v) attachment(s) to the Equipment, including connection of devices not supplied by CSA, which cause the Equipment to malfunction, unless previously authorized in writing by CSA; (vi) use of improper, or inadequate use of or failure to use, supplies; (vii) the use of forms not in compliance with CSA's paper specifications; (viii) maintenance or repair services performed by Customer or a third party without written authorization from CSA; or, (x) pre or post processing Equipment disconnected from the printing system to which it was originally installed unless previously authorized in writing by CSA. If in CSA's sole opinion, Equipment has been rendered unrepairable, then CSA may refuse to render services under this Agreement and may terminate this Agreement.
- j. In the event Customer removes a Product covered by Maintenance from the Installation Site, breaches this Agreement (or any other agreement it has with CSA), or, in the event CSA declares an end of life date with respect to a Product (provided CSA has given customer no less than ninety (90) days prior written notice of such end of life date), CSA may withdraw such Product from maintenance coverage under this Agreement in which case Customer shall not be entitled to any refund for any payments made hereunder.

17.0 ORDERING OF SUPPLIES AND OTHER MATERIALS. Customer orders for supplies, Customer or field replaceable units, consumables, expendables or any other materials (a) must include a valid Customer purchase order number; (b) are shipped to Customer FOB, CSA's warehouse; and (c) are subject to a thirty percent (30%) restocking fee if accepted for return by CSA pursuant to its Material Return Authorization (MRA) procedure. If Customer requires a carrier other than CSA's preferred carrier(s), the order will be subject to a surcharge plus actual delivery charges. "Expedite/Emergency Orders" are any orders, regardless of the shipping method, that per Customer's request, must be shipped on the same day as ordered and such Expedite/Emergency Orders are subject to an expedite surcharge plus actual delivery charges. Non standard carrier and Expedite/Emergency Order surcharges are subject to change without notice. Claims for shortages, damages in transit or lost shipments, as well as invoice discrepancies must be made within thirty (30) days of receipt or invoice date (whichever is applicable). Customer agrees that it is purchasing only toner/developer and that the bottles are and will remain the property of CSA. Moreover, empty toner bottles for certain models are recycled by CSA in accordance with its environmentally friendly practices. Accordingly, Customer agrees to return to CSA those empty toner bottles for those certain models that are shipped to Customer with pre-paid return labels using such pre-paid labels. IN THE EVENT CSA DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER HAS ORDERED CONSUMABLES BEYOND ITS REASONABLE REQUIREMENTS BASED ON INDUSTRY ACCEPTED CLICK VOLUME MEASUREMENTS, CSA MAY, IN ITS SOLE DISCRETION, UPON REASONABLE DEMONSTRATION OF SUCH EXCESS USE TO CUSTOMER, BILL CUSTOMER THE LIST PRICE OF THE EXCESS CONSUMABLES.

18.0 MAINTENANCE SERVICE CHARGES. For the period covering the Effective Date to the date that monthly billing commences for the first Minimum Maintenance Payment set forth on the Cover Sheet ("Interim Period"), Customer shall pay CSA an amount equal to the Minimum Maintenance Payment divided by 30 and multiplied by the number of days in the Interim Period. Such amount shall be due and payable on the tenth day following the date that monthly billing commences. CSA shall invoice the Minimum Maintenance Payment in advance and shall invoice the Excess Meter Charges and other usage fees ("Maintenance Service Charges") periodically as indicated on the Cover Sheet. If applicable, Customer provide meter readings by the last calendar day of each month the monthly usage by a CSA approved method. Should such meter readings not be provided in a timely fashion, Excess Meter Charges may be estimated by CSA. Except for wide format products, when supplies are included in the Minimum Maintenance Payment, Customer is entitled to the amount of toner which, on average, covers six percent (6%) of the media unless another coverage rate is specified in an applicable program or document. Notwithstanding any other provision herein and in addition to Maintenance Service charges, CSA may assess a fuel surcharge ("Fuel Surcharge") to offset increases in fuel expenses. The Equipment may contain software that allows CSA to access the Equipment remotely ("Remote Software"). In such cases, Customer authorizes CSA to use the Remote Software to (a) receive software updates and transmit use and service data accumulated by the Equipment over Customer's network by means of an HTTPS protocol and (b) store and analyze such data solely for CSA's own purposes related to servicing the Equipment and for product improvement. Customer hereby requests that CSA enable the Remote Software on the Equipment listed on the Cover Sheet and/or Customer Agreement Addendum.

19.0 EXCLUSIONS. The following are not within the scope of Maintenance Service or warranty: (i) provision and installation of optional retrofits; (ii) enhancement of any feature of the Product(s); (iii) services connected with Product(s) relocation; (iv) installation/removal of accessories, attachments, or other devices; (v) exterior painting or refinishing of Product(s); (vi) maintenance, installation, or removal of Product(s) or devices not provided by CSA; (vii) performance of normal operator functions as described in applicable CSA operator manual(s), including, but not limited to, loading of toner and/or paper; (viii) performance of services necessitated by accident, negligence, temperature, inadequate ventilation, power failure, improper electrical power, unauthorized alteration of Product(s), tampering, service by other than CSA, causes other than ordinary use, improper supplies or accessories, interconnect of Product(s) by electrical or electronic, or mechanical means, with incompatible Product(s), or failure to use CSA operating system software; (ix) performance of services necessitated by the introduction of a computer virus or other bug into the Product(s); (x) repair or replacement of Expendable Items listed in Common Terms, Section 9 above; and (xi) performance of service necessitated by any modification, alteration or any other change whatsoever of Customer's computer system into which the Product(s) is integrated or otherwise connected. Maintenance provided by CSA to resolve an exclusion set forth under this paragraph shall be billed at CSA's (i) then published hourly service rates and minimum charges for service time, including travel and waiting time; (ii) parts and material prices then in effect; and (iii) charges for shipping and travel expenses.

20.0 CUSTOMER RESPONSIBILITIES. Customer agrees: (a) not to use paper, recycled paper, parts, photoconductors, toner, or other supplies which will cause a need for excessive service and (b) that replaced parts are the property of CSA.

21.0 SOFTWARE SUPPORT.

The following terms are applicable only if Software Support is made available to Customer through Customer's purchase of "Incidents":

- (i) For certain Equipment, Software Support is provided on a "per Incident" basis. An "Incident" is defined as a question related to a specific issue with regard to the maintained Software that can be resolved telephonically by isolating its origin to a single cause.
 - (ii) Incidents may be purchased individually or in quantities as in accordance with CSA's policy. Any such Incidents purchased by Customer are set forth on the Customer Agreement Addendum. An Incident will be considered "used" when CSA: (1) corrects the problem; (2) creates a reasonable work-around; (3) provides information in response to a Customer question; or (4) isolates the cause of the support issue to product provided by a party other than CSA. An Incident will not be considered "used" if the problem results from a defect in maintained Software for which no Software patch or workaround is then available from CSA. Issues that CSA determines cannot reasonably be resolved as Incidents may be escalated, with the consent of Customer, to a CSA Software Engineer or scheduled for on-site support at CSA's then-current consulting rates. CSA DOES NOT REPRESENT OR WARRANT THAT ALL SOFTWARE ISSUES CAN OR WILL BE RESOLVED AS INCIDENTS. Incidents purchases are non-transferable and non-refundable. Incidents not used by Customer shall expire at the end of the Maintenance Service Initial Term or the applicable Maintenance Service Renewal Term. At the start of each Maintenance Service Renewal Term, Customer shall receive the same number of Incidents purchased during the Maintenance Service Initial Term unless Customer purchases additional Incidents in accordance with CSA's then-current policy.
 - (iii) CSA will provide Software Support through the use of Incidents to those Customer employees who have been issued an ID code providing email/telephone access to the CSA Software Support Center. Customer shall be responsible for controlling ID code access and for any unauthorized use of ID codes. ID codes are non-transferable.
 - (iv) An overview of the total number of Incidents purchased, number used and number remaining available for use are available by contacting the Software Support Center with access provided using the Customer's ID code.
 - (v) Software Support does not include: (1) training; (2) maintenance materials; (3) on-site support; (4) on-site implementation, installation or integration support; (5) re-installation of Software on computer equipment supplied by CSA after modification of such computer equipment by Customer (such as installation of memory, disk, interface boards, other software, etc.); (6) re-installation or re-initialization of Software after changes in a networking system or alteration of the parameters of Customer's current networking system; or (7) support or service required because of the upgrade of any software not licensed by CSA, such as operating system or utilities software, even if running on computer equipment supplied by CSA. CSA may make these services available at CSA's then-current consulting rates. CSA reserves the right to decline to perform such services.
- c. It is the responsibility of Customer to make and maintain adequate backups of data and configuration of Software. CSA shall not be liable for any losses (of data or productivity or of any other kind) resulting from rebuilding or reconfiguring Software to the original, factory configuration. Reloading, rebuilding and reconfiguring of server software may, at CSA's sole discretion, be chargeable at CSA's then published hourly Professional Services rates with minimum charges for service time, including travel and on-site wait time.

22.0 LICENSE FEE. The license for the various Software products listed herein is covered by a one time license fee for these products. In order to receive updates, fixes and enhancements (maintenance) for the Software products, Customer must continue to pay the maintenance fee which is identified on the face of the Customer Agreement next to the Software as "Service Charge". If Customer discontinues paying the maintenance fee, Customer will not receive maintenance, however, Customer is permitted to use the Software solely with the Product(s) and "as is" with no obligation on the part of CSA with respect to such use or maintenance, subject to the terms and conditions herein including those restricting the assignability of Software. With respect to third party software, CSA is a reseller of such software. Customer's license for such third party software is granted from the third party software provider and the terms of the license agreement that comes with that software must be referenced for updates, fixes and enhancements.

Professional Services Terms

23.0 All Professional Services provided hereunder shall be set forth on the Customer Agreement Addendum. A statement of work ("Statement of Work") shall be signed by Customer prior to commencement of any Professional Services. The Statement of Work shall include the completion date (if applicable), total cost, a description of the work to be performed, acceptance criteria (if applicable) and maintenance charges (if applicable). All work product created under a Professional Services statement of work and all ideas, improvements, know-how, discoveries, and techniques including without limitation, computer programs, routines and code, developed in connection with Professional Services shall be owned by CSA. CSA grants to Customer a personal, non-exclusive, non-transferable royalty-free limited license to use such work product in the United States solely for internal use and solely in conjunction with the Equipment identified in the Customer Agreement Addendum.

Educational Services Terms

24.0 All Educational Services shall be set forth on the Customer Agreement Addendum. The following terms are only applicable if Educational Services are purchased and apply to any and all Educational Services purchased hereunder:

- a. Educational Services are offered to Customer by CSA in the form of training sessions and are provided during CSA's standard business hours (Monday through Friday excluding CSA recognized holidays - 8:00 AM to 5:00 PM local time) unless Customer purchases after hour on-site training at additional cost. Training may take place at an CSA central training facility or at Customer's site as determined by CSA and Customer. Each training session is a one-time event or a one-time visit. Customers are charged separately for each training session. The composition and duration of each training session is determined solely at CSA's discretion.

- b. Unless otherwise set forth in a writing signed by both parties, standard CSA published rates apply. CSA published rates are subject to change without notice. Customer is responsible for Customer's travel and lodging expenses. CSA will bill Customer, and Customer agrees to pay, CSA's reasonable travel, hotel and other reasonable expenses in connection with Customer on-site training sessions.
- c. Training materials for each training session are provided to Customer and/or Customer's registrants as set forth under CSA's then current policy. Such training materials are CSA Confidential Information.
- d. Unless otherwise agreed in writing, Educational Services must be completed within sixty (60) days after the date of Installation. In the event Educational Services are not completed within this time period and provided the delay is not due to CSA, Customer's Educational Services shall automatically terminate with no further obligation on the part of CSA, in which case Customer shall not be entitled to a refund. Monies paid towards a training session in connection with a specific model of Equipment or software is not transferrable to any other model of Equipment or software and may not be used by Customer to pay for any other Equipment, Maintenance, Professional Services or training offering.
- e. Cancellation. (i) CSA may cancel an on-site training session by providing notice to Customer no less than five (5) business days prior to the scheduled date of training. If a training session is cancelled by CSA and CSA and Customer do not agree to reschedule such session, upon request of Customer, CSA will refund the purchase price for the cancelled training session. CSA is not responsible for any expenses incurred by Customer or Customer's registrant in connection with such cancellation. (ii) CSA may reschedule a training session by providing notice to Customer no less than five (5) business days prior to the scheduled date of training. CSA is not responsible for any expenses incurred by Customer or Customer's registrant in connection with such rescheduling. (iii) Upon written notice to CSA received no less than five business days prior to the date of a scheduled training session, Customer may cancel such training session and receive a full refund of Customer's purchase price for such training session; or, Customer may reschedule such training session at a mutually agreeable time and place. If CSA and Customer do not agree on dates and location for a rescheduled session, upon request of Customer, CSA will refund the purchase price for the cancelled training session. In the event that CSA has incurred any non-refundable costs or expenses, such as travel, lodging and related expenses, in anticipation of such training session, Customer shall reimburse CSA for such costs and expenses. (iv) Monies received for a training session, the cancellation notice of which is received by CSA within five business days of the scheduled date for such training session, are not refundable. However, CSA may, within its sole discretion, apply such monies to a rescheduled training session. In any event, to the extent CSA has incurred any non-refundable costs or expenses, such as travel, lodging and related expenses, in anticipation of such training session, Customer shall reimburse CSA for such costs and expenses. (v) CSA is not obligated to refund any monies paid for registrants not attending any scheduled training session.

Miscellaneous

25.0 This Agreement shall constitute the entire agreement between Customer and CSA with respect to product(s), services and software. Any variance from or additions to the terms and conditions of this Customer Agreement, or any amendments, schedules or addenda, in any purchase order or other written notification from Customer will be of no effect. This Agreement may not be assigned by Customer without the written consent of CSA and shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, permitted successors and assigns. Customer may deliver the signed Agreement to CSA by facsimile or electronic transmission. By delivering the Customer signed Agreement to CSA by facsimile or electronic transmission, Customer intends and agrees that such facsimile or electronic transmission shall constitute an original of the Agreement, shall be legally binding on Customer as if the Agreement were manually signed by Customer and personally delivered to CSA, shall be the best evidence of the Customer's agreement and shall be admissible in any legal proceeding. CSA shall have no duty or obligation whatsoever to verify or inquire as to the validity, execution, signer's authority, or any other matter concerning the propriety of the facsimile or electronic transmission. No amendment hereunder shall be effective unless in writing, signed by the parties hereto and no waiver shall be effective unless in writing, signed by the party to be charged. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. Except for obligations of payment, neither CSA nor Customer shall be liable for nonperformance caused by circumstances beyond their control, during the time such circumstances exist including, but not limited to, work stoppages, floods, and Acts of God. Customer agrees that CSA may use Customer's name and/or logo in connection with press releases, marketing literature, advertising and other public announcements or publicity materials concerning the Products acquired by Customer from CSA. CSA does not acquire any ownership interest in any Customer trademarks. CSA shall properly attribute ownership of Customer's trademarks to Customer. The captions in this Agreement are for convenience only and shall not define or limit any of the terms hereof. This Agreement is the result of negotiation between the parties and, accordingly, shall not be construed for or against either party regardless of which party drafted this Agreement or any portion thereof. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW RULES. Each party expressly and irrevocably agrees: (a) that any and all legal disputes whatsoever concerning this Customer Agreement and any amendments, schedules or addenda entered into hereunder, must be brought in the State or Federal courts located in New York, New York and that such courts shall have the exclusive jurisdiction and authority to resolve such disputes; (b) to submit to the jurisdiction of the State and Federal courts located in New York, New York, for purposes of resolving legal disputes concerning this Agreement and any Schedules entered into hereunder, and to waive any and all objections to personal jurisdiction and/or to venue; and (c) to waive any right to trial by jury in legal disputes concerning this Agreement and any amendments, schedules or addenda entered into hereunder.

Canon Solutions America, Inc.

Easy Pac II Amendment

CSA Origination office: 5450 Cumberland Avenue Chicago IL 60656
CSA Administrative office: 5450 Cumberland Avenue Chicago IL 60656

Customer:	TOWN OF SOUTHWEST RANCHES
Customer #	550940

THIS AMENDMENT IS ATTACHED TO AND MADE A PART OF THE AGREEMENT # 411892-03 BETWEEN Canon Solutions America, Inc. ("CSA") and Customer ("Agreement"). All defined terms within the Agreement shall have the same meaning within this Amendment.

Definitions

- "Excess Charges" means charges in excess of the SmartClick Allowance.
- "Océ Combo Pack" means Océ ink tank(s) and printhead(s) for the Océ TCS Equipment and Océ ColorWave® 300 Equipment.
- "Program" means the Océ EasyPac II Océ TDS Black Toner/Océ PlotWave Black Toner/Océ TCS- Océ ColorWave 300 Ink/Océ ColorWave 6xx Océ Toner Pearls Cartridge Program.
- "Scheduled Supplies" means: in connection with Océ TDS Equipment and Océ PlotWave Equipment, the fixed amount of Océ Black Toner to which Customer is entitled as set forth in the Agreement(s) and/or this Amendment.
- "Supplies" means: (i) for Océ TDS Equipment and Océ PlotWave® Equipment, Océ Black Toner; (ii) for Océ TCS Equipment and Océ ColorWave 300 Equipment, ink tanks, printheads, Océ Combo Pack(s) and/or maintenance cassettes; (iii) for Océ ColorWave 6xx Equipment, Océ TonerPearls® cartridges.
- "Supplies Entitlement" means: in connection with Océ TCS Equipment and the Océ ColorWave 300 Equipment the number of ink tanks, printheads, "Combo Packs", and/or maintenance cassettes to which Customer is entitled as set forth in the Agreement(s) and/or this Amendment and in connection with Océ ColorWave 6xx Equipment, the amount of Océ TonerPearls cartridges to which Customer is entitled as set forth in the Agreement(s) and/or this Amendment.
- "SmartClick™" means a CSA proprietary measurement derived from (1) the amount of toner used; plus (2) the area of media used, for each application printed on the Equipment.

Supplies Program

So long as Customer is not in default, the Program entitles Customer to the fixed amount of genuine Océ Supplies set forth in the Agreement and/or this Amendment, on a scheduled or entitlement basis. Scheduled Supplies for Océ TDS Equipment will be shipped directly to the Ship to address set forth on the Cover Sheet during the term of the Agreement. Supplies for Océ TCS Equipment and/or Océ ColorWave Equipment will be shipped pursuant to Customer's order and subject to the Supplies Entitlement during the term of the Agreement. Supplies for the Océ ColorWave 6XX Equipment may be used solely with the Océ ColorWave 6xx Equipment set forth on the Cover Page and/or Customer Agreement Addendum. Any additional Supplies that are required beyond the Scheduled Supplies or Supplies Entitlement can be ordered directly from CSA (toll free at 800-323-4827) at additional cost to Customer.

Equipment and Annual Allowance or Estimated Print Quantities

Printer Model: PW340

Annual Allowance or Estimated Print Volume: 24000

Supplies Shipment

A. For Océ TDS Equipment or Océ PlotWave Equipment and provided Customer is not in default: Supplies shipments will be automatically shipped and will continue for the full term of the Agreement, without Customer's request or without requiring any documentation or order confirmation from Customer. For Océ TDS Equipment and for Océ PlotWave Equipment, one unit of supplies is equal to one carton of Océ Black Toner. Changes to this shipment schedule are valid only upon execution of a new amendment to the Agreement. CSA will ship only on the periodic shipment schedule dates. CSA will not accelerate or expedite shipments unless otherwise approved by CSA.

CSA will Automatically Ship: 1 units of Toner

on the first business day:

Semi-Annually. Terms Supplies entitlement of 10 units.

B. For Océ TCS Equipment, Océ Colorwave 6xx Equipment or Océ ColorWave 300 Equipment and provided Customer is not in default: Supplies will only be shipped once an order has been placed by Customer. For Océ TCS Equipment and Océ ColorWave 300 Equipment, one unit of supplies is equal to one Océ Combo Pack. For Océ ColorWave 6xx Equipment, one unit of Supplies is equal to one Océ TonerPearls cartridge.

Pricing

For Océ TDS Equipment and Océ PlotWave Equipment: CSA will ship the Scheduled Supplies for the term of the Agreement. Additional amounts of Supplies may be required by Customer for excess print volumes or applications based on Customer's actual usage. Customer is responsible for ordering and paying for Supplies in excess of the Scheduled Supplies. Should Customer require additional Supplies beyond the Scheduled Supplies, CSA will ship such additional quantities to Customer upon acceptance of Customer's purchase order for such additional Supplies. Customer will be invoiced separately for such additional orders over Scheduled Supplies and agrees to pay for such additional quantities. CSA reserves the right to refuse shipment of additional Supplies. This Program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

For Océ TCS Equipment or Océ ColorWave 300 Equipment: This is a fixed supplies quantity contract. Customer is responsible for ordering Supplies as needed during the term of the Agreement. If additional Supplies are required by Customer for excess print volumes or applications based on Customer's actual usage, Customer is responsible for ordering such additional Supplies as needed during the term of the Agreement. Should Customer require additional supplies beyond the contracted quantities, CSA will ship such additional quantities to Customer upon acceptance of Customer's purchase order for such additional Supplies. Customer will be invoiced separately for such additional orders over the fixed contract quantity and agrees to pay for such additional quantities. CSA reserves the right to refuse shipment of additional Supplies. This Program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

For Océ Colorwave 6xx Equipment – SmartClick Excess Plan: This is a fixed supplies quantity contract. Customer is responsible for ordering Supplies as needed during the term of the Agreement. If additional Supplies are required by Customer for excess print volumes or applications based on Customer's actual usage, Customer is responsible for ordering such additional Supplies. The cost to Customer for such additional Supplies is included in the excess SmartClick Charge. If additional Supplies are ordered by Customer, CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon Customer's consumption and subject to CSA's approval, which shall not be unreasonably withheld. CSA reserves the right to refuse shipment of additional Supplies. This program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included. The Minimum Periodic Payment and Excess SmartClick Charges may both include a charge for toner.

Term

Customer may not terminate this Program except as set forth herein. This Amendment shall commence on the start date of the Agreement and shall remain in effect for an initial term of a period of 57 months. The Program shall be automatically renewed for successive one (1) year terms at CSA's then current charges, for a *pro rata* amount of the Supplies Entitlement based on the Supplies Entitlement for the initial term and under the terms and conditions of the Agreement and this Amendment unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of any initial or renewal term. CSA may also notify Customer ninety (90) days in advance that the Supplies covered under this Agreement will no longer be available for any subsequent renewal terms. Customer may terminate this Program in any renewal term upon thirty (30) days prior written notice. If Customer provides written notice of Intent to terminate during the first thirty (30) days of a renewal term, Customer shall be responsible for the charges for the period of coverage up until the effective date of termination. After the first thirty (30) days of coverage in any renewal term, Customer may provide notice to terminate the Program subject to a termination charge equal to the monthly charges for twelve (12) months or the period of this Program remaining in the renewal term, whichever is less. For prepaid agreements, CSA will refund or credit the *pro rata* price of the remaining term less the applicable termination charge.

Miscellaneous

CSA may refuse shipment of Supplies if Customer is not current on payments, or is in default for any other reason. Customer may order Supplies under the Agreement and/or this Amendment solely for its own internal use and not for resale or, if Customer is a CSA authorized reseller, for the internal use of Customer's end user that acquires, through purchase or lease from Customer, the Océ Products and not for resale. CSA may refuse shipment in the event that CSA reasonably believes Supplies are not being used for the internal use of the Customer or Customer's end user or, if in connection with the Océ ColorWave 6xx model, CSA reasonably believes Supplies are not being used solely with the Océ ColorWave 6xx equipment set forth on the Cover Sheet and/or Customer Agreement Addendum.

Returns

Returns of Supplies are only permitted for Supplies defects. A CSA Return Materials Authorization (RMA) is required prior to any return.

Except as contained herein, the terms and conditions of the Agreement shall remain in full force and effect. This Amendment will not commence and will not be binding on CSA until accepted by CSA.

Customer Authorized Signature		CSA Authorized Signature	
ATTEST:	TOWN OF SOUTHWEST RANCHES	Date:	
	By: _____		
	Jeff Nelson, Mayor	Accepted by:	
Russell Muñiz, MBA, MMC, Town Clerk	By: _____		
	Andrew D. Berns, Town Administrator	Name (print):	
APPROVED AS TO FORM AND CORRECTNESS	Dated this ____ day of _____ 2014		
:		Title:	
Keith M. Poliakoff, Town Attorney			

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Canon Solutions America, Inc.

Canon imagePROGRAF printer Amendment - LFS

CSA Origination office: 5450 Cumberland Avenue Chicago IL 60656
CSA Administrative office: 5450 Cumberland Avenue Chicago IL 60656

Customer:	TOWN OF SOUTHWEST RANCHES
Customer #	550940

THIS AMENDMENT IS ATTACHED TO AND MADE A PART OF AGREEMENT # 411892-03 BETWEEN Canon Solutions America, Inc. ("CSA") and Customer ("Agreement"). All defined terms within the Agreement shall have the same meaning within this Amendment. In the event that this Amendment conflicts with the terms of the Agreement, the terms of this Amendment shall control.

Definitions:

- "Canon Equipment" means the model(s) of the Canon imagePROGRAF printer(s) set forth on the Cover Sheet.
- "Canon Products" means the software, consumables, accessories and/or parts used in connection with the Canon imagePROGRAF Equipment and set forth on the Cover Sheet and/or Customer Agreement Addendum.

1. The terms set forth in this Amendment shall apply only to the Canon Equipment and/or the Canon Products:
2. For the Canon Equipment and/or the Canon Products, in lieu of Section 9.0 of the Agreement, the terms of the imagePROGRAF LARGE FORMAT PRINTER LIMITED WARRANTY ("Canon Printer Limited Warranty") shall be the sole warranty in connection with the Canon Equipment and/or Canon Products (except for printheads used with the Canon Equipment), and the terms of the imagePROGRAF PRINthead LIMITED WARRANTY ("Canon Printhead Limited Warranty") shall be the sole warranty in connection with printheads used with the Canon Equipment. If Customer purchases an extension of the Canon Printer Limited Warranty and/or the Canon Printhead Limited Warranty, the term and cost thereof is set forth on the Cover Sheet and/or the Customer Agreement Addendum. If Customer has not purchased an extension of the Canon Printer Limited Warranty and/or the Canon Printhead Limited Warranty maintenance services may be made available to Customer on a time and materials basis at CSA's then-current rates.
3. If Customer self installs the Canon Equipment, Customer is responsible for all installation services, including uncrating, unpacking, connection to peripherals, power, communication and other utilities and rendering the Canon Equipment and/or any Canon software ready for use. All site preparation described herein is the responsibility of the Customer.
4. The following language is added immediately after the first sentence of Section 7, (PAYMENT AND TAXES), of the Agreement:

If Customer self installs the Canon Equipment, CSA will invoice Customer upon shipment of the Canon Equipment and payment is due thirty (30) days from the date invoiced.
5. The first sentence of Section 11 (INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS) of the Agreement is deleted in its entirety and the following language is added as the new first sentence of Section 11:

CSA agrees to defend Customer against and hold Customer harmless from, claims, costs (including reasonable and necessary attorney fees), damages, demands judgments and liabilities arising out the claims of third parties that a Product (but specifically excluding Canon Equipment, Canon Products, Third Party Software and NOLI Products) infringes such third party's United States patent, copyright or other intellectual property right and CSA agrees to pay the resulting costs, damages and

attorneys' fees finally awarded, provided that Customer promptly notifies CSA in writing of the claim and fully cooperates with CSA and CSA has sole control of the defense and all related settlement negotiations.

6. Section 16.0 (MAINTENANCE); Section 18.0 (MAINTENANCE SERVICE CHARGES); Section 19.0 (EXCLUSIONS); and Sections 21.0 (SOFTWARE SUPPORT) of the Agreement are hereby deleted in their entirety.

Except as contained herein, the terms and conditions of the Agreement shall remain in full force and effect. This Amendment will not commence and will not be binding on CSA until accepted by CSA.

Customer Authorized Signature		CSA Authorized Signature
ATTEST:	TOWN OF SOUTHWEST RANCHES	Date: _____
	By: _____	
	Jeff Nelson, Mayor	Accepted by: _____
Russell Muñiz, MBA, MMC, Town Clerk	By: _____	
	Andrew D. Berns, Town Administrator	Name (print): _____
APPROVED AS TO FORM AND CORRECTNESS	Dated this ____ day of _____, 2014	Title: _____

Keith M. Poliakoff, Town Attorney		



Site Information

Customer Name: TOWN OF SOUTHWEST RANCHES

Department: Engineering Floor: First Room/Suite: _____

Address: 13400 GRIFFIN RD

City: SOUTHWEST RANCHES State: FL Zip: 33330-2628

Contact Name:(1) CLETE SAUNIER Phone: 954-343-7444 Ext: _____

Contact Name:(2) _____ Phone: _____ Ext: _____

Region: Branch: Orlando Service Zone: 1

Inspection Date: 08/08/2014 Requested Install Date: 08/08/2014

Priority Message: _____

Other Comments: _____

Delivery Requirements

Is a loading dock available? ☐ Yes ☒ No Delivery hours? _____ to _____

If yes, what is the dock height? 0 Is the customer site tractor/trailer accessible? ☐ Yes ☒ No

Please note: a tractor/trailer can be 48' to 53' in length plus the cab

If not, list building entrance dimensions (list dimensions in inches) : Height: 81 Width: 48

Door Width: 48 Corridor Width: 121 Step Width: 0

of steps (outside): 0 # of steps (inside): 0

Stair Crawler Required? ☐ Yes ☒ No Number of floors: 0

Will an elevator be used? ☐ Yes ☒ No Elevator hours? _____ to _____

Elevator appointment required? ☐ Yes ☒ No If yes, contact name & phone: _____

Elevator Dimensions (in inches): Width: 0 Depth: 0 Load Capacity: 0

Elevator Door Opening (in inches): Height: 0 Width: 0

Customer to move fixed obstructions prior to installation unless special arrangements are made. ☐ Yes ☒ No

If "No", list specifics, contact and phone number: _____

Will floor protections be required: ☐ Yes ☒ No

Has the floor condition been confirmed satisfactory by the customer? ☒ Yes ☐ No

Current Equipment

REPLACEMENT EQUIPMENT

Make: _____ Model: _____ Serial Number: _____

To Be Removed By: _____

Special Instructions: _____

** If existing equipment is to be removed by CSA, additional labor will be invoiced at current published service rates.*

Additional Delivery Requirements

<p>Is a power lift on the truck required:</p> <p>Will metal plates be required for some areas?</p> <p>Is a forklift available at the customer site? *</p> <p>Are pallet jacks available at the customer site? Two short ones (4 feet) Plus one Long one (6 feet) if possible</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Is a crane required for delivery of equipment?</p> <p>If a crane is required, is access sufficient (for example, a window)?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Key Operator Training

Key Operator(s) will be trained upon completion of install: (To be determined)			
Key Operator	Name: Clete Sauier		Phone/Ext: 9547437444
Key Operator	Name:		Phone/Ext:
Date and Time:	Prime Shift	Second Shift	Third Shift
Field Engineer:			
No. of Students:			

Space Requirements

The printing system (with or without the optional Scanner Express) requires a floor space / working area of at least **1811 mm x 1471 mm (71.3 inch x 57.9 inch)**.

Image TBD Note floor space requirements above and below.

Environmental Conditions

Temperature and relative Humidity	Temperature		R.H.
	□ C	□ F	%
Guaranteed performance area	20	68	30
	27	81	30
	27	81	60
	20	68	60
Reasonable performance area	17	63	20
	30	86	20
	30	86	80
	17	63	80
Room volume and ventilation	System		
Minimum Room Volume	25 m ³		
Minimum Room Ventilation (natural ventilation)	12,5 m ³ /hour		

Shipping Information

Machine Dimensions Unpacked	Depth		Width		Height without Top Delivery Tray and User Interface		Height with Top Delivery Tray and User Interface	
	(mm)	(")	(mm)	(")	(mm)	(")	(mm)	(")
PlotWave 340/360	800	31.5	1527	60.1	1052	41.4	1495	58.9
PlotWave 340/360 Multifunction Express	800	31.5	1527	60.1	1110	43.7	1495	58.9
PlotWave 340/360 Delivery Tray	1474	58	1169	46	839	33	839	33

Machine Dimensions Packed on Pallet

	Depth		Width		Height			
	(mm)	(")	(mm)	(")	(mm)	(")		
PlotWave 340/360	1445	57.3	839	33	1270	50.2		
Scanner Express	1245	49	331	13	483	19		
PlotWave 300 Delivery Tray	1220	48	1016	40	432	17		

Machine Weight

	Unpacked		Packed				
	Kg	lbs	Kg	lbs			
PlotWave 340/360	180	397	277	612			
PlotWave 340/360 Multifunction Express (Excludes paper rolls)	200	441	Not available Packed.				
Scanner Express	19	44	29	64			
PlotWave 340/360 Delivery Tray	-	-	68	150			

Electrical Requirements

Customer is responsible for providing the electrical power as outlined below prior to the machine installation. Electrical receptacle (as shown below) is required. Electrical Supply must be a dedicated line.

- 115 Volt
- 20 Amps for Plotwave
- 3 Wire Ground



NEMA 5-20R
for Printer

The electrical service will be available on:

Field Service Information

District Service Manager		
Service Area		
Office Address		
Telephone Number		
FAX Number		
Installation Technician	Gonzalez, Mario	
Primary Technician	Gonzalez, Mario	
Back-up Technician	Gonzalez, Mario	
Salesperson		Phone:
Sales Order Number:		Is this a trial <input type="checkbox"/>
If a Trial how long (weeks/months)		Contract Approved <input type="checkbox"/>

Delivery Information	
Carrier:	
Anticipated Delivery Date:	
Target Installation Date at Site:	
Target Installation Date On-line:	

Site Survey - Acceptance Signatures	
Customer	Date
CSA	Date
Service Manager	Date
<p>Please return completed form to your Branch Administrator Notify your Region Administrator and Bus Ops if any changes occur prior to installation date.</p> <p>Return to: Canon Solutions America Attn: Business Operations 425 N. Martingale Rd. Schaumburg, IL 60173 LFS_Orders@csa.canon.com SASG_Orders@csa.canon.com</p>	

**Canon Solutions America, Inc.
Amendment**

CSA Origination office: 100 Park Blvd. Itasca, IL 60143
CSA Administrative office: 100 Park Blvd. Itasca, IL 60143

Customer:	Town of Southwest Ranches
Contract No:	411892-03

THIS AMENDMENT IS ATTACHED TO AND MADE A PART OF THE AGREEMENT #411892-03 BETWEEN Canon Solutions America, Inc. ("CSA") and Customer ("Agreement"). All defined terms within the Agreement shall have the same meaning within this Amendment.

Section 2.0: Re-write the first sentence as follows: "This Agreement governs the provision of Products and NOLI Products identified on the Cover Sheet and/or Customer Agreement Addendum and shall be in effect upon installation of the equipment as identified in Section 1, Item (p)."

Section 3.0 Equipment: Re-write the paragraph as follows: "Products shipped hereunder shall be New/Newly Manufactured. "New/Newly Manufactured" means Equipment that is newly assembled and which may contain a limited number of used components that have been thoroughly inspected and tested to assure product performance and reliability specifications.

Section 4.0, Delivery; Risk of Loss; Insurance: Delete the second sentence from the paragraph.

Section 12.0, Confidentiality: This Section is hereby deleted from the Agreement.

Section 25.0, Miscellaneous: Throughout the paragraph, delete "New York" and "New York, New York" and replace with "Florida".

Customer Authorized Signature		CSA Authorized Signature
ATTEST:	TOWN OF SOUTHWEST RANCHES	Date: _____
	By: _____	
	Jeff Nelson, Mayor	Accepted by: _____
Russell Muñiz, MBA, MMC, Town Clerk	By: _____	
	Andrew D. Berns, Town Administrator	Name (print): _____
APPROVED AS TO FORM AND CORRECTNESS	Dated this ____ day of _____, 2014	
: _____		Title: _____
Keith M. Poliakoff, Town Attorney		

LEASE AGREEMENT

CFS-1020 (07/13)

CANON FINANCIAL SERVICES, INC. ("CFS")
Remittance Address: 14904 Collections Center Dr.
Chicago, Illinois 60693 (800) 220-0200

AGREEMENT
NUMBER

COMPANY LEGAL NAME TOWN OF SOUTHWEST RANCHES		DBA		PHONE (954) 343-7444	
BILLING ADDRESS 13400 GRIFFIN RD		CITY SOUTHWEST RANCHES	COUNTY BROWARD	STATE FL	ZIP 33330-2628
EQUIPMENT ADDRESS 13400 GRIFFIN RD		CITY SOUTHWEST RANCHES	COUNTY BROWARD	STATE FL	ZIP 33330-2628
EQUIPMENT INFORMATION			NUMBER AND AMOUNT OF PAYMENTS		
Quantity	Serial Number	Make/Model/Description	Number of Payments	Total Payment *	
1		PW340 / PlotWave 340 Printer (PW340)	5	\$4,474.00	
1		SCEXP2 / Scanner Express II (SCEXP2)			
1		IPF760C / imagePROGRAF 760 Printer (IPF760C)			
FIRST PAYMENT AMOUNT FIRST & LAST PAYMENT(S) + SECURITY DEPOSIT = TOTAL DUE AT SIGNING \$ _____ \$ _____ \$ _____ <input type="checkbox"/> Nonrefundable Check must accompany Agreement			Term in months: 60 Payment Frequency: <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input checked="" type="checkbox"/> Other: END OF TERM PURCHASE OPTION <input type="checkbox"/> FAIR MARKET VALUE <input type="checkbox"/> 10% \$ _____ (estimated) <input checked="" type="checkbox"/> \$1.00 <input type="checkbox"/> Other _____		

THIS AGREEMENT IS EFFECTIVE ONLY UPON SIGNING BY BOTH PARTIES. THIS AGREEMENT IS NON-CANCELABLE BY CUSTOMER. CUSTOMER REPRESENTS THAT ALL ACTION REQUIRED TO AUTHORIZE THE EXECUTION OF THIS SCHEDULE ON BEHALF OF THE CUSTOMER BY THE FOLLOWING SIGNATORIES HAS BEEN TAKEN.

ACCEPTED CANON FINANCIAL SERVICES, INC. By: _____ Title: _____ Date: _____		AUTHORIZED CUSTOMER SIGNATURE TOWN OF SOUTHWEST RANCHES By: _____ Jeff Nelson, Mayor By: _____ Andrew D. Berns, Town Administrator APPROVED AS TO FORM AND CORRECTNESS Dated this _____ day of _____ 2014 Keith M. Poliakoff, Town Attorney	
ACCEPTANCE CERTIFICATE To: Canon Financial Services, Inc. ("CFS") The Customer certifies that (a) the Equipment referred to in the above Agreement has been received, (b) installation has been completed, (c) the Equipment has been examined by Customer and is in good operating order and condition and is, in all respects, satisfactory to the Customer, and (d) the Equipment is irrevocably accepted by the Customer for all purposes under the Agreement. Accordingly, Customer hereby authorizes billing under this Agreement. Signature: _____ Printed Name: _____ Title (if any): _____ Date: _____			

TERMS AND CONDITIONS

- 1. AGREEMENT:** CFS leases to Customer, a Municipal Corporation organized under the laws of the State of Florida, with its chief executive office at 13400 Griffin Rd Southwest Ranches FL 33330-2628 and Customer leases from CFS, with its place of business at 158 Gaither Drive, Suite 200, Mount Laurel, New Jersey 08054, all the equipment described above, together with all replacement parts and substitutions for and additions to all such equipment (the "Equipment"), upon the terms and conditions set forth in this Lease Agreement ("Agreement"). The amount of each Payment specified in Number and Amount of Payments section above and the 10% or Other Purchase Option price specified above are based on the supplier's best estimate of the cost of the Equipment. Such Payments and Purchase Option prices will be adjusted upward or downward if the actual total cost of the Equipment, including any sales or use tax, is more or less than the estimate and, in that event, Customer authorizes CFS to adjust such Payments and Purchase Option price by up to fifteen percent (15%).
- 2. AGREEMENT PAYMENTS:** Customer agrees to pay to CFS, as invoiced, during the term of this Agreement, (a) the payments specified under "Number and Amount of Payments," and (b) such other amounts permitted hereunder as invoiced by CFS ("Payments").
- 3. APPLICATION OF PAYMENTS:** All payments received by CFS from Customer under this Agreement will be applied to amounts due and payable hereunder chronologically, based on the date of CFS's charge as shown on the invoice for each such amount, and among amounts having the same date in such order as CFS, in its discretion, may determine.
- 4. TERM OF AGREEMENT:** The term of this Agreement shall commence on the date the Equipment is delivered to Customer, provided Customer executes CFS's Acceptance Certificate or otherwise accepts the Equipment as specified herein. After acceptance of the Equipment, Customer shall have no right to cancel this Agreement during the term hereof. The term of this Agreement shall end, unless sooner terminated by CFS, when all amounts required to be paid by Customer under this Agreement have been paid as provided and either (a) Customer has purchased the Equipment in accordance with the terms hereof or (b) the Equipment has been returned at the end of the scheduled term or renewal term in accordance with the terms hereof. Customer has no right to return the Equipment to CFS prior to the end of the scheduled term of this Agreement for any reason whatsoever, including, without limitation, payment of all amounts due under the Agreement prior to the end of the scheduled term.
- 5. ADVANCE PAYMENTS: SECURITY DEPOSIT:** CFS may apply, but shall not be obligated to apply, any "Advance Payment(s)" or "Security Deposit" specified above to cure any default of Customer, in which event Customer shall promptly restore to CFS any amount so applied. In no event shall any advance payment or security deposit earn interest except where required by applicable law. No portion of any security deposit will be refunded to Customer until all of Customer's obligations have been fully performed as expressly provided in this Agreement. If the "Nonrefundable" box is checked, no portion of the security deposit will be refunded to Customer for any reason whatsoever.

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS.

PERSONAL GUARANTY

The undersigned, (whether one or more are specified, the "Guarantor(s)"), in consideration of CANON FINANCIAL SERVICES, INC. ("CFS") entering into an Agreement (together with any schedules or supplements thereto, the "Agreement") with Customer identified above ("Customer") irrevocably and unconditionally, jointly and severally, guarantee to CFS, and its successors and assigns, the payment when due of all amounts owed under the Agreement (whether at maturity or upon the occurrence of an event of default or otherwise) and the performance by Customer of all promises, obligations and terms of the Agreement and any other financial transaction between Customer and CFS (collectively, the "Liabilities"). If Customer shall fail to pay or perform all or any part of the Liabilities when due, the Guarantors agree, upon demand, to pay any amounts which may be due from Customer and to take any action required of Customer under the Agreement. The Guarantors agree that this is an absolute and continuing guaranty and that their liability under this Guaranty is primary and will not be affected by any settlement, extension, renewal or modification of the Agreement or any discharge or release of Customer's obligations whether or not by operation of law.

If any payment applied by CFS to the Liabilities is thereafter set aside, recovered or required to be returned for any reason (including without limitation the bankruptcy, insolvency or reorganization of Customer or any other person), the Liabilities to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such Liabilities as fully as if such application had never been made. This Guaranty may be terminated only upon 60 days prior written notice to CFS, and such termination shall be effective only as to Liabilities arising under Schedules, supplements, or agreements entered into after the effective date of termination and shall not affect CFS's rights under this Guaranty arising out of the Agreement or other agreements entered into prior to such date.

The Guarantors waive all damages, demands, presentments and notices of every kind and nature, any rights of set-off, and any defenses available to a guarantor (other than the defense of payment and performance in full) under applicable law. The Guarantors further waive any (i) notice of the incurring of indebtedness by Customer and the acceptance of this Guaranty, (ii) right to require suit against Customer or any other party before enforcing this Guaranty and (iii) right of subrogation to CFS's rights against Customer until Customer's indebtedness is paid in full and Customer's other obligations have been fully performed. The Guarantors consent and agree that any (i) renewals and extensions of time of payment, (ii) release, substitution or compromise of or realization upon the Equipment, other guaranties or any collateral security and (iii) exercise of any other right under this or any other agreement between CFS and Customer or any third party, may be made, granted and effected by CFS without notice to the Guarantors and without in any manner affecting the Guarantors' liability under this Guaranty.

The Guarantors agree to pay all expenses (including attorney's fees and legal expenses) paid or incurred by CFS in endeavoring to collect the Liabilities, or any part thereof and in enforcing the Guaranty. THIS GUARANTY SHALL FOR ALL PURPOSES BE DEEMED A CONTRACT ENTERED INTO IN THE STATE OF NEW JERSEY. THE RIGHTS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. ANY ACTION BETWEEN THE GUARANTORS AND CFS SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF CAMDEN OR BURLINGTON, NEW JERSEY, OR AT CFS' SOLE OPTION, IN THE STATE WHERE THE GUARANTORS OR THE EQUIPMENT IS LOCATED. THE GUARANTORS, BY THEIR EXECUTION AND DELIVERY HEREOF, IRREVOCABLY WAIVE OBJECTIONS TO THE JURISDICTION OF SUCH COURTS AND OBJECTIONS TO VENUE AND CONVENIENCE OF FORUM. THE GUARANTORS, BY THEIR EXECUTION AND DELIVERY HEREOF, AND CFS, BY ITS ACCEPTANCE HEREOF, HEREBY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDINGS.

The Guarantors agree that CFS may accept a facsimile or other electronic transmission copy of this Guaranty as an original, and that facsimile or electronically transmitted copies of the Guarantor's signatures will be treated as an original for all purposes.

Printed Name: _____	Signature: _____	(No Title)	Date: _____
Address: _____			Phone: _____
Printed Name: _____	Signature: _____	(No Title)	Date: _____
Address: _____			Phone: _____

CFS-1020 (07/13)

6. NO CFS WARRANTIES: CUSTOMER ACKNOWLEDGES THAT CFS IS NOT A MANUFACTURER, DEALER, OR SUPPLIER OF THE EQUIPMENT. CUSTOMER AGREES THAT THE EQUIPMENT IS LEASED "AS IS" AND IS OF A SIZE, DESIGN, AND CAPACITY SELECTED BY CUSTOMER. CFS HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF THE EQUIPMENT, THE ABSENCE OF ANY CLAIM OF INFRINGEMENT OR THE LIKE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Any warranty with respect to the Equipment made by the supplier, dealer, or manufacturer is separate from, and is not a part of, this Agreement and shall be for the benefit of CFS, Customer and CFS's purchaser or assignee, if any. So long as Customer is not in breach or default of this Agreement, CFS assigns to Customer, solely for the purpose of making and prosecuting any such claim, the rights, if any, which CFS may have against the supplier, dealer or manufacturer for breach of warranty or other representation respecting any item of Equipment. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER THE SUPPLIER NOR ANY DEALER IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OF THIS AGREEMENT, OR MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THIS AGREEMENT OR THE EQUIPMENT ON BEHALF OF CFS.

7. ACCEPTANCE; DELIVERY: Customer's execution of the Acceptance Certificate, or Customer's provision to CFS of other confirmation of its acceptance of the Equipment, shall conclusively establish that the Equipment has been delivered to and accepted by Customer for all purposes of this Agreement and Customer may not, for any reason, revoke that acceptance; however, if Customer has not, within ten (10) days after delivery of the Equipment, delivered to CFS written notice of non-acceptance of any of the Equipment, specifying the reasons therefore and specifically referencing this Agreement, Customer shall be deemed to have irrevocably accepted the Equipment. CFS is the lessor and Customer is the lessee of the Equipment under this Agreement. As between CFS and Customer only, this Agreement shall supersede any Customer purchase order in its entirety. Customer agrees to waive any right of specific performance of this Agreement and to hold CFS harmless from damages if for any reason the Equipment is not delivered as ordered, if the Equipment is unsatisfactory or if CFS does not execute this Agreement. Customer agrees that any delay in delivery of the Equipment shall not affect the validity of this Agreement.

8. LOCATION; LIENS; NAMES; OFFICES: Customer shall not move the Equipment from the location specified herein except with the prior written consent of CFS. Customer agrees that it will keep the Equipment free and clear of all claims and liens other than those created as a result of this Agreement. Customer's legal name (as set forth in its constituent documents filed with the appropriate government office or agency) is set forth herein. Upon request, Customer will deliver to CFS a good standing certificate and/or state certified constituent documents. The jurisdiction of organization of Customer is as set forth herein. The chief executive office of Customer is located at the address set forth herein. Customer will not change its name, the location of its chief executive office or its corporate structure (including, without limitation, its jurisdiction of organization) unless CFS has been given at least 30 days prior written notice thereof and Customer has executed and delivered to CFS such financing statements and other instruments required or appropriate.

9. USE; FINANCING STATEMENTS: Customer shall comply with all laws or regulations relating to the use or maintenance of the Equipment. Customer shall put the Equipment only to the use contemplated by the manufacturer of such Equipment. Customer authorizes CFS (and any third party filing service designated by CFS) to execute and file, (a) financing statements evidencing the interest of CFS in the Equipment, (b) continuation statements in respect thereof, and (c) amendments (including forms containing a broader description of the Equipment than the description set forth herein) and Customer irrevocably waives any right to notice thereof.

10. INDEMNITY: Customer agrees to reimburse CFS for and to defend CFS against any claim for losses or injury caused by the Equipment. This Section shall survive termination of this Agreement.

11. MAINTENANCE; ALTERATIONS: Customer will keep and maintain the Equipment in good working order and shall, at Customer's expense, supply and install all replacement parts and accessories when required to maintain the Equipment in good working condition. Customer shall not, without the prior written consent of CFS, make any changes or substitutions to the Equipment. Any and all replacement parts, accessories, authorized changes and/or substitutions for the Equipment shall become part of the Equipment and subject to the terms of this Agreement.

12. TAXES; OTHER FEES AND CHARGES: CUSTOMER SHALL PAY AND DISCHARGE WHEN DUE ALL LICENSE AND REGISTRATION FEES, ASSESSMENTS, SALES, USE, PROPERTY AND OTHER TAXES, AND OTHER EXPENSES AND CHARGES, together with any applicable penalties, interest, and administrative fees now or at any time imposed upon any item of the Equipment, the Payments payable under this Agreement, or Customer's performance or non-performance of its obligations hereunder, whether payable by or assessed to CFS or Customer. If Customer fails to pay any fees, assessments, taxes, expenses or charges as required by the Agreement, CFS shall have the right but not the obligation to pay those fees, assessments, taxes, expenses or charges. If such payments are made by CFS, Customer shall promptly reimburse CFS, upon demand, for all such payments made plus administration fees and costs, if any. Customer acknowledges that where required by law, CFS will file any notices and pay personal property taxes levied on the Equipment. Customer shall reimburse CFS for the expense of personal property taxes as invoiced by CFS and pay CFS a processing fee not to exceed \$50 per year per item of Equipment which is subject to such tax. Customer agrees that CFS has not, and will not, render tax advice to Customer and that the payment of such taxes is an administrative act. ON THE DATE OF THE FIRST SCHEDULED PAYMENT AND THE DATE OF THE FIRST SCHEDULED PAYMENT AFTER THE ADDITION OF ANY EQUIPMENT, CUSTOMER SHALL PAY TO CFS AN ADMINISTRATIVE FEE, IN THE AMOUNT OF \$65, TO REIMBURSE CFS FOR ITS ADMINISTRATIVE AND RECORDING COSTS.

13. INSURANCE: Customer, at its sole cost and expense, shall obtain, maintain and pay for (a) insurance against the loss, theft, or damage to the Equipment for the full replacement value thereof, and (b) comprehensive public liability and property damage insurance. All such insurance shall provide for a deductible not exceeding \$5,000 and be in form and amount, and with companies satisfactory to CFS. Each insurer providing such insurance shall name CFS as additional insured and loss payee and provide CFS thirty (30) days written notice before the policy in question shall be materially altered or canceled. Customer shall pay the premiums for such insurance, shall be responsible for all deductible portions thereof, and shall deliver certificates of other evidence of insurance to CFS. The proceeds of such insurance, at the option of CFS, shall be applied to (a) replace or repair the Equipment, or (b) pay CFS the "Remaining Lease Balance." For purposes of this Agreement, the "Remaining Lease Balance" shall be the sum of: (i) all amounts then owed by Customer to CFS under this Agreement; (ii) the present value of all remaining Payments for the full term of this Agreement; (iii) the "Asset Value," and the "Asset Value" shall be: (A) for an Agreement with a \$1.00 purchase option, \$1.00; (B) for an Agreement with no purchase option or a Fair Market Value purchase option, the Fair Market Value of the Equipment shall be as defined in the terms hereof; and (C) for an Agreement with an Other or 10% Purchase Option, the amount indicated as the respective dollar amount of such Purchase Option on the face of this Agreement; plus (iv) any applicable taxes, expenses, charges and fees. For purposes of determining present value under this Agreement, Payments shall be discounted at 6% per year. Customer hereby appoints CFS as Customer's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts for any loss or damage under any such insurance policy. If within ten (10) days after CFS's request, Customer fails to deliver satisfactory evidence of such insurance to CFS, then CFS shall have the right, but not the duty, to obtain insurance with respect to the Equipment satisfactory to CFS, at the expense of the Customer. Customer hereby agrees that CFS shall be entitled to retain any fees earned by it in connection with any insurance obtained under this Agreement.

14. LOSS; DAMAGE: Customer assumes and shall bear the entire risk of loss, theft of, or damage to the Equipment from any cause whatsoever, effective upon delivery to Customer. No such loss, theft or damage shall relieve Customer of any obligation under this Agreement. In the event of damage to any item of Equipment, Customer shall immediately repair such damage at Customer's expense. If any item of Equipment is lost, stolen, or damaged beyond repair, Customer, at the option of CFS, will (a) replace the same with like equipment in a condition acceptable to CFS and convey clear title to such equipment to CFS (such equipment will become "Equipment" subject to the terms of this Agreement), or (b) pay CFS the Remaining Lease Balance. Upon CFS's receipt of the Remaining Lease Balance, Customer shall be entitled to whatever interest CFS may have in the Equipment, in its then condition and location, without warranties of any kind.

15. DEFAULT: Any of the following events or conditions shall constitute an Event of Default under this Agreement: (a) if Customer defaults in the payment when due of any indebtedness of Customer to CFS, whether or not arising under this Agreement, without notice or demand by CFS; (b) if Customer or any Guarantor ceases doing business as a going concern; (c) if Customer or any Guarantor becomes insolvent or makes an assignment for the benefit of creditors; (d) if a petition or proceeding is filed by or against Customer or any Guarantor under any bankruptcy or insolvency law; (e) if a receiver, trustee, conservator, or liquidator is appointed for Customer, any Guarantor, or any of their property; (f) if any statement, representation or warranty made by Customer or any Guarantor to CFS is incorrect in any material respect; (g) if Customer or any Guarantor defaults under any loan or credit agreement; or (h) if Customer or any Guarantor who is a natural person dies.

16. REMEDIES: Upon the happening of any one or more Events of Default, CFS shall have the right to exercise any one or all of the following remedies (which shall be cumulative), simultaneously, or serially, and in any order: (a) to declare all unpaid Payments and other amounts due and payable under this Agreement, with CFS retaining title to the Equipment; (b) to terminate any and all agreements with Customer; (c) with or without notice, demand or legal process, to retake possession of any or all of the Equipment (and Customer authorizes and empowers CFS to enter upon the premises wherever the Equipment may be found) and (i) retain such Equipment and all Payments and other sums paid under this Agreement, or (ii) re-lease the Equipment and recover from Customer the amount by which the Remaining Lease Balance exceeds the value attributed to the Equipment by CFS for purposes of calculating the payment under the new Agreement, or (iii) sell the Equipment and recover from Customer the amount by which the Remaining Lease Balance exceeds the net amount received by CFS from such sale; or (d) to pursue any other remedy permitted at law or in equity. CFS (i) may dispose of the Equipment in its then present condition or following such preparation and processing as CFS deems commercially reasonable; (ii) shall have no duty to prepare the Equipment prior to sale; (iii) may disclaim warranties of title, possession, quiet enjoyment and the like; and (iv) may comply with any applicable state or federal law requirements in connection with a disposition of the Equipment and none of the foregoing actions shall be deemed to adversely affect the commercial reasonableness of the disposition of the Equipment. In the event the Equipment is not available for sale, the Customer shall be liable for the Remaining Lease Balance and any other amounts due under this Agreement.

17. LATE CHARGES; EXPENSES OF ENFORCEMENT: If Customer fails to pay any sum to be paid by Customer to CFS under this Agreement on or before the applicable due date, Customer shall pay CFS, upon demand, an amount equal to ten percent (10%) of each such delayed Payment or ten dollars (\$10) whichever is greater for each billing period or portion of a billing period such Payment is delayed to the extent permitted by law. The amounts specified above shall be paid as liquidated damages and as compensation for CFS's internal operating expenses incurred in connection with such late payment. In addition, Customer shall reimburse CFS for all of its out-of-pocket costs and expenses incurred in exercising any of its rights or remedies under this Agreement or in enforcing any of the terms or provision of this Agreement, including, without limitation, reasonable attorney's fees and expenses and fees and expenses of collection agencies, whether or not suit is brought. If CFS should bring court action, Customer and CFS agree that attorney's fees equal to twenty-five percent (25%) of the total amount sought by CFS shall be deemed reasonable for purposes of this Agreement.

18. ASSIGNMENT: CUSTOMER SHALL NOT ASSIGN OR PLEDGE THIS AGREEMENT IN WHOLE OR IN PART, NOR SHALL CUSTOMER SUBLET OR LEND ANY ITEM OF EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF CFS. CFS may pledge or transfer this Agreement. Customer agrees that if CFS transfers this Agreement, the new owner will have the same rights and benefits that CFS has now and will not have to perform any of CFS's obligations which CFS will continue to perform. Customer agrees that the rights of the new owner will not be subject to any claims, defenses, or set-offs that Customer may have against CFS, including without limitation, claims, defenses or set-offs arising out of service obligations, if any, under this Agreement. If Customer is given notice of any such transfer, Customer agrees, if so directed therein, to pay directly to the new owner all or any part of the amounts payable hereunder.

19. RENEWAL; RETURN: Except in the case of an Agreement containing \$1.00 purchase option, this Agreement shall automatically renew on a month to month basis at the same Payment amount and frequency unless Customer, at least sixty (60) days before the end of the scheduled term or any renewal term, either (i) exercises the purchase option in accordance with the terms hereof or (ii) sends to CFS written notice that Customer does not want to renew this Agreement, and at the end of such term returns the Equipment as provided below. CFS may cancel the automatic renewal term by, at least sixty (60) days before the end of any term, sending the Customer written notice that CFS does not want the Agreement to renew. Unless this Agreement automatically renews or Customer purchases the Equipment as provided in this Agreement, Customer shall, at the termination of this Agreement, return the Equipment at its sole cost and expense in good operating condition, ordinary wear and tear resulting from proper use excepted, to a location specified by CFS. If for any reason Customer shall fail to return the Equipment to CFS as provided in this Agreement by the last day of the applicable term, Customer shall pay to CFS upon demand one billing period's Payment for each billing period or portion thereof that such delivery is delayed.

20. PURCHASE OPTION: (A) END OF TERM PURCHASE OPTION. Customer shall give CFS sixty (60) days prior irrevocable written notice (unless the Purchase Option is \$1.00) that it will purchase all the Equipment at the end of the initial term or any renewal term for the purchase option price indicated on the face of this Agreement plus any applicable taxes, expenses, charges and fees. (B) PRIOR TO MATURITY PURCHASE. Customer may, at any time, upon sixty (60) days irrevocable written notice purchase all (but not less than all) the Equipment at a price equal to the sum of all remaining Payments plus the Fair Market Value, plus any applicable taxes, expenses, charges and fees. For purposes of this Agreement, "Fair Market Value" shall be CFS's retail price at the time Customer notifies CFS of its intent to purchase the Equipment, but not less than 20% of the total cost of the Equipment. Equipment purchases shall not be available to Customer if a default hereunder has occurred and is continuing. Upon proper notice and payment by Customer of the amounts specified above, CFS shall transfer the Equipment to Customer "AS-IS WHERE-IS" without any representation or warranty whatsoever, except for title, and this Agreement shall terminate.

21. DATA: Customer acknowledges that the hard drive(s) on the Equipment, including attached devices, may retain images, content or other data that Customer may store for purposes of normal operation of the Equipment ("Data"). Customer acknowledges that CFS is not storing Data on behalf of Customer and that exposure or access to the Data by CFS, if any, is purely incidental to the services performed by CFS. Neither CFS nor any of their affiliates has an obligation to erase or overwrite Data upon Customer's return of the Equipment to CFS. Customer is solely responsible for: (i) its compliance with applicable law and legal requirements pertaining to data privacy, storage, security, retention and protection; and (ii) all decisions related to erasing or overwriting Data. Without limiting the foregoing, Customer should, prior to return or other disposition of the Equipment, utilize the Hard Disk Drive (HDD) (or comparable) formatting function (which may be referred to as "Initialized All Data/Settings" function) if found on the Equipment to perform a one pass overwrite of Data or, if Customer has higher security requirements, Customer may purchase from its Canon dealer at current rates an appropriate option for the Equipment, which may include (a) an HDD Data Encryption Kit option which disguises information before it is written to the hard drive using encryption algorithms, (b) an HDD Data Erase Kit that can perform up to a 3-pass overwrite of Data or (c) a replacement hard drive (in which case the Customer should properly destroy the replaced hard drive). Customer will indemnify CFS, their subsidiaries, directors, officers, employees and agents from and against any and all costs, expenses, liabilities, claims, damages, losses, judgments or fees (including reasonable attorneys' fees) arising or related to the storage, transmission or destruction of the Data. This section survives termination or expiration of this Agreement.

22. WARRANTY OF BUSINESS PURPOSE: Customer represents and warrants the Equipment will not be used for personal, family, or household purposes.

23. PERSONAL PROPERTY: The Equipment shall remain personal property regardless of whether it becomes affixed to real property or permanently rests upon any real property or any improvement to real property.

24. MAXIMUM INTEREST; RECHARACTERIZED AGREEMENT: No Payment is intended to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable laws, and any such excess Payment will be applied to payments due under this Agreement, in inverse order of maturity, and thereafter shall be refunded. If this Agreement is recharacterized as a conditional sale or loan, Customer hereby grants to CFS, its successors and assigns, a security interest in the Equipment to secure payment and performance of Customer's obligations under this Agreement.

25. UCC - ARTICLE 2A: CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT IS INTENDED AS A "FINANCE LEASE" AS THAT TERM IS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE AND THAT CFS IS ENTITLED TO ALL BENEFITS, PRIVILEGES AND PROTECTIONS OF A LESSOR UNDER A FINANCE LEASE.

26. WAIVER OF OFFSET: This Agreement is a net lease. If the Equipment is not properly installed, does not operate as represented or warranted, or is unsatisfactory for any reason, Customer shall make such claim solely against the supplier, dealer, or manufacturer. Customer waives any and all existing and future claims and offsets against any Payments or other charges due under this Agreement, and unconditionally agrees to pay such Payments and other charges, regardless of any offset or claim which may be asserted by Customer or on its behalf.

27. NOTICES: All notices required or permitted under this Agreement shall be sufficient if delivered personally, sent via facsimile or other electronic transmission, or mailed to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from CFS to Customer shall be effective three days after it has been deposited in the mail, duly addressed. All notices to CFS from Customer shall be effective after it has been received via U.S. Mail, express delivery, facsimile or other electronic transmission.

28. ELECTRONIC ACCEPTANCE: Customer agrees that CFS may accept a facsimile or other electronic transmission of this Agreement or any Acceptance Certificate as an original, and that facsimile or electronically transmitted copies of Customer's signature will be treated as an original for all purposes.

29. NON-WAIVER: No waiver of any of Customer's obligations, conditions or covenants shall be effective unless contained in a writing signed by CFS. Failure to exercise any remedy which CFS may have shall not constitute a waiver of any obligation with respect to which Customer is in default.

30. MISCELLANEOUS: If there should be more than one party executing this Agreement as Customer, all obligations to be performed by Customer shall be the joint and several liability of all such parties. Customer's representations, warranties, and covenants under this Agreement shall survive the delivery and return of the Equipment. Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. No such prohibition or unenforceability in any jurisdiction shall invalidate or render unenforceable such provision in any other jurisdiction. Customer agrees that CFS may insert missing information or correct other information on this Agreement including the Equipment's description, serial number, and location, otherwise, this Agreement contains the entire arrangement between Customer and CFS and no modifications of this Agreement shall be effective unless in writing and signed by the parties.

31. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL: THIS AGREEMENT HAS BEEN EXECUTED BY CFS IN, AND SHALL FOR ALL PURPOSES BE DEEMED A CONTRACT ENTERED INTO IN, THE STATE OF NEW JERSEY. THE RIGHTS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. ANY ACTION BETWEEN CUSTOMER AND CFS SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF CAMDEN OR BURLINGTON, NEW JERSEY, OR AT CFS' SOLE OPTION, IN THE STATE WHERE THE CUSTOMER OR THE EQUIPMENT IS LOCATED. CUSTOMER, BY ITS EXECUTION AND DELIVERY HEREOF, IRREVOCABLY WAIVES OBJECTIONS TO THE JURISDICTION OF SUCH COURTS AND OBJECTIONS TO VENUE AND CONVENIENCE OF FORUM. CUSTOMER, BY ITS EXECUTION AND DELIVERY HEREOF, AND CFS, BY ITS ACCEPTANCE HEREOF, HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDINGS.



CANON FINANCIAL SERVICES, INC. ("CFS")

Remittance Address: 14904 Collections Center Dr.
Chicago, Illinois 60693 800-220-0200

Municipal Fiscal Funding Addendum

Agreement

Number:

Agreement

Date:

GOVERNMENTAL ENTITY

Complete Legal Name **TOWN OF SOUTHWEST RANCHES**

("Customer")

THIS ADDENDUM WILL BE OF NO FORCE OR EFFECT IF THE CUSTOMER IS NOT A STATE OR A POLITICAL SUBDIVISION OF A STATE WITHIN THE MEANING OF SECTION 103(C) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

The Customer warrants that it has funds available to pay the lease payments ("Payments") payable pursuant to the lease agreement (the "Agreement") between Customer and CFS until the end of its current appropriation period and warrants that it presently intends to make Payments in each appropriation period from now until the end of the Agreement. The officer of the Customer responsible for preparation of Customer's annual budget shall request from its legislative body or funding authority funds to be paid to CFS under the Agreement. If notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such legislative body or funding authority does not appropriate funds to be paid to CFS for the Equipment, Customer may, upon prior written notice to CFS, effective upon the exhaustion of the funding authorized for the then current appropriation period, return the Equipment to CFS, at Customer's expense and in accordance with the Agreement, and thereupon, Customer shall be released of its obligations to make Payments to CFS due thereafter, provided: (1) the Equipment is returned to CFS as provided for in the Agreement, (2) the above described notice states the failure of the legislative body or funding authority to appropriate the necessary funds as the reason for cancellation; and (3) such notice is accompanied by payment of all amounts then due to CFS. In the event Customer returns the Equipment pursuant to the terms of this Addendum and the Agreement, CFS shall retain all sums paid by Customer. Customer's Payment obligations under this Agreement in any fiscal year shall constitute a current expense of Customer for such fiscal year, and shall not constitute indebtedness or a multiple fiscal year obligation of Customer under Customer's state constitution, state law or home rule charter. Nothing in this Agreement shall constitute a pledge by Customer of any taxes or other monies, other than as appropriated for a specific fiscal year for this Agreement and the Equipment.

The undersigned represents and warrants to CFS that all action required to authorize the execution and delivery of this Addendum on behalf of the above referenced Governmental Entity by the following signatory has been duly taken and remains in full force and effect. CFS may accept a facsimile copy of this Addendum as an original for all purposes.

ACCEPTED

Canon Financial Services, Inc.

By _____

Title _____

Date _____

ATTEST:

TOWN OF SOUTHWEST RANCHES

By: _____

Jeff Nelson, Mayor

By: _____

Andrew D. Berns, Town Administrator

Russell Muñiz, MBA, MMC, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS

Dated this ____ day of _____, 2014

Keith M. Poliakoff, Town Attorney

CFS-2020 (06/12)



Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall
(954) 434-1490 Fax

Town Council
Jeff Nelson, Mayor
Gary Jablonski, Vice Mayor
Steve Breitzkreuz, Council Member
Freddy Fisikelli, Council Member
Doug McKay, Council Member

Andy Berns, Town Administrator
Keith M. Poliakoff, Town Attorney
Russell Muñiz, MMC, Town Clerk
Martin D. Sherwood, CPA CGFO, Town Financial Administrator

COUNCIL MEMORANDUM

TO: Honorable Mayor Nelson and Town Council

THROUGH: Andy Berns, Town Administrator

FROM: December Lauretano-Haines, PROS Coordinator

DATE: August 22, 2014

**SUBJECT: Proposed Resolution to approve purchase of additional
Playground Equipment, Site Furnishings and Related Products and
Services from Gametime Division of Playcore, Inc./Dominica
Recreation Products for the Country Estates Fishing Hole Park**

Recommendation

To place this item on the agenda to approve procurement of additional playground equipment, site furnishings and services from Gametime/Dominica Recreation Products for the Country Estates Fishing Hole Park.

Issue

In order to satisfy existing grant commitments, purchase and installation of additional playground equipment and site furnishings, such as educational signage, benches, trash receptacles, a bicycle rack and other equipment, are needed for the Town's Fishing Hole Park.

Background

The Town Council has approved two matching grants from Broward County supporting playground construction at Fishing Hole Park. Proposals were requested based upon Cooperative Purchasing through Government Contracts, in accordance with Section 17 of the Town's Procurement Code. Four proposals were received.

On May 14, 2013, a joint meeting of the Rural Public Arts and Design and Recreation, Forestry and Natural Resources Advisory Boards was held and members reviewed the submitted proposals and design concepts, summarized in attached "Exhibit A." The two

Advisory Boards unanimously voted to recommend Council approval for procurement of equipment and services from Gametime Division of Playcore, Inc./Dominica Recreation Products through U.S. Communities Government Purchasing Alliance, of which the Town is a member since 2008.

The proposal from Gametime Division of Playcore, Inc./Dominica Recreation Products includes purchase of equipment, site furnishings, and related products and services, including freight, site-offloading, and installation as necessary for completion of playground.

Fiscal Impact

A \$21,886.86 budgetary requirement is anticipated for this procurement. Funds are allocated and available through Chart of Accounts #301-5300-572-63200 in FY 2014 budget. The total expenditure represents matching requirements for funds reimbursable through the grants.

Staff Contact

December Lauretano-Haines, Parks, Recreation, and Open Space Coordinator
Emily McCord, Community Services Coordinator

RESOLUTION NO. 2014 –

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT AND RELATED PRODUCTS AND SERVICES FOR THE COUNTRY ESTATES FISHING HOLE PARK FROM GAMETIME DIVISION OF PLAYCORE, INC./DOMINICA RECREATION PRODUCTS, FOR AN AMOUNT NOT TO EXCEED \$20,886.86; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 11, 2011 the Town of Southwest Ranches received a matching grant from Broward County for \$70,000 for improvements to the Country Estates Fishing Hole Park, including phase I construction of a playground; and

WHEREAS, on February 26, 2013 the Town of Southwest Ranches received an additional matching grant from Broward County for \$150,000 for improvements to the Country Estates Fishing Hole Park, including phase III construction of a playground; and

WHEREAS, the Town of Southwest Ranches is desirous of satisfying the terms of the grant by constructing phase III of the playground; and

WHEREAS, the Town solicited competitive proposals from Gametime Division of Playcore, Inc./Dominica Recreation Products, Landscape Structures, Inc./Rep services, Inc., Safeplay Systems, and Playmore Recreational Products and Services; and

WHEREAS, upon review of competitive proposals, the Southwest Ranches Recreation, Forestry and Natural Resources and Rural Public Arts and Design Advisory Boards unanimously approved the recommendation of Gametime Division of Playcore, Inc./Dominica Recreation Products playground equipment and related products and services for use in the Country Estates Fishing Hole Park;

WHEREAS, in accordance with its procurement procedures, the Town has elected to procure the playground equipment and related products and services via the Town's membership #651036656 with U.S. Communities Government Purchasing Alliance; and

WHEREAS, the Lead Public Agency, State of North Carolina, County of Mecklenburg, maintains Master Agreement #110179, "Agreement to provide playground equipment, surfacing, site furnishing and related products and services," to which the Town of Southwest Ranches is a party through Cooperative Purchasing;

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 procurement of Gametime Division of Playcore, Inc./Dominica Recreation Products to provide playground equipment and related products and services for use in the Country Estates Fishing Hole Park for an amount not to exceed \$20,886.86.

Section 3. The Gametime Division of Playcore, Inc./Dominica Recreation Products playground equipment product line selected is the "Tree House" with "Play Trail pockets," attached hereto as "Exhibit A" and incorporated herein by reference.

Section 4. The Mayor, Town Administrator and Town Attorney are each authorized to execute any and all documents necessary 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 30th day of September, 2014, on a motion by

_____ and seconded by _____.

[Signatures on Following Page]

Nelson _____
Breitkreuz _____
Jablonski _____
Fisikelli _____
McKay _____

Ayes _____
Nays _____
Absent _____
Abstaining _____

Jeff Nelson, Mayor

ATTEST:

Russell Muñiz, MMC, Town Clerk

Approved as to Form and Correctness:

Keith M. Poliakoff, J.D., Town Attorney
ACTIVE: #111900713v1

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT NO. 110179

**AGREEMENT TO PROVIDE PLAYGROUND EQUIPMENT,
SURFACING, SITE FURNISHINGS AND RELATED
PRODUCTS AND SERVICES**

This Agreement (the "Agreement") is entered into as of this 17th Day of September, 2010 (the "Effective Date"), by and between PlayCore Wisconsin, Inc. dba GameTime (the "Company") a corporation doing business in North Carolina (the "Company"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

Statement of Background and Intent

- A. The County issued a Request for Proposals (RFP Number 269-2010-183) dated March 19, 2010 requesting proposals from qualified firms to provide the County and other Participating Public Agencies with Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services hereafter referred to as ("Products"). This Request for Proposals, together with all attachments and any amendments, is referred to herein as the "RFP".
- B. The Company submitted a proposal in response to RFP Number 269-2010-183 on May 5, 2010. This bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The County awarded this contract on July 6, 2010, to Company to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services to the County all in accordance with the terms and conditions set forth herein.
- D. Charlotte-Mecklenburg (herein "Lead Public Agency"), in cooperation with the U.S. Communities Government Purchasing Alliance (herein "U.S. Communities"), and on behalf of other public agencies that elect to access the Master Agreement (herein "Participating Public Agencies"), competitively solicited and awarded the Master Agreement to the Company. Lead Public Agency has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Master Agreement to Participating Public Agencies.

Lead Public Agency is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Master Agreement.

The Master Agreement shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists. Participating Public Agencies are required to register on-line with U.S. Communities at www.uscommunities.org. The registration allows the Participating Public Agency to enter into a Master Intergovernmental Cooperative Purchasing Agreement ("MICIPA"), which is intended to allow the Participating Public Agencies to meet applicable legal requirements and facilitate access to the Master Agreement and the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

A G R E E M E N T

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated into and made a part of this Agreement by reference:

Exhibit A:	Contract Pricing, Discount Structures and Pricing Incentives
Exhibit B:	Installation Fees
Exhibit C:	National Network of Distributors and Certified Installers
Exhibit D:	U.S. Communities Administrative Agreement
Exhibit E:	Freight Rate Schedules
Exhibit F:	Product Warranties
Exhibit G:	Company's Proposal (not attached, but incorporated herein by reference)
Exhibit H:	RFP #269-2010-183 (not attached, but incorporated herein by reference)

Each reference to the Agreement shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement. Each reference to GameTime in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Agreement (including all Exhibits):

- 2.1. **AGREEMENT.** The term "Agreement" shall mean this Agreement including the Company's Proposal, the RFP and all attachments, exhibits, and addenda (all as defined in the Statement of Background and Intent).
- 2.2. **DOCUMENTATION.** The term "Documentation" shall mean all written, electronic, or recorded works, and all enhancements and updates thereto, that describe the use, functions, features, or purpose of the Products and Services, including without limitation all functional and technical specifications, end user manuals, guides and other materials which relate to the Products and Services, or which are necessary to fully utilize the Products and Services.
- 2.3. **DELIVERABLES.** The term "Deliverables" shall mean all equipment, materials, drawings, data, wiring, cable, installation services, incidentals and all other items that the Company is required to complete and deliver to the County in connection with this Agreement.
- 2.4. **DEFECT.** The term "Defect" shall mean any failure of the Products, or any component thereof, to conform fully to the Specifications and Requirements. Non-conformity is not a Defect if it results from the County's misuse, improper use, alteration, or damage of the Products.
- 2.5. **EFFECTIVE DATE.** The term "Effective Date" refers to the date this Agreement is fully executed by all parties to the Agreement.
- 2.6. **PARTICIPATING PUBLIC AGENCY.** The term shall mean any and all states, local governments, school districts, and higher education institutions and other public agencies and nonprofit organizations that have authority to purchase from another public agency's competitively solicited contract.

- 2.7. **PRODUCTS.** The term "Products" shall mean Playground Equipment, Surfacing, Site Furnishings, and Related Products that the Company agreed to provide in the Company's Proposal.
- 2.8. **SERVICES.** The term "Services" shall include all services that the Company agreed to provide in the Company's Proposal, including all design, assembly, installation, reporting, and optional work.
- 2.9. **SPECIFICATIONS AND REQUIREMENTS.** The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products and Services which are set forth or referenced in: (a) this Agreement, including all Exhibits; (b) the Company's proposal; (c) the RFP; (d) the Documentation; and (e) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products. Notwithstanding the forgoing, if the Company improves the Products or Services over time to incorporate new technology or improved features or functionality, and provided the improved Products or Services under this Agreement, the descriptions, specifications and requirements for such improvements shall be deemed part of the Specifications and Requirements. Also notwithstanding the forgoing, the Company's Bid shall only take precedence over the ITB to the extent the Company properly took exception to the terms of the ITB in the manner required by the ITB.
3. **TERM.**
The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment to the contract signed by both parties.
4. **GENERAL DESCRIPTION OF PRODUCTS AND SERVICES.**
The Company shall provide the Products and Services in accordance with the terms of the Company's proposal, and in compliance with all other conditions, covenants, stipulations, terms and provisions contained in this Agreement.
5. **SHIPPING AND DELIVERY.**
All shipments shall be F.O.B. destination with freight charges prepaid and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's freight bill. Estimated freight charges shall be provided at the time of quotation utilizing the freight rate schedules incorporated into this Agreement as Exhibit E.
6. **INSTALLATION, MAINTENANCE AND SAFETY INSPECTIONS.**
The County and Participating Public Agencies shall be responsible for contracting installation services on a project-by project basis as needed. If included with purchase, all equipment shall be installed by a GameTime Installer in accordance with the standards established by the terms, specifications, drawings, and construction notes for each project and meet manufacturer's specifications and industry standards. County and Participating Public Agencies shall be responsible for scheduling coordination and site preparation. Site should be level and permit installation equipment access. Participating Public Agency shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional labor or material costs.
7. **COMPENSATION.**
- 7.1. The County shall pay the Company for Products and Services compliant with the Specifications and requirements of this Agreement based on the fixed percentage discounts from the current manufacturer's price index as identified and incorporated into this Agreement as Exhibit A.
- 7.2. The Company agrees the fixed percentage discounts will remain firm for the entire contract term.
- 7.3. Pricing shall remain in effect until December 31, 2011. Thereafter, the Company shall advise the Charlotte-Mecklenburg Procurement Services Department in writing of any proposed price increases no later than sixty (6) days prior to the effective date of the requested increase.

- 7.4. The Company shall be responsible for furnishing and delivering approved price lists and the most current catalogs to the County and other participating public entities, upon request.
- 7.5. The Company agrees that if a public agency is otherwise eligible for lower pricing through a federal, state, regional, or local contract, the Company will match the pricing.

8. **OPTIONAL WORK.**

The County and Participating Public Agencies may elect to request quotations for additional services not specifically listed in the Company's proposal or this Agreement. The Company shall provide quotations for optional products and services as requested, to provide a full turnkey solution.

9. **BILLING.**

Each invoice sent by the Company shall detail all items delivered which are necessary to entitle the Company to the requested payment under the terms of this Agreement. The Company shall mail all invoices to:

Mecklenburg County
Finance - Accounts Payable
600 East 4th St.
Charlotte, NC 28202

The County will pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt. Proposals may include an incentive discount for early payment. Invoices must include state and local sales tax.

10. **GENERAL WARRANTIES.**

Company represents and warrants that:

- 10.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;
- 10.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- 10.3 The execution, delivery, and performance of this Agreement have been duly authorized by Company;
- 10.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- 10.5 In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 10.6 The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

11. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

Company represents warrants and covenants that:

- 11.1 The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;

- 11.2 All work performed by the Company and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 11.3 Neither the Services, nor any Deliverables provided by the Company under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 11.4 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Agreement by virtue of interruptions in the computer systems used by the Company.

12. **TERMINATION.**

12.1. *TERMINATION WITHOUT CAUSE.* The County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company.

12.2. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
- (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

12.3. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE COUNTY.* By giving written notice to the Company, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
- (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

- 12.4. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**
In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.
- 12.5. **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.**
Any termination of the Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 12.6. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Agreement, the Company shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate the Services to a new service provider; and (d) refund to the County all pre-paid Warranty Fees (other than pre-paid Warranty Fees for the then current year).
- 12.7. **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Agreement, the Company agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 12.8. **AUTHORITY TO TERMINATE.** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.
- 12.9. **AUDIT.** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the County for the cost of the audit.
13. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Agreement, the Company shall cooperate with the County to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the County as determined by the County in its sole discretion. The transition services that the Company shall perform if requested by the County include but are not limited to:
- a. Working with the County to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and

- b. Notifying all affected service providers and subcontractors of the Company of transition activities;
- c. Performing the transition service plan activities;
- d. Answering questions regarding the products and services on an as-needed basis; and
- e. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

14. **AMENDMENTS.** In the event changes to the Agreement become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Agreement (an "Amendment"). The Amendment shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on any associated price.

In the event either party desires an Amendment, the party shall submit to the other party a proposed change. If the receiving party does not accept the Contract Amendment in writing within ten (10) days, the receiving party shall be deemed to have rejected the proposed change. If the parties cannot reach agreement on a proposed change, the Company shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

15. **INDEMNIFICATION.** The Company shall indemnify, defend and hold harmless the County and the County's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) copyright, trademark or patent infringement or other infringement of proprietary rights with respect to any of the Products or Services delivered to the County pursuant to this Agreement ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Agreement; or (iii) arising from the Company's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that a Company employee or subcontractor is an employee of the County, including claims relating to worker's compensation, failure to withhold taxes and the like.

If an Infringement Claim occurs, the Company shall either: (i) procure for the County the right to continue using the affected Product or Service; or (ii) repair or replace the infringing Product or Service so that it becomes non-infringing, provided that the performance of the System or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the County is directed to cease use of a Product or Service, the Company shall promptly refund to the County all amounts paid under this Agreement, other than Extended Maintenance Fees.

The indemnification requirement is not intended to cover, and the Company is not responsible for, any damages that result from lack of maintenance; inadequate supervision; negligence; intentional acts of anyone other than the Company or their affiliates; inadequate surfacing; or vandalism.

It is the intent of any insurance provided by the Company to indemnify for product liability claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by Company or Company's subcontractors. This clarifies and supersedes any other section of the contract concerning indemnification that could be interpreted otherwise.

16. **INSURANCE.** Throughout the term of this Agreement, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Agreement, or in the event the Company fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate this Agreement immediately upon written notice to the Company.

16.1. General Requirements.

- (a) The Company shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this Section and such insurance has been approved by the County. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.
- (b) All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the County with proof of insurance coverage by certificates of insurance accompanying this Agreement and shall name the County as an additional named insured under the commercial general liability.
- (c) The County shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

16.2. Types of Insurance. The Company agrees to purchase and maintain during the life of this Agreement with an insurance company, acceptable to the County, authorized to do business in the State of North Carolina the following insurance:

- (a) Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- (b) Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.
- (c) Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The County shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Agreement. Certificates of all required insurance shall be furnished to the County and shall contain the provision that the County will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.

It is understood that Playground Equipment will be in the care, custody, and control of the County or Participating Public Agency following installation. It is further understood that the Company cannot additionally insure the eventual owners of the equipment for Participating Public Agencies nationwide for any damages that result from lack of maintenance, inadequate supervision, negligence, or intentional acts

by anyone other than the Company or their affiliates; inadequate surfacing, or vandalism. The responsibility for maintenance and supervision belongs to the County or Participating Public Agency and the public user respectively.

17. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Agreement.
18. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Agreement without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by Company shall name the County as a third party beneficiary.
11. **NON-DISCRIMINATION.** The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.

The Company agrees that it will inform the County of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Company will also inform the County of the final disposition of such cases.
19. **AUDIT.** During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company in connection with this Agreement, to ensure the Company's compliance with all the terms and conditions of this Agreement or the County's payment obligations.
20. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the County in connection with this agreement. County data processed by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this agreement.
21. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County's project manager with respect to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.
22. **DRUG-FREE WORKPLACE.** The County is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:
 - 22.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
 - 22.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any

available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

- 22.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 22.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 22.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 22.6. Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be ground for suspension, termination or debarment.

- 23. **NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

- 23.1. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:

For The Company:	For The County:
Don King	Karen Ruppe
PlayCore Wisconsin, Inc. dba GameTime	Charlotte-Mecklenburg Procurement Services
150 Playcore Drive	600 East 4 th Street
Fort Payne, AL 35967	Charlotte, NC 28202
Phone: 256.997.5255	Phone: 704.336.2992
Fax: 256.997.5455	Fax: 704.632.8254
E-mail: dking@playcore.com	E-mail: kruppe@ci.charlotte.nc.us
With Copy To:	With Copy To:
	Tyrone Wade
	Deputy County Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704.336.4135
	Fax:
	E-mail: TyroneC.Wade@mecklenburgcountync

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

24. **MISCELLANEOUS**

- 24.1. **ENTIRE AGREEMENT.** This Agreement, (including all Exhibits) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter

herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

24.2. AMENDMENT. No amendment or change to this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.

24.3. GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

24.4. BINDING NATURE AND ASSIGNMENT. This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 25.10 constitute an assignment.

24.5. FORCE MAJEURE. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:

- (a) if such failure or delay:
 - i. could not have been prevented by reasonable precaution;
 - ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
- (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Service Provider shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Service Provider continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the Service Provider shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Service Provider from performing its obligations for more than five (5) days, the County shall have the right to terminate this Agreement by written notice to the Service Provider.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Service Provider from the performance of its obligations under this Agreement.

An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force

Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate this Agreement by written notice to the Company.

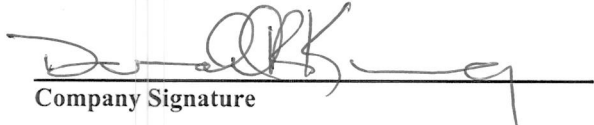
- 24.6. SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 24.7. NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 24.8. WAIVER. No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 24.9. CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the County shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 24.10. NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with this Agreement.
- 24.11. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 24.12. TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.

22.13 *WAIVER OF RIGHT TO JURY TRIAL.* The County and Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.

25. **Non-Appropriation of Funds.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.


PLAYCORE WISCONSIN, INC.
dba GAMETIME:



Company Signature
Donald R. King
Director of Sales Administration

Title

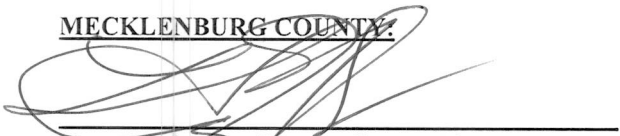
ATTEST:

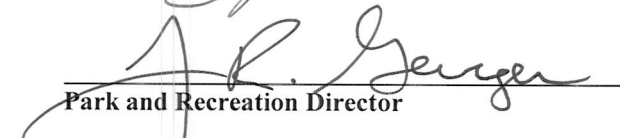


Mary Cole
Sales Administration Manager

Title

MECKLENBURG COUNTY:



General Manager/Deputy County Manager


Park and Recreation Director

ATTEST:

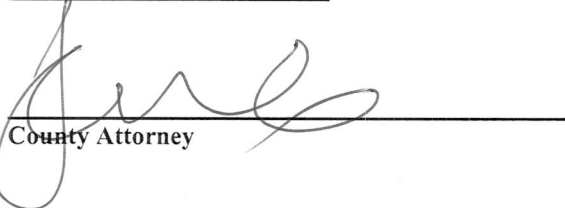


Clerk to the Board of County Commissioners

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

APPROVED AS TO FORM:



County Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:



Director, Charlotte-Mecklenburg Division of Insurance
Risk Management

**NO PRE-AUDIT REQUIRED.
DEPARTMENT(S) TO ENCUMBER
FUNDS AS NEEDED.**

BY: 

DIRECTOR OF FINANCE



CONTRACT # 110179.05

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT # 110179.05

FIFTH AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS FIFTH AMENDMENT to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of March 2014 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore Wisconsin, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revised freight rates, and new products.
- D. The County and the Company agreed to amend the contract on February 1, 2013 to incorporate a 2.47 percent (2.47%) price increase and new products offered by the Company.
- E. The County and the Company agreed to amend the contract on May 1, 2013 to incorporate the new Colorado Timing System products offered by the Company.
- F. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT


- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
 - a) Incorporate new products offered in the GameTime 2014 Playground Design Guide.

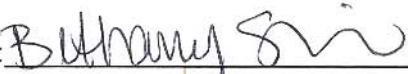
- b) Incorporate GameTime 2014 U.S. Communities Net Price List 1401 with an average price increase of 3.3 percent (%) for all playground equipment, site furnishings, surfacing materials, and all related commodities and services as specified in Exhibit A.
 - c) Incorporate addition of new products offered by GameTime strategic partners and corresponding 2014 price lists as specified in Exhibit A.
 - d) Incorporate revised freight rates comprised of Class 30 for steel shade structures, Class 70 for metal playground apparatus, and Class 175 for molded plastic playground apparatus, as specified in Exhibit E.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

Attested:

By: 
Donald R. King
Title: Director of Sales Administration

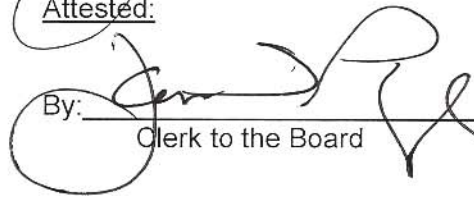
By: 
Bethany Smission
Title: Excutive Administrative Assistant

MECKLENBURG COUNTY:

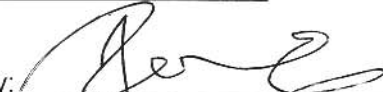
By: 
County/General Manager

By: 
Park and Recreation Director

Attested:

By: 
Clerk to the Board

Approved As To Form:

By: 
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: 
Finance Director

NO PRE-AUDIT REQUIRED.

By: 
Wanda Reeves

Approved As To Insurance Requirements:

By: _____
Risk Management



**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

CONTRACT # 110179.04

FOURTH AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS FOURTH AMENDMENT to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of May 2013 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore Wisconsin, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revised freight rates, and new products.
- D. The County and the Company agreed to amend the contract on February 1, 2013 to incorporate a 2.47 percent (2.47%) price increase and new products offered by the Company.
- E. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

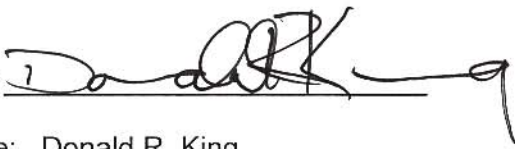
AGREEMENT

- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
 - a) Incorporate the new Colorado Timing Systems products as specified in the revised 2013 Pricing Schedules included as Exhibit A.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.

- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

By: 
Title: Donald R. King
Director of Sales Administration

Attested:

By: 
Title: Bethany Pelts
Executive Assistant

MECKLENBURG COUNTY:

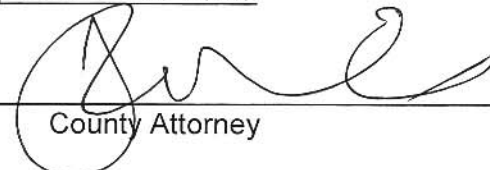
By: 
County General Manager

By: _____
Park and Recreation Director

Attested:

By: 
Clerk to the Board

Approved As To Form:

By: 
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: 
Finance Director

**NO PRE-AUDIT REQUIRED.
DEPARTMENT(S) TO ENCUMBER
FUNDS AS NEEDED.**

BY: 
DIRECTOR OF FINANCE

Approved As To Insurance Requirements:

By: _____
Risk Management



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT # 110179.03

THIRD AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS THIRD AMENDMENT to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of February 2013 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore Wisconsin, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revise freight rates, and incorporate new products.
- D. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT

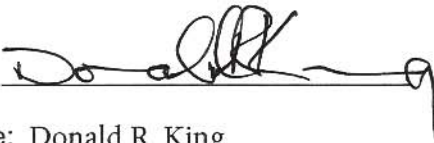
- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
 - a) Incorporate the new products offered by the GameTime 2013 Playground Design Guide.
 - b) Incorporate an average price increase of 2.47 percent (2.47%) for all playground equipment, site furnishings, surfacing materials, and all related products as specified in Exhibit A.
 - c) Incorporate addition of new products offered by GameTime strategic partners and corresponding 2013 price lists as specified in Exhibit A.


- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

Attested:

By: 
Title: Donald R. King
Director of Sales Administration

By: 
Title: Bethany Pelts
Executive Administrator

MECKLENBURG COUNTY:

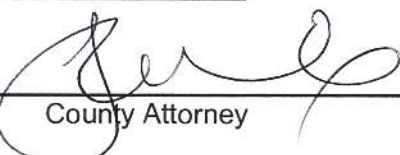
By: 
Park and Recreation Director

Attested:

By: 
County/General Manager

By: 
Clerk to the Board

Approved As To Form:

By: 
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: 
Finance Director

Approved As To Insurance Requirements:

**NO PRE-AUDIT REQUIRED.
DEPARTMENT(S) TO ENCUMBER
FUNDS AS NEEDED.**

BY: 
DIRECTOR OF FINANCE

By: _____
Risk Management



**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

CONTRACT # 110179.02

SECOND AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS SECOND AMENDMENT To The Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of February 2012 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT

- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
 - a) Incorporate the new products offered by the GameTime 2012 Playground Design Guide, Everlast Climbing Industries, Inc., and Ultra Play Systems, Inc.
 - b) Incorporate an average price increase of 1.8 percent for all playground and surfacing products as specified in Exhibit A.
 - c) Incorporate revised GameTime freight rates as specified in Exhibit E.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and expect as modified herein, the terms of the Agreement shall remain in force and effect.

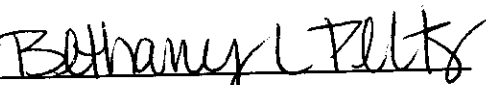
IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION

By: 

Title: Director of Sales Administration

Attested:

By: 


Title: Executive Administrative Assistant

MECKLENBURG COUNTY:

By: 
County/General Manager

By: 
Park and Recreation Director

Attested:

By: 
Clerk to the Board

Approved As To Form:

By: 
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: 
Finance Director

Approved As To Insurance Requirements:

By: _____
Risk Management

**NO PRE-AUDIT REQUIRED.
DEPARTMENT(S) TO ENCUMBER
FUNDS AS NEEDED.**

BY: 
DIRECTOR OF FINANCE



**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

CONTRACT # 110179.01

FIRST AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS FIRST AMENDMENT To The Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 7th day of April 2011 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The parties now desire to amend the Agreement by making certain changes and clarifications to the term and pricing provisions of the Agreement.

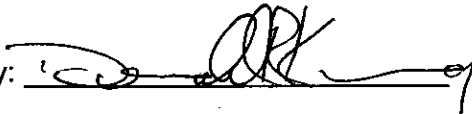
NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT

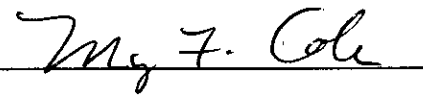
- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
 - a) Incorporate a price increase of four percent (4%) for all GameTime products except GTH20 water play and GTImpax surfacing, due to the escalation in steel and plastic resin material costs. Price increases will be effective on orders entered April 7, 2011. Orders entered before April 7th will be exempt from the price increase providing the order ships prior to April 29, 2011.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

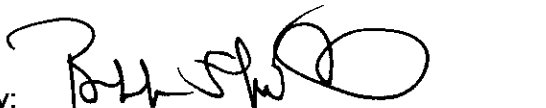
GAMETIME:

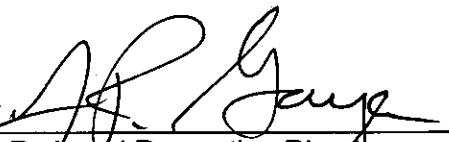
By: 
Title: Director of Sales Administration

Attested:

By: 
Title: Sales Administration Manager

MECKLENBURG COUNTY:

By: 
County/General Manager

By: 
Park and Recreation Director

Attested:

By: 
Clerk to the Board

Approved As To Form:

By: 
County Attorney

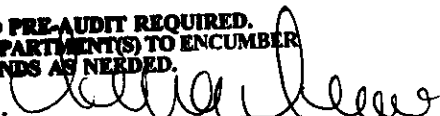
This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: 
Finance Director

Approved As To Insurance Requirements:

By: _____
Risk Management

**NO PRE-AUDIT REQUIRED.
DEPARTMENTS TO ENCUMBER
FUNDS AS NEEDED.**

BY: 
DIRECTOR OF FINANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/24/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. Two Alliance Center 3560 Lenox Road, Suite 2400 Atlanta, GA 30326 Attn: Atlanta.CertRequest@marsh.com / Fax: 212-948-4321 457102-Cas-GAUWX-10-11 GAMETI	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No.): E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #: INSURER(S) AFFORDING COVERAGE <table border="1"><thead><tr><th>INSURER</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A : Columbia Casualty Company</td><td>31127</td></tr><tr><td>INSURER B : Travelers Property Casualty Company Of America</td><td>25674</td></tr><tr><td>INSURER C : National Union Fire Ins Co Pittsburgh PA</td><td>19445</td></tr><tr><td>INSURER D : Phoenix Insurance Company</td><td>25623</td></tr><tr><td>INSURER E : Ohio Casualty Insurance Company</td><td>24074</td></tr><tr><td>INSURER F :</td><td></td></tr></tbody></table>	INSURER	NAIC #	INSURER A : Columbia Casualty Company	31127	INSURER B : Travelers Property Casualty Company Of America	25674	INSURER C : National Union Fire Ins Co Pittsburgh PA	19445	INSURER D : Phoenix Insurance Company	25623	INSURER E : Ohio Casualty Insurance Company	24074	INSURER F :	
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INSURER E : Ohio Casualty Insurance Company	24074														
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

ATL-002237295-35

REVISION NUMBER: 7

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> SIR \$150,000 Per Occ. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			4015728458 (\$10M AGGREGATE CAP)	08/01/2010	08/01/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			TJCAP9518B945-10	08/01/2010	08/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp Ded: \$1,000 \$ Coll Ded: \$1,000 \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000			BE35053165	08/01/2010	08/01/2011	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$ \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	TC2NUB-9520B24-6-10 (AOS) TRJUB-9520B25-8-10 (AZ & WI)	08/01/2010 08/01/2010	08/01/2011 08/01/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
E	Excess Umbrella			ECO11 53059239	08/01/2010	08/01/2011	\$25,000,000 Excess \$25,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: All Jobs.

The City of Charlotte/Mecklenburg County is listed as additional insured (except Workers' Compensation) as their interests may appear until completion of each job performed by the Insured.

CERTIFICATE HOLDER

CANCELLATION

The City of Charlotte/Mecklenburg County Procurement Services Division 600 East Fourth Street Charlotte, NC 28202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Ted L. Young <i>Ted L. Young</i>
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GameTime Division
PlayCore Wisconsin, Inc.
150 PlayCore Drive, S.E.
Fort Payne, Alabama 35967
Telephone: 256/845-5610
Facsimile: 256/845-9361

U.S. COMMUNITIES CONTRACT 110179

2013 PRICING SCHEDULES

Pricing Schedules:

1. *GameTime 2013 U.S. Communities Contract Net Price List 1301*
2. *GameTime 2013 U.S. Communities Installation charges*
3. *GTImpax U.S. Communities Contract Net Price Lists*
4. *Snug U.S. Communities 2013 Pricing Schedule*
5. *EarlyPlay U.S. Communities 2013 Pricing Schedule*
6. *UltraShade U.S. Communities 2013 Pricing Schedule*
7. *UltraShelter U.S. Communities 2013 Pricing Schedule*
8. *UltraSite U.S. Communities 2013 Pricing Schedule*
9. *Discovery Centers U.S. Communities 2013 Pricing Schedule*
10. *BarkPark U.S. Communities 2013 Pricing Schedule*
11. *GT Grandstands U.S. Communities 2013 Pricing Schedule*
12. *UPlay U.S. Communities 2013 Pricing Schedule*
13. *NRS 2013 Pricing Schedule*
14. *Everlast U.S. Communities 2013 Pricing Schedule*
15. *Spectrum Aquatics U.S. Communities 2013 Pricing Schedule*
16. *GTH20 U.S. Communities 2013 Pricing Schedule*

Product Discounts:

- | | |
|--|------------------------------------|
| a. Equipment (including components): | 24% (see Quantity Discounts below) |
| Freestanding Events: | 16% |
| Snug & EarlyPlay Childhood Play Equipment: | 6% |
| PlayWorx GFRC ThemeScapes: | 6% |
| b. Surfacing: | 18% |
| c. Site Furnishings: | 6% |
| d. Related Products: | 6% |
| Fitness and Sports | 9% |
| System Special Products | 9% |
| Park Furnishings & Special Accessories | 3% |
| UltraSite | 6% |

DISCOUNT SCHEDULES AND TERMS OF SALE

UPlay and Discovery Centers	6%
GTShade Structures and Shelters	4%
GTH20 Spray Grounds	3%
GTNets Climbing Nets	3%
Everlast Indoor Climbing Walls	10%
NatureROCKS Climbing Boulders	5%
Shelters	4%
BarkPark	20%
Bleachers	6%
Grandstands	6%

e. Services

All Services Net Pricing

Playground Equipment Installation
Safety Surfacing Installation
Sitework Services
Community Build Supervision
Design Services
Maintenance and Repairs
CPSI Initial Playground Safety Audit
CPSI Low-Frequency Playground Safety Inspection
CPSI Maintenance and Inspection Training (Quotations on a case-by-case basis)

TERMS OF SALE

Volume Discounts

Volume single purchases of composite play systems at U.S. Communities net pricing shall be eligible for an additional discount of 5% for orders totaling from \$50,000 to \$75,000; 10% from \$75,000 to \$100,000 and 15% for orders exceeding \$100,000.

Cash With Order Discount

Orders for playground equipment paid for at the time of placement are entitled to a 3% cash-with-order discount.

Installation Fees

See *GameTime U.S. Communities Discounts and Installation charges*

Shipping and Delivery – Shipping Program

Shipments shall be f.o.b. destination with freight charges prepaid and listed separately.

GAMETIME 2013 U.S. COMMUNITIES INSTALLATION CHARGES

Product Category	Installation Cost as % of Equipment Commercial List Price			
	Total Commercial List Price of Equipment per Site			
	<\$5,000	<\$10,000	<\$15,000	>\$15,000
Play Equipment	42%	38%	35%	32%
GameTime Freestanding Events	48%	43%	38%	36%
Snug Early Childhood Play Equipment	Installation is not required			
PlayWorx GFRC ThemeScapes	42%	38%	35%	32%
Site Furnishings	45%	45%	40%	38%
Related Products	45%	45%	40%	38%
Grandstands & Bleachers	42%	38%	35%	32%
Shade Structures	66%	60%	52%	46%
Shelters	\$70.00 per man hour plus materials & equipment			
GTH20 Spray Grounds	N/A	N/A	N/A	164%
Spectrum Aquatics Water Products	N/A	56%	52%	48%
Fitness & Sports	64%	53%	43%	38%
Indoor Climbing Walls	60%	38%	35%	32%
NatureROCKS Climbing Boulders	\$70.00 per man hour plus materials & equipment			
Independent Climbing Nets	N/A	50%	43%	38%
Dog Parks	48%	43%	38%	36%
Drinking Fountains	60%; see Note 9 below			
Skate Parks	Design & installation estimate upon request			

Safety Surfacing	Installation Cost per Square Feet of Safety Surfacing Area			
	<2,000 sf	<4,000 sf	<6,000 sf	>6,000 sf
Engineered Wood Fiber	\$0.56 sf	\$0.54 sf	\$0.52 sf	\$0.50 sf
Shredded Rubber Loose Fill	\$0.66 sf	\$0.64 sf	\$0.62 sf	\$0.60 sf
Recycled Rubber Tile	\$2.70 sf	\$2.40 sf	\$2.15 sf	\$2.05 sf
Synthetic Turf	Installation included in material price			
Poured-In-Place & Bonded Rubber	Installation included in material price			

Services	
Play Area Design Services	No Charge
Sitework Services	\$70.00 per man hour plus materials & equipment
Community Build Layout & Supervision	\$725.00 per man day plus materials & equipment
Maintenance & Repairs	\$68.00 per man hour plus materials & equipment
CPSI Playground Initial Safety Audit	\$1,580.00 per playground; see Note 8 below
CPSI Low-Frequency Safety Inspection	\$790.00 per playground; see Note 8 below.

GAMETIME 2013 U.S. COMMUNITIES INSTALLATION CHARGES

Notes:

- 1) All equipment to be installed in accordance with specifications by GameTime factory-certified professional installers.
- 2) Equipment shall be installed within four (4) weeks of product delivery, unless requested by agency to be delayed.
- 3) Customer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment unless other arrangements have been made.
- 4) Customer shall be responsible for providing a clear, level site and for coordinating the scheduling of all deliveries and installation.
- 5) Site should permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional costs.
- 6) Equipment installation pricing excludes all site work and landscaping; removal of existing equipment; storage of goods prior to installation; and drainage provisions. Call for an estimate for site services.
- 7) No additional charges for prevailing wages.
- 8) CPSI safety inspections and audits performed by an independent third-party. For multiple inspections, call for volume pricing.
- 9) Customer shall provide and install water supply line to the Drinking Fountain.



GameTime
c/o Dominica Recreation Products, Inc.
P.O. Box 520700
Longwood, FL 32752-0700
800-432-0162 * 407-331-0101
Fax: 407-331-4720
www.playdrp.com

QUOTE
#68653

08/22/2014

Fishing Hole Park

Town of Southwest Ranches
Attn: December Lauretano
13400 Griffin Road
Southwest Ranches, FL 33330
Phone: 954-343-7452
Fax: 954-434-1490
dlauretano@swranches.org

Ship To Zip: 33330

Quantity	Part #	Description	Unit Price	Amount
1	38059	Game Time - Bird Fun Facts Sign	\$792.00	\$792.00
1	7038	Game Time - Telescope, F/S	\$893.00	\$893.00
1	38024	Game Time - Pond Fun Facts	\$792.00	\$792.00
1	38025	Game Time - Tree Dwellers Fun Facts	\$792.00	\$792.00
1	38023	Game Time - Bees Fun Facts	\$792.00	\$792.00
1	38050	Game Time - Leaves Fun Facts	\$792.00	\$792.00
1	38021	Game Time - Butterflies Fun Facts	\$792.00	\$792.00
1	38022	Game Time - Ants Fun Facts	\$792.00	\$792.00
1	38049	Game Time - Trees Fun Facts	\$792.00	\$792.00
1	38051	Game Time - Mushrooms Fun Facts	\$792.00	\$792.00
1	38063	Game Time - Bug Fun Facts	\$792.00	\$792.00
1	38060	Game Time - Habitats Fun Facts	\$792.00	\$792.00
1	38065	Game Time - Large Bike Rack	\$380.00	\$380.00
1	38043	Game Time - Nature Bench	\$1,325.00	\$1,325.00
1	38214	Game Time - Bug Bench	\$644.00	\$644.00
1	38213	Game Time - Leaf Bench	\$643.00	\$643.00
1	38212	Game Time - Pond Bench	\$646.00	\$646.00
1	38211	Game Time - Bug Trash Receptacle	\$897.00	\$897.00
1	38210	Game Time - Leaf Trash Receptacle	\$890.00	\$890.00
1	38209	Game Time - Pond Life Trash Receptacle	\$915.00	\$915.00
1	38062	Game Time - Rocks Fun Facts	\$792.00	\$792.00
1	INSTALL	Game Time - Installation of Quoted Equipment	\$4,185.00	\$4,185.00

Quote does not include sealed drawings; permits or safety surfacing.

Equipment delivered and installed. Site prep by others!

Contract: USC

SubTotal: \$20,922.00
Discount: (\$903.32)
Freight: \$868.18
Total Amount: \$20,886.86

This quote was prepared by Gina Wilson, Senior Project Manager.
For questions or to order please call - 800-432-0162 ext. 101 ginaw@gametime.com

All pricing in accordance with U.S. Communities Contract #110179.

All terms in the U.S. Communities Contract take precedence over terms shown below.

For more information on the U.S. Communities contract please visit www.uscommunities.org/gametime

Fishing Hole Park

QUOTE
#68653

08/22/2014

Permits are not included in cost, unless specifically listed in pricing. If permits are required Signed/Sealed drawings are usually needed and are also not included unless specifically listed in pricing. Any costs for municipal permits, paid by installer, will be charged back to the owner. Adding permits to any job will increase the length of completion (this is not due to manufacturing but rather the permit process at the municipality level). It is expected that **owner will provide approved site plans** of the area for the permit office if required, and will help and assist in the securing of all required approvals before assembly of equipment can begin. Installer cannot provide site plans.

Payment Terms: Governmental Purchase Order.

Purchases in excess of \$1,000.00 to be supported by your written purchase order made out to GameTime.

Net 30 days subject to approval by GameTime Credit Manager. A completed Credit Application and Bank Reference Authorization, must be received with the order. The decision on credit is the sole discretion of GameTime/PlayCore. A 1.5% per month finance charge will be imposed on all past due accounts.

Multiple Invoices: Invoices will be generated upon services rendered. When equipment ships it will be invoiced separately from installation and/or other services. Terms are Net 30 for each individual invoice.

This Quotation is subject to policies in the current GameTime Park and Playground Catalog and the following terms and conditions. Our quotation is based on shipment of all items at one time to a single destination, unless noted, and changes are subject to price adjustment.

Pricing: Firm for 60 days from date of quotation.

Shipment: F.O.B. factory, order shall ship within 30-45 days after GameTime's receipt and acceptance of your purchase order, color selections, approved submittals, and receipt of payment.

Taxes: State and local taxes will be added at time of invoicing, if not already included, unless a tax exempt certificate is provided at the time of order entry.

Exclusions: Unless specifically discussed, this quotation excludes all sitework and landscaping; removal of existing equipment; acceptance of equipment and off-loading; storage of goods prior to installation; security of equipment (on site and at night); equipment assembly and installation; safety surfacing; borders; drainage; signed/sealed drawings; or permits.

Installation Terms: Shall be by a Certified Installer. If playground equipment, installer will be NPSI and Factory Trained and Certified. Customer shall be responsible for scheduling and coordination with the installer. Site should be level and allow for unrestricted access of trucks and machinery. Customer shall be responsible for unknown conditions such as buried utilities, tree stumps, rock, or any concealed materials or conditions that may result in additional labor or material costs. Customer will be billed hourly or per job directly by the installer for any additional costs that were not previously included.

ORDER INFORMATION

Bill To: _____	Ship To: _____
Contact: _____	Contact: _____
Address: _____	Address: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____
Tel: _____ Fax: _____	Tel: _____ Fax: _____

SALES TAX EXEMPTION CERTIFICATE #: _____
(PLEASE PROVIDE A COPY OF CERTIFICATE)

Acceptance of quotation:

Accepted By (printed): _____	P.O. No: _____
Signature: _____	Date: _____
Title: _____	Phone: _____
E-Mail: _____	Purchase Amount: \$20,886.86

REGULAR MEETING MINUTES OF THE TOWN COUNCIL
Southwest Ranches, Florida

Thursday 7:00 PM

August 28, 2014

13400 Griffin Road

Present:

Mayor Jeff Nelson

Vice Mayor Gary Jablonski

Council Member Doug McKay

Council Member Freddy Fisikelli

Council Member Steve Breitreuz

Andrew Berns, Town Administrator

Keith Poliakoff, Town Attorney

Martin Sherwood, Town Financial Administrator

Russell Muñiz, Town Clerk

Regular Meeting of the Town Council of Southwest Ranches was held at 13400 Griffin Road in the Southwest Ranches Council Chambers. The meeting, having been properly noticed, was called to order by Mayor Nelson at 7:51 PM. Attendance was noted by roll call and was followed by the Pledge of Allegiance.

3. Master Sign Plan Amendment - Consideration of Master Sign Plan Amendment Application SP-059-14, Coquina Station, LLC, owner, Thomas Sign & Awning Co., Inc., petitioner. Property generally located on the north side of Sheridan Street and east of Dykes Road in the Town of Southwest Ranches, and known as Coquina Plaza. Legally described as a portion of Parcel A of Coquina Flats, according to the Plat thereof as recorded in Plat Book 155, Page 29 of the Public Records of Broward County, Florida, said land being situate in Southwest Ranches, Broward County, Florida. Petitioner is seeking amendment of the wall sign criteria of the Coquina Plaza Master Sign Plan on behalf of Publix Super Markets, Inc.

{Petitioner has withdrawn the item}

The item was withdrawn by the petitioner.

4. Variance - Consideration of Variance Application VA-070-14, Coquina Station, LLC, owner, Thomas Sign & Awning Co., Inc., petitioner. Property generally located on the north side of Sheridan Street and east of Dykes Road in the Town of Southwest Ranches, and known as Coquina Plaza. Legally described as a portion of Parcel A of Coquina Flats, according to the Plat thereof as recorded in Plat Book 155, Page 29 of the Public Records of Broward County, Florida, said land being situate in Southwest Ranches, Broward County, Florida. Petitioner is requesting relief from the maximum allowable dimensions and area for wall signage on behalf of Publix Super Markets, Inc. **{Petitioner has withdrawn the item}**

The item was withdrawn by the petitioner.

5. Public Comment

The following members of the public addressed the Town Council: Dee Schroeder, Mike Chatfield, Mary Gay Chaples, and Leslie Kastner.

6. Board Reports

Aster Knight spoke on behalf of the Aster Knight Parks Foundation and reminded everyone about the fundraiser at the Weekley Pavilion on October 11, 2014 and was looking forward to a good turnout.

7. Council Member Comments

Council Member Breitkreuz provided an update on the workshop about traffic held with the Griffin 345 area and 188th Avenue. He felt the meeting was very productive and felt the residents were pleased. The 190th Avenue connection was also discussed, and he felt that all parties present were on the same page. He advised that he would be presenting the plan to the full membership of the Griffin 345 community in late September. He felt that a key component of the plan was to put a gate in place prior to the road being opened. Council Member McKay felt that the Town could not spend funds to close a road on private property. Council Member Breitkreuz indicated that his intention was to find the funds for the initial construction of the gate and coordinate that with the opening of the road, and ongoing maintenance would be the responsibility of the HOA. Councilmember McKay indicated his agreement with what the road closure would accomplish, but felt that all costs should be borne by the HOA, not the Town. Vice-Mayor Jablonski questioned if the Town could build the gate and then bill the HOA. Council Member Breitkreuz indicated that he would take that suggestion back to the HOA. Lastly, he advised that another topic was the widening of 184th Avenue and restated his opposition to any plan to make 184th Avenue a four lane roadway. He questioned what options through the Metropolitan Planning Organization (MPO) could be explored to ensure that the roadway would not be widened. Town Attorney Poliakoff provided various options available. Council Member McKay thought a survey of the Rolling Oaks community might be prudent. Council Member Fisikelli spoke about the reluctance of the MPO to improve the roadway unless it was a four lane road. He did not believe they would favor funding any improvements unless it was four lanes.

Council Member Fisikelli again spoke of the need to find a way to adequately memorialize Town Attorney Emeritus Gary Poliakoff. He provided an update on the development of Fishing Hole Park.

Vice Mayor Jablonski spoke of the possible widening of 184th Avenue. He asked that a resolution be drafted to withdraw the roadway from the trafficways plan. Mayor Nelson asked that Council Member Fisikelli report back to Council after the next MPO meeting prior to the drafting of this proposed resolution. Council Member Fisikelli suggested setting up a meeting with the MPO to include the Town Administrator so the Town's concerns regarding 184th Avenue could be heard.

Mayor Nelson was also concerned with 184th Avenue and discussed the possibility of removing it from the trafficways plan. He also spoke about a memorial for Mr. Poliakoff. He spoke of Mr. Poliakoff's efforts in having the developer donate the property that is now Trailside Park, and suggested and that it be renamed in honor of Mr. Poliakoff.

8. Legal Comments

Town Attorney Poliakoff thanked the Town Council for their consideration in seeking to memorialize his father. He provided an account of how the Town's first Town Hall came to be.

He provided an update on litigation between CCA and the City of Pembroke Pines. He advised that Pembroke Pines has listed the property recently purchased from the County and were seeking to annex the property into their city. He provided an update on the collections attributed to Code Enforcement actions. He also provided an update on his preparations for the next legislative session.

9. Administration Comments

Town Administrator Berns advised that the Town Engineer and the Public Works Director for the Town of Davie have met to discuss the striping of Volunteer Road between Palomino Drive and Griffin Road. He further indicated that the Town of Davie would be seeking funding from Broward County to complete the striping.

10. Ordinance – 2nd Reading - AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE REZONING OF APPROXIMATELY 1.06 ACRES FROM RURAL ESTATE DISTRICT TO COMMUNITY FACILITY DISTRICT, GENERALLY LOCATED 600 FEET SOUTH OF GRIFFIN ROAD ON THE WEST SIDE OF SW 130TH AVENUE, MORE PARTICULARLY DESCRIBED AS THE SOUTH 173.00 FEET OF THE NORTH 844.00 FEET OF SECTION 26, TOWNSHIP 50 SOUTH, RANGE 40 EAST, LYING SOUTH OF SOUTH NEW RIVER CANAL, LESS THE EAST 2631.70 FEET AND LESS THE WEST 2331.66 FEET, LESS THE EAST 50.00 FEET THEREOF (SOUTH FLORIDA HINDU TEMPLE, 5000 SW 130TH AVENUE, APPLICATION #RZ-017-12); PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. {Tabled from the July 10, 2014 Town Council Meeting}

The following motion was made by Council Member McKay, seconded by Council Member Breitkreuz and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitkreuz, Fisikelli, McKay, Jablonski, and Mayor Nelson voting Yes.

MOTION: TO TABLE THE ITEM TO SEPTEMBER 30, 2014 AT 7 P.M.

11. Ordinance – 1st Reading - AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING OBJECTIVES AND POLICIES WITHIN SEVERAL ELEMENTS OF THE ADOPTED TOWN OF SOUTHWEST RANCHES COMPREHENSIVE PLAN PERTAINING TO BROWARD COUNTY LAND USE PLAN ("BCLUP") CONSISTENCY REQUIREMENTS, INTERGOVERNMENTAL COORDINATION, AND LOCAL STREET CONNECTIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING FOR RECERTIFICATION BY THE BROWARD COUNTY PLANNING COUNCIL; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE. {Requires a Super Majority Vote - Second reading will be held at a later date}

The following motion was made by Vice Mayor Jablonski, seconded by Council Member McKay and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitkreuz, Fisikelli, McKay, Jablonski, and Mayor Nelson voting Yes.

MOTION: TO TABLE THE ITEM.

12. Resolution - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A CONSERVATION EASEMENT TO BE PLACED ON A PORTION OF THE COUNTRY ESTATES FISHING HOLE PARK IN FURTHERANCE OF THE PERMIT REQUIREMENTS; APPROVING THE FORM OF THE CONSERVATION EASEMENT; AND AUTHORIZING THE MAYOR, TOWN ADMINSTRATOR, AND TOWN ATTORNEY TO EXECUTE THE CONSERVATION EASEMENT.

The following motion was made by Council Member Fisikelli, seconded by Council Member Breitkreuz and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitkreuz, Fisikelli, McKay, Jablonski, and Mayor Nelson voting Yes.

MOTION: TO APPROVE THE RESOLUTION.

13. Resolution - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING RESOLUTION NO. 2014-020 TO REPLACE VICE MAYOR JABLONSKI'S APPOINTMENT ON THE SCHOOLS AND EDUCATION ADVISORY BOARD; AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Vice Mayor Jablonski, seconded by Council Member Breitkreuz and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitkreuz, Fisikelli, McKay, Jablonski, and Mayor Nelson voting Yes.

MOTION: TO APPROVE THE RESOLUTION.

14. Discussion – CSI/Mellgren Planning Group

Town Administrator Berns displayed a PowerPoint presentation on the services of both firms and the proposed transition of services to be provided by Code Services, Inc. The consensus of the Town Council was to move forward with the proposal and bring forward a resolution at the September 15, 2014 Town Council meeting.

15. Discussion/Motion – FEMA Reimbursement Settlement

Town Administrator Berns provided an update on the amount owed to FEMA but hoped that with additional negotiation the total would be further reduced to \$37,761.11.

16. Approval of Minutes

- a. Minutes for July 24, 2014 – Regular Council Meeting
- b. Minutes for August 12, 2014 – Budget Workshop

The following motion was made by Council Member Fisikelli, seconded by Vice Mayor Jablonski and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Fisikelli, McKay, Jablonski, and Mayor Nelson voting Yes.

MOTION: TO APPROVE THE MINUTES.

17. Adjournment – Meeting was adjourned at 9:23 p.m.

Respectfully submitted:

Russell Muñiz, MMC, Town Clerk

*Adopted by the Town Council on
this 30TH day of September, 2014.*

Jeff Nelson, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.