



# Southwest Ranches Town Council

REGULAR MEETING  
Agenda of October 8, 2020

Southwest Ranches Council Chambers  
7:00 PM Thursday

13400 Griffin Road  
Southwest Ranches, FL 33330

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<b><u>Mayor</u></b> Doug McKay	<b><u>Town Council</u></b> Delsa Amundson Bob Hartmann Gary Jablonski	<b><u>Town Administrator</u></b> Andrew D. Berns	<b><u>Town Attorney</u></b> Keith M. Poliakoff, J.D.
<b><u>Vice Mayor</u></b> Denise Schroeder		<b><u>Town Financial Administrator</u></b> Martin Sherwood, CPA CGFO	<b><u>Assistant Town Administrator/Town Clerk</u></b> Russell C. Muniz, MMC

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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. **Volunteer Recognitions - Pavitpaul Makkar and Madison Sullivan**
4. **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.
5. **Board Reports**
6. **Council Member Comments**
7. **Legal Comments**
8. **Administration Comments**

## **Ordinance - 1st Reading**

9. **AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING THE TEXT OF THE FUTURE LAND USE ELEMENT OF THE TOWN OF SOUTHWEST RANCHES COMPREHENSIVE PLAN, PERTAINING TO THE US HIGHWAY 27 BUSINESS LAND USE CATEGORY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; REQUESTING RECERTIFICATION BY THE BROWARD COUNTY PLANNING COUNCIL; AND, PROVIDING FOR AN EFFECTIVE DATE. (APPLICATION NO. PA-20-4)**

10. AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING THE TOWN OF SOUTHWEST RANCHES UNIFIED LAND DEVELOPMENT CODE (“ULDC”) TO CREATE A NEW ZONING CLASSIFICATION ENTITLED, “US HIGHWAY 27 PLANNED BUSINESS DISTRICT;” PROVIDING FOR DISTRICT REGULATIONS AND RELATED AMENDMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.

#### Resolutions

11. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ENTERING INTO A LONG TERM LEASE AGREEMENT WITH SUPREME ORGANICS, LLC FOR THE TOWN’S VACANT 24.3622 +/- ACRE PROPERTY, GENERALLY LOCATED WEST OF NW 196TH AVENUE BETWEEN STIRLING ROAD AND SHERIDAN STREET, COMMONLY KNOWN AS THE FORMER CCA PROPERTY; AUTHORIZING THE SITE TO BE UTILIZED FOR A SINGLE SOURCE ORGANIC PROCESSING FACILITY, WITH ANCILLARY USES INCLUDING THE SALE OF THE END PRODUCTS, VEHICULAR PARKING AND STORAGE, AND A PRIVATE FUELING FACILITY; FINDING THAT THE ENTERING INTO THIS LONG TERM LEASE AGREEMENT IS IN THE BEST INTEREST OF THE PUBLIC; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT AND TO MAKE ANY AND ALL CHANGES NECESSARY AND PROPER TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.
12. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY PROVIDING FOR THE PROVISION OF CARES ACT FUNDING TO OFFSET UNANTICIPATED EXPENDITURES ASSOCIATED WITH THE TOWN’S EFFORTS IN RESPONDING TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE THE INTERLOCAL AGREEMENT AND ANY AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.
13. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, CENSURING COUNCIL MEMBER BOB HARTMANN FOR HIS CONDUCT AT THE SEPTEMBER 14, 2020, COUNCIL MEETING; FINDING THAT COUNCIL MEMBER BOB HARTMANN’S CONDUCT WAS UNPROFESSIONAL AND INAPPROPRIATE; DIRECTING THE TOWN CLERK TO PUBLISH THIS RESOLUTION ON A FULL PAGE IN THE TOWN’S NEXT MONTHLY NEWSLETTER, AND IN THE NOTICE SECTION OF THE SUN SENTINEL; AND PROVIDING FOR AN EFFECTIVE DATE.
14. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING RESOLUTION NO. 2019-061, AND ESTABLISHING ADDITIONAL RULES AND POLICIES FOR CIVILITY AND DECORUM DURING TOWN COUNCIL MEETINGS,

**TOWN BOARD MEETINGS, AND DURING PUBLIC COMMENT AT TOWN COUNCIL AND BOARD MEETINGS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**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

## MADISON SULLIVAN VOLUNTEER RECOGNITION

**WHEREAS**, the scope of government services is vast and it is challenging to meet all of the diverse needs of a community; and

**WHEREAS**, volunteerism provides an enhancement to the levels of service provided by government to its community and is therefore vital to help cultivate a vibrant community; and

**WHEREAS**, volunteers who give of themselves without any expectation other than the satisfaction of knowing they are contributing to the value of their community should be celebrated and recognized for their efforts; and

**WHEREAS**, Madison Sullivan is a volunteer deserving of such recognition because of her numerous selfless acts including singing the national anthem at numerous Town events, starting a reading program for Town youth, documenting an oral history of the Town through the viewpoint of Town pioneers, organizing a female only self-defense seminar, fundraising efforts that realized thousands of dollars for the Town's College Scholarship Fund, and serving as student liaison to the Schools and Education Advisory Board and organized and moderated a Candidate Night Forum to name just a few; and

**WHEREAS**, Madison Sullivan has consistently demonstrated that she gives of herself selflessly to the Town and its residents and is a beacon of hope for the future of our community and for this should be recognized.

**NOW, THEREFORE**, the Mayor and Town Council do hereby extend our deepest thanks to Madison Sullivan on her many contributions to the Town and designate October 10, 2020:

## MADISON SULLIVAN DAY

**PROCLAIMED** this 8<sup>th</sup> Day of October, 2020.

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DOUG McKAY, MAYOR

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# PROCLAMATION

## PAVITPAUL MAKKAR VOLUNTEER RECOGNITION

**WHEREAS**, the scope of government services is vast and it is challenging to meet all of the diverse needs of a community; and

**WHEREAS**, volunteerism provides an enhancement to the levels of service provided by government to its community and is therefore vital to help cultivate a vibrant community; and

**WHEREAS**, volunteers who give of themselves without any expectation other than the satisfaction of knowing they are contributing to the value of their community should be celebrated and recognized for their efforts; and

**WHEREAS**, Pavitpaul Makkar is a volunteer deserving of such recognition because of his numerous selfless acts including collecting and delivering food supplies and gift cards to support the Town's fundraising drive for the Military Heroes Support Foundation, developing and organizing the Town's A Race for Unity in Diversity 5K Run/Walk the past two years which celebrates the unique diversity within the Town while raising thousands of dollars for the Town's College Scholarship, and assisting with the setup of the Town's COVID-19 testing site at the Rolling Oaks Barn; and

**WHEREAS**, Pavitpaul Makkar has consistently demonstrated that he gives of himself selflessly to the Town and its residents and is a beacon of hope for the future of our community and for this should be recognized.

**NOW, THEREFORE**, the Mayor and Town Council do hereby extend our deepest thanks to Pavitpaul Makkar on his many contributions to the Town and designate October 11, 2020:

## PAVITPAUL MAKKAR DAY

**PROCLAIMED** this 8<sup>th</sup> Day of October, 2020.

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**DOUG McKAY, MAYOR**

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

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

Town Council  
Doug McKay, *Mayor*  
Denise Schroeder, *Vice Mayor*  
Delsa Amundson, *Council Member*  
Bob Hartmann, *Council Member*  
Gary Jablonski, *Council Member*

Andrew D. Berns, *Town Administrator*  
Keith M. Poliakoff, JD, *Town Attorney*  
Russell Muniz, *Assistant Town Administrator/Town Clerk*  
Martin D. Sherwood, CPA, CGMA, CGFO, *Town Financial Administrator*

## COUNCIL MEMORANDUM

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew Berns, Town Administrator  
**FROM:** Jeff Katims  
**DATE:** 10/8/2020  
**SUBJECT:** ORDINANCE AMENDING US 27 COMPREHENSIVE PLAN PROVISIONS

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### **Recommendation**

Staff recommends the Town Council approve the Ordinance on first reading and adopt the Ordinance on second reading.

### **Unanimous Vote of the Town Council Required?**

Yes

### **Strategic Priorities**

A. Sound Governance

### **Background**

The Ordinance makes the following changes, noting that the Council previously reviewed the first two changes at a workshop:

1. Amending the list of permitted uses in the US Highway 27 Business land use category to reflect additional uses recommended by the Comprehensive Plan Advisory Board and made part of the US Highway 27 Business zoning regulations.
2. Clarifying that the US Highway 27 Business land use category can be applied to both east and west sides of US 27.
3. Adjusting performance standards for noise and other impacts to allow for reasonable implementation. The revision prohibits levels of noise and other impacts that are not compatible with residential uses.

**Fiscal Impact/Analysis**

Not applicable.

**Staff Contact:**

Jeff Katims

**ATTACHMENTS:**

Description	Upload Date	Type
Ordinance - TA Approved	10/2/2020	Ordinance

**ORDINANCE NO. 2021 -XXX**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING THE TEXT OF THE FUTURE LAND USE ELEMENT OF THE TOWN OF SOUTHWEST RANCHES COMPREHENSIVE PLAN, PERTAINING TO THE US HIGHWAY 27 BUSINESS LAND USE CATEGORY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; REQUESTING RECERTIFICATION BY THE BROWARD COUNTY PLANNING COUNCIL; AND, PROVIDING FOR AN EFFECTIVE DATE. (APPLICATION NO. PA-20-4)**

**WHEREAS**, the Future Land Use Element ("FLUE") of the Town of Southwest Ranches Comprehensive Plan includes objectives, policies and permitted uses for the US Highway 27 Business land use category ("US 27 Category"); and

**WHEREAS**, the Town Council wishes to amend the text of the FLUE to clarify that both the east and west sides of U.S. Highway 27 may be designated US 27 Category, to expand the list of permitted uses and to provide implementable directives for zoning regulations; and

**WHEREAS**, the Town Council, sitting as the Local Planning Agency, held a duly noticed public hearing on October 8, 2020 and recommended that the Town Council adopt the proposed amendment; and

**WHEREAS**, the Town Council finds that the amendment is internally consistent with goals, objectives and policies of the adopted Comprehensive Plan.

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

**Section 1: Ratification.** 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: Amendment to FLUE Part I.** The Goals, Objectives and Policies in Part I of the Future Land Use Element are hereby amended as follows:

**FLUE POLICY 1.8-a:** The Town has identified the US 27 Corridor as appropriate for business uses on the land use plan map. The Town created the US Highway 27 Business Category for this purpose. Only parcels west of US Highway 27 and parcels

~~that fronting the east side of US Highway 27 that are buffered from Rural Ranch land use designations by an intervening open space or community facilities land use designation~~ are eligible for this designation, including parcels that also front Griffin Road or Stirling Road. Parcels designated US Highway 27 Business on the land use plan map must only be developed and used in strict compliance with the following policies. The Town Council shall consider the extent to which each application submitted for land use plan amendment, rezoning and development furthers the intent and spirit of the policies hereunder in determining whether to approve the application.

**Section 3: Amendment to FLUE Part II.** The Permitted Uses in Part II of the Future Land Use Element are hereby amended as follows:

## **5. US HIGHWAY 27 BUSINESS CATEGORY**

The US Highway 27 Business Category is intended to facilitate a limited range of “clean” light industrial and business uses along the US 27 corridor that are not a threat to the potable water quality of the Biscayne Aquifer or to the peaceful enjoyment of residential properties to the east. ~~This category may be applied only to properties fronting the east side of U.S. Highway 27 that are buffered from parcels designated Rural Ranches, Rural Estates and Agricultural by an intervening permanent open space or community facility land use.~~

The Town shall carefully consider potential environmental, traffic and quality of life impacts before changing the land use plan map designation of any parcel to US Highway 27 Business. An application for land use plan amendment to designate a property as US Highway 27 Business must affirmatively demonstrate that the amendment is consistent with all of the performance standards established herein. Every such application for plan amendment shall be submitted concurrently with a rezoning application to an implementing zoning district.

### A. Performance Standards.

1. Development shall not generate levels of noise, vibration, odor, dust, fumes, smoke, glare, or night-time illumination that ~~can be detected from~~ are incompatible any property with residential land uses east of US Highway 27 ~~an Agricultural, Rural Ranch or Rural Estate land use plan map designation.~~
2. City of Sunrise sanitary sewer and potable facilities must be in place, or the provision of City of Sunrise sanitary sewer and potable facilities must be the subject of a binding agreement with the City of Sunrise to serve any parcel designated US Highway 27 Business, prior to issuance of any permit for the construction of any building or roofed structure. Such service must be in place prior to the issuance of a certificate of occupancy, temporary or otherwise.
3. Development shall not involve use of any chemicals, substances or processes that create byproducts that are combustible, carcinogenic, biohazardous, or are otherwise

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toxic to humans or animals. The land development regulations may permit fuel storage tanks for emergency generators and for the purpose of servicing vehicles or equipment used in the regular course of business, provided that any such tanks may be required to exceed the installation, containment, inspection and other requirements of Article 27, Chapter 10, "Storage Tanks" of the Broward County Code of Ordinances, as may be amended from time to time.

4. Any use – the nature of which may be considered dangerous, or which may potentially compromise the comfort, peace, enjoyment, health or safety of the community or any property with a Rural Ranches, Rural Estate or Agricultural land use plan map designation - shall be prohibited.
  5. All development shall provide for north-south cross-access to abutting parcels in accordance with the conceptual master access management plan for the US-27 corridor (see FLUE Policy 1.8-e.). Such access may include dedication and construction of a frontage drive and/or site design that anticipates driveway connections or drive aisle connections with abutting properties, and which provides cross-access easements for such connections.
- B. Uses permitted in areas designated US Highway 27 Business are as follows, subject to limitations, conditions of use and review requirements established within the Unified Land Development Regulations:

*Light industrial uses:*

1. Fabrication and assembly.
2. Contractor shops and similar uses.
3. Sales and display of agricultural equipment, construction equipment, utility trailers, boats, and similar uses.
4. A limited range of light manufacturing and light industrial uses that are consistent with the performance standards set forth herein.
5. Educational and scientific research businesses, including dental laboratories but excluding medical and industrial laboratories. Industrial laboratories may be approved on a case-by-case basis after review by the Town Council. All such uses shall be that are consistent with the performance standards set forth herein.
6. A limited range of commercial recreation uses that are consistent with the performance standards set forth herein.
7. Wholesaling, warehousing and storage provided that only storage or materials and items that are consistent with the performance standards set forth herein may be permitted.
8. Distribution uses that the Town determines are consistent with the performance standards set forth herein.

*Other permitted uses:*

Underlined text is added and ~~stricken~~ text is deleted.

9. Communication facilities.
10. Non-residential agricultural uses.
11. Office uses, excluding call centers, ~~provided that principal office uses shall not exceed twenty percent (20%) of the land area within the Town designated Industrial on the Broward County Land Use Plan.~~
12. Utilities located on the site of a development and confined to serving only the specific development.
13. Recreation and open space that does not adversely affect the suitability of adjacent US 27 frontage parcels for business use.
14. One (1) residential caretaker or watchman unit within the same structure as a light industrial use.
- ~~15. Retail, restaurants, personal services and other ancillary commercial uses, limited to less than fifty percent (50%) of any building occupied by a light industrial use.~~
- ~~16. The following uses may also be permitted as long as the total area of these uses does not consume more than twenty percent (20%) of the land designated Industrial on the Future Broward County Land Use Plan Map (Series) within the Town, and as long as the location of these uses does not preclude or adversely affect the future use of surrounding areas for light industrial use:~~
  - ~~15.-a. Commercial and retail business uses, including restaurants and personal services.~~
  - ~~16. b. Hotel, motel and similar lodging.~~
  17. Community facilities uses limited to cemeteries, mausoleums, trade and vocational schools, and theatrical studios.

**Section 4: F.S. Chapter 163 Transmittal.** That the Town Planner is hereby directed to transmit the amendment to the State Land Planning Agency immediately following first reading of this Ordinance, and is hereby directed to transmit the adopted amendments to the State Land Planning Agency immediately following the second and final reading of this Ordinance.

**Section 5: Recertification.** That the Town Planner is hereby directed to apply to the Broward County Planning Council for recertification of the Future Land Use Map subsequent to the effective date of this Ordinance.

**Section 6: Effective Date.** This Ordinance shall take effect 31 days after the Department of Economic Opportunity notifies the Town that the plan amendment package is complete, unless timely challenged pursuant to sec. 163.3184(5), F.S., in which case the Ordinance shall take effect on the date that the Department of

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Economic Opportunity or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

**PASSED ON FIRST READING** this \_\_\_ day of \_\_\_\_\_, 2020 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED AND ADOPTED ON SECOND READING** this \_\_\_ day of \_\_\_\_, 2020, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith M. Poliakoff, J.D., Town Attorney  
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Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall  
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Town Council  
Doug McKay, *Mayor*  
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## COUNCIL MEMORANDUM

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew Berns, Town Administrator  
**FROM:** Jeff Katims  
**DATE:** 10/8/2020  
**SUBJECT:** ORDINANCE CREATING THE US HIGHWAY 27 PLANNED BUSINESS DISTRICT

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### **Recommendation**

Staff recommends that the Council approve the Ordinance on first reading and adopt the Ordinance on second reading.

### **Unanimous Vote of the Town Council Required?**

Yes

### **Strategic Priorities**

A. Sound Governance

### **Background**

The proposed Ordinance creates zoning regulations to implement the US Highway 27 Business land use category in the comprehensive plan. A comprehensive summary is provided in the backup materials.

### **Fiscal Impact/Analysis**

Not Applicable.

### **Staff Contact:**

Jeff Katims

**ATTACHMENTS:**

Description	Upload Date	Type
Staff memorandum	9/29/2020	Executive Summary
Draft-US_27_Zoning-TA Approved	10/2/2020	Ordinance



**Town of Southwest Ranches**  
13400 Griffin Road  
Southwest Ranches, FL 33330  
(954) 434-0008 Town Hall  
(954) 434-1490 Fax  
[www.southwestranches.org](http://www.southwestranches.org)

*Town Council*  
**Doug McKay** Mayor  
**Denise Schroeder**, *Vice Mayor*  
**Delsa Amundson**, *Council Member*  
**Bob Hartmann**, *Council Member*  
**Gary Jablonski**, *Council Member*

Andrew Berns, *Town Administrator*  
Keith Poliakoff, *Town Attorney*  
Martin Sherwood, *Town Financial Administrator*  
Russell Muñiz, *Assistant Town Administrator/Town Clerk*

## **MEMORANDUM**

TO: The Honorable Mayor and Town Council

FROM: Jeff Katims, Town Planner

THRU: Andy Berns, Town Administrator

DATE: October 8, 2020

RE: First Reading of Ordinance Creating the US Highway 27 Planned Business District

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### **Background**

The Town Council adopted the US Highway 27 Business future land use category on January 26, 2017 by Ordinance No. 2017-02. That ordinance established policies, permitted uses and requirements for the new category in the text of the comprehensive plan, but did not change future land use map.

Before any change to the future land use map can be considered, Policy 1.8-m requires the Town establish a zoning classification in the form of a planned development district, whereby specific permitted uses, development standards and a conceptual development plan for the property are made part of the rezoning and will govern use and development of the property. Policy 1.8-n requires submitting both applications for land use map amendment and rezoning concurrently.

### **Proposed Zoning Regulations**

The proposed ordinance creates a new zoning classification, "US Highway 27 Business District" to implement the land use category that Council established in 2017. The regulations are in the form of a planned development district that gives the Town

flexibility to ensure each development follows the intent of the comprehensive plan policies for US 27, while also allowing the developer flexibility to design each site as long as Town objectives are met.

### Procedure

The property owner must submit a rezoning application together with an application for land use map amendment. The US Highway 27 Business District is the only zoning classification that can be used in conjunction with the US Highway 27 Business land use category.

A master plan is required as an integral part of the rezoning application. The master plan is a regulatory tool that allows the Town to review an overall plan for a large land holding, and to achieve its objectives of compatibility, environmental neutrality and aesthetics on both a large-scale and site-by-site basis, while also providing the developer flexibility in designing each site without the need for variances. The planned development approach offers opportunities for creativity and large-area planning that traditional zoning regulations do not.

Each site plan must be consistent with the approved master plan, in the same way that building plans must conform to an approved site plan. The information requirements for master plans are found in Sec. 051-050. It is expected that corridor will develop incrementally within the overall parameters of the master plan, and that master plan amendments will be required as more detailed development plans are formed. Since the master plan is adopted as an integral part of the ordinance rezoning the property, each master plan amendment is also subject to the rezoning process.

### Permitted uses

The list of permitted and prohibited uses in Sec. 051-020 of the ordinance is the same list recommended by the Comprehensive Plan Advisory Board, with the following exceptions:

- In row 34 of the schedule of uses table, "menagerie, or keeping of wild animals" is deleted because a similar use, "animal refuge" is a use the CPAB recommended be permitted, and is included on line 12 as special exception use.
- In row 121 of the schedule of uses table, "construction equipment" is added to the sales and display of tractor equipment. As a permitted use.

Preceding the schedule of uses table are procedures for allowing unlisted uses similar to permitted or special exception uses.

## Compatibility and environmental impact

The proposed regulations address comprehensive plan directives to protect the residential area east of the cemetery from potential negative impacts of corridor development.

- Subsection 051-050(D) requires a detailed disclosure of processes, activities, equipment, and materials involved in any use of property within the district. Since list of permitted and special exception uses was vetted for categorically incompatible, environmentally harmful and noxious uses, the disclosure is for a finer-grain review to ensure that businesses do not utilize prohibited chemicals and that potential noise sources are mitigated before they are established.
- Subsection 051-30(A) authorizes the Town to require a noise study and attenuation when a proposed use involves processes or activities that may not be compatible with residential uses.
- Subsection 051-030(B) recognizes that the Town's noise ordinance is subjective, and that the regulations address potential noise impacts before a business can operate. Therefore, any business that complies with the disclosure requirements and operates with approved sound attenuation measures, if applicable, is exempt from the subjective standards of the noise ordinance in Chapter 9 from 7:00 a.m. to 10:00 p.m. on weekdays, and 8:00 a.m. and 10:00 p.m. on holidays. Outside of those hours, the subjective standards of the noise ordinance take effect.
- Subsection 051-030(D) limits the amount of accessory fuel storage authorized in the comprehensive plan for servicing vehicles and equipment for use onsite.
- Subsection 051-030(F) regulates the retail sales of chemical products.

## **Companion Comprehensive Plan Text Amendments**

A comprehensive plan text amendment accompanies this ordinance, proposing the following changes, noting that the Council already reviewed the first two at a workshop:

1. Amending the list of permitted uses in the US Highway 27 Business land use category to reflect additional uses recommended by the Comprehensive Plan Advisory Board and made part of the US Highway 27 Business zoning regulations.
2. Clarifying that the US Highway 27 Business land use category can be applied to both east and west sides of US 27.
3. Adjusting performance standards for noise and other impacts to allow for reasonable implementation. The revision prohibits levels of noise and other impacts that are not compatible with residential uses.

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**ORDINANCE NO. 2021 - XXX**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING THE TOWN OF SOUTHWEST RANCHES UNIFIED LAND DEVELOPMENT CODE ("ULDC") TO CREATE A NEW ZONING CLASSIFICATION ENTITLED, "US HIGHWAY 27 PLANNED BUSINESS DISTRICT;" PROVIDING FOR DISTRICT REGULATIONS AND RELATED AMENDMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Future Land Use Element Policy 1.8-m requires the Town establish a zoning classification in the form of a planned development district to implement the US 27 Category; and

**WHEREAS**, the Town Council, sitting as the Local Planning Agency, held a duly noticed public hearing on October 8, 2020 and recommended that the Town Council adopt the proposed amendment; and

**WHEREAS**, the Town Council finds that the amendment implements Future Land Use Element Policy 1.8-m and related objectives, policies and provisions of the adopted Comprehensive Plan.

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

**Section 1: Ratification.** 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: ULDC Amendment.** The ULDC is hereby amended to create Article 51 entitled, "US Highway 27 Planned Business District" as set forth in Exhibit "A", which is attached hereto and made a part hereof.

**Section 3: Codification.** The Town Clerk shall cause this ordinance to be codified as a part of the ULDC during the next codification update cycle.

**Section 4: Conflict.** 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 upon the effective date of Ordinance No. \_\_\_\_ (Plan Amendment Application No. PA-20-4).

**PASSED ON FIRST READING** this \_\_\_\_ day of \_\_\_\_\_, 2020 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED AND ADOPTED ON SECOND READING** this \_\_\_\_ day of \_\_\_\_, 2020, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith M. Poliakoff, J.D., Town Attorney  
37526756.1



**EXHIBIT "A"**

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**Article 51. US Highway 27 Planned Business District.**

**Sec. 051-010. Intent and applicability.**

(A) *Intent.* The US Highway 27 Planned Business District ("US 27 District") is intended to facilitate a limited range of light industrial and business uses along the US 27 corridor that are not a threat to the potable water quality of the Biscayne Aquifer or to the peaceful enjoyment of residential properties to the east.

It is the further the intent of this district to coordinate access, circulation, buffering and screening, utilities, drainage, and design among parcels within the US 27 corridor through a master development plan, and to utilize the flexibility of the master development plan process to coordinate certain development standards with locational contexts and the unique impacts of different land uses.

(B) *Applicability.* This zoning district shall only be applied to property designated US Highway 27 Business Category on the Future Land Use Map. The provisions of this article, together with policies under Objective 1.8, the permitted uses in the Future Land Use Element of the comprehensive plan, and master development plans approved pursuant to this article shall govern the use and development of land within this district.

**Sec. 051-020. Permitted, prohibited and special exception uses.**

(A) *Unauthorized use.* No land or improvements thereon shall be used for any purpose other than as provided in this section. Further, no land shall be used for any use not authorized by an approved master development plan for a given parcel or tract.

(B) *Permitted uses.* Uses followed by a "P" are permitted, subject to compliance with all applicable conditions for the use set forth in section 051-030.

(C) *Special exception uses.* Uses followed by an "SE" are special exception uses that require town council approval pursuant to the procedures and requirements of Article 112 - Special Exception Uses, with an additional required finding that the use does not involve chemicals, substances or byproducts that are combustible, carcinogenic, biohazardous, or are otherwise toxic to humans or animals.

(D) *Prohibited uses.* Uses followed by an "NP" are prohibited.

(E) *Unlisted uses.* An unlisted use may be permitted if it is not a listed permitted, conditional, special exception, or prohibited use in any district, pursuant to the findings and procedures of this subsection.

- 1 (1) The town council may approve a use that it finds is similar to a listed special  
 2 exception use in this district upon consideration of an application for similar  
 3 special exception use that shall follow the process for special exception uses in  
 4 Article 112.
- 5 (2) The town administrator may approve a use upon finding the use similar to a  
 6 listed permitted use in this district subject to the following requirements:
- 7 (a) Finding that the use possesses similar characteristics to a permitted use in  
 8 this district, including but not limited to operating hours, emission of noise,  
 9 odor, dust, smoke or other particulates, vibration, and glare. Approval of a  
 10 similar use may be made subject to any master plan and site plan conditions  
 11 that are applicable to the similar use, or as deemed appropriate by the town  
 12 administrator to mitigate potential incompatibilities with residential uses.
- 13 (b) The use shall not involve chemicals, substances or byproducts that are  
 14 combustible, carcinogenic, biohazardous, or that are otherwise toxic to  
 15 humans or animals.
- 16 (c) The town administrator shall provide written notice to all town council  
 17 members the intent to authorize the similar use. If no councilmember files a  
 18 written objection with the town administrator within ten (10) business days,  
 19 the town administrator may approve the use.
- 20 (d) If by the end of the ten (10)-day period any councilmember files an objection,  
 21 the use may only be approved as a special exception use.
- 22 (F) *Schedule of uses.* The schedule in this subsection enumerates those uses that are  
 23 permitted, prohibited and subject to special exception permit.

	Use	
1.	<u>Abrasive product manufacturing</u>	NP
2.	Accessory uses & structures, including outdoor storage, incidental fuel storage and caretaker/watchman living quarters, [subject to sec. 051-030 (C), (D) and (E), respectively]	P
3.	<u>Acid (corrosive) manufacturing, including hydrochloric, nitric, picric, sulfurous, and sulfuric</u>	NP
4.	<u>Adult entertainment</u>	NP
5.	Agricultural equipment sales and display	P
6.	Agricultural uses (non-residential)	P
7.	<u>Airport and airport hanger</u>	NP
8.	<u>Alkaline products manufacturing</u>	NP
9.	<u>Ammunition reloading</u>	NP
10.	<u>Animal burial ground</u>	NP

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Ordinance No. 2021-\_\_\_\_ Key: Underlined words are added and ~~stricken~~ words are deleted.

11.	Animal hospital or veterinary clinic including equine [subject to sec. 051-030(A) – noise]	P
12.	Animal refuge	SE
13.	<b>Asphalt manufacturing or refining</b>	<b>NP</b>
14.	<b>Asphalt paving plant</b>	<b>NP</b>
15.	Assembly of appliances and instruments	P
16.	Assembly of pre-manufactured components	P
17.	Automobile, commercial vehicle, RV, boat, tractor, trailer storage, transport, parking or open-air storage [subject to sec. 051-030(B)-screening]	P
18.	Automobile, motor vehicle, motorcycle, vehicle accessories, parts sales and display - new & used	P
19.	Automobile, motor vehicle detailing including car washes	P
20.	<b>Automobile wrecking yard</b>	<b>NP</b>
21.	Awning and canvas repair	P
22.	<b>Battery repair and rebuilding</b>	<b>NP</b>
23.	Boarding kennel [subject to sec. 051-030(A)-noise]	P
24.	Boat sales, including outdoor display, and indoor minor repair of components as an accessory use (ex: upholstery, wiring and electronics, switchgear, pumps, batteries, hydraulics, window seals, etc.) but excluding any work relating to the hull and power generating components.	P
25.	<b>Body and paint shop, both as stand-alone use and accessory to auto sales</b>	<b>NP</b>
26.	Bookbinding- no use of adhesives	P
27.	Bottling plant - only liquids safe for human consumption	P
28.	Broadcasting, movie production, relay station	P
29.	Brewing and distilling -subject to ability of municipal sewer to treat effluent	P
30.	<b>Brick, tile, terra cotta manufacturing</b>	<b>NP</b>
31.	Bulk storage excluding chemicals	P
32.	Building supplies sales and display. May be outdoors if roofed and if screened from view pursuant to sec. 51-030(B).	P
33.	<b>Butane or propane manufacturing</b>	<b>NP</b>
34.	<b>Carnival, circus, circus quarters, <del>menagerie,</del> or keeping wild animals</b>	<b>NP</b>
35.	<b>Carpet manufacture, power looms</b>	<b>NP</b>
36.	<b>Cement and concrete products manufacturing, batching or mixing plant</b>	<b>NP</b>
37.	Cemetery, columbarium, mausoleum	P
38.	<b>Chemical manufacturing</b>	<b>NP</b>

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39.	Clothing fabrication – no use of chemicals	P
40.	Cold storage facility [subject to sec. 051-030(A)-noise]	SE
41.	Commercial recreation uses including rifle and gun range - indoors only [subject to sec. 051-030(A)-noise]	P
42.	Contractor shops-indoor only; carpentry shops are subject to sec. 051-030(A)-noise.	P
43.	Contractor yards, principal or accessory to a contractor shop	SE
44.	Courier, packing or delivery service	P
45.	<b>Creosote manufacture or treatment</b>	<b>NP</b>
46.	Daycare	P
47.	Dental lab	P
48.	<b>Disinfectant and insecticide manufacturing</b>	<b>NP</b>
49.	Distribution warehouse, truck or freight terminal [subject to sec. 051-030(A)-noise.]	P
50.	Educational lab	P
51.	Electronics assembly	P
52.	<b>Electronics manufacturing</b>	<b>NP</b>
53.	Fabrication	P
54.	Feed, seed and fertilizer sales and display	P
55.	<b>Fertilizer compounding</b>	<b>NP</b>
56.	Food catering service	P
57.	Food processing, packaging and distribution without refrigeration	P
58.	Food processing, packaging and distribution with refrigeration [subject to sec. 051-030(A)-noise]	SE
59.	<b>Foundry</b>	<b>NP</b>
60.	Frozen food lockers, bulk storage & warehousing [subject to sec. 051-030(A)-noise]	SE
61.	Fruit packing and shipping	P
62.	Funeral home or mortuary including monument sales and display	P
63.	Furniture manufacturing [subject to sec. 051-030(A)-noise]	P
64.	Furniture, appliance repair [subject to sec. 051-030(A)-Noise]	P
65.	<b>Gas station, fuel sales</b>	<b>NP</b>
66.	Glass and mirror shop	P
67.	<b>Hazardous materials storage in bulk</b>	<b>NP</b>
68.	Home improvement center including accessory outdoor sale and display of utility trailers, lawn furniture and barbeques	P
69.	<b>Hospitals, sanitariums, orphanages, and similar institutions for the treatment of persons (excluding adult day care)</b>	<b>NP</b>
70.	Hotel	P
71.	Household items repair shop	P

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72.	House wrecking yards; used building materials yard	NP
73.	Ice manufacturing including storage, distributing and self-service ice station [subject to sec. 051-030(A)-noise]	P
74.	Incineration, reduction, or storage of garbage, offal, dead animal refuse, and rancid fats	NP
75.	Industrial lab	SE
76.	Junk yard	NP
77.	Laboratories/labs: see individual lab types: dental lab; educational lab; industrial lab; and research and development lab	---
78.	Lawnmower rental, sales, repair [repair subject to sec. 051-030(A)-noise].	P
79.	Light manufacturing	SE
80.	Livery stable, riding academy or dude ranch	P
81.	Livestock auction	P
82.	Lumber yard with planning mill	NP
83.	Machine shop, including use of screw machines [subject to sec. 051-030(A)-noise]	P
84.	Manufacturing of canvas, cork, textiles -no chemical treatment of textiles	P
85.	Manufacturing of glass products from previously manufactured glass	P
86.	Machinery sales and display	P
87.	Medical waste incineration, sterilization or transfer station	NP
88.	Metalsmithing [subject to sec. 051-030(A) – noise]	P
89.	Mobile collection center and food units	NP
90.	Motor vehicle repair, including body shops, both as a principal use and accessory use	NP
91.	Motor vehicle and equipment wholesale and public auctions including boat, RV, commercial vehicles (whole car or salvage)	NP
92.	New equipment and tool sales and display including tool rental (commercial and contractor)	P
93.	Night club, music hall, bar, tavern, pool or billiard room, penny arcades, games of skill and science	NP
94.	Offices	P
95.	Paint or varnish manufacture	NP
96.	Paper or pulp mills	NP
97.	Penal Institutions and detention centers	NP
98.	Personal services	P
99.	Pest control service	NP
100.	Petroleum product manufacturing	NP

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101.	Poisonous gas storage	NP
102.	Photographic, radio and TV studio	P
103.	Printing plant - no use of solvents or offset printing	P
104.	Railroad freight or passenger station, transfer, storage or team tracks	NP
105.	Recycling facility	NP
106.	Research and development lab	SE
107.	Restaurant including bakery and delicatessen	P
108.	Restaurant and hotel supplies and equipment sales and display, including store fixtures	P
109.	Retail sales, including firearms, ammunition [subject to 051-030(F)-incidental retail sale of prepackaged chemicals]	P
110.	Rock, gravel, or sand distribution	P
111.	Self-storage and mini warehouses	P
112.	Sewage or water treatment, pumping and storage plants	NP
113.	Sharpening and grinding [subject to sec. 051-030(A)-noise]	P
114.	Sign printing shop - digital printing only	P
115.	Slaughterhouse	NP
116.	Smelting or refining of ores or metals	NP
117.	Swimming pool supplies retail sales and display [subject to sec. 051-030(F)-incidental sale of prepackaged chemicals]	P
118.	Tank storage of bulk oil or gas	NP
119.	Theatrical studio	P
120.	Tire recapping and vulcanizing	NP
121.	Tractor, construction equipment sales and display	P
122.	Trade and vocational schools	P
123.	Truck stop	NP
124.	Upholstery shop	P
125.	Utility trailer sales and display	P
126.	Welding equipment and supplies sales and display	P
127.	Wholesale (no chemicals)	P

- 1
- 2 **Sec. 051-030. Limitations of uses.**
- 3 (A) *Noise compatibility.*
- 4 (1) The town may require a noise study for any use subject to this subsection in the
- 5 table of permitted uses, and any other use, equipment or machinery that may
- 6 be expected to generate noise detectable beyond the property line. The study
- 7 shall identify the anticipated noise impact from the proposed use at the nearest
- 8 point of the lot line of the receiving residentially zoned property ("impact
- 9 location").

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- 1 (2) The impact analysis shall consider the level of sound that would be generated  
2 by the proposed use, as well as its temporal characteristics (how it varies with  
3 time) and its spectral characteristics ((how it varies over frequency). If the  
4 projected noise from the proposed use or proposed modifications to an existing  
5 use exceed either 5 dB above the average daytime ambient sound level or 55  
6 dB at the impact location, the noise study shall include recommendations to  
7 mitigate the noise impacts. Design and construction recommendations shall be  
8 incorporated in the design of all plans submitted for town approval. All use-  
9 related recommendations shall be made part of the approved site plan, an  
10 enforceable agreement approved as to form by the town attorney, the certificate  
11 of use, or a combination of these. The 55 dB noise threshold shall be corrected  
12 to 50 dBA for sources emitting a discrete tone as defined in ANSI S.13, and shall  
13 be corrected to 50 dBA for noise sources that are of an impulsive character as  
14 defined in ANSI S.13.
- 15 (3) Acceptable methods of sound attenuation may include limitations on the scope  
16 of a use or its operations, deliberate site design, sound walls, acoustic blankets  
17 or insulation, and other measures or combinations of same acceptable to the  
18 town.
- 19 (4) In determining whether to require a noise study, the town shall consider the  
20 applicability of previous studies, distance of the noise source from residentially  
21 zoned parcels, intermediate conditions such as intervening land uses and land  
22 cover, site design characteristics, existing noise walls or other attenuation  
23 measures, and any other factors the town deems relevant.
- 24 (5) The town may inspect construction pursuant to approved sound attenuation  
25 plans to verify strict compliance with the plans and may test the effectiveness of  
26 the sound attenuation measures to verify attainment of the approved noise  
27 reduction levels.
- 28 (6) The applicant shall be responsible for full cost recovery relating to the town's  
29 use of acoustical consultants.
- 30 (B) *Noise violations.*
- 31 (1) Notwithstanding the town's noise ordinance set forth in Chapter 9 of the Code  
32 of Ordinances, the operation of lawful uses in this district between the hours of  
33 7:00 a.m and 10:00 p.m. on weekdays, and from 8:00 a.m. to 10:00 p.m on  
34 weekends and holidays for which town administrative offices are closed, shall  
35 not constitute a violation of Chapter 9. Lawful use includes, at a minimum, use  
36 of land in compliance with this chapter, the approved master plan and site plan,  
37 and any limitations including noise attenuation measures made part of, or  
38 required for, any town approval.

- 1 (2) Use of outside loudspeakers and other amplified sound is specifically prohibited  
2 unless the town determines that such use is adequately addressed in the noise  
3 study.
- 4 (C) *Outdoor storage-screening.* Outdoor storage shall be screened on all open sides by  
5 an eight- (8)-foot opaque enclosure unless otherwise approved by the town council.  
6 The outside perimeter of such enclosures facing, or visible from a bordering public  
7 street shall meet the requirements in subsec. 051-040(O).
- 8 (D) *Fuel storage as an accessory use.*
- 9 (1) On plots of 3.5 acres or more in area, one fuel storage tank up to 1,100 gallons  
10 capacity is permitted for servicing vehicles or equipment used in the regular  
11 course of business and for backup generators.
- 12 (2) The town council may permit additional fuel storage by special exception permit  
13 upon demonstration that the larger tank is necessary for the reasonable  
14 operation of the business, provided that the total amount of fuel storage within  
15 the master plan shall not exceed 300 gallons multiplied by the number of net  
16 acres zoned US 27 District within the master plan.
- 17 (3) Above ground tanks shall be protected on all sides from vehicular impact and  
18 potential windstorm-driven debris damage to ensure the continued integrity of  
19 the tank, as shall be demonstrated on the site plan to the satisfaction of the  
20 town council. The tank and enclosure shall be screened with a hedge on all sides  
21 visible from public rights-of-way and adjoining zoning districts.
- 22 (4) Underground tanks shall be installed to a depth of at not less than 12 inches  
23 above the future projected average wet season groundwater elevation  
24 established in Broward County Ordinance No. 2017-16 as may be amended from  
25 time to time, or the South Broward Drainage District control elevation, whichever  
26 is higher.
- 27 (5) All tanks shall comply with the installation, containment, inspection and other  
28 requirements of Article 27, Chapter 10, "Storage Tanks" of the Broward County  
29 Code of Ordinances, as may be amended from time to time.
- 30 (E) *Watchman's quarters.* One (1) dwelling unit is permitted accessory to a principal use  
31 on the plot for exclusive occupancy by a guard or night watchman. The unit may be  
32 constructed as part of a principal nonresidential building or a separate building. Use  
33 of a mobile home for watchman's quarters is permitted by special exception permit  
34 only.
- 35 (F) *Sale of chemicals.* Retail sale of chemicals that are combustible, flammable,  
36 carcinogenic, biohazardous, or are otherwise toxic to humans or animals is permitted  
37 when pre-packaged and sealed from the factory in containers designed and intended  
38 for retail sale to individual consumers, in quantities that are incidental to the sale of

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1 other goods, comprising not more than fifteen percent (15%) of inventory at any one  
2 time. Wholesale of such chemicals is prohibited.

3  
4 **Sec. 051-040. Development standards.**

5 (A) *Generally.* The US Highway 27 Business District is a planned development district  
6 that provides the flexibility for the applicant to propose certain development  
7 standards for evaluation by the town council, based upon site location, site  
8 configuration and proposed use.

9 (B) *Setbacks.* Setbacks for each parcel shall be established by the master development  
10 plan.

11 (C) *Pervious area.* Each master plan shall provide at least 25 percent pervious area.  
12 Abutting property not zoned US 27 District, that meets the requirements in subsec.  
13 (I) for an offsite landscape buffer, may be shown on the master plan and counted  
14 toward the pervious area requirement of this subsection rather than that of the  
15 abutting property.

16 (D) *Separation from local streets, rural land uses.* There shall be no nonresidential,  
17 nonagricultural building, structure, parking, storage or use within two hundred (200)  
18 feet of SW 209<sup>th</sup> Avenue and 210<sup>th</sup> Terrace, nor shall there be any such structure,  
19 parking, storage or use within two hundred (200) feet of any parcel with a rural land  
20 use plan designation, unless such parcel is under unified control with the parcel  
21 designated US Highway 27 Business. Open space use, including buffers and drainage  
22 retention for a US Highway 27 Business use, is not subject to this restriction.

23 (E) *Access.* Access to development from public streets shall be limited to US 27, Stirling  
24 Road and Griffin Road. Access to US 27 shall be in accordance with a master access  
25 management plan approved by the Florida Department of Transportation (FDOT) for  
26 the entire US 27 corridor within the Town. The town will not approve a plat  
27 application for property fronting US 27 until the applicant has submitted the plat to  
28 FDOT for review and obtained approval.

29 (F) *Floor Area Ratio (F.A.R.).* The overall F.A.R. within a master plan shall not exceed  
30 0.75.

31 (G) *Height.* No building or structure shall exceed forty (40) feet in height, measured to  
32 the highest point on the building, including parapets and roof-mounted equipment,  
33 provided that the town council may authorize up to eight (8) additional feet of height  
34 after consideration of a line-of-site study demonstrating that the additional height  
35 will not adversely affect any property with a rural land use plan designation.

36 (H) *Parking and loading.* All buildings and uses shall provide off-street parking and  
37 loading facilities in accordance with Article 80, "Off-Street Parking and Loading,"

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- 1 (I) *Landscaping and screening.* The landscaping requirements of Article 75, shall apply  
2 except as otherwise provided in this article, provided that:
- 3 (1) The town council may recognize a permanent offsite, upland vegetated area as  
4 satisfying a perimeter buffer requirement when it functions as an equivalent to  
5 a required buffer, and its permanence and upkeep are guaranteed by an  
6 enforceable agreement deemed acceptable by the town attorney. The intent of  
7 this provision is to encourage a forested buffer between development on the  
8 east side of US 27 and residential properties to the east.
- 9 (2) The master development plan shall include a street tree and understory planting  
10 program for the edge of the highway corridor.
- 11 (J) *Design.* Building facades that are visible from a public street shall, to the greatest  
12 extent possible, be lined with office, retail, service, and other types of habitable space  
13 with fenestration, utilizing Florida Vernacular architecture of Caribbean or Cracker  
14 style, or a combination thereof. This architecture generally promotes generous roof  
15 overhangs, colonnades and sloped standing seam metal roofs. Pleasing architecture  
16 and building placement shall emphasize and showcase the building(s). The town  
17 council may approve variations in architectural style that are consistent with the  
18 town's rural character. However, stucco walls in combination with flat, unarticulated  
19 rooflines or Mediterranean-style tile roofs that are typical of commercial development  
20 in South Florida are prohibited as a means of complying with the architectural  
21 requirement for building facades that are visible from a public street.
- 22 (K) *Lighting.* Outdoor lighting shall comply with Article 95, with the following exceptions:
- 23 (1) Ambient outdoor lighting impacts shall be further mitigated by limiting the height  
24 of parking lot lighting fixtures to 25 feet.
- 25 (2) An applicant may petition the town council for a waiver of the requirement to  
26 provide parking lot lighting based upon limited hours of operation. The town  
27 council may approve the request subject to recordation of an enforceable  
28 agreement, approved as to form by the town attorney, that limits hours of  
29 operation and indemnifies the town.
- 30 (L) *Water and Sewer.* No permit for the construction of any building or roofed structure  
31 may be issued until the development is connected to, or the subject of a binding  
32 agreement for, connection to municipal water and sewer systems. No certificate of  
33 occupancy, temporary or otherwise, may be issued until the property is served by  
34 municipal water and sewer.
- 35 (M) *Signs.* The standards and requirements of Article 70 shall govern signage. For the  
36 purpose of determining permissible freestanding sign height and area in Sec. 070-  
37 080, Table 70-1, the "non-shopping center" standards shall be used, and distance  
38 from edge of pavement shall be based upon US 27 (not any frontage road). The  
39 design of signage shall compliment the building architecture and site design .

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- 1 (N) *Dumpsters.* Dumpsters and dumpster enclosures shall be provided in accordance  
2 with Section 015-070, "Dumpster enclosures."
- 3 (O) *Fences, walls and hedges.* Fences and walls shall not exceed eight (8) feet in height  
4 unless specifically authorized on the approved site plan. The outside perimeter of  
5 fencing and walls visible from public rights-of-way shall be lined with a continuous  
6 hedge maintained at a height of at least six (6) feet unless the town council waives  
7 the requirement upon finding that the fencing is of architectural or decorative quality,  
8 such as aluminum, iron or aesthetically commensurate material. Hedges are not  
9 limited in maximum height. The use of barbed wire and razor wire is prohibited on  
10 fences facing public rights-of-way.
- 11 (P) *Wireless communication facilities.* Wireless communication facilities are subject to  
12 provisions in Article 40, "Telecommunications Towers and Antennas."
- 13 (Q) *Definitions.* Definitions for certain terms used in this Article are located in Article 10,  
14 "Definition of Terms."
- 15 (R) *Nonconforming buildings uses and plots.* Any building, use or plot that has been  
16 established as nonconforming, or which becomes nonconforming, shall be subject to  
17 provisions of Article 30, "Nonconforming Uses, Structures and Plots."
- 18 (S) *Property maintenance.* Buildings and properties shall be maintained in accordance  
19 with Article 20, "Property Maintenance and Junk or Abandoned Property."
- 20 (T) *Construction trailers.* One (1) mobile home may be placed upon a plot to be used as  
21 a construction office, upon issuance of a building permit for the construction of a  
22 building or addition thereto. Such mobile home may not be utilized for dwelling  
23 purposes. The mobile home shall be removed from the property prior to issuance of  
24 a certificate of occupancy or after one (1) year, whichever occurs first. The town  
25 administrator may grant one (1) extension for a maximum six (6) months, upon  
26 petition from the property owner, provided the petition demonstrates unexpected  
27 hardship, and steady construction progress, such that construction can reasonably  
28 be completed within the six-month extension period. A decision of the town  
29 administrator to deny the request for extension may be appealed to the town council  
30 subject to the requirements of Article 135, "Appeals of Administrative Decisions."  
31 Placement of the mobile home shall is subject to all minimum yard requirements.
- 32 (U) *General provisions.* In addition to the general provisions herein, buildings, uses and  
33 properties shall be subject to the requirements of Article 15, "General Provisions."

34

35 **Sec. 051-050. Rezoning procedure.**

- 36 (A) *Procedure.* Rezoning to US 27 District shall follow the procedure in Article 130,  
37 "Zoning map amendments," and the additional requirements in this section.

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- 1 (B) *Unified control*. All land included in an application for rezoning to US 27 District shall  
 2 be owned by or be under the complete control of the applicant, whether the applicant  
 3 be an individual, partnership, corporation, other entity, group, or agency.
- 4 (C) *Master development plan*. A master development plan, containing the information  
 5 required in this section, shall be made part of the rezoning ordinance. The master  
 6 development plan shall be prepared by a professional engineer, architect or  
 7 landscape architect licensed in the State of Florida to scale. To the extent that an  
 8 application involves parcels for which specific development plans do not yet exist,  
 9 the master development plan shall reserve these parcels for later amendment  
 10 through the rezoning process. The following information is required for a master  
 11 development plan.
- 12 (1) Tier I information requirements, applicable to the entire master plan:
- 13 (a) Dimensioned boundaries and legal description for the property to be rezoned,  
 14 and dimensions of abutting rights-of-way.
- 15 (b) A master circulation and access plan showing the location and width of public  
 16 and private streets and their rights-of-way, and the location of access points  
 17 to the external and internal thoroughfare network.
- 18 (c) A master utilities plan, including conceptual stormwater drainage.
- 19 (d) Architectural style standards for all buildings. The applicant shall be  
 20 responsible for cost-recovery pertaining to the Town's use of an architectural  
 21 consultant to review the architectural standards and advise the town council.
- 22 (e) Thematic landscape treatment of US 27 frontage, including a street tree and  
 23 understory planting program. Specific development sites within the master  
 24 plan may provide additional landscaping and buffering to compliment the US  
 25 27 edge treatment.
- 26 (f) Typical buffer treatment along parcel lines that abut other zoning districts.
- 27 (g) Delineation and area of lots and parcels if the master development will be  
 28 subdivided.
- 29 (h) An analysis of the adequacy of police, fire, municipal water and municipal  
 30 sewer facilities for serving the master plan area.
- 31 (2) Tier II information requirements, pertaining to development sites within the  
 32 master plan. Tier II information for future phases may initially be indicated on  
 33 the master plan as conceptual or preliminary, to be refined as development plans  
 34 progress. Alternatively, areas of the master plan may be labeled as reserved for  
 35 future amendment.
- 36 (a) The proposed use(s) of each parcel or site (ex: retail, office and warehouse,  
 37 refrigerated storage, etc.).

1 (b) Location, floor area, dimensions, and number of stories of each building and  
2 structure.

3 (c) Orientation and placement of loading doors and loading zones.

4 (d) Location of areas for outdoor storage, refrigeration equipment, generators,  
5 and fuel tanks larger than 200 gallons both above and below ground.

6 (e) Site-specific landscape buffers.

7 (D) *Site plan requirements.* Each site plan application shall conform with the approved  
8 master plan and shall comply with the site plan provisions in Article 120 and this  
9 subsection. The following information is required to demonstrate compliance with the  
10 US Highway 27 Business land use category of the comprehensive plan and this article:

11 (1) The application shall provide a detailed description of the processes, activities,  
12 equipment, and materials involved in the proposed use(s) of the property, and  
13 an analysis identifying any use and storage of chemicals or fuel, and identify any  
14 causes of noise, dust, smoke or other particulates, vibration, glare, or odor.  
15 Certain uses may require provision of more detailed information at time of  
16 building permit and certificate of use. See also, noise compatibility in subsec.  
17 051-030 (A).

18 (2) The application shall detail how the site plan design and proposed uses will  
19 minimize the need for police and fire services. By way of example, site design  
20 may use Crime Prevention Through Environmental Design principals, commercial  
21 uses that are associated with loitering may avoid late night operating hours, and  
22 businesses may provide on-site security.

23  
24 **Sec. 051-060. Master plan amendment.**

25 Amendments to an approved master development plan shall be by ordinance and shall  
26 follow the same process set forth herein for rezoning to the US 27 Business District.  
27 Master plan amendments for new phases or modifications to an existing phase may be  
28 processed concurrently with associated site plans and site plan modifications.

29  
30 **Sec. 051-070. Effect of zoning.**

31 All development in the district shall proceed in accordance with the site plan review and  
32 subdivision approval provisions of this chapter. Site plan and subdivision approval shall  
33 be granted only for developments that conform to the approved master development  
34 plan and stipulations made a part thereof.  
35

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

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

**Town Council**  
**Doug McKay, Mayor**  
**Denise Schroeder, Vice Mayor**  
**Delsa Amundson, Council Member**  
**Bob Hartmann, Council Member**  
**Gary Jablonski, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

### **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 10/8/2020  
**SUBJECT:** P3 Agreement

---

#### **Recommendation**

Town Council consideration for a motion to approve the resolution.

#### **Unanimous Vote of the Town Council Required?**

No

#### **Strategic Priorities**

- A. Sound Governance
- B. Enhanced Resource Management

#### **Background**

The Town owns 24.3622 +/- acres of vacant, unimproved property located within the West Broward Industrial Park in Broward County, Florida, generally located generally west of NW 196 Avenue, north of Sheridan Street, and east of SW 202 Avenue, and identified by the Broward County Property Appraiser with Parcel Identification Numbers 5139 02 04 0510, 5139 02 04 0500, and 5139 02 04 0490.

Supreme Organics, LLC submitted an unsolicited public private partnership proposal to the Town on October 28, 2019 for the lease and development of the property through the financing, construction, operation and maintenance of two (2) facilities to serve a public purpose - a single source organic processing facility, with the retail sale of the end products of such processing, a vehicle parking and equipment storage facility, and private fueling facility.

Supreme Organics proposes to finance, construct, operate and maintain a single source organic processing facility for the public's disposal of vegetative waste which will then be processed and sold to the public as compost, mulch and soil. Additionally, they propose to finance, construct, operate and maintain a parking facility open to the public for operable vehicle parking and equipment storage.

The Town and Supreme Organics desire to enter into this Lease to ensure that the statutory requirements set forth in 287.05712, Florida Statutes (2019) are fulfilled. The Town Council believes that entering into a long term lease agreement with Supreme Organics, as outlined and incorporated herein, is in the best interest of the health, safety, and welfare of its residents.

**Fiscal Impact/Analysis**

The financial impact as outlined in the agreement attached provides at a minimum, payment of the debt service on the property.

**Staff Contact:**

Keith Poliakoff, Town Attorney  
Russell Muñiz, Assistant Town Administrator/Town Clerk

**ATTACHMENTS:**

Description	Upload Date	Type
Reso for WBIP Property Lease - TA Approved	9/30/2020	Resolution
WBIP Parcels - Exhibit A	10/2/2020	Exhibit
WBIP Lease Proposal from Supreme Organics - Exhibit B	10/2/2020	Exhibit
WBIP Lease Notices - Exhibit C	10/2/2020	Exhibit
WBIP Lease Agreement - Exhibit D	10/2/2020	Exhibit
Exhibits to Lease Agreement with Supreme Organics	10/2/2020	Exhibit



## **RESOLUTION 2020-XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ENTERING INTO A LONG TERM LEASE AGREEMENT WITH SUPREME ORGANICS, LLC FOR THE TOWN'S VACANT 24.3622 +/- ACRE PROPERTY, GENERALLY LOCATED WEST OF NW 196TH AVENUE BETWEEN STIRLING ROAD AND SHERIDAN STREET, COMMONLY KNOWN AS THE FORMER CCA PROPERTY; AUTHORIZING THE SITE TO BE UTILIZED FOR A SINGLE SOURCE ORGANIC PROCESSING FACILITY, WITH ANCILLARY USES INCLUDING THE SALE OF THE END PRODUCTS, VEHICULAR PARKING AND STORAGE, AND A PRIVATE FUELING FACILITY; FINDING THAT THE ENTERING INTO THIS LONG TERM LEASE AGREEMENT IS IN THE BEST INTEREST OF THE PUBLIC; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT AND TO MAKE ANY AND ALL CHANGES NECESSARY AND PROPER TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town owns 24.3622 +/- acres of vacant, unimproved real property located within the West Broward Industrial Park in Broward County, Florida, generally located generally west of NW 196 Avenue, north of Sheridan Street, and east of SW 202 Avenue, and identified by the Broward County Property Appraiser with Parcel Identification Numbers 5139 02 04 0510, 5139 02 04 0500, and 5139 02 04 0490 (the "Property") (as shown in Exhibit "A"); and

**WHEREAS**, Supreme Organics, LLC ("Supreme Organics") submitted an unsolicited public-private partnership proposal (as shown in Exhibit "B") to the Town on October 28, 2019 for the lease and development of the Property through the financing, construction, operation and maintenance of two (2) facilities to serve a public purpose -- a single source organic processing facility, with the retail sale of the end products of such processing, a vehicle parking and equipment storage facility, and private fueling facility (the "Qualifying Project"); and

**WHEREAS**, in its proposal Supreme Organics identifies two public purposes that will be addressed: (1) the lack of strategically located, cost-effective vegetative waste disposal sites for residents and businesses, and (2) local zoning codes that prohibit the parking of commercial vehicles and large equipment on both residential and commercial properties thereby creating the need for a public parking facility to serve the needs of both residents and businesses that have a need for overnight and long-term parking and storage; and

**WHEREAS,** Supreme Organics proposes to finance, construct, operate and maintain a single source organic processing facility for the public's disposal of vegetative waste which will then be processed and sold to the public as compost, mulch and soil; and

**WHEREAS,** in addition, Supreme Organics proposes to finance, construct, operate and maintain a parking facility open to the public for operable vehicle parking and equipment storage; and

**WHEREAS,** upon reviewing the proposal, the Town published all statutorily required notices through the Florida Administrative Register and *The Miami Herald* as well as to each local government in the affected area (as evidenced in Composite Exhibit "C") and sought competitive proposals for the development and Lease of the Property; and

**WHEREAS,** despite its procurement, the Town did not receive any responsive proposals; and

**WHEREAS,** the Town and Supreme Organics desire to enter into this Lease to ensure that the statutory requirements set forth in 287.05712, Florida Statutes (2019) are fulfilled unless specific requirements are waived by the Town herein, as permissible by law; and

**WHEREAS,** the Town Council believes that entering into a long term lease agreement with Supreme Organics, as outlined and incorporated herein, is in the best interest of the health, safety, and welfare of its residents;

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

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

**Section 2.** The Town Council hereby approves entering into a long term lease agreement with Supreme Organics, LLC, as specifically attached hereto, and incorporated herein by reference as Exhibit "D" (the "Lease").

**Section 3.** The Town Council hereby finds that the Lease is in the best interest of the health, safety, and welfare of its residents.

**Section 4.** The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the Lease, and to make any and all changes necessary and proper to effectuate the intent of this Resolution.

**Section 5.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this \_\_\_\_ day of \_\_\_\_ 2020 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

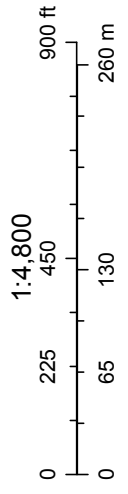
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Keith Poliakoff, Town Attorney  
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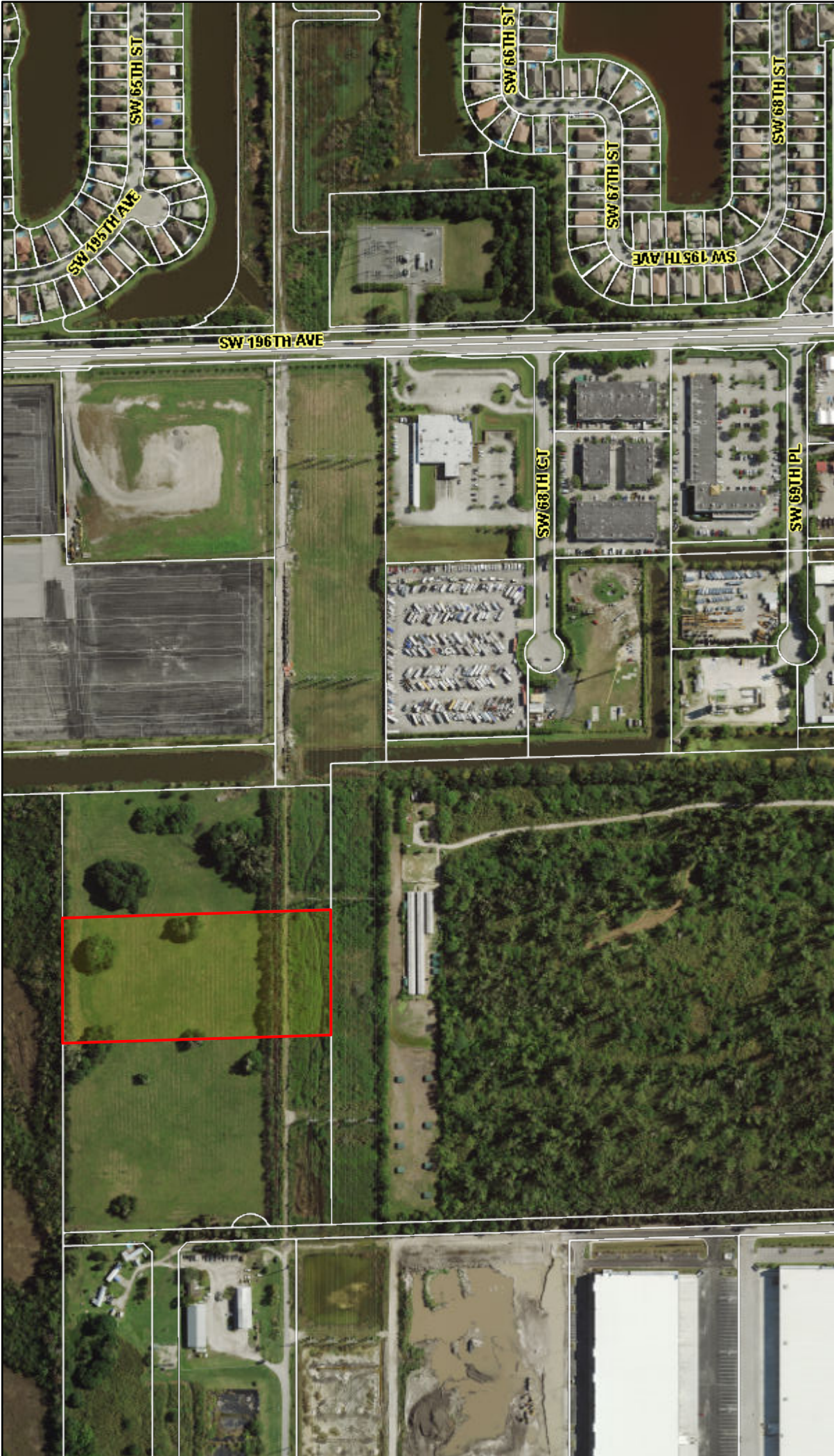
Property Id: 513902040510

\*\*Please see map disclaimer

EXHIBIT A

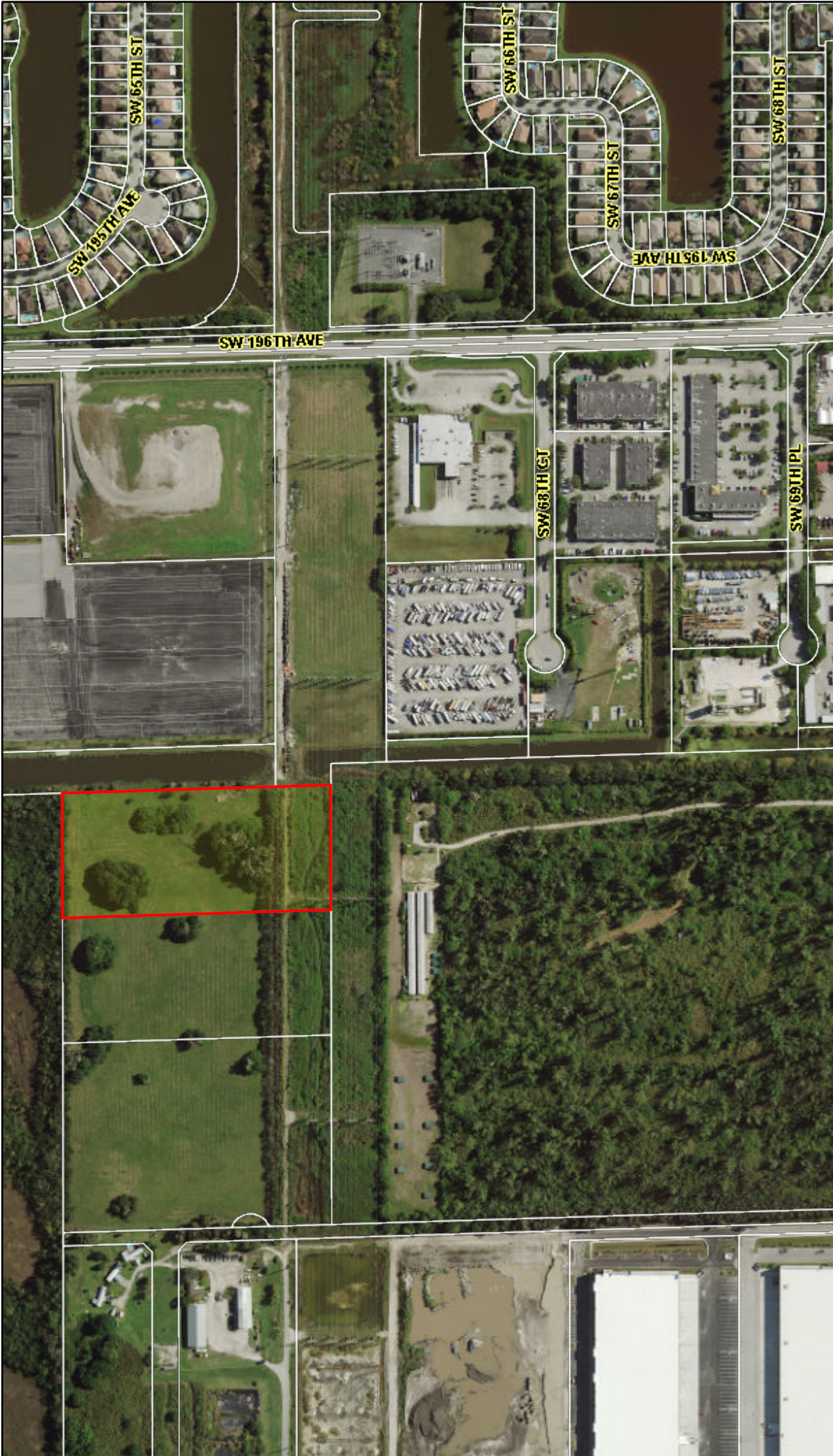


October 1, 2020

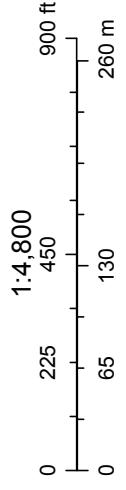


October 1, 2020

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October 1, 2020



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**Supreme Organics LLC**  
 1675 North Commerce Parkway  
 Weston, Florida 33326

October 28, 2019

Mr. Andrew Berns, Town Administrator  
 Town of Southwest Ranches  
 13400 Griffin Road  
 Southwest Ranches, Florida 33025

Re: 25± Acre Vacant Land, Folio #513902040490, 513902040500, 513902040510, 513902040511, a/k/a Lots 60, 61, 62 and the Vacated Right-of-Way of Sylvan Pass, according to the Replat of a Portion of West Broward Industrial Park – Public/Private Partnership Proposal

Dear Town Administrator Berns:

Transmitted herewith is a Public/Private Partnership proposal ("P3 Proposal") by Supreme Organics, LLC, a Florida limited liability company ("Supreme") for the operation of the 25 ± acres of the Town of Southwest Ranches' (the "Town") owned property as described above. This proposal is being tendered consistent with the provisions of Section 255.065, Florida Statutes.

Under the Public/Private Partnership ("P3") statute, a private entity may submit an unsolicited proposal to a governmental entity, provided that such proposal serves a public purpose. When the proposal is unsolicited it must contain the following information:

1. Project description (conceptual design and proposed project schedule);
2. How the property interests will be secured;
3. Plans for financing the project; and
4. Proposed user fees, lease payments or service payments.

Upon receipt of such proposal, if the governmental entity is interested in proceeding, the governmental entity must publish notice of our proposal once a week for two (2) weeks, whereby it will accept other proposals for at least twenty-one (21) days. Thereafter, the governmental entity shall rank the proposals and enter into a negotiation process.

When reviewing such proposals the governmental entity must consider:

1. Is the Project in the public's best interest;
2. Ownership interest;
3. Safeguards to ensure public will not experience additional costs or service disruptions in the event of cancellation; and
4. Safeguards to ensure public entity can add capacity.

As such, and in accordance with the statutory requirements, Supreme is hereby submitting to the Town this unsolicited proposal for the operation of a green waste depository facility on the

Property for use by residents of and businesses operating within the Town's municipal boundaries, as well as to the general public at large, together with a vehicle parking and storage facility open to the public, with a first preference for use by and for residents and businesses living and operating within the Town's municipal boundaries. As a consequence of the green waste depository facility and the decomposition of the green waste on the Property, and related uses, such as the sale or resale of the soil resulting from the decomposition of the green waste, an additional revenue center will be created as well. Supreme requests that we enter into a Comprehensive Agreement, as defined by the statute, with the City no later than December 30, 2019.

I. Background on Respondent

Supreme Organics, LLC, is a newly created Florida limited liability company comprised of a seasoned and experienced ownership and management team. As a newly created Florida limited liability company, Supreme has no current or existing financial records. Supreme is led by James E. McDonnell, IV. Mr. McDonnell is a successful and tested entrepreneur who has a "hands-on" approach in his ventures, as well as being a leader in the environmental industry. Mr. McDonnell is the founder and creator of Pro-Lab®, the world leader in environmental testing, having sold more than twenty-one million test kits over the last two decades, and has the world's largest environmental testing laboratory based on testing volume.<sup>1</sup>

In addition to Pro-Lab® and a host of other enterprises – ranging from publishing, e-magazine and restaurants – Mr. McDonnell founded ProScapes Enterprises, LLC, a full service landscaping installation company, in 2013. From a start-up in 2013, ProScapes is now a ten million dollar per year business. Through the operation of ProScapes, Mr. McDonnell has overseen the operation of green waste recycling and its benefits. In connection with the green waste, Mr. McDonnell engaged a professional team to work with organically sourced greenery composting. This team and this experience will spearhead the operation of Supreme.

On the business side, Matthew Adams, CPA, has more than thirty-two years of finance and accounting experience across many different industries. For the past decade, Mr. Adams has been the Chief Financial Officer for the portfolio of companies founded and operated by Mr. McDonnell. Most recently he has led the accounting and finance departments for PRO-LAB® as well as ProScapes Enterprises. Prior to devoting his efforts to Mr. McDonnell's entrepreneurial portfolio, Mr. Adams spent twelve years serving as the Chief Financial Officer for a large South Florida commercial real estate firm. During his time as CFO, the portfolio value grew from \$25,000,000 to over \$250,000,000. While at the real estate firm Mr. Adams procured financing on purchases and repositioned assets as well as led the acquisition process of many properties throughout Florida and the United States.

This experienced leadership team will oversee the development and operation of the green waste

---

<sup>1</sup> In lieu of financials for Supreme, ProScapes Enterprises, LLC, its related entity will provide financials in a sealed envelope indicating that the same are exempt from public record, provided that the Town can insure the same.

facility and parking and storage facility on the Property, as well as the development of any and all public purpose oriented uses at and from the Property. At the initiation of operations, Supreme will have the use and benefit of ProScapes equipment to facilitate the acceptance of green waste and the spreading of the same on the Property, as well as the leasing of employees by ProScapes to Supreme prior to the hiring of specific and dedicated staff for the site.

ProScapes has personnel beyond the management team experienced in the collection and composting of green waste. These experienced personnel will be on site to insure the even distribution of green waste so as to best management the expected volume of deposits of green waste materials so as to maximize both the disbursement across the Property and the decomposition and composting process, while minimizing the height of the piles on site. ProScapes has processed green waste on its existing site within the Town, successfully turning the green waste into useable, nutrient rich soils for its nursery operations.

This team is knowledgeable in the field of green waste collection and recycling, and ready and able to operate the green waste disposition and recycling on the Property.

## II. Justification for Entry into an Operating Agreement or Lease

The Property was acquired by the Town from the Corrections Corporation of America by Special Warranty Deed dated April 5, 2016, and recorded in the Broward County Public Records on April 7, 2016. In conjunction with the acquisition of the Property, the Town utilized the proceeds of a \$7,750,000.00 bond with a twenty (20) year maturity and a bank call option after fifteen (15) years. The debt service payments on the bond are payable presently interest only at the rate of \$125,937.50 semi-annually, which equates to \$20,989.58 per month. That debt service will increase to \$384,270.83 semi-annually in November 2021 when principal and interest become payable. The payment amount will decrease in small incremental amounts semi-annually thereafter. At this time, the Town has no anticipated revenue generation from the Property to offset the current and future debt service on the bond.

The Property, which is bounded on the east by the City of Pembroke Pines and by unincorporated Broward County to the north, south and west, is presently vacant land which is zoned M-4 Heavy Industrial District. The M-4 Heavy Industrial District allows for the heaviest manufacturing and industrial uses, involving the use, handling and storage of hazardous materials, or industrial uses which require a substantial amount of open air storage. This location and the commensurate zoning category, make this site ideal for the deposit of green waste materials by the general public, including residents of and business operating in the Town.

Green waste is a term that was coined to refer to organic waste that can decompose and has a high concentration of nitrogen. The proper disposition and disposal of green waste has been an issue within both the Town and all of Broward County for some time. Typically, green waste, which is typically composed of lawn and grass clippings, leaves, palm fronds branches and other yard trash are picked up once or twice per month, depending on the municipality. In the case of the Town, there are such pick-ups twice per month. Additionally, most municipalities impose limitations on the size and volume of the green waste which may be picked up at any one time.

The Town imposes such limitations, which limit single items to less than four (4) feet in length or 50 pounds in weight and, in any event, a twelve (12) cubic yard maximum for residential pick-up. Bulk piles exceeding the twelve (12) cubic yard maximum will be picked up and billed at a rate of \$17.50 per cubic yard. Given the unique and rural nature of the Town, and the larger parcel sizes, bulk piles in excess of twelve (12) cubic yards are not uncommon.

Depending on the timing of a resident's landscaping activities, the green waste resulting from those activities may sit in an unattractive pile in the resident's yard until a scheduled bulk pick-up date approaches. In the interim, the growing debris pile becomes an eyesore for neighbors and the Town. Unfortunately, residents also will place their bulk green waste piles out earlier than is permitted in violation of applicable Town codes, resulting in an upswing in code enforcement citations and cases. In either case, the twice per month yard waste pick-ups by the Town's waste hauler, Waste Pro, does not meet the ongoing needs of the Town's residents. Additionally, the swales and vacant parcels in the Town become the repository of the illegal dumping of green waste when people, including Town residents, have no other options for such waste. As there is no meaningful alternative to the twice per month bulk pick-up available to residents, this provides an option that fills a true need of the residents of the Town, and the public in general.

The Town is also the home to a plethora of nurseries and landscaping companies. These companies commonly retain on their properties the green waste that cannot otherwise be timely and inexpensively disposed of by these businesses, which creates additional issues, and code violations within the Town. These commercial operations have a need to properly dispose of their green waste in a prompt and efficient manner; however, the ability to do so at Broward County operated landfills is neither convenient nor cost efficient. The landfills open at 8:00 a.m. and close at 4:00 p.m., which is usually the hours that the landscape maintenance are providing their services to their customers. These companies do not have the time to sit in a line at the County landfills to dispose of their accumulated green waste. Additionally, the cost per ton to dispose of green waste is approximately \$50.00 per ton, which equates to approximately \$25.00 per yard, a significant expense. In the interim, the green waste accumulates on sites located within the Town.

Beyond the borders of the Town, the same types of issues face the rest of Broward County, as well as our neighbors to the south in Miami-Dade County. Limited yard waste bulk pick-ups leading to accumulations of green waste and limited hours of operation for governmentally operated landfills, coupled with illegal dumping of green waste on the streets and vacant lots throughout the area, reinforces the fact that readily available and affordable locations to accept green waste are needed.

When most people think of "recycling", they think of glass, metal, paper and plastics. In reality, the collection of green waste in a dedicated location is "recycling." The materials that comprise green waste are organic in nature and should not end up being disposed of in a landfill. This material composts and decomposes into a rich organic soil. The larger green waste materials, such as tree branches and tree trunks – which do not decompose at the same rate as leaves, palm fronds and grass clippings – can be disposed of through the use of "burn boxes." The resulting ash is mixed with the decomposing green waste to create an even more nutrient rich topsoil. This

“manufactured” topsoil, which has a beneficial use in farming and nursery operations, can be sold to end users. The green waste, particularly its woody components, is crucial because it increases the quantity of the manufactured topsoil. The “manufactured” top soil is vital because it increases the water retention capacity of regular soils and introduces minerals to the soil.

Other portions of the green waste material become an organic mulch, which can be sold to and used by homeowners and nurseries alike in plant beds and as ground cover to help retain moisture, thereby reducing water usage, while supplying plants and trees with nutrients as the mulch breaks down. Recycling green waste is an essential activity as it not only reduced dumping in landfills, it can also contribute to reducing the number of greenhouse gases in the environment.

The issue confronting the Town is how best to create an avenue for its residents to legally and efficiently dispose of its green waste in a manner which does not run afoul of the Town’s Code of Ordinances, while providing a low cost alternative for the easy and environmentally sound manner for the disposition of such materials, and providing the commercial landscaping and nursery businesses which operate within the borders of the Town an available and convenient avenue for transferring its accumulation of green waste without interruption of their business operations, and without unduly burdening existing landfills. Additionally, the same issues face neighboring municipalities and both Broward and Miami-Dade County. The Town should address these issues impacting its residents and resident business, and Broward County as a whole, and assist in its resolution by the creation of a public-private partnership to provide a designated green waste disposal site within the confines of property owned by the Town. The creation of an operating agreement (or, in the alternative, a lease) with Supreme to operate such a disposal site on the Property is a valid public purpose, and a sound and appropriate basis for the investment of public lands. It is also but one basis to proceed with such a public-private partnership.

In addition to the creation of a green waste disposal facility to address the above-reference public need, the Town has a number of residents, and an even greater number of Town based businesses who maintain vehicles on their properties which are not permitted to be located on such parcels under the applicable Town’s Code. The owners of these vehicles, in many cases, lack conveniently located and reasonably priced alternatives for the parking of these vehicles, which are typically commercial vehicles. As a result, they run the continued risk of being issued code citations for violations of applicable municipal codes. Alternatively, the owners of these vehicles are relegated to parking them at inconveniently located and often distant and expensive locations, thereby creating a financial burden on the residents and businesses in the Town. That is, of course, when space is available.

Surrounding communities also face the same issue. Cities, such as Cooper City, flatly prohibit the parking of commercial vehicles in residentially zoned communities. Municipally operated vehicle storage sites are limited and the number of spaces are scarce, while waiting lists are long. Commercial storage facilities are more geared to indoor storage, with similarly limited numbers of spaces for the parking of vehicles, particularly larger vehicles, such as trucks.

To remedy this issue and ease the burden on its residents and businesses, as well as potentially offering relief to vehicle owners from surrounding communities, helping residents to avoid code violations and lessening the visual blight created by the significant numbers of commercial vehicles and other larger vehicles being parked and stored within residential communities, Supreme will, through the reservation of a portion of the Property – of up to ten (10) acres -- for vehicle parking and storage as part of the same public-private partnership. This too would also serve a valid public purpose and be an appropriate use and dedication of public lands.

As a further public benefit, the operation of the Property as envisioned hereby would result in the payment of the Town's ongoing bond debt service and the generation of revenues to generate income beyond such the amount of the Town's bond debt and our operational costs in amounts which would not only reduce the ad valorem tax burden of the Town's property owners, but would generate additional funds for the operation of the Town and the provision of municipal services. After the bond indebtedness is paid in full, the Town would receive a fair market rent that would be charged for an M-4 zoned property of a similar character and nature. Further, it would be possible for the Town reduce the green-waste operating cost to the residents of the Town.

### III. Proposed Venture

Supreme proposes to operate a green waste processing facility and vehicle parking facility on the Property through the use of an operating agreement or a lease between us and the Town. The substantial portion of the Property would be used for the receipt of green waste from the public so as to properly and responsibly allow for the disposal of green waste.

The green waste received on site would be deposited and spread on the property to allow for its decomposition. The piles of green waste would be limited to six (6) feet in height, unless we were actively working on the pile. Additionally, we would, as needed, operate tub grinders, chippers and/or burn boxes, if permitted by the responsible governmental entity, to eliminate the accumulation of branches, tree trunks and other woody materials which are unlikely to decompose at the same expected rate of leaves, palms fronds and other yard waste. If not used, these less decomposition friendly materials will be removed and transported by us to certain facilities, which are known to accept such items. If we were to use burn boxes, they would be located on northerly portions of the Property, away from the FPL transmission lines located along the southerly portions of the Property. Given the unique and isolated location of the Property, there is a low likelihood that smoke or fumes from burn boxes, or noise from the operations on the Property, including, without limitation, tub grinders and chippers, would result in any impact on residents of the Town.

A portion of the Property, up to ten (10) acres, will be allocated for vehicle parking and storage. Supreme or its affiliates and related entities, subject to the Town's verification and approval, which at this time is only ProScapes Enterprises, LLC, would be permitted to park up to fifty (50) vehicles which might otherwise be parked within the municipal boundaries of the Town on the site, at no charge. Similarly, the Town may park up to fifty (50) vehicles on the site, at no charge. The location of the parking area would likely be near what would be the main entrance to

the Property, nearest to SW 202 Avenue, and will be constructed in accordance with the Town's engineering standards.

The charge for the dumping of green waste will be established by us, and may change from time to time. Such rate for dumping of green waste will be less than the rate charged by the neighboring Broward County landfill site. Town residents, who prove their residency by the exhibition of a valid Florida driver's license with a residence address within the Town, will receive a discount of twenty percent (20%) off the rate charged to the general public. i.e., non-residents of the Town. No discount will be afforded to non-residents of the Town. The Town, for its green waste disposal, will pay fifty percent (50%) of the published non-discounted public waste dumping rate for the dumping of its green waste or green waste dumped by its waste hauler. Provided that such rate is less than the current rate being charged to the Town, the Town will cause its waste hauler to bring its green waste collected within the municipal boundaries of the Town to the site. This will result in a significant savings to the Town.

Vehicle parking and storage rates will also be determined by us and a public non-resident rate will be established. A discount will be afforded to Town residents as well as to businesses operating within the Town. In the event that the parking area is full and a waiting list is created, residents of the Town shall be given priority for spaces as the same thereafter become available.

As the green waste decomposes and composts, the soil resulting from such process, together with the mulch created, will be sold from the Property so as to reduce the volume of materials on site and to insure that the green waste piles are kept below a mandated six foot height maximum. To the extent that soil and mulch cannot be sold in a manner necessary to adhere to height limitations, materials will be trucked offsite to an alternate disposal location at our expense.

We also reserve the right to expand to other uses over time, which meet with a public purpose, and are approved by the Town, in the Town's sole discretion.

In conjunction with the foregoing, and to monitor green waste disposal and vehicle storage and removal, we propose placing a mobile home style office on the Property. Understanding that the Town has no utilities available at or to the Property, Supreme will arrange for well-water, electric, and commercial septic services. Supreme acknowledges that there is no availability of municipal water at the Property and that there is a substantial likelihood that the same will not be available at any time during the term of any operating agreement or lease. Supreme understands that its access to water will be through a well system. As needed, we will secure the perimeter of the Property with a form of fencing approved by and in accordance with Code as it applies to an M-4 zoning district. We would anticipate that the Town will be cooperative in connection with permitting, if needed for a farming style operation such as this, for fencing.

Given the Property's unique and isolated location, we would propose operating the green waste facility and parking/storage area could be operated on an around the clock basis, subject to any reasonable limitations the Town may impose necessary for an M-4 zoned property to limit noise generated from the operation of the Property during evening hours, which may impact residents of the Town. In any event, extended hours of operation would be of public benefit to residents

and businesses that may not be able to dump green waste during “normal” business hours, as residents are working and businesses are servicing their clients and customers during “normal” business hours and would need the extended hours in order to dump green waste or park/store vehicles.

#### IV. Financing

The costs of improvements and readying the Property for the use intended by this proposal shall be self-financed, without the necessity for the securing of outside or third party financing as a contingency for proceeding with the project. Although, once up and running Supreme may seek financing for the expansion of the business.

#### V. Proposed Public-Private Partnership Arrangement

Supreme proposes to enter into an operating agreement (or lease) of an initial term of twenty (20) years, with four (4) options to renew the agreement for three (3) terms of twenty (20) years each and a fourth and final option term of nineteen (19) years. Upon the provision of a negotiated notice period, which, in any event will not be less than one year, either party may elect not to renew the operating agreement or lease commencing with the expiration of the initial term, i.e. either party may elect not to renew commencing with the first renewal term. We will control the Property and own all of the improvements made to the Property, while the Town will, at all times, continue to own the land, and any fixtures that may be adhered thereto. We will also own all of the green waste and soil that results from the decomposition of such green waste and ash from burn boxes. We envision that the agreement would be assignable in the future, subject to the consent of the Town, which may be granted or withheld in the Town’s sole discretion.

The agreement, whether an operating agreement or a lease, will specify our operational and financial reporting obligations and responsibilities, as we will operate the site for the benefit of the Town. The agreement will include any special provisions, such as limitations on the height of green waste piles, environmental testing through the use of the existing or future on-site wells, if required by a governmental agency having jurisdiction thereover, and appropriate indemnity provisions. The agreement must have a provision allowing for us to enforce the terms and conditions of the agreement and our right to possess the Property throughout the term of the agreement, as well as expressing the Town’s obligation to provide a co-defense in the event that legal is taken to enjoin our intended use of the Property. The Town will also be prohibited from modifying the approved uses or zoning of the Property while it is subject to the agreement. The terms of the agreement shall be negotiated in good faith by their parties and their respective legal counsel.

Taking all of these factors into consideration, Supreme proposes the following with respect to obtaining control of the Property:



- A. Upon delivery of the P3 Proposal, Supreme shall place a \$25,000.00 deposit with an escrow agent mutually agreeable to Supreme and the Town. The Town may draw from these funds to finance the direct cost of advertising and processing the P3 request, legal fees for consultation by the Town with its bond counsel to insure that the proposed venture does not violate any bond terms, and legal fees incurred in connection with negotiating the “Comprehensive Agreement” required by Florida Statutes Section 255.065, the agreement and any other required agreements in connection with the P3 selection.
- B. Within sixty (60) days of selection, Supreme and the Town will enter into an operating agreement (or lease) for the Property under mutually agreed upon and commercially reasonable terms governing the obligations of the parties thereunder and, as to Supreme the preconditions to the opening of the Property for acceptance of green waste and vehicle storage, such as the completion, if necessary, for ingress and egress to the Property, and if not being constructed or required to be constructed by any other third party for use of any adjacent property, or paving, at our sole cost and expense, of Southwest 202 Avenue and securing appropriate permits from Broward County and/or the State of Florida, and due diligence. The agreement will also provide that a portion of the Property may be utilized by the Town, at no cost to it, for the placement and disposal of debris of all and any nature or kind resulting from a hurricane or other natural disaster so as to properly account for the same in accordance with applicable State and Federal law and regulation, including as may be promulgated by FEMA. If and as applicable and to the extent the same is legally permitted, Supreme shall be permitted to engage in the disposal of any such debris and receive payment from the Town for the same.
- C. Supreme agrees that the Town will deliver the Property in its “As Is, Where Is” condition, with no representations and warranties of any kind other than that it has the ability to execute and convey control of the Property to Supreme and that it is zoned M-4.
- D. Supreme shall assume the cost of the Town entering into this P3 Proposal assessment for control of the Property. Should Supreme fail to enter into an agreement (or lease) to obtain control of the Property (assuming both parties act in good faith), or if the negotiations on the initial P3 program proposal should reach an impasse between the parties, the Town shall have the right to deduct its direct costs from Supreme’s escrow deposit, and return the balance to Supreme upon conclusion of negotiations and/or termination of negotiations.
- E. The Town shall cooperate with Supreme in securing any permits, licenses or other approvals, and shall sign, as owner, any applications for permits, licenses or other approvals reasonable required or requested by Supreme.

- F. Provided that the parties enter into the Operating Agreement or lease, Supreme will provide the Town with the necessary funds, not to exceed Thirty Thousand Dollars (\$30,000.00), within ten (10) business days from the date of execution of such Operating Agreement or lease, for the Town to purchase or acquire, through the Town of Davie, for the Rolling Oaks Civic Association, Inc., a Florida not for profit corporation, which is a voluntary homeowners association within the Rolling Oaks subdivision, a license plate reader, for the use of the community, to be installed at the entrance to Rolling Oaks, Southwest 178<sup>th</sup> Avenue. Supreme, and its related entities, Windmill Holdings VI, LLC, and ProScapes, seek to assist the Town in the prevention and reduction of crime through the donation of the funds necessary to purchase a license plate reader.

#### VI. Proposed Financial Terms

Supreme's objective in this Public Private Partnership is to operate the Property in a means and manner which is beneficial to both the Town and Supreme. In order to do so, Supreme proposes the following terms:

- A. The agreement will be for an initial term of twenty (20) years, with four (4) options to renew the Operating Agreement (or lease) for terms of twenty (20) years for the first three options and nineteen (19) years for the fourth and final option. Upon the expiration or termination of the agreement, Supreme shall, at the request of the Town, remove any existing green waste or soil on the Property such that the elevation of Property is not more than one (1) foot (or such greater height, if so requested by the Town thereafter) above the elevation as of the commencement date of the agreement. The Property will be reasonably maintained in accordance with Town Codes applicable to the intended operations ongoing on the Property and to a M-4 zoning district, subject to any other written agreements concerning such operations and any State laws which may usurp local authority. Additionally, all fixtures installed on the Property shall remain thereon and shall become the property of the Town, unless the Town should request their removal at the end of the term of the operating agreement or lease, or the termination thereof. Termination of the operating agreement or lease, aside from any notice of intent not to renew (as provided for in this proposal), shall be based solely on a "for cause" basis only resulting from the material breach of the terms of the operating agreement or lease by either Supreme or the Town, which breach is not cured after notice and a cure period to be negotiated by the parties for monetary and non-monetary breaches. It is envisioned that cause would include a payment default, a failure to maintain required insurances, a lapse of the bond, failure of the Town to require its waste hauler to dump the Town's green waste at the Property at the rate provided for herein, and such other "causes" as the parties may agree. As part of the agreement between the Town and Supreme, the Town shall be permitted, at its discretion, to hire and have onsite, one employee to oversee, as more fully set forth in Section VI.E. below, the operations on the

Property (the "Town Employee"). If the facility is run more than eight hours a day, the Town may be required to have up to three (3) employees on eight hour shifts. i.e., one Town Employee per eight hour shift. The Town shall promote to its residents and businesses the use of Property for the disposal of green waste and parking of vehicles not otherwise permitted within the Town. As previously stated herein, if the applicable rate is in less than the amount currently paid by the Town, the Town shall cause all green waste generated by the Town or collected by its waste hauler(s) to be dumped at the Property.

- B. There shall be made available a portion of the Property for use by the Town, without charge, for the dumping and disposition of waste and debris resulting from a hurricane or other natural disaster, which debris is generated within the municipal boundaries of the Town. The same shall be held on site pending compliance with the requirements of FEMA or other governmental agency in order secure reimbursement for the removal of such debris, and as allowed by law. If allowed by state and federal law, Supreme shall be entitled to process the green waste debris through the use of chippers, tub grinders or other reasonable means and, as necessary truck such debris to an appropriate location for disposition, and to be paid a negotiated fee for such services. All non-green waste materials deposited on the site by the Town as a result of a natural disaster, that are not processed by Superior, shall be later removed and disposed of by the Town at the Town's expense, which should be a FEMA reimbursable expense for the Town. Supreme will comply with the Federal procurement guidelines under 2 CFR 200, as it pertains to Federal/FEMA reimbursement for disaster recoveries, should and when it becomes applicable, and will work cooperatively with the Town in such regard. The Town will provide assistance and guidance in so complying. In addition, Supreme, to the extent that it installs a fueling station on the Property to fuel its vehicles which are parked on site or used on the business, in the event of a natural disaster impacting the ability of the Town to fuel its emergency vehicles, the Town shall have access to the fuel facility on the Property to fuel its emergency vehicles, and the Town shall reimburse Supreme for the cost of the fuel drawn from such facility within forty-five (45) days of invoicing by Supreme. The Town will not object to or interfere with an application for the installation of a fueling station or facility on the Property, which fueling station or facility will comply with applicable law and regulation, including applicable environmental laws and regulations. The fueling facility shall be for the fueling of vehicles owned by Supreme and/or its affiliates and related entities, which at this time is only ProScapes Enterprises, LLC
- C. On a monthly basis during the term of the Operating Agreement or Lease, Supreme shall pay to the Town a guaranteed amount equal to one-sixth (1/6) of the then next due payment due on the bond which financed the Town's acquisition of the Property in accordance with bond payment schedule attached hereto as Exhibit "A". For example, assume that the date is May 1, 2021 and the May 1, 2021 bond payment has just been made. The next semi-annual payment

due would be due on November 1, 2021 in the amount of \$384,270.83. Commencing with the May 1<sup>st</sup> monthly payment by Supreme to the Town under the Operating Agreement of Lease, and continuing through and including the October payment, Supreme would pay to the Town monthly payments of \$64,045.14 ( $\$384,270.83/6$ ). The amount of Supreme's monthly payment shall be variable and shall be based on the next bond payment then due by the Town according to Exhibit "A", i.e., May through October payments shall be based on the November bond payment amount and November through April payments shall be based on the May bond payment amount. If the period from the commencement date of the agreement is less than six months from the next bond payment then due, Supreme shall pay to the Town in the same manner as above, without the necessity of any disproportionate payments to make up any shortfall in the one-sixth payment amount, as the Town shall make up and cover any bond payment shortfall during the initial period from the commencement date to the next bond payment then due. For example, if the agreement is entered into on September 30, 2019 and the next semi-annual payment is due on November 1, 2019 in the amount of \$125,937.50, Supreme would only pay a prorated one-sixth (1/6) of that amount for the October payment, with the Town covering the balance. Once the bond is paid in full, no further payments shall be required to be made to the Town under this subsection C. The payments under this subsection C shall commence first day of the first month falling thirty (30) days after the collection of first revenues from the operation of the Property. To insure payment of the sums set forth in this subsection C, Supreme will provide to the Town an annual and renewable performance bond equal to the amount of the bond payments due in the following year together with ad valorem and non-ad valorem taxes due in the current year, but in any event, not less than \$1,000,000.00, which shall be maintained for the period during which the Town's bond indebtedness remains outstanding. At such time as the Town's bond indebtedness is extinguished, Supreme shall no longer be obligated to maintain the performance bond. At such time as the Town's bond indebtedness has been extinguished, Supreme shall pay to the Town, on a monthly basis, an amount equal to the then current market rate for M4 zoned property of a similar size and character, as mutually determined and calculated by the parties, which monthly payment shall be in addition to the Town's share of the remaining gross revenues provided for in subsections F, H and I below.

- D. Thereafter, from the gross revenues generated from the Property, all ad valorem and non-ad valorem taxes shall be paid. Supreme, in its monthly payments to the Town, will also include one-twelfth (1/12) of the estimated ad valorem and non-ad valorem taxes from the revenues generated. Any shortfall in the amount shall be paid by Supreme and offset from the gross revenues generated from the Property in November of each year. The payment of the ad valorem and non-ad valorem taxes shall not be deemed to be an operational expense under the terms of the operating agreement or lease.

E. After paying the pro rata portion of the ad valorem and non-ad valorem taxes provided for in subsection D, from gross revenues, the Town shall be reimbursed from the gross revenues for the salary (but not the cost of any associated benefits or employment related taxes) of the Town Employee, and, thereafter, the documented operational expenses incurred during the immediately preceding month in connection with the operation of the Property, which sums include, wages and related employment expenses and benefits for site manager, staff and administrative employees; heavy equipment and vehicles; small tools and equipment; fuel for Supreme’s vehicles used in the business; repairs and maintenance for vehicles and equipment; electric, phone and data communications; typical business insurances; permits and licenses; building rental; third party security; professional fees for Supreme; advertising, marketing and promotion; taxes (other than ad valorem and non-ad valorem) assessed on parking or depositing of green waste by any governmental entity (if any); and, the management fee of five percent (5%) (all of the foregoing are referred to as “Operational Costs”). The Operational Costs are subject to increases over time for operational expansion and increases in business. Salaries, benefits, the number of employees and other costs and expenses within the operational control of Supreme shall be reasonable, in accordance with industry norms and standards, and in compliance with then applicable law. Notwithstanding anything herein to the contrary, Supreme agrees that there shall be a cap on the recovery of the Operational Costs based on the following scale:

<u>Operational Cost Cap</u>	<u>Gross Revenues Generated from the Property</u>
40%	\$0.00 - \$1,999,999.99
35%	\$2,000,000.00 - \$2,999,999.99
30%	\$3,000,000.00 - \$3,999,999.99

After \$3,999,999.99, such Operational Cost Cap shall be negotiated in good faith by both parties.

The Town shall agree that such Town employee(s) shall not be involved in the day-to-day business decisions or operations of the Property, and that the salary of the Town Employee(s) shall be reasonable and in accordance with industry norms and standards. The Town employee(s) shall be the Town’s onsite monitor to confirm that the operation is properly documenting all revenues, and operating the facility in accordance with all laws. Supreme would be entitled to recover its start-up costs in connection with the initiation of operations, i.e., the costs to ready the site for use, including road installation, within the confines of the Operational Cost Cap delineated above.

F. After payment of the sums provided for in subsections D. and E., above, any remaining gross revenues collected from the operation of the Property, including, without limitation, as generated from green waste disposal on site, parking and

vehicle storage and sale of soil and mulch, shall be divided and disbursed between Supreme and the Town, with Supreme retaining fifty percent (50%) of the remaining gross revenues, and fifty percent (50%) of the remaining gross revenues being paid to the Town. The disbursements under this subsection F. shall be made within sixty (60) days of the end of each calendar month so as to allow for verification of revenues and expenses, and shall be accompanied by a statement evidencing the same.

- G. Supreme shall be entitled to create a rate structure so as to charge parties green waste transfer fees, the amount of which shall be determined by Supreme, in its sole discretion. Residents of the Town who provide proof of residency in the form of a validly issued State of Florida driver's license or identification card shall be entitled to a discount of twenty percent (20%) off of the public rate. The Town, Supreme and its affiliate, ProScape Enterprises, LLC, shall pay a fee equal to fifty percent (50%) of the then published public rate, but in no event shall such rate exceed the then current rate being charged to the Town for the disposal of its green waste by its waste hauler. Supreme would retain the right to add any affiliates which are created in the future to participate in the discounted rate afforded to ProScapes, subject to the reasonable approval of the Town Administrator. The Town shall require its waste hauler to deposit green waste collected within the Town at the Property, as well as encouraging all residents and businesses within the boundaries of the Town to do the same.
- H. Supreme shall be permitted to determine the size of parking/storage spaces (which will be open air storage and 10 acres or less), the amount of the charge and the period for which it will be charged (i.e., daily, weekly, monthly, semi-annually or annually) for the parking and storage of vehicles on the Property, the types of vehicles to accept, the days and hours that the parking facility will be open and operating and whether to assess different charges for different classes of vehicles (for example, different charges based on the type of size of a vehicle - a pick-up truck vs. a dump truck vs. an tractor-trailer combination). Residents of the Town and businesses located in the Town shall be entitled to a discount from the stated rate. Any vehicles titled to Supreme or its affiliates and related entities, subject to the Town's verification and approval, which at this time is only ProScapes Enterprises, LLC, and the Town, shall be exempted from paying a fee for the parking and storage on site of its vehicles; provided, however, that there shall be a cap of fifty vehicles, per party, which may park for free. Such vehicles must be, at all times, titled in the name of Supreme or its approved affiliated and related entities. The Town shall be permitted to park for free on the Property that number of vehicles equal to the number of vehicles parked by Supreme and its affiliated and related entities for free. In conjunction with the operating agreement or lease, ProScapes has agreed that it shall relocate all of its vehicles presently located within Rolling Oaks on the parcel owned by owned by Windmill Holdings VI, LLC, aside from those actively working that property, to the Property. The revenues generated from the parking and storage of vehicles on the Property will

be aggregated with the revenues generated from the dumping of green waste, from which the Town will receive fifty percent (50%) and Supreme will receive fifty percent (50%), after payment of the amounts set forth in subsections D. and E. above.

- I. Supreme shall be permitted to sell any products produced from the operation of the Property, such as, without limitation, dirt, topsoil or mulch, in amounts and at prices determined by Supreme from time to time and based on volume, without discounts based on residency. The revenues generated from sales of products produced from the operation of the Property will be aggregated with the revenues generated from the dumping of green waste, from which the Town will receive fifty percent (50%) and Supreme will receive fifty percent (50%), after payment of the amounts set forth in subsections D. and E. above.
- J. Supreme shall keep in place commercial general liability insurance and environmental insurance naming the Town as an additional insured/loss payee, with the limits of coverage to be reasonably determined by the parties. Such insurance shall be maintained with a Best A rated or better insurer regularly doing business in the State of Florida, and such policies shall require a minimum of a thirty day notice prior to cancellation, with notice to the Town. The Town shall have the right, but not the obligation to pay to maintain any coverages which are not paid current by Supreme, with the cost be recovered from the gross revenues from the Property prior to the payment to Supreme of its Operational Costs.
- K. The Town shall be permitted to conduct, at its expense, an annual audit of the operation and shall be provided copies of all financial statements and records from the operation of the Property.

Supreme represents to the Town that the operation will be operated and maintained as a drug free workplace, in compliance with State and Federal law. Supreme will conduct background checks and will require drug screenings, paid for by Supreme of all intended hires prior to securing their employment. Such testing will be performed in the same manner as the Town performs such checks and administers drug screenings. Supreme will be in compliance with all public entity crime regulations and statutes. All of the foregoing will be incorporated, in more detail, into the operating agreement or lease.

Supreme represents and certifies that no compensation has been, is being or will be paid or given to any person associated or affiliated with the Town for the Town's acceptance of this public-private partnership proposal or any agreement which may be ultimately entered into between Supreme and the Town. Additionally, Supreme certifies that no person affiliated or associated with the Town has any contingent right or agreement to receive compensation upon the acceptance of this public-private partnership proposal or any agreement which may be ultimately entered into between Supreme and the Town.

Mr. Andrew Berns, Town Administrator  
Town of Southwest Ranches  
Page 16

We greatly appreciate the opportunity to present this P3 Proposal and are excited and energized about the prospect of working with the Town of Southwest Ranches to provide an avenue for the addressing at least two areas of great public need to the Town, its residents and businesses, and to the public as a whole.

Sincerely,

A handwritten signature in black ink, appearing to read "James McDonnell", with a horizontal line extending to the right. The signature is written in a cursive style.

James McDonnell, Manager,  
By M. Scott Kleiman, Esq.

cc: Russell Muñiz, Assistant Town Administrator/Town Clerk  
Martin Sherwood, Town Financial Administrator  
Keith Poliakoff, Esq., Town Attorney



SUN-SENTINEL  
RECEIVED

NOV 15 2019

SUN-SENTINEL  
Published Daily  
Fort Lauderdale, Broward County, Florida  
Boca Raton, Palm Beach County, Florida  
Miami, Miami-Dade County, Florida  
Town of Southwest Ranches

State Of Florida  
County Of Broward

Before the undersigned authority personally appeared MARK KUZNITZ, who on oath says that he or she is a duly authorized representative of the SUN- SENTINEL, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice in:

The matter of 11700-Advertisement for Bids ,  
Town of Southwest Ranches  
20-003

Was published in said newspaper in the issues of; Nov 04, 2019; Nov 11, 2019

Affiant further says that the said SUN-SENTINEL is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, and that the said newspaper has heretofore been continuously published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, each day and has been entered as second class matter at the post office in BROWARD County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised, any person, firm or corporation, any discount, rebate, commission or refund, for the purpose of securing this advertisement for publication in the said newspaper.

*Mark Kuznitz*

Signature of Affiant

Sworn to and subscribed before me this: November 11, 2019.

*Marcia*

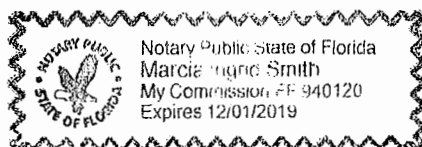
Signature of Notary Public

Name of Notary, Typed, Printed, or Stamped  
Personally Known (X) or Produced Identification ( )

**Sold To:**  
Town of Southwest Ranches - CU00118938  
13400 Griffin Rd  
Fort Lauderdale, FL 33330-2628

**Bill To:**  
Town of Southwest Ranches - CU00118938  
13400 Griffin Rd  
Fort Lauderdale, FL 33330-2628

**Affidavit Delivery Method:** U.S. Mail  
**Affidavit Email Address:**  
6500447



**NOTICE OF RECEIPT AND ACCEPTANCE OF AN UNSOLICITED PROPOSAL FOR A QUALIFYING PROJECT AND INTENT TO ENTER INTO A COMPREHENSIVE AGREEMENT FOR THE PROJECT AND ACCEPTANCE OF ALTERNATIVE PROPOSALS FOR THE QUALIFYING PROJECT OTHER AGENCIES AND ORGANIZATION**

**Town of Southwest Ranches**  
RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

**NOTICE OF AN UNSOLICITED PROPOSAL FOR PUBLIC PRIVATE PARTNERSHIP OPPORTUNITY FOR THE FORMER CCA PROPERTY**

The Town of Southwest Ranches is soliciting alternative proposals from qualified parties to lease and to develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park. The three parcels that comprise the Property are zoned Manufacturing (M) and are identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490 (hereinafter "Former CCA Property").

The Town of Southwest Ranches, Florida (the "Town"), has received an unsolicited proposal submitted under the provisions of Section 255.065, Florida Statutes, Public-Private Partnerships, relating to the Former CCA Property. The proposal seeks to finance, develop, construct, and manage a green waste processing facility and parking on the Former CCA Property. The Former CCA Property is currently vacant.

Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its desire to seek alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.  
Russell Muniz, MMC, Assistant Town Administrator/Town Clerk  
11/4, 11/11/2019 6500447

**FLORIDA DEPARTMENT OF STATE**  
**Laurel M. Lee, Secretary of State**  
 Administrative Code  
 The Gray Building - 500 S. Bronough Street, Tallahassee, FL 32399-0250

Billed to:  
 Other Agencies and Organizations  
 Town of Southwest Ranches  
 13400 Griffin Road  
 Southwest Ranches, FL 33330  
 Attn: Russell Muniz

**Account: 2228                      Invoice Date: 11/19/2019                      Invoice Number: 101765**

	P.O. #	Publication in Florida Administrative Register	#units	\$each	Extension
1		Vol/No: 45/215, November 4, 2019, Notice ID: 22565709	490	0.14	\$68.60

Invoice # must appear on all checks and correspondence. Please pay balance due: **\$68.60**  
 F.E.I.D. number: F 59-3466865                      \*\*\*Net Due - 15 days - No Discount\*\*\*

**RECEIVED**

NOV 21 2019

Town of Southwest Ranches

**-----**  
**TO INSURE PROPER CREDIT, PLEASE RETURN THIS PORTION.**

Department of State - Division of Administrative Services - Bureau of Planning, Budget and Financial Services - (850)245-6579

R.A. Gray Bldg - 500 S. Bronough St, 4th Fl. - Tallahassee, FL 32399-0250

**Account: 2228      Invoice Date: 11/19/2019      Number: 101765      Amount Due: \$68.60**

State Agencies - Journal Transfer to Account Code: 45-60-2-572001-45400100-00    BF Obj 019000    BF Cat 001903

Org Code / EO : 45400120200 7X    Object:019032    Category: 001903

For Accounting Use Only:      Object Code: 019012    Cat: 001905      ARGL: 16500      GL: 67200

FLAIR Account Code:      Vendor FEID: F651036656-003

Regular Meeting October 8, 2020

Notice of Bid/Request for Proposal

**OTHER AGENCIES AND ORGANIZATIONS**

**Town of Southwest Ranches**

RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

Notice of Receipt and Acceptance of an Unsolicited Proposal for a Qualifying Project and Intent to Enter Into a Comprehensive Agreement for the Project and Acceptance of Alternative Proposals for the Qualifying Project

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Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its desire to seek alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.

Russell Muniz, MMC, Assistant Town Administrator/Town Clerk

Notice of Receipt and Acceptance of an Unsolicited Proposal for a Qualifying Project and Intent to Enter Into a Comprehensive Agreement for the Project and Acceptance of Alternative Proposals for the Qualifying Project

OTHER AGENCIES AND ORGANIZATIONS

Town of Southwest Ranches

RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

NOTICE OF AN UNSOLICITED PROPOSAL FOR PUBLIC PRIVATE PARTNERSHIP OPPORTUNITY FOR THE FORMER CCA PROPERTY

The Town of Southwest Ranches is soliciting alternative proposals from qualified parties to lease and to develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park. The three parcels that comprise the Property are zoned Manufacturing (M) and are identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490 (hereinafter "Former CCA Property")

The Town of Southwest Ranches, Florida (the "Town"), has received an unsolicited proposal submitted under the provisions of Section 255.065, Florida Statutes, Public-Private Partnerships, relating to the Former CCA Property. The proposal seeks to finance, develop, construct, and manage a green waste processing facility and parking on the Former CCA Property. The Former CCA Property is currently vacant.

Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its request to accept alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.

Russell Muniz, MMC, Assistant Town Administrator/Town Clerk

**From:** [Russell Muniz](#)  
**To:** [Angel M. Gomez](#)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 10:54:00 AM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

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Good Morning Angel,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



## Russell Muniz

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**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:37 AM  
**To:** Henry, Bertha  
**Subject:** Public Private Partnership Opportunity Notice  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Afternoon Miss Henry,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñoz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



## Russell Muniz

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**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:46 AM  
**To:** carenberg@cscbroward.org  
**Subject:** Public Private Partnership (P3) Opportunity  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Morning Mrs. Arenberg-Seltzer,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñoz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [fgernert@aicw.org](mailto:fgernert@aicw.org)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 12:01:00 PM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

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Good Morning Mr. Gernert,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (including Florida Inland Navigation District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)





## Russell Muniz

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**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:40 AM  
**To:** Kevin Hart (kevin@sbdd.org)  
**Subject:** Public Private Partnership Opportunity Notice  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Morning Kevin,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñoz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [Vnarang@mhs.net](mailto:Vnarang@mhs.net)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 11:24:00 AM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

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Good Morning Mr. Narang,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (South Broward Hospital District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [lmayers@sfwmd.gov](mailto:lmayers@sfwmd.gov)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 3:43:00 PM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal-Final.docx](#)

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Good Afternoon Miss Mayers,

Thank you for returning the call earlier today. Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (including the South Florida Water Management District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



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**LEASE AND REVENUE SHARING AGREEMENT  
WEST BROWARD INDUSTRIAL PARK**



**TOWN OF SOUTHWEST RANCHES, LANDLORD**

**and**

**SUPREME ORGANICS, LLC, TENANT**

**Department of Procurement**

**Town of Southwest Ranches**

**October \_\_ , 2020**

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## **LEASE AND REVENUE SHARING AGREEMENT**

THIS LEASE AND REVENUE SHARING AGREEMENT (this “Lease”) is made and entered into this \_\_\_\_ day of August, 2020, by and between the Town of Southwest Ranches, a political subdivision of the State of Florida (the “Town”), and, Supreme Organics, LLC, a Florida limited liability company, having its office and principal place of business at 1675 North Commerce Parkway, Weston, Florida 33326 (“Tenant”).

### **WITNESSETH:**

WHEREAS, Town owns 24.3622 +/- acres of vacant, unimproved real property located within the West Broward Industrial Park in Broward County, Florida; located generally west of NW 196 Avenue, north of Sheridan Street, and east of SW 202 Avenue; and identified by the Broward County Property Appraiser with Parcel Identification Numbers 5139 02 04 0510, 5139 02 04 0500, and 5139 02 04 0490 (the “Property”) (as shown in Exhibit A); and

WHEREAS, Tenant submitted an unsolicited public-private partnership proposal (as shown in Exhibit “B”) to the Town on October 28, 2019 for the lease and development of the Property through the financing, construction, operation and maintenance of two (2) facilities to serve a public purpose- a single source organic processing facility, with the retail sale of the end products of such processing, a vehicle parking and equipment storage facility, and private fueling facility (the “Qualifying Project”); and

WHEREAS, Tenant identifies two public purposes that will be addressed: (1) the lack of strategically located, cost-effective vegetative waste disposal sites for residents and businesses, and (2) local zoning codes that prohibit the parking of commercial vehicles and large equipment on both residential and commercial properties thereby creating the need for a public parking facility to serve the needs of both residents and businesses that have a need for overnight and long-term parking and storage; and

WHEREAS, Tenant proposes to finance, construct, operate and maintain a single source organic processing facility for the public’s disposal of vegetative waste which will then be processed and sold to the public as compost, mulch and soil;

WHEREAS, Tenant proposes to finance, construct, operate and maintain a parking facility open to the public for operable vehicle parking and equipment storage; and

WHEREAS, the Tenant desires to develop and to use the Property for the Qualifying Project with the following accessory uses: sale of compost, mulch and top soil; parking of vehicles and equipment used in support of the Qualifying Project; fueling of vehicles and equipment owned or operated by Tenant and affiliates further defined herein; fueling of essential vehicles used to support the official duties of the Town in a declared state of emergency; parking of operable vehicles owned or leased by members of the public for a fee; parking of operable vehicles owned or leased by the Town or one of its emergency services providers; and a modular office used in connection with the Facility; and

WHEREAS, the Town, upon receipt of Tenant’s unsolicited proposal, published all statutorily required notices through the Florida Administrative Register and *Sun Sentinel* as well as to each local government in the affected area (as evidenced in Exhibit “C”); and

WHEREAS, the Town published a Request for Proposals (RFP 20-003) (as shown in Exhibit “D”) seeking proposals for the development and lease of the Property and did not receive any responsive proposals; and

WHEREAS, the Town and Tenant desire to enter into this Lease to ensure that the statutory requirements set forth in 287.05712, Florida Statutes (2019) are fulfilled unless specific requirements are waived by the Town herein, as permissible by law. NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

### **ARTICLE 1 - RECITALS**

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

### **ARTICLE 2 - DEFINITIONS**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

2.01 “Additional Insured” has the meaning set forth in Section 11.08.

2.02 “Additional Rent” has the meaning set forth in Section 5.11.

2.03 “Air Curtain Incinerator” has the same meaning set forth in 5I-2.003(2) of the Florida Administrative Code and is a portable or stationary combustion device that directs a plane of high velocity forced air draft through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.

2.04 “Approval Deadline” has the meaning set forth in Section 3.08(B).

2.05 “Ash” has the meaning set forth in Florida Administrative Code § 62-701.200, all the solid residue and any entrained liquids resulting from the combustion of solid waste in a solid waste combustor, including bottom ash, fly ash and combined bottom and fly ash, but excluding recovered metals, glass, and other recovered materials separated from the ash residue.

2.06 “Assignment” has the meaning set forth in Article 16.

2.07 “Bond” has the meaning set forth in Section 5.02.

2.08 “Business Day” means any day other than a Saturday, Sunday or nationally recognized bank holiday. Use of the word “day” as opposed to Business Day means a calendar day.



2.09 “Compost” means solid waste which has undergone biological decomposition of organic matter, and has been disinfected using composting or similar technologies, and has been stabilized to a degree which is potentially beneficial to plant growth and which is used or sold for use as a soil supplement, artificial top soil, or other similar uses.

2.10 “Composting” means the process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can be easily and safely stored, handled, and used. The presence of anaerobic zones within the composting material will not cause the process to be classified as other than composting. Processing may include physical turning, windrowing, aeration or other mechanical handling of organic matter. Simple exposure of solid waste under uncontrolled conditions resulting in natural decay is not composting except as specified in Chapter 62-709, F.A.C., as amended.

2.11 “Composting Facility” means a solid waste management facility where solid waste is processed using composting technology. Processing may include turning, windrowing, aeration or other mechanical handling of organic matter as specific in Chapter 62-709, F.A.C., as amended.

2.12 “County” means Broward County, Florida.

2.13 “Damages” has the meaning set forth in Article 18.

2.14 “Date of Beneficial Occupancy” shall mean the date the Certificate of Completion is issued for the source organic processing facility to commence operations on the Property.

2.15 “Department” means the Department of Procurement of the Town.

2.16 “Derelict Vehicle” means a vehicle that is in a wrecked, dismantled or partially dismantled condition, is leaking fluids, rusted, does not have current tags, registered as missing or stolen, or which is discarded and in an inoperable condition.

2.17 “Director” means the Town Administrator or his/her designee.

2.18 “Effective Date” means the date that this Lease is approved by the Southwest Ranches Town Council.

2.19 “Environmental Laws” means all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission, discharge, seepage or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.

2.20 “FDACS” means the Florida Department of Agriculture and Consumer Services.

2.21 “FDEP” means the Florida Department of Environmental Protection.

2.22 “Fueling Station” means the installation and operation of above ground storage tank(s) capable of holding more than 550 gallons of petroleum products, for the purpose of fueling

Tenant's vehicles and equipment used directly in the operation of the Facility, fueling of vehicles and equipment owned and/or operated by Tenant and its affiliates now or hereafter existing, the fueling of essential vehicles used to support the official duties of the Town in a declared state of emergency, as further provided for herein. This definition does not include retail sales of petroleum products.

2.23 "Governmental Approvals" has the meaning set forth in Section 3.08.

2.24 "Gross Revenue" means the sum of all money generated by the operation of the Qualifying Project. "Hazardous Substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, Pub. L. No. 96-510, 94 stat. 2767, as amended by the Superfund Amendments and Reauthorization Act ("SARA") of 1986.

2.25 "Hours of Operation" means deliveries and removal between the hours of 7:00 a.m. and 7:00 p.m. On site operations may occur all times subject to the Town's Noise Ordinance, as may be amended from time to time.

2.26 "Initial Term" means the twenty (20) year period commencing on Effective Date.

2.27 "Initial Term" has the meaning set forth in Section 3.02.

2.28 "Inspection Period" has the meaning set forth in Section 3.07.

2.29 "Inspections" includes, but is not limited to, the following: (a) physical inspection of the Property; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities and site planning studies.

2.30 "Lease" means this Lease and all exhibits attached hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.

2.31 "Leasehold Mortgage" has the meaning set forth in Section 17.01.

2.32 "Leasehold Mortgagee" has the meaning set forth in Section 17.01.

2.33 "Lease Payment" means the annual ground lease payment set forth in Section 5.01 and included as a schedule in Exhibit E.

2.34 "Leasehold Improvements" mean an improvement, including equipment, of a building and infrastructure on the Property principally used to support the operation and maintenance of the Qualifying Project.

2.35 "Lease Year" means a twelve (12) month period beginning on the Effective Date, and each twelve (12) month period thereafter, until the expiration or earlier termination of this Lease.

2.36 “Major Breach” shall mean a material breach from the terms of the Lease and Revenue Sharing Agreement which is not cured after notice and within the cure period.

2.37 “Management Fee” shall mean a fee payable to Tenant under the terms provided for herein for the management of the Qualifying Project.

2.38 “Material Default” means a substantial failure in the performance of the Lease and Revenue Sharing Agreement.

2.39 “Manufacturing and Industrial District” has the meaning set forth in the Town’s Unified Land Development Code (“ULDC”) Section 055-010, The M, manufacturing and industrial district is intended for manufacturing and industrial uses, some of which involve the use, handling and storage of hazardous materials, or require a substantial amount of open air storage area.

2.40 “Net Revenue” means sums remaining after all Operational Expenses, as described herein, are deducted from Gross Revenue.

2.41 “Operational Expenses” means reasonable and documented expenses incurred in the construction, maintenance and operation of the Qualifying Project as further provided for herein. The parties agree that a Tenant Affiliate cannot be retained for services unless three (3) comparable bids are obtained from unrelated companies, and Tenant Affiliate is less than or equal to the lowest price received. Any disputes concerning reasonable and documented expenses shall be determined in the sole discretion of the Town Administrator. All Operational Expenses shall be reasonable and in accord with industry standards and applicable laws. Such reasonable Operational expense may include a management fee not to exceed five (5%) of the gross revenues). Notwithstanding anything contained herein to the contrary, Tenant agrees to a cap on their annual recovery of Operational Expenses as follows:

<u>Operational Expense Cap</u>	<u>Annual Gross Revenue</u>
40%	\$0.00 - \$1,999,999.99
35%	\$2,000,000.00-\$2,999,999.99
30%	\$3,000,000.00-\$3,999,999.99

Operational Expenses Cap shall be negotiated, in good faith, by the parties, when annual gross revenue exceeds \$3,999,999.00.

2.42 “Phase II Environmental Assessment” or “Phase II EA” has the meaning set forth in Section 20.05.

2.43 “Plans” shall mean any design, operational or site plans submitted by Tenant to obtain any and all Governmental Approvals.

2.44 “Premises” means the Property together with all buildings, facilities and other improvements now or hereafter constructed thereon, subject to easements, rights- of-way and any other encumbrances of record.

2.45 “Property” means 24.3622 acres, more or less, of vacant, unimproved real property as more particularly described on Exhibit A, subject to easements, rights-of-way and any other encumbrances of record.

2.46 “Proposal” means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

2.47 “Qualifying Project” is a facility or project that serves a public purpose and has the same meaning as set forth in 287.05712, Florida Statutes, as amended.

2.48 “Release Documents” has the meaning set forth in Section 17.08.

2.49 “Renewal Term” has the meaning set forth in Section 3.03.

2.50 “Rent Payment” means the annual ground lease payment set forth in Section 5.01 and included as a schedule in Exhibit “E.”

2.51 “Request for Proposals” or “RFP” means Request for Proposals No. 20-003, issued by Town on November 4, 2019, as amended and/or supplemented attached hereto and made a part hereof in Exhibit “D.”

2.52 “Resource Recovery Equipment” means equipment that is integrally and extensively used in the actual process of recovering material from solid waste and specifically includes recycling equipment and is owned and operated by or on behalf of any county or municipality, as certified by the Department of Environmental Protection under the provisions of Chapter 403.715, Florida Statutes, as amended.

2.53 “Source-Separated Organic Processing Facility” or “SOPF” means a facility permitted by the Florida Department of Environmental Protection and Broward County where vegetative waste and other organic materials are processed into compost.

2.54 “Storage Tank Facility” means all storage tank systems containing petroleum products used for the express purposes authorized herein.

2.55 “Survey” means the survey prepared by Aviom & Associates, Inc., on March 5, 2016, attached hereto and made a part hereof in Exhibit A.

2.56 “Tenant Affiliate” means any other entity controlling, controlled by, or under common control with Tenant, where there is ownership of securities or membership interests of or in Tenant and such other entity by a common individual or entity, and “control” means the possession, directly or indirectly, of the power to direct the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise.

2.57 “Tenant Improvements” means all buildings, structures, pavement, facilities, landscaping and other improvements, above and below ground, constructed by Tenant upon the Premises during the Term, including the Leasehold Improvements.

2.58 “Tenant Party” means Tenant and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.

2.59 “Term” means the Initial Term plus any Renewal Term.

2.60 “Title Review Period” has the meaning set forth in Section 3.04.

2.61 “Town Party” means the Town and its elected officers, employees and agents.

2.62 “Traffic Concurrency Allocation” has the meaning set forth in Section 6.06.

2.63 “Unified Land Development Code” means the Unified Land Development Code of the Town of Southwest Ranches as amended.

2.64 “Vapor Recovery System” means a system that collects and conserves vapors that would otherwise be released to the atmosphere.

2.65 “Vector” means a carrier organism that is capable of transmitting a pathogen from one organism to another.

2.66 “Vegetative Debris” means plants, trees, grass, or weeds that have been cut down as a result of landscaping maintenance or land clearing operations and includes materials such as severed or uprooted trees and tree trunks, tree and shrub trimmings, grass clippings, palm fronds, or green leaf clippings.

2.67 “Vehicle Parking and Equipment Storage Facility” means a maximum of ten (10) acres of the Property allocated for Town, Tenant and public for operable vehicle parking and equipment storage as further provided for herein.

2.68 “West Broward Industrial Park” means the property more particularly described in Exhibit “A”.

2.69 “Yard Trash” means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils.

### **ARTICLE 3 - EFFECTIVE DATE, TERM, TITLE AND EVALUATION OF PREMISES**

3.01 Effective Date. The term of this Lease shall commence on the Effective Date or such later date as agreed to by Town.

3.02 Initial Term. The Initial Term shall begin on the designated Effective Date and expire twenty (20) years thereafter, unless sooner terminated pursuant to the terms of this Lease.

3.03 Option to Renew and Renewal Term. Provided that Tenant is not in material default of this Lease (or event has not occurred, which with the passage of time or giving of notice would constitute a material default), Tenant shall have the option to renew this Lease for an additional three (3) terms of twenty (20) years and one (1) term of nineteen (19) years (“Renewal Term”), by

notifying the Town in writing of Tenant's intent to exercise its option to renew not later than three hundred and sixty five (365) days prior to the expiration of the Initial Term, with time being of the essence. Such renewal shall be upon the same terms and conditions set forth herein. The total lease term, including all renewal terms, shall not exceed ninety-nine (99) years.

3.04 Title Insurance. Tenant shall have thirty (30) days following the Effective Date to examine Town's title to the Property (the "Title Review Period") and, at Tenant's option, obtain a title insurance commitment for the issuance of a leasehold title policy, agreeing to issue to Tenant a title insurance policy in such amount as deemed appropriate by Tenant. Tenant shall furnish a copy of the title insurance commitment and title policy, if applicable, to Town together with legible copies of all exceptions to coverage reflected thereon upon receipt. The cost of the title insurance commitment and title insurance policy and any premium shall be borne by Tenant.

3.05 Title Defects. In the event the title insurance commitment shows as an exception any matters which render title unmarketable or would unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, Tenant shall notify Town of Tenant's objections thereto prior to expiration of the Title Review Period. Town shall have the right, but not the obligation, within sixty (60) days from receipt of the notice, to cure such title defects or to make arrangements with the title insurer for the removal of such objections from the title insurance commitment. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the sixty (60) day period, Tenant shall have the option of: (a) accepting title to the Property as it then exists; (b) providing Town with an additional ninety (90) days to remove such defects; or (c) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the sixty (60) day period. In the event Tenant elects option (b) above and Town is unable to cure such defects within the additional ninety (90) day period, Tenant shall have the option of: (a) accepting title to the Property, as it then exists; or (b) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the ninety (90) day period. In the event Tenant terminates this Lease pursuant to this Section, the parties shall be released from all obligations under this Lease, with the exception of those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right and shall be deemed to have accepted title to the Property subject to all matters of record.

3.06 Survey. Tenant shall have the right, within the Title Review Period, to obtain a current survey of the Property. The survey shall be prepared in accordance with the minimum technical standards for surveys within the State of Florida. If the survey reveals any encroachments, overlaps, boundary disputes or other defects which render title unmarketable or unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, the same shall be treated as title defects as described in Section 3.04 of this Lease and Tenant shall have the same rights and remedies as set forth therein.

3.08 Inspections. Commencing on the Effective Date and expiring sixty (60) days thereafter ("Inspection Period"), Tenant may conduct any Inspections that Tenant deems appropriate with respect to the Property. The Town shall provide copies of all environmental reports and assessments; reports and results for any and all monitoring wells located on the

Property; soil boring reports; surveys; copies of all studies and reports commissioned or obtained by or prepared for the benefit of the Town in connection with its acquisition of the Property and the securing of the current obligation relating to the Property; and any other documents in the possession of the Town which may be requested by Tenant. All Inspections performed hereunder shall be conducted at Tenant's sole cost and expense and shall be performed by licensed persons or firms dealing in the respective areas or matters. Tenant agrees to indemnify the Town Parties from and against any and all Damages arising from or out of a Tenant Party's entry upon and inspection of the Property except if such Damages are caused by a Town Party's negligence or willful misconduct or Town's breach of its obligations under this Lease. Tenant's obligation to indemnify the Town Parties pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Tenant shall provide Town with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Tenant hereunder. If Tenant determines, in its sole discretion, that it will be unable to develop the Property for the uses permitted hereunder as the result of the Inspections, Tenant may elect to terminate this Lease upon written notice to Town within sixty (60) days after the expiration of the Inspection Period, time being of the essence. If termination notice is timely given by Tenant pursuant to this Section, this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right. In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Property to the condition in which it existed prior thereto, using materials of like kind and quality.

3.09 Governmental Approvals. This Lease is expressly conditioned on Tenant's pursuit and receipt of any and all governmental approvals, permits and entitlements necessary for Tenant to construct the Leasehold Improvements on the Property. The parties acknowledge and agree that the term Governmental Approvals shall also include internal approval processes of Tenant or the Department's review on behalf of the Town under Article 6 of this Lease.

- (A) Town shall cooperate with Tenant in the pursuit of the Governmental Approvals by executing applications and other instruments necessary to obtain the required Governmental Approvals when the property owner is required to execute such applications or instruments, which may be signed on behalf of Town by the Director or designee. Tenant acknowledges that: (i) Town shall be acting in its proprietary capacity in executing such applications or instruments and that nothing in this Section 3.09 shall be construed as obligating or requiring Town to take any specific action on such applications or instruments when acting in its governmental or regulatory capacity; and (ii) any and all costs incurred in the pursuit of the Governmental Approvals shall be an expense borne solely by Tenant.

3.10 Tenant's Election to Terminate. Provided that Tenant submits its applications in a timely manner and continues to work diligently in good faith to obtain all Governmental Approvals, if Tenant has not received all required Governmental Approvals on or before the date that is twelve (12) months from the Effective Date ("Approval Deadline"), Tenant shall be entitled to terminate this Lease upon prior written notice to Town within thirty (30) days after the expiration

of the Approval Deadline, if termination notice is timely given by Tenant to Town pursuant to this Section 3.07(B), this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event that Tenant has not obtained all required Governmental Approvals with the aforementioned twelve (12) month period but has not terminated this Agreement, the Town shall have a reciprocal right to terminate this Agreement provided that the Town shall reimburse Tenant for all costs and expenses incurred by Tenant in seeking the Governmental Approvals.

#### **ARTICLE 4 - PREMISES AND PRIVILEGES**

4.01 Description of Premises. Town hereby demises and leases to Tenant, and Tenant rents from Town, the Property, subject to the terms, conditions and covenants set forth herein.

4.02 Description of Specific Privileges, Uses and Rights. The foregoing specific privileges, uses and rights of the Property are granted to Tenant, and are fully delineated herein.

4.03 Single Source Organic Processing Facility. Tenant shall have the right and obligation to use the Property primarily for the purpose of constructing, operating, and maintaining a Single Source Organic Processing Facility (“Facility”), as permitted by FDEP and Broward County, and in accordance with all applicable federal, state and local laws.

- (A) The Tenant shall obtain all permits and other government approvals required for the use of air curtain incinerators. Air curtain incinerators shall be located in accordance with any permit issued by the Florida Forestry Service, Broward County or any other governmental agency.
- (B) The Tenant shall obtain permits from FDEP and Broward County for the construction, operation and maintenance of the Facility. Tenant shall provide the Director with the completed applications for review no less than two (2) weeks prior to submittal to the permitting agency and provide copies of all permit related notices to the Director within two (2) business days of receipt.
- (C) Compost piles shall not exceed six (6) feet maximum height or as permitted in accordance with 62 709, F.A.C., as amended.
- (D) The Town Council shall approve a rate structure for vegetative waste disposal by the public by March 1, on an annual basis, which shall be effective on the October 1 following such March 1. The Tenant shall present to the Town its recommendations for the rate structure based on a review of comparable regulated facilities within a fifteen (15) mile radius.
- (E) The Town shall require the Town’s waste hauler to dispose of vegetative waste generated within the Town’s jurisdiction and eligible for composting at the Facility.



- (F) Tenant shall comply with all federal and state laws regarding vector attraction reduction controls to protect the nursery and landscape industry from the spread of phytosanitary diseases and invasive pests.

4.04 Disaster Debris Staging, Processing and Collection Site. Landlord is permitted to use the Property for the staging of emergency and utility service providers, if space permits, as well as the collection, monitoring, sorting, recycling and disposal of non-hazardous debris generated outside of the Town in a declared emergency, upon written approval of the Director, and in accordance with all applicable federal, state and local laws.

- (A) In the event of a hurricane or other natural disaster, the Town may dispose of any resulting debris generated within the municipal boundaries of the Town and which debris do not constitute Hazardous Substances at no cost to the Town. The Town shall be required to pay for the disposal of such debris. Non-vegetative debris shall be removed by the Town. Vegetative debris shall be processed by Tenant.
- (B) Tenant shall work cooperatively with the Town's debris monitoring and debris hauling vendors in accordance with State and Federal law or regulation, including regulations promulgated by the Federal Emergency Management Agency (FEMA). Tenant shall be paid for its processing of the vegetative material, as specified herein. In accordance with Federal regulations, Tenant shall operate in compliance with 2 C.F.R. 200, as may be amended from time to time, and all employees shall be I-9 compliant, as may be amended from time to time.

4.05 Vehicle Parking and Equipment Storage. The rights granted for the use of the Property for vehicle parking and equipment storage permit a maximum of ten (10) acres of the Property to be utilized for operable vehicle parking and equipment storage as further specific herein.

- (A) With the exception of a state of emergency, as stated above, up to fifty (50) parking spaces, located near the main entrance of the Property, shall be designated for the parking of vehicles owned or leased by the Town or one of its emergency services providers at no cost to the Town. The Town may use parking spaces in excess of the Town's 50 spaces provided the Town pays in accordance with the approved rate structure. The Town Council shall approve the parking rate structure by March 1, on an annual basis, which shall be effective October 1. The Tenant shall present to the Town its recommendations for the rate structure based on a review of comparable outdoor storage facilities within a ten (10) mile radius, with the understanding that users may pay slightly more for convenience.

Notwithstanding the foregoing, the Town's storage of vehicles shall be limited to the number of spaces utilized by Tenant that shall be provided by Tenant by March 1, on an annual basis, which shall be effective October 1. By way of example, if the Tenant is only utilizing 30 parking spaces, the

Town shall be limited to 30 parking spaces. If Tenant does not advise Town of its parking demand by March 1, both parties shall be allocated 50 spaces for that fiscal year.

- (B) A maximum of fifty (50) parking spaces shall be allocated to Tenant and Tenant Affiliates at no cost to Tenant. The Tenant and Tenant Affiliates may use parking spaces in excess of the Tenant's 50 spaces provided the Tenant pays in accordance with the approved rate structure.
- (C) In accordance with County regulations, the Tenant is permitted to park up to 1,499 operable vehicles by means of a single level parking lot or 749 operable vehicles by means of a parking garage or multiple-level parking. If the Tenant desires to exceed this limitation, it shall first obtain approval from the Director and then obtain a parking facilities permit from Broward County and any other required governmental approvals including building permits from the Town.
- (D) No derelict vehicles or inoperable equipment shall be parked or stored. Parking of inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers on the Premises is strictly prohibited. Vehicle parking and storage area shall be maintained with a uniform, neat, clean appearance and all vehicles shall be maintained within a designated storage space. Vehicles leaking fluids, rusted vehicles, missing or stolen vehicles, or vehicles with expired tags shall be prohibited from being stored on the Premises.
- (E) Tenant shall comply with all applicable ULDC standards regarding the development and maintenance of the Property for vehicle parking and equipment storage unless waived by the Director.

4.06 Sale of Compost, Mulch and Top Soil. Tenant shall be permitted to sell compost, mulch and top soil generated by the operations of the single source organic compost facility to the public.

- (A) To the extent that Tenant is engaged in such sales, Tenant shall comply with any applicable state and local rules including the collection and remittance of state sales tax. Tenant shall register with the Florida Department of Agriculture and Consumer Services as an agricultural dealer and observe all applicable laws and regulations as such.
- (B) To the extent that Tenant is engaged in such sales, Tenant shall work with the Town to determine the pricing for such product, which shall be reviewed and approved by the Town Council by March 1, on an annual basis, which shall be effective October 1. Tenant may adjust the pricing lower, based upon the market, provided that it notifies the Town within thirty (30) days of the intended adjustment.

- (C) Tenant shall not divert vegetative material from the site, unless (a) such vegetative material, compost, mulch, or top soil has been sold or (b) such vegetative material cannot be processed at the site based upon the size or type of the material or (c) the site has reached capacity or (d) compost piles have reached six (6) feet maximum height.. In the event of any of the conditions contained in (b) through (d) above, the Town Administrator shall be notified of the transfer, at least forty-eight (48) hours before the occurrence of same.
- (D) (C) Tenant shall not divert compost, mulch, top soil or other products generated by the compost facility to its related businesses or Tenant Affiliates unless it purchases them at the same rates as charged to the Town. Any violation of this prohibition shall be deemed to be a major breach of this Lease.
- (E) In the event that Tenant is not engaging in the sale of compost, mulch or top soil resulting from the operation of the Qualified Project, the Town shall be permitted to engage in a program for the resident of the Town to receive free distribution of compost, mulch and top soil generated by the Qualified Project and Tenant shall be permitted to distribute the remaining material, after Town residents have had ample opportunity to obtain the material, to Tenant's Affiliates.
- (E) Nothing herein prohibits Tenant from responding to procurement solicitations for the purchase of compost, mulch and top soil by governmental entities including the Town.

4.07 Fueling of Vehicles and Equipment. The Tenant may install storage tanks containing petroleum products on-site for the fueling of vehicles and equipment as further defined herein. Retail sale of petroleum products shall be prohibited. The fueling of trucks and equipment with off road or dye diesel shall be prohibited. Any violation of this prohibition shall be deemed a major breach of this Lease.

- (A) Tenant shall obtain a Storage Tank Facility License and Hazardous Material Facility License from FDEP and Broward County, as applicable. The Tenant shall provide the Town with any operation plans submitted in accordance with permitting applications to FDEP and the County.
- (B) In the event of a declared state of emergency impacting the ability of the Town to fuel vehicles used to support the official duties of the Town, the Town may fuel such essential vehicles at the Property. The Town shall reimburse Tenant at Tenant's cost for any fuel drawn from the fueling facility for such vehicles within forty-five (45) days of the delivery by Tenant to Town of an invoice for the cost of the fuel dispensed.
- (C) Tenant and Tenant Affiliates, are and shall be permitted to use the fueling facility.

4.08 Modular Office Building and Support Structures. Tenant is permitted to construct a modular office building and any structures necessary to support the compost facility as approved by FDEP and the County in connection with the issuance of facility permits. Tenant shall comply with all applicable standards in the ULDC and Americans with Disabilities Act and obtain permits and governmental approvals as required prior to construction.

4.09 Prohibited Uses, Products and Services. Tenant agrees the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever, unless specifically authorized in writing by the Director. Tenant shall not provide any products or services not specifically authorized by this Lease or the Director, which authorization shall not be unreasonably withheld.

4.10 Restrictions on Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the improvement, maintenance, and operation of the Premises pursuant to the terms and conditions of this Lease.

- (A) Parking of inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers on the Premises is strictly prohibited. Vehicle parking and storage area shall be maintained with a uniform, neat, clean appearance and all vehicles shall be maintained within a designated storage space. Vehicles leaking fluids, rusted vehicles, missing or stolen vehicles, or vehicles with expired tags shall be prohibited from being stored on the Premises. Notwithstanding the foregoing, Tenants and Tenant's affiliates shall be permitted to perform any necessary maintenance and repair to its vehicles on site but, in so doing, shall not permit any leakage of fluids onto or into the ground.
- (B) The Property shall comply with provisions in the ULDC regarding setbacks and screening unless waived in writing by the Director, which waiver shall not be unreasonably withheld. The storage of materials and equipment not used in support of the Qualifying Project or specific privileges, uses and rights contained in this Lease shall be prohibited.

4.11 Except Condition and Use of the Premises. Except as otherwise provided for herein, and subject to Tenant's rights to complete inspections pursuant to Sections 3.03, 3.04, 3.05, and 3.06 Tenant accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Tenant further acknowledges that Town has made no representations or warranties of any nature whatsoever regarding the Premises the physical and/or environmental condition of the Premises.

4.12 Tenant, Town, and Resident Rates. Notwithstanding any of the rates stated above, Tenant and Town shall receive a discount of not less than twenty five percent (25%) from all rates established herein. As it relates to the processing of green waste, in no event shall the Town be charged in excess of the rate charged by its current hauler. Residents, and businesses located within the Town, shall receive a discount of not less than fifteen percent (15%) from the rates established herein, provided that proof of residency in the Town is provided in the form of a valid and unexpired State of Florida Driver's License or Identification Card, or valid corporate records.

4.14 Tenant shall provide the Town with copies of any and all agreements relating to the above uses and users, and the Town shall be provided the right to provide input into the language contained in same.

4.15 Access to Property. When possible Tenant shall access 202nd Avenue solely through the use of arterial roadways. Tenant shall instruct all yard waste customers to access 202nd Avenue from arterial roadways, and shall reject any yard waste that does not comply with this requirement, after warning has been given. Town understands and agrees that Tenant cannot control the access route by third parties to the Property.

**ARTICLE 5 - LEASE PAYMENT, PAYMENT OF TAXES AND FEES, SECURITY DEPOSIT AND OTHER FINANCIAL OBLIGATIONS**

5.01 Lease Payment. For the use and occupancy of the Premises, Tenant shall pay to Town annual ground rental equal to the annual payments due, in accordance with the payment schedule, attached hereto as Exhibit "E". Tenant understands and agrees that this Agreement causes the Town's annual payments to no longer qualify as being tax free. As a result, Exhibit "E" is based on a refinance of the taxable Property. Additionally, the monthly Rental shall include an amount equal to one-twelfth of the annual estimated ad valorem and non-ad valorem taxes, including assessments, assessed for the Property, which shall be adjusted annually commencing January 1, based upon the prior year's ad valorem and non-ad valorem taxes and fees. Once the annual payments are extinguished, Tenant shall pay Town Rental in an amount equal to the greater of the immediately prior year's Rental or an amount established by the Fair Market Value of property as determined by an appraisal prepared in accordance with Uniform Standards or Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation, with the valuation determined based on its then current use. The Town shall engage an appraiser to furnish an appraisal report prepared on "as is" market value looking at both the operation and a per acre rental value for such operation. In no event shall the Fair Market Value be less than the previous year's annual payment. The fee for the appraiser's report shall be paid from Gross Revenue. In the event that the Town or Tenant disagrees with the appraiser's Fair Market Value, either party shall have the right to obtain a subsequent appraisal at their sole cost and expense. In the event that either party does not accept the findings of the second appraisal, either party may terminate this Agreement. In the event that the Town and Tenant agrees with the Fair Market Value, each year thereafter the annual rent shall increase by three (3) percent. Every ten (10) years thereafter the property shall be reappraised in this fashion to verify its Fair Market Value. In the event that such Fair Market Value has increased, the Lease shall be adjusted accordingly. In the event that the fair market value has decreased, the rent shall remain the same.

5.02 Performance Bond. Tenant shall provide annual performance bonds equal to the total amount of rental payments due in the calendar year, together with amounts due for ad valorem and non-ad valorem taxes assessed for the Property but, in no event shall the bond be less than one million dollars (\$1,000,000.00), which cost shall be an Operational Expense. The performance bond shall be maintained until such time that the Town's debt payments, for the Property, are extinguished. After the Town's debt payments, for the Property, are extinguished, Tenant shall provide a security deposit equal to one (1) month's Rent.

5.03 Commencement and Time of Payment of Rental. Payment of the Rental by Tenant to Town shall commence upon the Date of Beneficial Occupancy. Rental shall be payable in twelve (12) equal monthly installments, in advance, on or before the first (1st) day of each and every month throughout the Term of this Lease, subject to a ten (10) day grace period. If the last day of the grace period falls on a Saturday, Sunday or government holiday, then the grace period shall be extended to the first business day thereafter. All payments must be delivered (together with applicable sales taxes), without demand and without any deduction, holdback or set off whatsoever, to: Town Financial Administrator, Town of Southwest Ranches, 13400 Griffin Road Southwest Ranches, FL 33331, or at such other address as may be directed by the Department from time to time. Payments shall be made payable to Town of Southwest Ranches.

5.04 Late Payments. Tenant shall pay to Town interest at the rate of one and one-half percent (1.5%) per month on any Rental and profit sharing payments made after the expiration of any applicable grace period. The Department, in its sole and absolute discretion, may elect to waive the aforementioned late fees in appropriate circumstances as determined by the Department.

5.05 Escrow. Tenant shall place a twenty five thousand dollar (\$25,000.00) escrow deposit with a mutually agreed upon escrow agent upon delivery of its Proposal to the Town. The escrow funds are to be used, by the Town, for the direct cost of advertising and processing the Public Private Partnership proposal, legal fees and costs incurred to insure the proposed venture complies with terms of the Property bond, legal fees incurred in negotiating the terms of the Lease Agreement and any other costs associated with the review and implementation of the Public Private Partnership proposal. Additionally, should Tenant fail to enter into a Lease Agreement, after good faith negotiations, the Town shall have the right to deduct direct costs from the escrow account, any remainder, upon termination of negotiations, and satisfaction of the above listed obligations, shall be returned to the Tenant.

5.06 License Plate Readers. Part of the inducement for the Town to enter into this Lease, is Tenant's agreement that, within ninety (90) day of the Qualified Project opening for operations, it will cause its Tenant Affiliate to no longer store or fuel off-site vehicles and equipment at its property located within the Town's Rolling Oaks Community. Nothing herein shall preclude such Tenant Affiliate from fueling on such Tenant Affiliate's property vehicles specifically working thereon, such vehicles do not include transport and deliveries. To ensure that Tenant has complied with this provision, Tenant has agreed that within ten (10) days of execution of this Lease Agreement, that Tenant shall provide the Town with funds not to exceed thirty thousand dollars (\$30,000.00) for the Town's acquisition of a license plate reader to be placed at the entrance of the Town's Rolling Oaks Community. Such cameras will further offer additional crime prevention in the community.

5.06 Triple Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to Town including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Premises.

5.07 Profit Sharing. Tenant shall pay from gross revenue, ad valorem and non-ad valorem taxes, reimbursement to the Town for Town Representative's salary, documented and reasonable Operational Expenses incurred the previous month (as defined in section 2.38), as stated above. The remainder, or Net Revenue, shall be distributed, fifty percent (50%) to the Town

and fifty percent (50%) to Tenant. Profit sharing distributions shall be made within thirty (30) days of the completion of a calendar month and shall be accompanied by a statement of account for Operational Expenses deducted from Gross Revenue. Should the Operational Expenses exceed the gross revenues generated resulting in a loss for the operation of the Qualifying Project for year one (1) only, Tenant shall be permitted to carry forward such losses, without regard to any Operational Cap in Section 2.38, for the first year of operations only and which shall be charged against gross revenues generated from the operations of the Qualifying Project. After the first year, there shall be no further loss carryover.. The payment of profit sharing is not nor shall the same be deemed or construed to be the payment of Rent or Additional Rent. In the event that the foregoing profit sharing payment is deemed to be rent by the Florida Department of Revenue upon which sales tax is due, the Town and Tenant agree, in good faith, to modify the foregoing to arrive at a formula by which the profit sharing distribution is equalized to take the payment of sales tax into consideration, as necessary.

5.08 Financial Reporting Requirements.

- (A) Monthly Reporting of Operational Expenses. Tenant shall provide copies of all documented Operational Expenses, to the Town on the last business day of each month.
- (B) Monthly Operational Reporting. Tenant shall provide to Town on a monthly basis an operating statement with each profit sharing distribution. Tenant shall provide the Town with copies of balance sheets, revenue and expenditure report, trial balance, detailed general ledger, budget to actual report, fixed asset report and subsidiary ledgers and worksheets within 14 days of the last business day of each preceding month.
- (C) Annual Audit. The Town shall have the right, in its sole and absolute discretion, to cause an annual performance audit, agreed upon procedures engagement, a financial statement audit and/or a forensic audit. Tenant hereby covenants and agrees to fully cooperate with any and all requirements necessary, in the preparation of the annual audit and to provide all financial statements and records necessary to prepare said audit. The cost of such audit shall be paid by Town at the Town's sole cost and expense.
- (D) Town's Right to Request Tax Returns. The Town reserves the right to request in writing a copy of Tenant's tax returns, and the Tenant shall produce within fourteen (14) business days unless an extension is granted by the Director.

5.09 Payment of Ad Valorem and Non Ad Valorem Taxes and Assessments. Within thirty (30) days of the Date of Beneficial Occupancy, Town shall notify the Broward County Property Appraiser of the change in status of the use of the Property. The Town shall pay all ad valorem and non-ad valorem taxes and assessments in full prior to December 1st of each year, with the payment of tangible personal property taxes, if any. Payment by the Town shall be taken from the escrowed account, however, any shortfall shall be paid to the Town by Tenant within fifteen

(15) days from receipt of notice of same. In the event of an overage, the amount shall be credited towards the following years escrow and the escrowed payment shall be adjusted accordingly. These payments shall be deemed an Operating Expense.

5.10 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease, other than Lease Payment and Operational Expenses as provided for herein, shall be considered Additional Rent, whether or not the same is specifically so designated. The Town shall have the same rights to enforce due and timely payment by Tenant of Additional Rent as are available to Town with regard to annual rent. The payments made to the Town for revenue sharing shall be deemed Additional Rent.

5.11 Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Town may accept any check or payment without prejudice to Town's right to recover the balance due or to pursue any other remedy available to Town pursuant to this Lease or under the law

5.12 The Town shall, at its sole discretion, hire onsite employees to oversee the operations on the Property ("Town Representatives"), who shall be present during operational hours of the facility to help ensure that the terms and conditions are being met herein; provided, however, that the number of Town Employees is limited to one per each eight hour shift. Town Employees shall perform onsite monitoring to ensure that all revenue is documented, operation of the facility complies with rules, regulations and the terms of the Lease Agreement, but will not be involved in the day-to-day business operations of the Property. Tenant shall reimburse Town, from gross revenue, for the reasonable gross salary of the Town Representative or Employees, and such reimbursement shall be deemed an Operational Expense.

## **ARTICLE 6 - CONSTRUCTION OF LEASEHOLD IMPROVEMENTS**

6.01 Tenant Construction Requirements. Except as otherwise provided for herein, Tenant shall make no additions, alterations or improvements to the Premises, or improvements constructed thereon, without the prior written approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for the Department or Town to withhold consent to any improvements determined to be a potential hazard. Any such additions, alterations or improvements shall be made in accordance with the construction requirements contained herein and as established by the Town. All improvements constructed or placed on the Premises, including drainage and landscaping, shall comply with the ULDC unless waived by the Director (which waiver shall not be unreasonably withheld) as well as any and all applicable governmental laws, regulations, permits, rules and orders Notwithstanding the foregoing, additions, alterations or improvements to interior improvements to the Premises that do not require a building permit, such as interior painting and replacement of flooring, and replacement of damaged exterior landscaping with the same landscaping materials, shall not require the Department's prior approval.



6.02 Leasehold Improvements. The Tenant shall obtain permits to construct the Leasehold Improvements in accordance with all Governmental Approvals. All Leasehold Improvements shall comply with the ULDC unless waived in writing by the Director.

- (A) Commencement Date. In accordance with 287.05712, as amended, the Town shall establish a date for the commencement of activities related to the Qualifying Project and may extend with written approval of the Director. The Tenant shall obtain all Governmental Approvals for the construction of the Qualifying Project within six (6) months of the Effective Date. The Tenant shall commence the operation of the Qualifying Facility within eighteen (18) months of the Effective Date. Both of these dates for the commencement of activities shall be subject to force majeure, unless otherwise approved by the Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant.
- (B) Modular Office. Substantial completion of will occur when the applicable governmental authority issues a certificate of occupancy or completion for the accessory modular office building to be located on the Property.

6.03 Off-Site Improvements. Tenant shall cause the design and construction of the following off-site improvements, to the extent that the same do not presently exist and if and as needed, should other legal access and/or improvements not then be in place: (a) two (2) lanes on Southwest 202 Avenue from the site south to the existing pavement constituting Southwest 202 Avenue to Sheridan Street; (b) Pavement based cul-de-sac at the northern terminus of Southwest 202 Avenue which complies with applicable provisions of the Town Code of Ordinances, provided that the same can be located within existing dedicated right of way or within the Property; (c) installation of pavement markings and signs on the Property. Tenant shall not be required to build any portion of the above that has previously been constructed, and shall work with Broward County on the completion of same.

6.04 Cost of Design and Recovery. The cost of the design and construction of the Leasehold Improvements shall be paid by Tenant but such costs and expenses shall be recoverable by Tenant as Operational Expenses provided they are reasonable and documented.

- (A) Within sixty (60) days following Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for Leasehold Improvements constructed pursuant to this Article, Tenant shall have prepared and deliver to the Department: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format, one (1) copy of all permits for Leasehold Improvements, and one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable to the Department, with such costs and expenses recoverable by Tenant from Gross Revenue as Operational Expenses provided they are reasonable and documented.

6.05 Utilities. Tenant shall be responsible for obtaining any and all Governmental Approvals for the installation and provision of utility services to and on the Property, including but not limited to septic and well systems and electrical. Tenant acknowledges that the Town is unable to provide water and wastewater service to the Property

6.06 Review of Design. In accordance with 287.05712(9), Florida Statutes, as amended, Tenant has provided the Town with its design of the Qualifying Project for review as a condition precedent to the approval of this Lease by the Town Council. See Exhibit "F." Tenant shall notify the Department in writing of any changes to the design and provide the Department with an opportunity to review and approve the design. Tenant warrants that the design will be substantially similar to Exhibit "F" and shall only seek to modify the design to achieve all necessary Governmental Approvals.

6.07 Construction Bonds. Tenant shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements to the Premises, the estimated cost of which exceeds Two Hundred Thousand Dollars (\$200,000), Tenant shall cause to be made, executed and delivered to Town at Tenant's sole cost a bond that is in a form and substance reasonably satisfactory to Town that a company reasonably acceptable to Town issues, and that guarantees Tenant's compliance with its construction obligations arising under this Lease, with such costs and expenses recoverable by Tenant from Gross Revenue as Operational Expenses provided they are reasonable and documented. Tenant may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. Town shall be named as the obligee on the bonds. In lieu of the bond required by this Section, Tenant may file with Town an alternative form of security in the form of cash, money order, certified check, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of Town and shall be in accordance with Town's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Tenant subject to the reasonable approval of Town during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage, and the Department, on behalf of the Town, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Tenant shall provide Town evidence reasonably satisfactory to Town evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.

6.08 Contractor Bonds/Insurance.

- (A) Tenant shall cause its contractors to furnish for the benefit of Town a payment and performance bond satisfying the requirements of Section 255.05, Florida Statutes, in a form approved by Town. Tenant shall require its contractors to name Town as a dual obligee on the bond(s). All

insurance shall be issued by companies rated “A-” or better per A.M. Best’s Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the Tenant and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the Tenant, which relate to the activities of such Tenant and the Town. Such notification shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance. The Town shall have the right but, not the obligation to pay to maintain insurance coverage of Tenant. If Town pays for Tenant’s insurance maintenance costs, Town shall recover the expenditure from Tenant’s fifty percent (50%) of Net Revenue distribution.

6.09 Additional Insurance. Tenant shall also require its general contractor to provide the following insurance:

- (1) Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) per aggregate, which shall not exclude products/completed operations. Town and Tenant shall be each be endorsed as additional insured on the Commercial General Liability policy, and Town’s endorsement shall comply with the requirements of Sections 11.08 and 11.09(B).
- (2) Business Auto Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (3) Environmental Liability/Pollution Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per pollution condition and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for damages including, without limitation, third- party liability, clean up, corrective action, including assessment, remediation and defense costs, subject to the terms and conditions of the respective policies.
- (4) Workers’ Compensation insurance in compliance with Chapter 440, Florida Statutes and all federal laws. The Workers’ Compensation policy shall include Employer’s Liability with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (5) Builder’s Risk in accordance with Section 11.07.

6.10 No Liens. Tenant agrees that nothing contained in this Lease shall be construed as consent by Town to subject the estate of Town to liability under the Construction Lien Law of the State of Florida and understands that Town’s estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by Town, Tenant

shall file a notice satisfactory to Town in the Public Records of Broward County, Florida, stating that Town's estate shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Premises or other Town property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Tenant fails to transfer or satisfy such claim within the thirty (30) day period, Town may do so and thereafter charge Tenant all costs incurred by Town in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to Town all such costs upon demand, as Additional Rent.

6.11 Traffic Concurrency Allocation. Tenant acknowledges and agrees that Tenant shall be obligated, at Tenant's sole cost and expense, if applicable pursuant to the ULDC, to obtain traffic concurrency approval for the additional traffic demand generated by Tenant's proposed development, the cost of which shall be recoverable by Tenant from Gross Revenue as an Operating Expenses provided the cost is reasonable and documented.

## **ARTICLE 7 - OBLIGATIONS OF TENANT**

7.01 Observance of Town Code of Ordinances. The provisions of the ULDC shall apply to the Property, and any violations of the ULDC shall be remedied by Tenant upon receipt of notice. Any costs or fines in connection with code enforcement shall be borne by the Tenant and shall not be deemed an Operating Expense.

7.02 Noise and Vibrations. Tenant shall comply with the Town's noise or vibrations ordinances or seek a waiver in writing from the Director.

7.03 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, and those others doing business with Tenant on the Premises.

7.04 Garbage and Debris. Tenant shall be responsible for the provision of trash removal services for the Premises with the same being an Operational Expense and agrees to deposit trash, garbage and non-vegetative waste in appropriate containers for collection using the Town's franchise waste provider.

7.05 Nuisance, Waste or Injury. Tenant shall not commit any nuisance, waste or injury on the Premises and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Premises. Notwithstanding the foregoing, Tenant's business operations and any by-products thereof shall not, by its nature, be deemed to be a nuisance. In the event of litigation filed by a third party, the parties shall agree to jointly defend such action. The reasonable costs to defend such action shall be deemed to be an Operational Expense.

7.06 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate or conflict with any insurance policies covering the Property; provided, however, that the intent of the Town and Tenant are for the Property to be utilized for uses described in Section 4.2 hereof and the

right to use and operate the property as such shall be permitted notwithstanding existing insurance policies; or

- (B) May constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Lease.

7.07 Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

7.08 Fire Extinguishing System. From time to time and as often as reasonably required by the Department or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus, if any, which are maintained by Tenant.

7.09 Derelict Vehicles. Tenant shall not knowingly permit the temporary or permanent storage of any Derelict Vehicles on the Premises. In the event that written notice from the Department is provided Tenant with written notice of the presence of any Derelict Vehicles owned by third parties on the Property, Tenant shall cause written notice to be delivered to the owner of such Derelict Vehicle advising of such status and requiring such owner to cure the basis for the identification of such vehicle as a Derelict Vehicle or to remove such vehicle from the Property within seven (7) days of Tenant's notice. If no action is taken by the owner to cure Derelict Vehicles status or remove the Derelict Vehicle from the Property, Tenant shall cause the Derelict Vehicle to be removed from the Premises.

7.10 Towing. The cost of obtaining towing services for the removal of Derelict Vehicles and abandoned or unauthorized vehicles shall be borne by the owner of the vehicle. Tenant shall use the Town's franchise towing vendor for such service. Tenant shall provide notice of the foregoing to such third parties storing or parking vehicles on the Property in any agreement provided by Tenant to such third parties for such service.

7.11 Emergency Evacuation and Hurricane Plans. If applicable, Tenant shall provide the Department with emergency evacuation and hurricane plans within ninety days of the actual commencement of its operations. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants, if any, in the event of an emergency evacuation or hurricane warning. Tenant shall update its emergency evacuation and hurricane plans annually, if requested by the Department.

7.12 Security of Premises. Tenant acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities, the costs of which are an Operational Expense. Tenant fully understands that the police security protection provided by Davie Police Department is limited to that provided to any other business situated in Southwest Ranches, Florida by the Davie Police department, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises and improvements constructed thereon, shall be an Operational Expense.

7.13 Sales Tax Exemption on Resource Recovery Equipment. Tenant shall make an application for the state sales exemption on Resource Recovery Equipment. The Town shall assist Tenant in the application as necessary to achieve all applicable sales tax exemptions.

## **ARTICLE 8 - MAINTENANCE AND REPAIR**

8.01 Maintenance and Repair of Premises. Tenant shall be responsible for conducting all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all landscaped areas, paved areas, buildings and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Such repair and maintenance costs shall be deemed to be Operational Expenses provided they are reasonable and documented. Maintenance and repairs shall be in quality and class comparable to the original work. Tenant shall be required to keep all landscaped areas, paved areas, curbing, buildings, equipment and other improvements in good condition and repair throughout the Term of this Lease. Without limiting the generality thereof, Tenant shall:

- (A) Repair and maintain all doors, windows, pavement, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, signage and structural support system(s).
- (B) Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (C) Repair any damage to landscaped areas, paving or other surface(s) of the Premises.
- (D) If applicable, repair and maintain all utilities including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Tenant and which are used exclusively by Tenant or any of its subtenants.
- (E) Repair and maintain those portions of any storm water drainage system serving and located upon the Premises.
- (F) Maintain all machinery structures, fencing, screening, fueling station, parking facilities and equipment used in the operation of the Qualifying Project in good condition and repair.
- (G) The costs incurred with the reasonable repair and maintenance of the Qualifying Project and Property shall be Operational Expenses provided they are reasonable and documented. Any costs to remedy ULDC or permit violations shall be borne by the Tenant and shall not be deemed an Operational Expense.

- (H) Tenant shall be responsible for maintaining all landscaping on the Premises in good condition and in compliance with the ULDC. The costs incurred with any and/or all of the foregoing shall be Operational Expenses provided they are reasonable and documented.

8.02 Inspections. The Department shall have the right to enter the Premises during regular business hours upon reasonable notice to Tenant to inspect same for the purpose of determining whether Tenant is in compliance with this Lease. If Tenant elects not to hire on-site employees as provided in Section 5.14. In the event Tenant is not in compliance with this Lease, as reasonably determined by the Department, the Department shall provide tenant with written notice of such noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, the Department may cause the same to be accomplished at Tenant's sole cost and expense. Tenant agrees that Tenant shall assume and be liable to Town for payment of all costs incurred by Town, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall constitute Additional Rent hereunder and shall be due and payable within thirty (30) calendar days of the date of the Department's written notice.

## **ARTICLE 9 - UTILITIES**

9.01 Utility Costs. Tenant shall pay for all electric and all other utility charges for the operation of the Qualifying Project and such costs shall be Operational Expenses. Metering devices shall become the property of Town upon installation. Tenant shall be responsible for the extension of utility mains and service to the Property and such utility mains shall become the property of Town upon installation, the cost of which shall be an Operational Expense.

9.02 Storm Water Drainage Systems. Tenant acknowledges and agrees that, if applicable, Tenant shall satisfy all storm water drainage requirements applicable to Tenant's development within the boundaries of the Premises, the cost of which shall be an Operational Expense. Town shall have the right, in its sole and absolute discretion and at its sole cost and expense, to relocate or otherwise modify any storm water drainage improvements located outside the Premises; provided that such relocation or modification does not negatively impact the Premises' drainage. Tenant shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Premises and the proper disposal thereof as required by all applicable federal, state and local laws, regulation and rules, as now or hereafter amended.

9.03 Water & Sewer Service. Tenant acknowledges, understands, and agrees that the Premises is not connected to sanitary sewer or municipal water, and that such connectivity is presently unavailable. As a result, Tenant will be required to construct a commercial septic system and a deep water well system or other suitable alternative for water at the Property, the cost of which shall be an Operational Expense provided it is reasonable and documented. The Town does not warrant the quality of the water obtained from the site and expressly recommends that the water not be ingested without consistent testing.

## ARTICLE 10 - INSURANCE REQUIREMENTS

Unless otherwise specified in this Lease, Tenant shall, as an Operational Expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Tenant acknowledges and agrees that the requirements contained in this Article, or Town's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease.

10.01 Commercial General Liability. Tenant 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 (ISO), and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the Town.

10.02 Business Auto Liability. Tenant shall maintain Business Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, non-owned and hired automobiles. In the event Tenant has 110 owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.

10.03 Environmental Liability. Tenant shall carry an Environmental Pollution Insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than \$500,000.00 Dollars per occurrence with deductible not greater than \$100,000.00. An additional Form or endorsement to the Commercial General Liability Insurance to include an Environmental Pollution Insurance coverage providing the specified coverage, is acceptable.

10.04 Business Interruption Insurance. Tenant shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual rental payable hereunder. Rent Insurance shall be carried in the name of Tenant as named insured and shall be payable to Town to be applied to rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

10.05 Worker's Compensation & Employer's Liability. Tenant shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis. Umbrella or Excess Liability. If required by law, and as determined by the Department, Tenant may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General



Liability, Business or Auto Liability. Town shall be specifically endorsed as an “Additional Insured” on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a “Follow-Form” basis.

10.06 Property, Wind & Flood Insurance. Builder’s Risk Insurance.

- (A) Tenant shall maintain Builder’s Risk insurance covering the Tenant’s building(s), betterments and improvements during the course of construction at the Premises in an amount at least equal to one hundred percent (100%) of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Tenant agrees this coverage shall be provided on a primary basis.

10.07 After construction of the Qualifying Project is completed, Tenant shall maintain:

- (1) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant’s contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (2) Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant’s contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant’s contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

10.08 Additional Insured Endorsement. Tenant shall endorse Town as “Additional Insured” on each of the liability policies required to be maintained by Tenant hereunder, with the exception of Workers’ Compensation/Employers Liability and Business Auto Liability. The “Additional Insured” endorsements shall provide coverage on a primary basis. Each “Additional

Insured” endorsement shall read: “Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees”, or as otherwise approved or modified by Town.

10.09 Certificate of Insurance. Tenant shall provide the Town with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:

- (1) Commercial General Liability insurance prior to the Effective Date;
- (2) Business Auto Liability insurance prior to allowing vehicles on to the Premises;
- (3) Environmental Liability insurance on or before the Date of Beneficial Occupancy;
- (4) Business Interruption and Workers’ Compensation insurance on or before the Date of Beneficial Occupancy.
- (5) Builder’s Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 11.07.
- (6) All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Tenant shall provide Town a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder’s name and address shall read “Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees,” 13400 Griffin Road, Southwest Ranches, FL 33330
- (7) The cost of all insurance premiums and required endorsements shall be an Operational Expense provided they are reasonable and documented.

10.10 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any condition, provision, or limitation of the property, flood or wind insurance policies. Tenant shall pay all premiums, including, but not limited to, increases for property, flood and wind insurance policies. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant

10.11 Deductibles, Coinsurance & Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

10.12 Right to Review or Adjust Insurance. The Town may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Town may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Town shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

10.13 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Town. Tenant agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

## **ARTICLE 11 - DAMAGE TO OR DESTRUCTION OF PREMISES**

11.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises. Tenant shall take all necessary actions to place the Premises in a neat and orderly condition to ensure the safety of persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, Town may utilize all available measures to ensure compliance with this Lease and the ULDC. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of any costs incurred by Town to remove such debris, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of written notice provided by the Department.

11.02 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, are damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of a Tenant Party, Tenant shall restore the Premises to the condition existing prior to such damage, the cost of which shall be an Operational Expense. Tenant shall commence restoration as soon as reasonably practicable after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 6. All repairs and restoration shall be performed by Tenant in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, Town shall have the right to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of the costs of restoration, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of the written notice provided by the Department.

11.03 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account so as to be available to pay for the cost of any required repair, replacement or rebuilding. The proceeds shall be disbursed at the direction of Tenant during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair,

replacement or rebuilding of damaged improvements, any additional sums required to complete the required repair, replacement or rebuilding into the escrow account shall be paid from the Gross Revenues. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant and treated as Gross Revenues.

## **ARTICLE 12 - ENCUMBRANCES**

12.01 Except as otherwise provided for in Article 16 herein or as otherwise provided for in this Lease, Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises without Town's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without Town's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of a Tenant Party. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

## **ARTICLE 13 - TITLE TO IMPROVEMENTS**

13.01 Title to Improvements on the Premises. Except as otherwise provided for herein, Tenant shall be deemed to be the owner of all Tenant Improvements during the Term. Upon expiration of the Term or earlier termination of this Lease, all buildings, structures, pavements, facilities, landscaping and other improvements, above and below ground, constructed or placed upon the Premises by Tenant, title to which has not previously vested in Town hereunder shall become the absolute property of Town, and Town shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of Town, Tenant shall provide Town with a bill of sale or other evidence of the transfer of ownership of the Tenant Improvements together with evidence satisfactory to Town that the improvements are free from liens, mortgages and other encumbrances.

13.02 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

## **ARTICLE 14 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**

14.01 Expiration. This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed in accordance with Section 3.02, this Lease shall automatically terminate at the end of the Renewal Term.

14.02 Default. The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

- (A) The vacating or abandonment of the Premises by Tenant.

- (B) The failure by Tenant to make payment of rental or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) Business Days after such payment is due and payable, provided that written notice of such failure has been provided to Tenant advising Tenant of such failure and affording a seven (7) day opportunity to cure.
- (C) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure continues for a period of thirty (30) days after written notice thereof from Town to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing contained in this paragraph shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided in this Lease.
- (D) To the extent permitted by law: (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.
- (E) Violation of any part of the foregoing provisions shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of receipt of notice from Town or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period.

Notwithstanding any provision of this Lease, Tenant acknowledges and agrees the Town may require Tenant to immediately cease any activity, which could result in an Industrial Park hazard or endanger safety of any Industrial Park user, as reasonably determined by the Town.

14.03 Remedies. In the event of a material default by Tenant, Town may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which Town may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (A) Declare the entire rent for the balance of the Term or any part thereof due and payable forthwith, and bring an action for the recovery thereof.
- (B) Terminate Tenant's right to possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Town is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Tenant. Upon such reletting, all rentals received by Town shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Town due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Town relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the remainder, if any, shall be paid to Tenant.
- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Town, thereby terminating any further liability under this Lease on the part of Tenant and Town. Notwithstanding the foregoing, Town shall have a cause of action to recover any rent remaining unpaid when Town retakes possession of the Premises for the account of Town.
- (D) Stand by and do nothing, holding Tenant liable for rental as it comes due.
- (E) Pursue any other remedy now or hereinafter available to Town under the laws of the State of Florida
- (F) Notwithstanding anything in this Lease to the contrary, Town shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and Town reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

14.04 Termination by Tenant. Tenant may terminate this Lease, if Tenant is not in default of this Lease (including, but not limited to, its payments to Town hereunder), by giving Town sixty (60) days advance written notice, upon or after the happening of any one of the following events:

- (A) The default by Town in the performance of any covenant or agreement herein required to be performed by Town and the failure of Town to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if Town shall

have remedied the default within such thirty (30) day period; or in the event the same cannot be cured within such thirty (30) day period and Town has commenced such cure and thereafter diligently pursues the same until completion.

- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Industrial Park and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

14.05 Default by Town. Town shall not be in default unless Town fails to perform obligations imposed upon Town hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Town, specifying wherein Town has failed to perform such obligations; provided, however, that if the nature of Town's default is such that more than thirty (30) days are reasonably required for its cure, then Town shall not be deemed to be in default if Town commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

14.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to Town in good condition, upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to Town for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to Town during the entire time period of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of Tenant not removed by Tenant shall, at the option of Town, become the property of Town, or alternatively, may be disposed of by Town at Tenant's expense.

14.07 Surrender of Property. Upon termination of the Lease Agreement and surrender of the Property, Tenant shall remove any green waste, soil and mulch that extends in excess of one (1) foot above elevation, as listed on the updated survey (as defined in section 2.35).

## **ARTICLE 15 - ASSIGNMENT, TRANSFER AND SUBLETTING**

Tenant shall not, in any manner, assign, transfer or otherwise convey an interest in this Lease, the Premises or any portion thereof ("Assignment"), without the prior written consent of Town, which consent may be unreasonably withheld, conditioned or delayed. When considering an assignment, transfer, or sublet, the Town shall consider if the intended assignee: (a) has the ability to make the rental payments required under this Lease; (b) has sufficient experience to operate the facilities constructed or to be operated on the Premises in the manner required hereunder; (c) has the ability to otherwise perform all of the terms, conditions and covenants of this Lease; and (d) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. Any attempted Assignment without Town approval shall be null and void. In the event Town consents in writing to an Assignment, Tenant shall have the right to assign this Lease to the extent permitted by Town's consent to such

Assignment, provided that the use of the Premises shall be limited to the same uses as are permitted under this Lease. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein. Upon an approved assignment and the assumption by such assignee of Tenant's obligations hereunder, Tenant shall be released from all liability and obligation arising hereunder upon such assignment. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Town may freely assign this Lease at any time without the consent of Tenant, and upon assumption by such assignee of Town's obligations hereunder, Town shall be released from all liability and obligation arising hereunder upon such assignment.

## **ARTICLE 16 - RIGHTS OF LEASEHOLD MORTGAGEES**

16.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Qualifying Project and further provided that Town shall not be obligated to, nor deemed to have subjected or subordinated Town's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated Town's interest in this Lease to such Leasehold Mortgage. Town's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage. If Tenant defaults on or under any mortgage, security agreement or other such instrument, such default will not, in anyway impact the Town, Tenant's obligation to pay the Town, or the Town's unencumbered ownership of the Property. A default of a Leasehold Mortgage shall constitute an immediate breach of this Agreement.

16.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Town, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Town, Town, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Town. Town agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of Town's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of Town to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. Town's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under



this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

16.03 Opportunity to Cure. Town will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to Town that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances any then-existing defaults by Tenant, and performs Tenant's obligations under this Lease. Town agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by Town. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, Town shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

16.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

16.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

16.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be

with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge, in the event Tenant or Leasehold Mortgagee shall require a certificate beyond the aforementioned statements (a) thru (e). additional time will be required to obtain Town Council approval of a certificate; alternatively, a specific estoppel certificate form may be submitted with the agenda item and approved by the Town Council in advance.

16.07 Subordination of Landlord's Lien. Town does not subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of Town's lien shall be self-operative.

16.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, but not limited to, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to Town, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as Town may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint Town as attorney in fact for the limited purpose of execution of such Release Documents.

16.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and, against any and all Damages arising from to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

16.10 Personal Property. Notwithstanding any other provision of this Lease to the contrary, Tenant may, without Town's or Department's consent, from time to time, secure financing or general credit lines and grant the lenders thereof, as security therefor: (a) a security interest in Tenant's personal property located at the Premises, and/or (b) the right to enter the Premises to realize upon any personal property so pledged and/or (c) pledge Tenant's share of and interest in the Net Revenues. Upon Tenant providing notice of such financing to Town, Town agrees to evidence its consent in writing to such security interest. All of Tenant's personal property shall be and remain the personal property of Tenant. Town expressly waives its statutory and common law landlord's liens as same may be enacted or may exist from time to time and any and all rights granted under any present or future laws to levy or distrain for rent, whether in arrears or in advance, against the aforesaid personal property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver (upon Tenant's request).

## **ARTICLE 17 - INDEMNIFICATION**

17.01 Indemnification of Town. Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character (collectively referred to herein as “Damages”) against, or in which Town is named or joined, arising out of this Lease or use or occupancy of the Premises by any Tenant Party, including, but not limited to those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with a Tenant Party’s acts, omissions or operations hereunder, or the performance, non-performance or purported performance of a Tenant Party or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to a Town Party for Damages that are solely attributable to the negligence or willful misconduct of such Town Party. Tenant further agrees to hold harmless and indemnify the Town Parties for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to a Tenant Party’s activities or operations or use of the Premises whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

## **ARTICLE 18 - EXTERIOR SIGNAGE**

18.01 Signage. Tenant may install and operate upon the Premises, at its sole cost and expense All signage shall be in conformity with the ULDC.

## **ARTICLE 19 - LAWS, REGULATIONS AND PERMITS**

19.01 General. Tenant agrees that throughout the Term and any extension thereof, Tenant shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature but not limited to, as now or hereafter amended.

19.02 Permits and Licenses Generally. Tenant agrees that it shall be responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Lease or any extension thereof by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by Tenant, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, Tenant’s operations and activities

on the Premises have been obtained and are in full legal compliance. The cost and expense of such permits, licenses and other governmental authorizations, and the renewals thereof, shall be an Operational Expense. Upon the written request of Town, Tenant shall provide to Town certified copies of any and all permits and licenses which Town may request.

19.03 Safety Regulation. Tenant agrees that it shall conduct its operations and activities under this Lease in a safe manner, shall comply with all safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all Tenant Parties transacting business with or for Tenant, resulting from, or in any way related to, the conduct of a Tenant's business on the Premises. Tenant shall procure and maintain such fire prevention and extinguishing devices as may be required by Town in accordance with applicable provisions of the ULDC, and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Property, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

19.04 Environmental and Natural Resource Laws, Regulations and Permits.

- (A) Notwithstanding any other provision of this Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to Town, upon which Town expressly relies, that Tenant is knowledgeable of, and shall fully comply with, any and all Environmental Laws applicable to Tenant and its operations hereunder.
- (B) Tenant acknowledges that, if its operations involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, such operations may be subject to regulation under applicable Environmental Laws. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such Hazardous Substances, in a manner which is both safe and in full compliance with any and all applicable Environmental Laws.
- (C) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Tenant's operations conducted on the Premises, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter thereof. Tenant further represents, warrants, guarantees and covenants to Town, upon which Town hereby expressly relies, that Tenant and any Tenant Party required to be so trained

working for, or on behalf of, Tenant have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- (D) Tenant shall provide to Town satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Town.
- (E) If Tenant is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Tenant shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Laws;
  - (2) Tenant shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Premises by Town;
  - (3) Tenant shall notify the Broward County Solid Waste Authority, Broward County Environmental Resources Management Department, and such other appropriate agencies as Town may from time to time designate, of all Tenant's hazardous waste activities, if any; and
  - (4) Tenant shall provide to the Department and to all appropriate governmental entities having jurisdiction there over, contact information for its emergency coordinator in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Violation of any part of the foregoing provisions or disposal by Tenant of any Hazardous Substances in violation of the provisions of this Article shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of receipt of notice from Town or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by a Tenant Party on or from the Premises, regardless of whether

or not a default notice has been issued and notwithstanding any other obligations imposed upon Tenant pursuant to the terms of this Lease. All such remedies of Town with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

- (G) Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and against any and all Damages arising from, resulting out of or in any way caused by or connected to a Tenant Party's failure to comply with applicable Environmental Laws. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 18. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

19.05 Environmental Assessment. At least one hundred twenty (120) days, but no more than one hundred eighty (180) days, prior to the expiration or earlier termination of this Lease, and the expiration of any Renewal Term, Tenant shall cause a Phase II Environmental Assessment (the "Phase II EA") of the Premises to be prepared and delivered to Town. The EAs shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Town, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Property. The Phase II EA shall state that Town is entitled to rely on the information set forth in the EAs. The Phase II EA shall be prepared and delivered to Town at Tenant's sole cost and expense. The Phase II EA must address any potential environmental conditions or areas of contamination identified. Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises and/or adjacent property into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of this Lease relating to the condition of the Premises and shall survive the termination or expiration of this Lease. Nothing in this Section shall be construed as obligating Tenant to remediate any condition identified in the Environmental Assessments or caused by the activities of a Town Party.

19.06 Phosphorus/Nitrogen Mitigation Strategy. Nutrient Management and Other Soil and Water Contaminants Mitigation Strategy.

- (A) Prior to the commencement of the Lease, Tenant shall supply the Town with a site plan and detailed written description of its plan to (1) implement monitoring protocols to prevent and to detect nutrient migration, (2) manage nutrient run-off through surface and groundwater flow, (3) store and handle fuel and other hazardous materials, (4) prevent contamination of

soil from excessive nutrient loading through storage, processing and/or land application of vegetative material and marketable products such as mulch and compost, and (5) conduct soil fertility monitoring and water quality sampling

- (B) At commencement of the Lease, Tenant shall supply to the Town a base line assessment of nutrients such as phosphorus and nitrogen as well other soil and water contaminant levels including metals. Subsequently, Tenant shall supply, to the Town, semi-annually (every six (6) months) soil sampling and water testing assessment of for such nutrients and other soil and water contaminants. Tenant shall utilize the monitoring wells presently installed at the Property, and may install additional wells, as may be needed.
- (C) If it is determined that nutrient and other contaminant levels have risen by an amount that would require remediation by the State of Florida or other responsible governmental agency, Tenant shall, within thirty (30) days, submit a plan to the Town outlining processes and procedures, which will be performed, at Tenant's sole expense, to mitigate and to reduce contamination of soil, groundwater, and surface water with excessive nutrients and other contaminants. If, the following report shows that contaminant levels have once again risen, Tenant shall immediately cease operation until and unless a mitigation plan, approved by the Town, has been implemented, and has successfully shown a reduction in contaminant levels. Such cessation of operation does not in any way impact Tenant's requirement to pay rent as delineated herein.

#### **ARTICLE 20 - AMERICANS WITH DISABILITIES ACT**

Tenant shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with Town to ensure Tenant remains in compliance with such requirements throughout the Term of this Lease.

#### **ARTICLE 21 - DISCLAIMER OF LIABILITY**

TOWN HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES THE TOWN PARTIES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY ANY TENANT PARTY DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF A TENANT PARTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A TOWN PARTY'S SOLE NEGLIGENCE OR IS CAUSED BY TOWN'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE TOWN BE

LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES PURSUANT TO THIS LEASE.

## **ARTICLE 22 - GOVERNMENTAL RESTRICTIONS**

22.01 County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Town, as a political subdivision of the State of Florida, or any of the public officials of Town, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

22.02 Release. Tenant acknowledges that noise and vibration are inherent to the operation of the Property and hereby releases Town from any and all liability relating to the same.

## **ARTICLE 23 - NON-DISCRIMINATION**

23.01 Non-Discrimination in Town Contracts. Town is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of this Agreement.

- (A) As a condition of entering into this Lease, Tenant represents and warrants that it will comply with Town's Commercial Nondiscrimination Policy. As part of such compliance, Tenant shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of contractors, vendors, suppliers, or commercial customers in the design and construction of the Initial Leasehold Improvements, nor shall the Tenant retaliate against any person for reporting instances of such discrimination. Tenant shall provide equal opportunity for contractors, vendors and suppliers to participate in all of its public sector and private sector contracting and supply opportunities in connection with the design and construction of the Initial Leasehold Improvements, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in Town's relevant marketplace. Tenant understands and agrees that a material violation of this clause shall be considered a material breach of this Lease and may result in termination of this Lease, disqualification or debarment of Tenant from participating in Town contracts, or other sanctions. This clause is not enforceable by or for



the benefit of, and creates no obligation to, any third party. Tenant shall include this language in its contracts for the design and construction of the Initial Leasehold Improvements.

23.02 Federal Non-Discrimination Covenants. Tenant represents and warrants to Town that Tenant shall comply with all applicable Federal Nondiscrimination Requirements set forth in Exhibit “G” attached hereto.

#### **ARTICLE 24 - TOWN NOT LIABLE**

Town shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Town. All personal property placed on or moved on to the Premises shall be at the sole risk of Tenant. Town shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

#### **ARTICLE 25 - AUTHORIZED USES ONLY**

Notwithstanding anything to the contrary herein, Tenant shall not use or permit the use of the Premises, the Property or the Qualifying Project for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Industrial Park for Town or Tenant.

#### **ARTICLE 26 - MISCELLANEOUS**

26.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties’ right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

26.02 Subordination.

- (A) Subordination to Bond Resolution. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Town in the Bond Resolution, and Town and Tenant agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all rights of Town hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and Town with the terms and provisions of this Lease and Bond Resolution.

- (B) Subordination to State/Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Town acquired the land, of which the Premises are a part, or improvements thereon, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Town and the United States of America or State of Florida, or any of their agencies, relative to the operation or maintenance of the Industrial Park, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Industrial Park.

26.03 Easements. Nothing in this Lease shall impair any existing utility easements, nor impair the right of access to any existing utility lines. Town reserves the right to grant easements, licenses and rights of way to others over, under, through, across or on the Premises reasonably necessary for the development, operation or provision of utility services to adjacent properties; provided that such grant is not materially detrimental to the proper conduct of Tenant' operations. The Town agrees to cooperate in good faith with Tenant to determine the appropriate location of such easements, licenses and rights of way in an effort to avoid unnecessarily impacting Tenant's operations. Tenant agrees to consent and join to such easements, licenses and rights of way upon the written request of Town.

26.04 Independent Contractor. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Town shall in no way be responsible therefor.

26.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit Town's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. Town's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statues and laws, nor to alter or impair Town's governmental functions, including, but not limited to, Town's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of Town's governmental authority.

26.06 Rights Reserved to Town. All rights not specifically granted Tenant by this Lease are reserved to Town.

26.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

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

26.09 Venue. Venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Broward County, Florida.

26.10 Notices. All notices and elections (collectively, “notices”) to be given or delivered by or to any party hereunder, shall be in writing and shall be sent via electronic mail with confirmation of delivery. The parties may elect, in writing, alternative service such as hand delivery by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5 p.m. on a Business Day and on the next Business Day if transmitted after 5 p.m. or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:Town:

Town of Southwest Ranches  
Attn: Andrew Berns, Town Administrator  
aberns@southwestranches.org  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

With a copy to:

Town of Southwest Ranches  
Attn: Keith Poliakoff, Town Attorney  
Keith.Poliakoff@saul.com  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008

Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to:

M. Scott Kleiman, Esq.  
Kalis, Kleiman & Wolfe  
7320 Griffin Road, Suite 109  
Davie, FL 33314  
Phone: 954-791-0477  
Fax(954) 791-0506  
Email: Scott@kklaw.us

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other party.

26.11 Inspector General. County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed Town contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Tenant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Broward County Code, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

26.12 Paragraph Headings. The heading of the various articles and sections of this Lease are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

26.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Broward County, Florida, without the prior written consent of the Department. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease, Tenant shall promptly execute, in recordable form, and deliver to Town a termination of the memorandum of this Lease. In the event Tenant fails to provide the foregoing termination document within thirty (30) Business Days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and Tenant hereby appoints Town attorney-in-fact for the limited purpose of execution of such termination document.

26.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

26.15 Performance. The parties expressly agree that time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

26.16 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one

party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

26.17 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless Town from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees plus cost at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. The obligations set forth in this paragraph shall survive the termination of this Lease.

26.18 Certification. Tenant certifies and affirms that no compensation has been or will be paid or given to any person associated or affiliated with the Town for the Town's acceptance of this Public Private partnership proposal or agreement. Additionally, Tenant certifies that no person associated or affiliated with the Town has any contingent right or agreement to receive compensation upon acceptance of the Public Private Partnership Proposal or the execution of a Lease Agreement.

26.19 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287.133(3)(a), Florida Statutes.

26.20 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

26.21 Annual Appropriation. Nothing in this Lease shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Town's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Town Council.

26.22 Consent or Action. Wherever this Lease requires Town or Department's consent or approval or permits Town or Department to act, such consent, approval or action may be given or performed by the Director.

26.23 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

26.24 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

26.25 Incorporation by References. All terms, conditions and specifications of RFP No. 20-003; the Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Lease, the order-of-precedence shall be: (a) this Lease; (b) the RFP No. 20-003; and (c) the Proposal.

26.26 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of Town and/or Tenant.

26.27 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, pandemic, strike, lockout, breakdown, accident, weather, order or regulation of or by any governmental authority or failure to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

26.28 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

26.29 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

26.30 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 Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Proposer acknowledges the public shall have access, at all reasonable times, to all documents and information pertaining to the 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.

To the extent that Tenant 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 RFP process, Proposer shall keep and maintain the security-sensitive information as confidential and exempt from public disclosures, as required by Florida Statutes.

Tenant agrees to keep and maintain public records required by the Town to perform the service in Tenant’s possession or control in connection with Tenant’s performance under this RFP and any Agreement awarded, and upon the request from the Town’s custodian of public records, to provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. Tenant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the contract term and following completion of the Agreement, if Tenant does not transfer the records to the Town.

Upon completion of the Agreement, Tenant agrees, at no cost to the Town, to transfer to the Town all public records in possession of Tenant or keep and maintain public records required by the Town to perform the service. If Tenant transfers all public records to the Town upon completion of the Agreement, Tenant shall destroy any duplicate public records which are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of the Agreement, Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology system of the Town.

Tenant’s failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Agreement by the Town.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TENANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, TENANT MUST CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PHONE: (954) 434-0008; EMAIL: RMUNIZ@SOUTHWESTRANCHES.ORG; RUSSELL MUNIZ, ASSISTANT TOWN

ADMINISTRATOR/TOWN CLERK, TOWN OF SOUTHWEST RANCHES, 13400 GRIFFIN ROAD, SOUTHWEST RANCHES, FLORIDA, 33330.

(Remainder of page left blank intentionally)



**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease as of the day and year first above written.

**SOUTHWEST RANCHES, A  
POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA, BY ITS TOWN  
COUNCIL**

**CLERK AND COMPTROLLER**

By: \_\_\_\_\_  
Russell Muñiz,  
Assistant Town Administrator/Town Clerk

By: \_\_\_\_\_  
Doug McKay, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
Keith Poliakoff, Town Attorney

By: \_\_\_\_\_  
Andrew Berns, Town Administrator

**Signed, sealed and delivered in the  
presence of two witnesses for TENANT:**

**TENANT:  
SUPREME ORGANICS, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

(Seal)

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# Lease Agreement

## Exhibit "A"

### Legal Description of Property

Lots 60, 61, 62 and the vacated Right of Way of Sylvan Pass, of the Replat of Portion of West Broward Industrial Park, according to the Plat thereof, as recorded in Plat Book 157 page 39, of the public records of Broward County, Florida.

LESS AND EXCEPT the property conveyed for Road Easement by Warranty Deed recorded in Official Record Book 48658 Page 890, of the public records of Broward County, Florida.

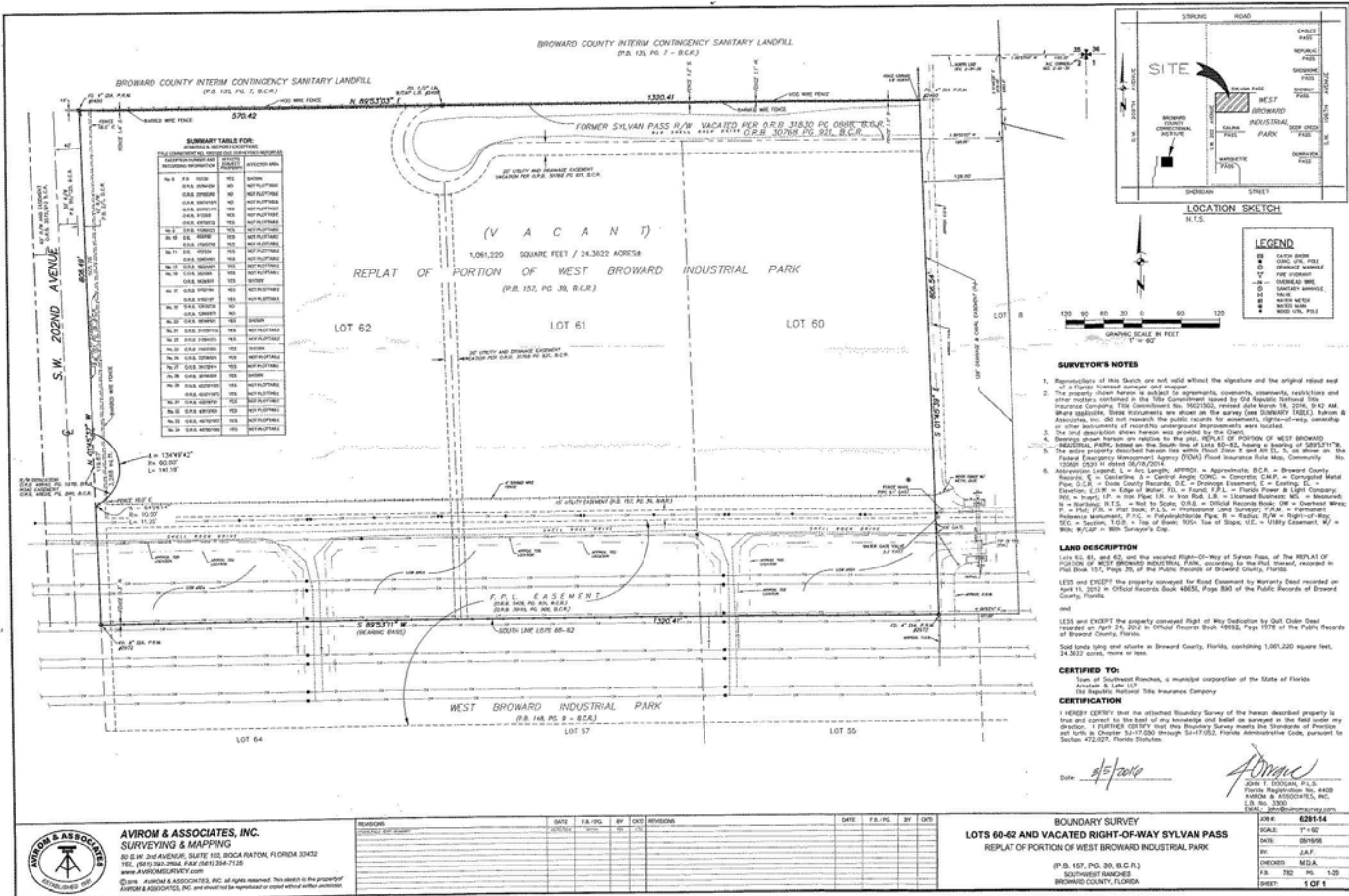
And

LESS AND EXCEPT the property conveyed Right of Way Dedication by Quit Claim deed recorded in Official Record Book 48692 Page 1976, of the public records of Broward County, Florida.

Said lands lying and situate in Broward County, Florida containing 1,061,220 square feet, 24.3622 acres, more or less.

Said property is identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; 5139 02 04 0511 and 5139 02 04 0490 and Zoned Manufacturing (M).

# Exhibit "A-1" Survey



# Lease Agreement

## Exhibit "B"

Supreme Organics LLC  
1675 North Commerce Parkway  
Weston, Florida 33326

October 28, 2019

Mr. Andrew Berns, Town Administrator  
Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, Florida 33025

Re: 25± Acre Vacant Land, Folio #513902040490, 513902040500, 513902040510, 513902040511, a/k/a Lots 60, 61, 62 and the Vacated Right-of-Way of Sylvan Pass, according to the Replat of a Portion of West Broward Industrial Park – Public/Private Partnership Proposal

Dear Town Administrator Berns:

Transmitted herewith is a Public/Private Partnership proposal ("P3 Proposal") by Supreme Organics, LLC, a Florida limited liability company ("Supreme") for the operation of the 25 ± acres of the Town of Southwest Ranches' (the "Town") owned property as described above. This proposal is being tendered consistent with the provisions of Section 255.065, Florida Statutes.

Under the Public/Private Partnership ("P3") statute, a private entity may submit an unsolicited proposal to a governmental entity, provided that such proposal serves a public purpose. When the proposal is unsolicited it must contain the following information:

1. Project description (conceptual design and proposed project schedule);
2. How the property interests will be secured;
3. Plans for financing the project; and
4. Proposed user fees, lease payments or service payments.

Upon receipt of such proposal, if the governmental entity is interested in proceeding, the governmental entity must publish notice of our proposal once a week for two (2) weeks, whereby it will accept other proposals for at least twenty-one (21) days. Thereafter, the governmental entity shall rank the proposals and enter into a negotiation process.

When reviewing such proposals the governmental entity must consider:

1. Is the Project in the public's best interest;
2. Ownership interest;
3. Safeguards to ensure public will not experience additional costs or service disruptions in the event of cancellation; and
4. Safeguards to ensure public entity can add capacity.

As such, and in accordance with the statutory requirements, Supreme is hereby submitting to the Town this unsolicited proposal for the operation of a green waste depository facility on the

Property for use by residents of and businesses operating within the Town's municipal boundaries, as well as to the general public at large, together with a vehicle parking and storage facility open to the public, with a first preference for use by and for residents and businesses living and operating within the Town's municipal boundaries. As a consequence of the green waste depository facility and the decomposition of the green waste on the Property, and related uses, such as the sale or resale of the soil resulting from the decomposition of the green waste, an additional revenue center will be created as well. Supreme requests that we enter into a Comprehensive Agreement, as defined by the statute, with the City no later than December 30, 2019.

### I. Background on Respondent

Supreme Organics, LLC, is a newly created Florida limited liability company comprised of a seasoned and experienced ownership and management team. As a newly created Florida limited liability company, Supreme has no current or existing financial records. Supreme is led by James E. McDonnell, IV. Mr. McDonnell is a successful and tested entrepreneur who has a "hands-on" approach in his ventures, as well as being a leader in the environmental industry. Mr. McDonnell is the founder and creator of Pro-Lab®, the world leader in environmental testing, having sold more than twenty-one million test kits over the last two decades, and has the world's largest environmental testing laboratory based on testing volume.<sup>1</sup>

In addition to Pro-Lab® and a host of other enterprises – ranging from publishing, e-magazine and restaurants – Mr. McDonnell founded ProScapes Enterprises, LLC, a full service landscaping installation company, in 2013. From a start-up in 2013, ProScapes is now a ten million dollar per year business. Through the operation of ProScapes, Mr. McDonnell has overseen the operation of green waste recycling and its benefits. In connection with the green waste, Mr. McDonnell engaged a professional team to work with organically sourced greenery composting. This team and this experience will spearhead the operation of Supreme.

On the business side, Matthew Adams, CPA, has more than thirty-two years of finance and accounting experience across many different industries. For the past decade, Mr. Adams has been the Chief Financial Officer for the portfolio of companies founded and operated by Mr. McDonnell. Most recently he has led the accounting and finance departments for PRO-LAB® as well as ProScapes Enterprises. Prior to devoting his efforts to Mr. McDonnell's entrepreneurial portfolio, Mr. Adams spent twelve years serving as the Chief Financial Officer for a large South Florida commercial real estate firm. During his time as CFO, the portfolio value grew from \$25,000,000 to over \$250,000,000. While at the real estate firm Mr. Adams procured financing on purchases and repositioned assets as well as led the acquisition process of many properties throughout Florida and the United States.

This experienced leadership team will oversee the development and operation of the green waste

<sup>1</sup> In lieu of financials for Supreme, ProScapes Enterprises, LLC, its related entity will provide financials in a sealed envelope indicating that the same are exempt from public record, provided that the Town can insure the same.

facility and parking and storage facility on the Property, as well as the development of any and all public purpose oriented uses at and from the Property. At the initiation of operations, Supreme will have the use and benefit of ProScapes equipment to facilitate the acceptance of green waste and the spreading of the same on the Property, as well as the leasing of employees by ProScapes to Supreme prior to the hiring of specific and dedicated staff for the site.

ProScapes has personnel beyond the management team experienced in the collection and composting of green waste. These experienced personnel will be on site to insure the even distribution of green waste so as to best management the expected volume of deposits of green waste materials so as to maximize both the disbursement across the Property and the decomposition and composting process, while minimizing the height of the piles on site. ProScapes has processed green waste on its existing site within the Town, successfully turning the green waste into useable, nutrient rich soils for its nursery operations.

This team is knowledgeable in the field of green waste collection and recycling, and ready and able to operate the green waste disposition and recycling on the Property.

## II. Justification for Entry into an Operating Agreement or Lease

The Property was acquired by the Town from the Corrections Corporation of America by Special Warranty Deed dated April 5, 2016, and recorded in the Broward County Public Records on April 7, 2016. In conjunction with the acquisition of the Property, the Town utilized the proceeds of a \$7,750,000.00 bond with a twenty (20) year maturity and a bank call option after fifteen (15) years. The debt service payments on the bond are payable presently interest only at the rate of \$125,937.50 semi-annually, which equates to \$20,989.58 per month. That debt service will increase to \$384,270.83 semi-annually in November 2021 when principal and interest become payable. The payment amount will decrease in small incremental amounts semi-annually thereafter. At this time, the Town has no anticipated revenue generation from the Property to offset the current and future debt service on the bond.

The Property, which is bounded on the east by the City of Pembroke Pines and by unincorporated Broward County to the north, south and west, is presently vacant land which is zoned M-4 Heavy Industrial District. The M-4 Heavy Industrial District allows for the heaviest manufacturing and industrial uses, involving the use, handling and storage of hazardous materials, or industrial uses which require a substantial amount of open air storage. This location and the commensurate zoning category, make this site ideal for the deposit of green waste materials by the general public, including residents of and business operating in the Town.

Green waste is a term that was coined to refer to organic waste that can decompose and has a high concentration of nitrogen. The proper disposition and disposal of green waste has been an issue within both the Town and all of Broward County for some time. Typically, green waste, which is typically composed of lawn and grass clippings, leaves, palm fronds branches and other yard trash are picked up once or twice per month, depending on the municipality. In the case of the Town, there are such pick-ups twice per month. Additionally, most municipalities impose limitations on the size and volume of the green waste which may be picked up at any one time.

The Town imposes such limitations, which limit single items to less than four (4) feet in length or 50 pounds in weight and, in any event, a twelve (12) cubic yard maximum for residential pick-up. Bulk piles exceeding the twelve (12) cubic yard maximum will be picked up and billed at a rate of \$17.50 per cubic yard. Given the unique and rural nature of the Town, and the larger parcel sizes, bulk piles in excess of twelve (12) cubic yards are not uncommon.

Depending on the timing of a resident's landscaping activities, the green waste resulting from those activities may sit in an unattractive pile in the resident's yard until a scheduled bulk pick-up date approaches. In the interim, the growing debris pile becomes an eyesore for neighbors and the Town. Unfortunately, residents also will place their bulk green waste piles out earlier than is permitted in violation of applicable Town codes, resulting in an upswing in code enforcement citations and cases. In either case, the twice per month yard waste pick-ups by the Town's waste hauler, Waste Pro, does not meet the ongoing needs of the Town's residents. Additionally, the swales and vacant parcels in the Town become the repository of the illegal dumping of green waste when people, including Town residents, have no other options for such waste. As there is no meaningful alternative to the twice per month bulk pick-up available to residents, this provides an option that fills a true need of the residents of the Town, and the public in general.

The Town is also the home to a plethora of nurseries and landscaping companies. These companies commonly retain on their properties the green waste that cannot otherwise be timely and inexpensively disposed of by these businesses, which creates additional issues, and code violations within the Town. These commercial operations have a need to properly dispose of their green waste in a prompt and efficient manner; however, the ability to do so at Broward County operated landfills is neither convenient nor cost efficient. The landfills open at 8:00 a.m. and close at 4:00 p.m., which is usually the hours that the landscape maintenance are providing their services to their customers. These companies do not have the time to sit in a line at the County landfills to dispose of their accumulated green waste. Additionally, the cost per ton to dispose of green waste is approximately \$50.00 per ton, which equates to approximately \$25.00 per yard, a significant expense. In the interim, the green waste accumulates on sites located within the Town.

Beyond the borders of the Town, the same types of issues face the rest of Broward County, as well as our neighbors to the south in Miami-Dade County. Limited yard waste bulk pick-ups leading to accumulations of green waste and limited hours of operation for governmentally operated landfills, coupled with illegal dumping of green waste on the streets and vacant lots throughout the area, reinforces the fact that readily available and affordable locations to accept green waste are needed.

When most people think of "recycling", they think of glass, metal, paper and plastics. In reality, the collection of green waste in a dedicated location is "recycling." The materials that comprise green waste are organic in nature and should not end up being disposed of in a landfill. This material composts and decomposes into a rich organic soil. The larger green waste materials, such as tree branches and tree trunks – which do not decompose at the same rate as leaves, palm fronds and grass clippings – can be disposed of through the use of "burn boxes." The resulting ash is mixed with the decomposing green waste to create an even more nutrient rich topsoil. This



“manufactured” topsoil, which has a beneficial use in farming and nursery operations, can be sold to end users. The green waste, particularly its woody components, is crucial because it increases the quantity of the manufactured topsoil. The “manufactured” top soil is vital because it increases the water retention capacity of regular soils and introduces minerals to the soil.

Other portions of the green waste material become an organic mulch, which can be sold to and used by homeowners and nurseries alike in plant beds and as ground cover to help retain moisture, thereby reducing water usage, while supplying plants and trees with nutrients as the mulch breaks down. Recycling green waste is an essential activity as it not only reduced dumping in landfills, it can also contribute to reducing the number of greenhouse gases in the environment.

The issue confronting the Town is how best to create an avenue for its residents to legally and efficiently dispose of its green waste in a manner which does not run afoul of the Town’s Code of Ordinances, while providing a low cost alternative for the easy and environmentally sound manner for the disposition of such materials, and providing the commercial landscaping and nursery businesses which operate within the borders of the Town an available and convenient avenue for transferring its accumulation of green waste without interruption of their business operations, and without unduly burdening existing landfills. Additionally, the same issues face neighboring municipalities and both Broward and Miami-Dade County. The Town should address these issues impacting its residents and resident business, and Broward County as a whole, and assist in its resolution by the creation of a public-private partnership to provide a designated green waste disposal site within the confines of property owned by the Town. The creation of an operating agreement (or, in the alternative, a lease) with Supreme to operate such a disposal site on the Property is a valid public purpose, and a sound and appropriate basis for the investment of public lands. It is also but one basis to proceed with such a public-private partnership.

In addition to the creation of a green waste disposal facility to address the above-reference public need, the Town has a number of residents, and an even greater number of Town based businesses who maintain vehicles on their properties which are not permitted to be located on such parcels under the applicable Town’s Code. The owners of these vehicles, in many cases, lack conveniently located and reasonably priced alternatives for the parking of these vehicles, which are typically commercial vehicles. As a result, they run the continued risk of being issued code citations for violations of applicable municipal codes. Alternatively, the owners of these vehicles are relegated to parking them at inconveniently located and often distant and expensive locations, thereby creating a financial burden on the residents and businesses in the Town. That is, of course, when space is available.

Surrounding communities also face the same issue. Cities, such as Cooper City, flatly prohibit the parking of commercial vehicles in residentially zoned communities. Municipally operated vehicle storage sites are limited and the number of spaces are scarce, while waiting lists are long. Commercial storage facilities are more geared to indoor storage, with similarly limited numbers of spaces for the parking of vehicles, particularly larger vehicles, such as trucks.

To remedy this issue and ease the burden on its residents and businesses, as well as potentially offering relief to vehicle owners from surrounding communities, helping residents to avoid code violations and lessening the visual blight created by the significant numbers of commercial vehicles and other larger vehicles being parked and stored within residential communities, Supreme will, through the reservation of a portion of the Property – of up to ten (10) acres -- for vehicle parking and storage as part of the same public-private partnership. This too would also serve a valid public purpose and be an appropriate use and dedication of public lands.

As a further public benefit, the operation of the Property as envisioned hereby would result in the payment of the Town's ongoing bond debt service and the generation of revenues to generate income beyond such the amount of the Town's bond debt and our operational costs in amounts which would not only reduce the ad valorem tax burden of the Town's property owners, but would generate additional funds for the operation of the Town and the provision of municipal services. After the bond indebtedness is paid in full, the Town would receive a fair market rent that would be charged for an M-4 zoned property of a similar character and nature. Further, it would be possible for the Town reduce the green-waste operating cost to the residents of the Town.

### III. Proposed Venture

Supreme proposes to operate a green waste processing facility and vehicle parking facility on the Property through the use of an operating agreement or a lease between us and the Town. The substantial portion of the Property would be used for the receipt of green waste from the public so as to properly and responsibly allow for the disposal of green waste.

The green waste received on site would be deposited and spread on the property to allow for its decomposition. The piles of green waste would be limited to six (6) feet in height, unless we were actively working on the pile. Additionally, we would, as needed, operate tub grinders, chippers and/or burn boxes, if permitted by the responsible governmental entity, to eliminate the accumulation of branches, tree trunks and other woody materials which are unlikely to decompose at the same expected rate of leaves, palms fronds and other yard waste. If not used, these less decomposition friendly materials will be removed and transported by us to certain facilities, which are known to accept such items. If we were to use burn boxes, they would be located on northerly portions of the Property, away from the FPL transmission lines located along the southerly portions of the Property. Given the unique and isolated location of the Property, there is a low likelihood that smoke or fumes from burn boxes, or noise from the operations on the Property, including, without limitation, tub grinders and chippers, would result in any impact on residents of the Town.

A portion of the Property, up to ten (10) acres, will be allocated for vehicle parking and storage. Supreme or its affiliates and related entities, subject to the Town's verification and approval, which at this time is only ProScapes Enterprises, LLC, would be permitted to park up to fifty (50) vehicles which might otherwise be parked within the municipal boundaries of the Town on the site, at no charge. Similarly, the Town may park up to fifty (50) vehicles on the site, at no charge. The location of the parking area would likely be near what would be the main entrance to

the Property, nearest to SW 202 Avenue, and will be constructed in accordance with the Town's engineering standards.

The charge for the dumping of green waste will be established by us, and may change from time to time. Such rate for dumping of green waste will be less than the rate charged by the neighboring Broward County landfill site. Town residents, who prove their residency by the exhibition of a valid Florida driver's license with a residence address within the Town, will receive a discount of twenty percent (20%) off the rate charged to the general public. i.e., non-residents of the Town. No discount will be afforded to non-residents of the Town. The Town, for its green waste disposal, will pay fifty percent (50%) of the published non-discounted public waste dumping rate for the dumping of its green waste or green waste dumped by its waste hauler. Provided that such rate is less than the current rate being charged to the Town, the Town will cause its waste hauler to bring its green waste collected within the municipal boundaries of the Town to the site. This will result in a significant savings to the Town.

Vehicle parking and storage rates will also be determined by us and a public non-resident rate will be established. A discount will be afforded to Town residents as well as to businesses operating within the Town. In the event that the parking area is full and a waiting list is created, residents of the Town shall be given priority for spaces as the same thereafter become available.

As the green waste decomposes and composts, the soil resulting from such process, together with the mulch created, will be sold from the Property so as to reduce the volume of materials on site and to insure that the green waste piles are kept below a mandated six foot height maximum. To the extent that soil and mulch cannot be sold in a manner necessary to adhere to height limitations, materials will be trucked offsite to an alternate disposal location at our expense.

We also reserve the right to expand to other uses over time, which meet with a public purpose, and are approved by the Town, in the Town's sole discretion.

In conjunction with the foregoing, and to monitor green waste disposal and vehicle storage and removal, we propose placing a mobile home style office on the Property. Understanding that the Town has no utilities available at or to the Property, Supreme will arrange for well-water, electric, and commercial septic services. Supreme acknowledges that there is no availability of municipal water at the Property and that there is a substantial likelihood that the same will not be available at any time during the term of any operating agreement or lease. Supreme understands that its access to water will be through a well system. As needed, we will secure the perimeter of the Property with a form of fencing approved by and in accordance with Code as it applies to an M-4 zoning district. We would anticipate that the Town will be cooperative in connection with permitting, if needed for a farming style operation such as this, for fencing.

Given the Property's unique and isolated location, we would propose operating the green waste facility and parking/storage area could be operated on an around the clock basis, subject to any reasonable limitations the Town may impose necessary for an M-4 zoned property to limit noise generated from the operation of the Property during evening hours, which may impact residents of the Town. In any event, extended hours of operation would be of public benefit to residents

and businesses that may not be able to dump green waste during “normal” business hours, as residents are working and businesses are servicing their clients and customers during “normal” business hours and would need the extended hours in order to dump green waste or park/store vehicles.

#### IV. Financing

The costs of improvements and readying the Property for the use intended by this proposal shall be self-financed, without the necessity for the securing of outside or third party financing as a contingency for proceeding with the project. Although, once up and running Supreme may seek financing for the expansion of the business.

#### V. Proposed Public-Private Partnership Arrangement

Supreme proposes to enter into an operating agreement (or lease) of an initial term of twenty (20) years, with four (4) options to renew the agreement for three (3) terms of twenty (20) years each and a fourth and final option term of nineteen (19) years. Upon the provision of a negotiated notice period, which, in any event will not be less than one year, either party may elect not to renew the operating agreement or lease commencing with the expiration of the initial term, i.e. either party may elect not to renew commencing with the first renewal term. We will control the Property and own all of the improvements made to the Property, while the Town will, at all times, continue to own the land, and any fixtures that may be adhered thereto. We will also own all of the green waste and soil that results from the decomposition of such green waste and ash from burn boxes. We envision that the agreement would be assignable in the future, subject to the consent of the Town, which may be granted or withheld in the Town’s sole discretion.

The agreement, whether an operating agreement or a lease, will specify our operational and financial reporting obligations and responsibilities, as we will operate the site for the benefit of the Town. The agreement will include any special provisions, such as limitations on the height of green waste piles, environmental testing through the use of the existing or future on-site wells, if required by a governmental agency having jurisdiction thereover, and appropriate indemnity provisions. The agreement must have a provision allowing for us to enforce the terms and conditions of the agreement and our right to possess the Property throughout the term of the agreement, as well as expressing the Town’s obligation to provide a co-defense in the event that legal is taken to enjoin our intended use of the Property. The Town will also be prohibited from modifying the approved uses or zoning of the Property while it is subject to the agreement. The terms of the agreement shall be negotiated in good faith by their parties and their respective legal counsel.

Taking all of these factors into consideration, Supreme proposes the following with respect to obtaining control of the Property:

- A. Upon delivery of the P3 Proposal, Supreme shall place a \$25,000.00 deposit with an escrow agent mutually agreeable to Supreme and the Town. The Town may draw from these funds to finance the direct cost of advertising and processing the P3 request, legal fees for consultation by the Town with its bond counsel to insure that the proposed venture does not violate any bond terms, and legal fees incurred in connection with negotiating the “Comprehensive Agreement” required by Florida Statutes Section 255.065, the agreement and any other required agreements in connection with the P3 selection.
  
- B. Within sixty (60) days of selection, Supreme and the Town will enter into an operating agreement (or lease) for the Property under mutually agreed upon and commercially reasonable terms governing the obligations of the parties thereunder and, as to Supreme the preconditions to the opening of the Property for acceptance of green waste and vehicle storage, such as the completion, if necessary, for ingress and egress to the Property, and if not being constructed or required to be constructed by any other third party for use of any adjacent property, or paving, at our sole cost and expense, of Southwest 202 Avenue and securing appropriate permits from Broward County and/or the State of Florida, and due diligence. The agreement will also provide that a portion of the Property may be utilized by the Town, at no cost to it, for the placement and disposal of debris of all and any nature or kind resulting from a hurricane or other natural disaster so as to properly account for the same in accordance with applicable State and Federal law and regulation, including as may be promulgated by FEMA. If and as applicable and to the extent the same is legally permitted, Supreme shall be permitted to engage in the disposal of any such debris and receive payment from the Town for the same.
  
- C. Supreme agrees that the Town will deliver the Property in its “As Is, Where Is” condition, with no representations and warranties of any kind other than that it has the ability to execute and convey control of the Property to Supreme and that it is zoned M-4.
  
- D. Supreme shall assume the cost of the Town entering into this P3 Proposal assessment for control of the Property. Should Supreme fail to enter into an agreement (or lease) to obtain control of the Property (assuming both parties act in good faith), or if the negotiations on the initial P3 program proposal should reach an impasse between the parties, the Town shall have the right to deduct its direct costs from Supreme’s escrow deposit, and return the balance to Supreme upon conclusion of negotiations and/or termination of negotiations.
  
- E. The Town shall cooperate with Supreme in securing any permits, licenses or other approvals, and shall sign, as owner, any applications for permits, licenses or other approvals reasonable required or requested by Supreme.

- F. Provided that the parties enter into the Operating Agreement or lease, Supreme will provide the Town with the necessary funds, not to exceed Thirty Thousand Dollars (\$30,000.00), within ten (10) business days from the date of execution of such Operating Agreement or lease, for the Town to purchase or acquire, through the Town of Davie, for the Rolling Oaks Civic Association, Inc., a Florida not for profit corporation, which is a voluntary homeowners association within the Rolling Oaks subdivision, a license plate reader, for the use of the community, to be installed at the entrance to Rolling Oaks, Southwest 178<sup>th</sup> Avenue. Supreme, and its related entities, Windmill Holdings VI, LLC, and ProScapes, seek to assist the Town in the prevention and reduction of crime through the donation of the funds necessary to purchase a license plate reader.

#### VI. Proposed Financial Terms

Supreme's objective in this Public Private Partnership is to operate the Property in a means and manner which is beneficial to both the Town and Supreme. In order to do so, Supreme proposes the following terms:

- A. The agreement will be for an initial term of twenty (20) years, with four (4) options to renew the Operating Agreement (or lease) for terms of twenty (20) years for the first three options and nineteen (19) years for the fourth and final option. Upon the expiration or termination of the agreement, Supreme shall, at the request of the Town, remove any existing green waste or soil on the Property such that the elevation of Property is not more than one (1) foot (or such greater height, if so requested by the Town thereafter) above the elevation as of the commencement date of the agreement. The Property will be reasonably maintained in accordance with Town Codes applicable to the intended operations ongoing on the Property and to a M-4 zoning district, subject to any other written agreements concerning such operations and any State laws which may usurp local authority. Additionally, all fixtures installed on the Property shall remain thereon and shall become the property of the Town, unless the Town should request their removal at the end of the term of the operating agreement or lease, or the termination thereof. Termination of the operating agreement or lease, aside from any notice of intent not to renew (as provided for in this proposal), shall be based solely on a "for cause" basis only resulting from the material breach of the terms of the operating agreement or lease by either Supreme or the Town, which breach is not cured after notice and a cure period to be negotiated by the parties for monetary and non-monetary breaches. It is envisioned that cause would include a payment default, a failure to maintain required insurances, a lapse of the bond, failure of the Town to require its waste hauler to dump the Town's green waste at the Property at the rate provided for herein, and such other "causes" as the parties may agree. As part of the agreement between the Town and Supreme, the Town shall be permitted, at its discretion, to hire and have onsite, one employee to oversee, as more fully set forth in Section VI.E. below, the operations on the

Property (the “Town Employee”). If the facility is run more than eight hours a day, the Town may be required to have up to three (3) employees on eight hour shifts. i.e., one Town Employee per eight hour shift. The Town shall promote to its residents and businesses the use of Property for the disposal of green waste and parking of vehicles not otherwise permitted within the Town. As previously stated herein, if the applicable rate is in less than the amount currently paid by the Town, the Town shall cause all green waste generated by the Town or collected by its waste hauler(s) to be dumped at the Property.

- B. There shall be made available a portion of the Property for use by the Town, without charge, for the dumping and disposition of waste and debris resulting from a hurricane or other natural disaster, which debris is generated within the municipal boundaries of the Town. The same shall be held on site pending compliance with the requirements of FEMA or other governmental agency in order secure reimbursement for the removal of such debris, and as allowed by law. If allowed by state and federal law, Supreme shall be entitled to process the green waste debris through the use of chippers, tub grinders or other reasonable means and, as necessary truck such debris to an appropriate location for disposition, and to be paid a negotiated fee for such services. All non-green waste materials deposited on the site by the Town as a result of a natural disaster, that are not processed by Superior, shall be later removed and disposed of by the Town at the Town’s expense, which should be a FEMA reimbursable expense for the Town. Supreme will comply with the Federal procurement guidelines under 2 CFR 200, as it pertains to Federal/FEMA reimbursement for disaster recoveries, should and when it becomes applicable, and will work cooperatively with the Town in such regard. The Town will provide assistance and guidance in so complying. In addition, Supreme, to the extent that it installs a fueling station on the Property to fuel its vehicles which are parked on site or used on the business, in the event of a natural disaster impacting the ability of the Town to fuel its emergency vehicles, the Town shall have access to the fuel facility on the Property to fuel its emergency vehicles, and the Town shall reimburse Supreme for the cost of the fuel drawn from such facility within forty-five (45) days of invoicing by Supreme. The Town will not object to or interfere with an application for the installation of a fueling station or facility on the Property, which fueling station or facility will comply with applicable law and regulation, including applicable environmental laws and regulations. The fueling facility shall be for the fueling of vehicles owned by Supreme and/or its affiliates and related entities, which at this time is only ProScapes Enterprises, LLC
- C. On a monthly basis during the term of the Operating Agreement or Lease, Supreme shall pay to the Town a guaranteed amount equal to one-sixth (1/6) of the then next due payment due on the bond which financed the Town’s acquisition of the Property in accordance with bond payment schedule attached hereto as Exhibit “A”. For example, assume that the date is May 1, 2021 and the May 1, 2021 bond payment has just been made. The next semi-annual payment

due would be due on November 1, 2021 in the amount of \$384,270.83. Commencing with the May 1<sup>st</sup> monthly payment by Supreme to the Town under the Operating Agreement of Lease, and continuing through and including the October payment, Supreme would pay to the Town monthly payments of \$64,045.14 ( $\$384,270.83/6$ ). The amount of Supreme's monthly payment shall be variable and shall be based on the next bond payment then due by the Town according to Exhibit "A", i.e., May through October payments shall be based on the November bond payment amount and November through April payments shall be based on the May bond payment amount. If the period from the commencement date of the agreement is less than six months from the next bond payment then due, Supreme shall pay to the Town in the same manner as above, without the necessity of any disproportionate payments to make up any shortfall in the one-sixth payment amount, as the Town shall make up and cover any bond payment shortfall during the initial period from the commencement date to the next bond payment then due. For example, if the agreement is entered into on September 30, 2019 and the next semi-annual payment is due on November 1, 2019 in the amount of \$125,937.50, Supreme would only pay a prorated one-sixth (1/6) of that amount for the October payment, with the Town covering the balance. Once the bond is paid in full, no further payments shall be required to be made to the Town under this subsection C. The payments under this subsection C shall commence first day of the first month falling thirty (30) days after the collection of first revenues from the operation of the Property. To insure payment of the sums set forth in this subsection C, Supreme will provide to the Town an annual and renewable performance bond equal to the amount of the bond payments due in the following year together with ad valorem and non-ad valorem taxes due in the current year, but in any event, not less than \$1,000,000.00, which shall be maintained for the period during which the Town's bond indebtedness remains outstanding. At such time as the Town's bond indebtedness is extinguished, Supreme shall no longer be obligated to maintain the performance bond. At such time as the Town's bond indebtedness has been extinguished, Supreme shall pay to the Town, on a monthly basis, an amount equal to the then current market rate for M4 zoned property of a similar size and character, as mutually determined and calculated by the parties, which monthly payment shall be in addition to the Town's share of the remaining gross revenues provided for in subsections F, H and I below.

- D. Thereafter, from the gross revenues generated from the Property, all ad valorem and non-ad valorem taxes shall be paid. Supreme, in its monthly payments to the Town, will also include one-twelfth (1/12) of the estimated ad valorem and non-ad valorem taxes from the revenues generated. Any shortfall in the amount shall be paid by Supreme and offset from the gross revenues generated from the Property in November of each year. The payment of the ad valorem and non-ad valorem taxes shall not be deemed to be an operational expense under the terms of the operating agreement or lease.



E. After paying the pro rata portion of the ad valorem and non-ad valorem taxes provided for in subsection D, from gross revenues, the Town shall be reimbursed from the gross revenues for the salary (but not the cost of any associated benefits or employment related taxes) of the Town Employee, and, thereafter, the documented operational expenses incurred during the immediately preceding month in connection with the operation of the Property, which sums include, wages and related employment expenses and benefits for site manager, staff and administrative employees; heavy equipment and vehicles; small tools and equipment; fuel for Supreme’s vehicles used in the business; repairs and maintenance for vehicles and equipment; electric, phone and data communications; typical business insurances; permits and licenses; building rental; third party security; professional fees for Supreme; advertising, marketing and promotion; taxes (other than ad valorem and non-ad valorem) assessed on parking or depositing of green waste by any governmental entity (if any); and, the management fee of five percent (5%) (all of the foregoing are referred to as “Operational Costs”). The Operational Costs are subject to increases over time for operational expansion and increases in business. Salaries, benefits, the number of employees and other costs and expenses within the operational control of Supreme shall be reasonable, in accordance with industry norms and standards, and in compliance with then applicable law. Notwithstanding anything herein to the contrary, Supreme agrees that there shall be a cap on the recovery of the Operational Costs based on the following scale:

<u>Operational Cost Cap</u>	<u>Gross Revenues Generated from the Property</u>
40%	\$0.00 - \$1,999,999.99
35%	\$2,000,000.00 - \$2,999,999.99
30%	\$3,000,000.00 - \$3,999,999.99

After \$3,999,999.99, such Operational Cost Cap shall be negotiated in good faith by both parties.

The Town shall agree that such Town employee(s) shall not be involved in the day-to-day business decisions or operations of the Property, and that the salary of the Town Employee(s) shall be reasonable and in accordance with industry norms and standards. The Town employee(s) shall be the Town’s onsite monitor to confirm that the operation is properly documenting all revenues, and operating the facility in accordance with all laws. Supreme would be entitled to recover its start-up costs in connection with the initiation of operations, i.e., the costs to ready the site for use, including road installation, within the confines of the Operational Cost Cap delineated above.

F. After payment of the sums provided for in subsections D. and E., above, any remaining gross revenues collected from the operation of the Property, including, without limitation, as generated from green waste disposal on site, parking and

vehicle storage and sale of soil and mulch, shall be divided and disbursed between Supreme and the Town, with Supreme retaining fifty percent (50%) of the remaining gross revenues, and fifty percent (50%) of the remaining gross revenues being paid to the Town. The disbursements under this subsection F. shall be made within sixty (60) days of the end of each calendar month so as to allow for verification of revenues and expenses, and shall be accompanied by a statement evidencing the same.

- G. Supreme shall be entitled to create a rate structure so as to charge parties green waste transfer fees, the amount of which shall be determined by Supreme, in its sole discretion. Residents of the Town who provide proof of residency in the form of a validly issued State of Florida driver's license or identification card shall be entitled to a discount of twenty percent (20%) off of the public rate. The Town, Supreme and its affiliate, ProScape Enterprises, LLC, shall pay a fee equal to fifty percent (50%) of the then published public rate, but in no event shall such rate exceed the then current rate being charged to the Town for the disposal of its green waste by its waste hauler. Supreme would retain the right to add any affiliates which are created in the future to participate in the discounted rate afforded to ProScapes, subject to the reasonable approval of the Town Administrator. The Town shall require its waste hauler to deposit green waste collected within the Town at the Property, as well as encouraging all residents and businesses within the boundaries of the Town to do the same.
- H. Supreme shall be permitted to determine the size of parking/storage spaces (which will be open air storage and 10 acres or less), the amount of the charge and the period for which it will be charged (i.e., daily, weekly, monthly, semi-annually or annually) for the parking and storage of vehicles on the Property, the types of vehicles to accept, the days and hours that the parking facility will be open and operating and whether to assess different charges for different classes of vehicles (for example, different charges based on the type of size of a vehicle - a pick-up truck vs. a dump truck vs. an tractor-trailer combination). Residents of the Town and businesses located in the Town shall be entitled to a discount from the stated rate. Any vehicles titled to Supreme or its affiliates and related entities, subject to the Town's verification and approval, which at this time is only ProScapes Enterprises, LLC, and the Town, shall be exempted from paying a fee for the parking and storage on site of its vehicles; provided, however, that there shall be a cap of fifty vehicles, per party, which may park for free. Such vehicles must be, at all times, titled in the name of Supreme or its approved affiliated and related entities. The Town shall be permitted to park for free on the Property that number of vehicles equal to the number of vehicles parked by Supreme and its affiliated and related entities for free. In conjunction with the operating agreement or lease, ProScapes has agreed that it shall relocate all of its vehicles presently located within Rolling Oaks on the parcel owned by owned by Windmill Holdings VI, LLC, aside from those actively working that property, to the Property. The revenues generated from the parking and storage of vehicles on the Property will

be aggregated with the revenues generated from the dumping of green waste, from which the Town will receive fifty percent (50%) and Supreme will receive fifty percent (50%), after payment of the amounts set forth in subsections D. and E. above.

- I. Supreme shall be permitted to sell any products produced from the operation of the Property, such as, without limitation, dirt, topsoil or mulch, in amounts and at prices determined by Supreme from time to time and based on volume, without discounts based on residency. The revenues generated from sales of products produced from the operation of the Property will be aggregated with the revenues generated from the dumping of green waste, from which the Town will receive fifty percent (50%) and Supreme will receive fifty percent (50%), after payment of the amounts set forth in subsections D. and E. above.
- J. Supreme shall keep in place commercial general liability insurance and environmental insurance naming the Town as an additional insured/loss payee, with the limits of coverage to be reasonably determined by the parties. Such insurance shall be maintained with a Best A rated or better insurer regularly doing business in the State of Florida, and such policies shall require a minimum of a thirty day notice prior to cancellation, with notice to the Town. The Town shall have the right, but not the obligation to pay to maintain any coverages which are not paid current by Supreme, with the cost be recovered from the gross revenues from the Property prior to the payment to Supreme of its Operational Costs.
- K. The Town shall be permitted to conduct, at its expense, an annual audit of the operation and shall be provided copies of all financial statements and records from the operation of the Property.

Supreme represents to the Town that the operation will be operated and maintained as a drug free workplace, in compliance with State and Federal law. Supreme will conduct background checks and will require drug screenings, paid for by Supreme of all intended hires prior to securing their employment. Such testing will be performed in the same manner as the Town performs such checks and administers drug screenings. Supreme will be in compliance with all public entity crime regulations and statutes. All of the foregoing will be incorporated, in more detail, into the operating agreement or lease.

Supreme represents and certifies that no compensation has been, is being or will be paid or given to any person associated or affiliated with the Town for the Town's acceptance of this public-private partnership proposal or any agreement which may be ultimately entered into between Supreme and the Town. Additionally, Supreme certifies that no person affiliated or associated with the Town has any contingent right or agreement to receive compensation upon the acceptance of this public-private partnership proposal or any agreement which may be ultimately entered into between Supreme and the Town.

We greatly appreciate the opportunity to present this P3 Proposal and are excited and energized about the prospect of working with the Town of Southwest Ranches to provide an avenue for the addressing at least two areas of great public need to the Town, its residents and businesses, and to the public as a whole.

Sincerely,

James McDonnell, Manager,  
By M. Scott Kleiman, Esq.

cc: Russell Muñiz, Assistant Town Administrator/Town Clerk  
Martin Sherwood, Town Financial Administrator  
Keith Poliakoff, Esq., Town Attorney

# Lease Agreement

## Exhibit "C"

FLORIDA DEPARTMENT OF STATE

Laurel M. Lee, Secretary of State

Administrative Code

The Gray Building - 500 S. Bronough Street, Tallahassee, FL 32399-0250

Billed to:

Other Agencies and Organizations  
Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Attn: Russell Muniz

Account: 2228

Invoice Date: 11/19/2019

Invoice Number: 101765

P.O. #	Publication in Florida Administrative Register	#units	\$each	Extension
1	Vol/No: 45/215, November 4, 2019, Notice ID: 22565709	490	0.14	\$68.60

Invoice # must appear on all checks and correspondence. Please pay balance due: **\$68.60**  
F.E.I.D. number: F 59-3466865 \*\*\*Net Due - 15 days - No Discount\*\*\*

RECEIVED

NOV 21 2019

Town of Southwest Ranches

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**TO INSURE PROPER CREDIT, PLEASE RETURN THIS PORTION.**

Department of State - Division of Administrative Services - Bureau of Planning, Budget and Financial Services - (850)245-6579

R.A. Gray Bldg - 500 S. Bronough St, 4th Fl. - Tallahassee, FL 32399-0250

Account: 2228 Invoice Date: 11/19/2019 Number: 101765 Amount Due: \$68.60

State Agencies - Journal Transfer to Account Code: 45-60-2-572001-45400100-00 BF Obj 019000 BF Cat 001903

Org Code / EO : 45400120200 7X Object:019032 Category: 001903

For Accounting Use Only:

Object Code: 019012 Cat: 001905

ARGL: 16500

GL: 67200

FLAIR Account Code: Regular Accounting Code

Vendor FEID: F651036656-002

October 8, 2020

Page 145 of 315

Notice of Bid/Request for Proposal

**OTHER AGENCIES AND ORGANIZATIONS**

**Town of Southwest Ranches**

RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

Notice of Receipt and Acceptance of an Unsolicited Proposal for a Qualifying Project and Intent to Enter Into a Comprehensive Agreement for the Project and Acceptance of Alternative Proposals for the Qualifying Project

NOTICE OF AN UNSOLICITED PROPOSAL FOR PUBLIC PRIVATE PARTNERSHIP OPPORTUNITY FOR THE FORMER CCA PROPERTY

The Town of Southwest Ranches is soliciting alternative proposals from qualified parties to lease and to develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park. The three parcels that comprise the Property are zoned Manufacturing (M) and are identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490 (hereinafter "Former CCA Property")

The Town of Southwest Ranches, Florida (the "Town"), has received an unsolicited proposal submitted under the provisions of Section 255.065, Florida Statutes, Public-Private Partnerships, relating to the Former CCA Property. The proposal seeks to finance, develop, construct, and manage a green waste processing facility and parking on the Former CCA Property. The Former CCA Property is currently vacant.

Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its desire to seek alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.

Russell Muniz, MMC, Assistant Town Administrator/Town Clerk

Notice of Receipt and Acceptance of an Unsolicited Proposal for a Qualifying Project and Intent to Enter  
Into a Comprehensive Agreement for the Project and Acceptance of Alternative Proposals for the  
Qualifying Project

OTHER AGENCIES AND ORGANIZATIONS

Town of Southwest Ranches

RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

NOTICE OF AN UNSOLICITED PROPOSAL FOR PUBLIC PRIVATE PARTNERSHIP OPPORTUNITY FOR THE  
FORMER CCA PROPERTY

The Town of Southwest Ranches is soliciting alternative proposals from qualified parties to lease and to develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park. The three parcels that comprise the Property are zoned Manufacturing (M) and are identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490 (hereinafter "Former CCA Property")

The Town of Southwest Ranches, Florida (the "Town"), has received an unsolicited proposal submitted under the provisions of Section 255.065, Florida Statutes, Public-Private Partnerships, relating to the Former CCA Property. The proposal seeks to finance, develop, construct, and manage a green waste processing facility and parking on the Former CCA Property. The Former CCA Property is currently vacant.

Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its request to accept alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.

Russell Muniz, MMC, Assistant Town Administrator/Town Clerk

**From:** [Russell Muniz](#)  
**To:** [Angel M. Gomez](#)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 10:54:00 AM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

---

Good Morning Angel,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)





## Russell Muniz

---

**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:37 AM  
**To:** Henry, Bertha  
**Subject:** Public Private Partnership Opportunity Notice  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Afternoon Miss Henry,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



## Russell Muniz

---

**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:46 AM  
**To:** carenberg@cscbroward.org  
**Subject:** Public Private Partnership (P3) Opportunity  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Morning Mrs. Arenberg-Seltzer,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñoz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [fgernert@aicw.org](mailto:fgernert@aicw.org)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 12:01:00 PM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

---

Good Morning Mr. Gernert,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (including Florida Inland Navigation District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



## Russell Muniz

---

**From:** Russell Muniz  
**Sent:** Wednesday, November 13, 2019 10:40 AM  
**To:** Kevin Hart (kevin@sbdd.org)  
**Subject:** Public Private Partnership Opportunity Notice  
**Attachments:** 36139874-v1-Notice of Bid P3- Request for Proposal.docx

Good Morning Kevin,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñoz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [Vnarang@mhs.net](mailto:Vnarang@mhs.net)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 11:24:00 AM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal.docx](#)

---

Good Morning Mr. Narang,

Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (South Broward Hospital District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



**From:** [Russell Muniz](#)  
**To:** [lmayers@sfwmd.gov](mailto:lmayers@sfwmd.gov)  
**Subject:** Public Private Partnership (P3) Opportunity  
**Date:** Wednesday, November 13, 2019 3:43:00 PM  
**Attachments:** [36139874-v1-Notice of Bid P3- Request for Proposal-Final.docx](#)

---

Good Afternoon Miss Mayers,

Thank you for returning the call earlier today. Attached please find a copy of the notice we ran in the Sun Sentinel on Monday November 4<sup>th</sup> and November 11<sup>th</sup> of an unsolicited proposal received for a Public Private Partnership (P3) Opportunity on property owned by the Town of Southwest Ranches. The Town is accepting proposals until December 2<sup>nd</sup> at 4 pm.

I have been asked to send the notice to all of the taxing districts (including the South Florida Water Management District) the property in question is assigned to. It was sent for informational purposes only.

Should you have any questions or wish to review the P3 Request please let me know.

Regards,

Russell Muñiz, MBA, MPA, MMC  
Assistant Town Administrator/Town Clerk

Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
E-mail: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)  
Website: [www.southwestranches.org](http://www.southwestranches.org)



SUN-SENTINEL  
RECEIVED

NOV 15 2019

SUN-SENTINEL  
Published Daily  
Fort Lauderdale, Broward County, Florida  
Boca Raton, Palm Beach County, Florida  
Miami, Miami-Dade County, Florida

Town of Southwest Ranches

State Of Florida  
County Of Broward

Before the undersigned authority personally appeared MARK KUZNITZ, who on oath says that he or she is a duly authorized representative of the SUN- SENTINEL, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice in:

The matter of 11700-Advertisement for Bids ,  
Town of Southwest Ranches  
20-003

Was published in said newspaper in the issues of; Nov 04, 2019; Nov 11, 2019

Affiant further says that the said SUN-SENTINEL is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, and that the said newspaper has heretofore been continuously published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, each day and has been entered as second class matter at the post office in BROWARD County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised, any person, firm or corporation, any discount, rebate, commission or refund, for the purpose of securing this advertisement for publication in the said newspaper.

Mark Kuznitz  
Signature of Affiant  
Sworn to and subscribed before me this: November 11, 2019.

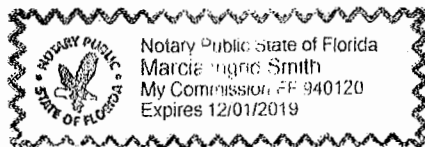
Marcia J. Smith  
Signature of Notary Public

Name of Notary, Typed, Printed, or Stamped  
Personally Known (X) or Produced Identification ( )

**Sold To:**  
Town of Southwest Ranches - CU00118938  
13400 Griffin Rd  
Fort Lauderdale, FL 33330-2628

**Bill To:**  
Town of Southwest Ranches - CU00118938  
13400 Griffin Rd  
Fort Lauderdale, FL 33330-2628

**Affidavit Delivery Method:** U.S. Mail  
**Affidavit Email Address:**  
6500447



**NOTICE OF RECEIPT AND ACCEPTANCE OF AN UNSOLICITED PROPOSAL FOR A QUALIFYING PROJECT AND INTENT TO ENTER INTO A COMPREHENSIVE AGREEMENT FOR THE PROJECT AND ACCEPTANCE OF ALTERNATIVE PROPOSALS FOR THE QUALIFYING PROJECT OTHER AGENCIES AND ORGANIZATION**  
Town of Southwest Ranches  
RFP 20-003 Notice of an Unsolicited Proposal for a Public Private Partnership Opportunity for the former Corrections Corporation of America's ("CCA") Property in the Town of Southwest Ranches.

**NOTICE OF AN UNSOLICITED PROPOSAL FOR PUBLIC PRIVATE PARTNERSHIP OPPORTUNITY FOR THE FORMER CCA PROPERTY**

The Town of Southwest Ranches is soliciting alternative proposals from qualified parties to lease and to develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park. The three parcels that comprise the Property are zoned Manufacturing (M) and are identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490 (hereinafter "Former CCA Property").

The Town of Southwest Ranches, Florida (the "Town"), has received an unsolicited proposal submitted under the provisions of Section 255.065, Florida Statutes, "Public-Private Partnerships, relating to the Former CCA Property. The proposal seeks to finance, develop, construct, and manage a green waste processing facility and parking on the Former CCA Property. The Former CCA Property is currently vacant.

Under Florida's P3 Statutes Section 255.065, the Town is required to publish notice of its receipt and acceptance of an unsolicited proposal for a qualifying project, its intent to enter into a comprehensive agreement for the project, and its desire to seek alternative proposals for the qualifying project.

A copy of the Town's Public Private Partnership Request may be reviewed on the Town's website at [www.southwestranches.org](http://www.southwestranches.org) or by requesting it on DemandStar at [www.demandstar.com](http://www.demandstar.com). A copy of the Public Private Partnership Request is also available at the Town Hall located at 13400 Griffin Road, Southwest Ranches, Florida 33330.

The Town has determined this unsolicited proposal is sufficient for consideration on a preliminary basis and will accept other proposals for the same project during this notification period. No final decision has been made relative to accepting this or any proposal for this project.

Anyone that has an interest in submitting a competing proposal under the provisions of Section 255.065, Florida Statutes, is hereby invited to submit a proposal in compliance with the provisions of subsection of 255.065(5), Florida Statutes. The submitted proposal shall include ten hard copies and one electronic copy, and shall be submitted no later than 4:00 p.m. on December 2, 2019 to: Town of Southwest Ranches, Office of the Town Clerk, 13400 Griffin Road, Southwest Ranches, Florida 33330. Proposals received after 4:00 p.m. on December 2, 2019 will be rejected.

Dated this 4th day of November, 2019.  
Russell Muniz, MMC, Assistant Town Administrator/Town Clerk  
11/4, 11/11/2019 6500447

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# Lease Agreement

## Exhibit "D"

**Southwest Ranches Council**  
Mayor Doug McKay,  
Vice Mayor Gary Jablonski  
Bob Hartman  
Denise Schroeder



**Town Administrator**  
Andrew Berns

---

### REQUEST FOR PROPOSALS

**RFP No. 20-003**

Town of Southwest Ranches  
Is seeking proposals for:

#### **LEASE AND DEVELOPMENT OF VACANT LAND AT THE WEST BROWARD INDUSTRIAL PARK**

**Date issued/available for distribution: November 4, 2019**

Proposer shall submit one (1) unbound original, five (5) bound copies of the completed proposal, and one (1) electronic copy of the entire proposal in a PDF or similar format, which must be received by the Office of the Procurement no later than **Monday, December 2, 2019, at 3:30 p.m. local time**. See Section 1.8 for mailing instructions.

**Pre-Proposal Conference : Non-Mandatory, Tuesday, November 12, 2019 at 10:00 a.m.** local time. See Section 1.4, of this RFP for the location of the Pre-Proposal Conference.

**Site Visit: Non-Mandatory, Tuesday, November 12, 2019 at 2:00 p.m.** local time. See section 1.5 of this RFP for the location of the Site Visit.

#### **ENVELOPE MUST BE IDENTIFIED WITH THE DEADLINE DATE FOR SUBMISSION OF PROPOSALS AND THE RFP NUMBER**

##### **CAUTION**

Amendments to this Request for Proposals will be posted on the Southwest Ranches Procurement Department's website which can be accessed at <http://southwestranches.org/procurement>. As they are issued, all amendments to solicitations will be posted under the applicable solicitation on our system. It is the proposers sole responsibility to routinely check the system for any amendments that may have been issued prior to the deadline for receipt of bids.

Southwest Ranches shall not be responsible for the completeness of any RFP document, amendment, exhibit or attachment that was not downloaded from the system or obtained directly from the Procurement Department.

IN ACCORDANCE WITH THE PROVISIONS OF ADA, THIS DOCUMENT MAY BE  
REQUESTED IN AN ALTERNATIVE FORMAT.

**RFP NO. 20-003**  
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## ATTACHMENTS

ATTACHEMNT "1" – SELECTION CRITERIA  
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## **SECTION 1 GENERAL INFORMATION**

### **1.1 ISSUING OFFICE**

This Request for Proposals (“RFP”) is issued by the Town of Southwest Ranches, a political subdivision of the State of Florida (“Town”), by and through its Procurement Department (“Department”). The Department is the SOLE point of contact concerning this RFP. All communications regarding this RFP must be done through the Department (See Section 1.9, Contact Person).

### **1.2 PURPOSE OF THE PROJECT**

The Department is soliciting proposals from qualified and experienced firms for the lease and development of up to 24.3622 +/- acres of unimproved land (“Property”) located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park.

The Department’s goals for this RFP are to:

- Provide for the development and operation of compatible commercial or industrial uses on the Property;
- Maximize the use of the Property;
- Generate revenues to the Town commensurate with the opportunity offered for the operation and maintenance of Town’s Industrial Park; and
- Ensure compatibility with surrounding communities.

### **1.3 OPPORTUNITY OFFERED**

The Department is soliciting proposals from qualified parties to lease and develop three (3) parcels of land, containing approximately 24.3622 +/- acres owned by the Town. In the event that less than the entire 24.3622 +/- acre parcel is proposed to be leased by a single proposer, one or more proposals may be accepted.

The Property is located generally west of NW 196th Avenue, north of Sheridan Street, and east of SW 202nd Avenue, in the West Broward Industrial Park in the Town of Southwest Ranches, Florida. The three parcels that comprise the Property are zoned Manufacturing (M) and identified by the Broward County Property Appraiser with ID numbers: 5139 02 04 0510; 5139 02 04 0500; and 5139 02 04 0490. A general location map is attached as Exhibit 1. The property will be leased for commercial or industrial purposes, “AS-IS” with no warranties or representations of any nature, including, without limitation, any relating to the proposer’s ability to use the Property for any intended purpose.

The Site, zoned M (Manufacturing), is located in a manufacturing and industrial district is intended for manufacturing and industrial uses, some of which involve the use, handling and storage of hazardous materials, or require a substantial amount of open air storage area. See

Article 55 of the Town's Code of Ordinances and Unified Land Development Code for additional information regarding uses and development standards. The Proposer is expected to include a detailed Site Plan to demonstrate how the Site will be used. The Site Plan should be developed in accordance with the Town's Code and must detail whether any conditional uses requiring a special exception use permit are necessary to achieve the intended goals and objectives.

A survey prepared by Avirom & Associates, Inc. of the Site dated March 5, 2016 is attached hereto as Exhibit "2".

#### **1.4 PRE-PROPOSAL CONFERENCE**

The Pre-Proposal Conference, will be held in the Town's Grand Oaks Conference Room or Council Chambers located at Town Hall on **Tuesday, November 12, 2019 at 10:00 a.m.** local time.

There will be a Town representative available to answer questions relative to this RFP; however, proposers should not rely on any oral representations, statements or explanations other than those made by this RFP or a formal Amendment to the RFP. Any questions or comments arising subsequent to the Pre-Proposal Conference must be presented, in writing, to the Contact Person (See Section 1.9) prior to the date and time stated in the Timetable (See Section 1.7).

In accordance with the provisions of ADA, auxiliary aids or services will be provided upon request with at least five (5) days notice.

#### **1.5 SITE VISIT**

The Site Visit, which will be held at The Property on **Tuesday, November 12, 2019 at 2:00 p.m.** local time.

There will be a Town representative available to answer questions relative to this RFP; however, proposers should not rely on any oral representations, statements or explanations other than those made by this RFP or a formal Amendment to the RFP. Any questions or comments arising subsequent to the Site Visit must be presented, in writing, to the Contact Person (See Section 1.9) prior to the date and time stated in the Timetable (See Section 1.7).

In accordance with the provisions of ADA, auxiliary aids or services will be provided upon request with at least five (5) days notice.

#### **1.6 QUALIFICATION OF PROPOSERS**

All proposers to this RFP shall have demonstrated experience in the lease and development of similar projects and shall meet all criteria/requirements identified in this RFP.

#### **1.7 TIMETABLE**

The anticipated schedule and deadline for this RFP and approval of the Lease Agreement is as follows:

<b>Activity</b>	<b>Date, Time and Location</b>
RFP available for download on website	<b>On or about: November 4, 2019 at:</b> <a href="http://southwestranches.org/procurement">http://southwestranches.org/procurement</a>
Pre-Proposal Conference	<b>10:00 a.m. local time, on Tuesday, November 12, 2019,</b> at Town’s Grand Oaks Conference Room or Council Chambers located at Town Hall.
Pre-Proposal Site Visit	<b>2:00 p.m. local time, on Tuesday, November 12, 2019, at The Property.</b>
Deadline for Submission of Written Comments/Questions	At Monday, November 18, 2019, the Office of the Procurement, 13400 Griffin Road, Southwest Ranches, FL 33330.
Response to Written Comments/Questions	Friday, November 22, 2019
Deadline for Submission of Proposals	<b>At 4 p.m. local time, on Monday, December 2, 2019,</b> at the Office of the Procurement, 13400 Griffin Road, Southwest Ranches, FL 33330.
Selection Committee meeting(s) and Oral Presentations (if necessary)	To be Determined
Award Date	To be Determined

### **1.8 PROPOSAL SUBMISSION**

All proposals must be submitted on 8 1/2 x 11 inch paper. One (1) unbound original and five (5) hard copies of the complete proposal must be received by the Town no later than 4 p.m. local time on Monday, December 2, 2019. Proposers must also submit an electronic copy of the proposal on CD or flash drive in the PDF or similar format. The original and all copies must be submitted in a sealed envelope or container. The proposers complete return address must be included on the outer envelope or wrapper enclosing any materials submitted in response to this RFP. The outer envelope or wrapper should be addressed as follows:

**Proposer Name**  
**Address**  
**Phone Number**

Town of Southwest Ranches  
Town Council  
Procurement Department  
13400 Griffin Road  
Southwest Ranches, FL 33330

RFP No.: 20-003  
Title: Lease and Development of Vacant Land

West Broward Industrial Park

Due Date: Monday, December 2, 2019

Hand-carried proposals may be delivered to the above address ONLY between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding holidays observed by the Town.

Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for insuring that the required address information appears on the outer wrapper or envelope used by such service.

The Proposal Response Form (Appendix "A") must be signed by an officer of the proposing entity or other authorized person ("Authorized Person").

The submission of a signed proposal by a proposer will be considered by the Town as constituting a legal offer by the proposer to provide services required by this RFP at the proposed price identified therein.

No proposals will be accepted after the deadline for submission of proposals or at any location other than the location designated in this RFP.

## 1.9 CONTACT PERSON

The individuals designated as "Contact Person" for this RFP are:

Russell Muñiz, Assistant Town Administrator/Town Clerk  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490  
Email: [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)

Or

Andrew D. Berns, Town Administrator  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

Notwithstanding any provision of this RFP to the contrary, including, but not limited to Section 1.10, Cone of Silence below, proposers are advised that from the date of release of this RFP until the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council, NO contact with Department staff (other than the Contact Person) is permitted, except as authorized by the Contact Person or as otherwise authorized or contemplated by this RFP as a part of the solicitation process (e.g., submission of questions, contract negotiations with designated representative of the Department, pre-proposal conference, site inspections, etc.) NO contact is permitted by a proposer or anyone representing a proposer with designated Selection Committee members concerning this RFP from the date of



release of the RFP until the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council, except at the public Selection Committee Meeting(s).

#### **1.10 PROCUREMENT CODE**

Article IX of the Town's Code of Ordinances establishes specific directions and guidelines for employees and agents of the Town to use in purchasing commodities and services. All requests for commodities and/or services, and all purchases shall be for a public purpose and in accordance with this code. This code provides the policies and procedures that frame the purchasing of contractual services and commodities starting with defining the procurement and proceeding through award of the contract or purchase order. The Town is committed to a system that provides quality, integrity and competition in a professional manner. Generally, purchasing procedures provide a mechanism to allow commodities and services to be purchased at the lowest possible cost, and consistent with the quality needed to meet the requirements of the town.

In addition to the procedures set forth in this code, the Town shall also adhere to the requirements of Florida Statutes, to the extent applicable to the Town.

#### **1.11 CONE OF SILENCE**

The Cone of Silence means a prohibition on any communication regarding this RFP between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and the Town Council members, Town's professional staff including, but not limited to, the Town Administrator and his or her staff, or any member of the Town's selection or evaluation committee. See Article IX, Sec. 2-208(c) for additional information including permitted exceptions to the Code of Silence.

The Cone of Silence shall be imposed at the time of the advertisement of this RFP and shall terminate at the beginning of the Town Council meeting at which the Town Administrator makes his or her written recommendation to the Town Council. However, if the Town Council refers the solicitation back to the Administrator, staff or committee for further review, the Cone of Silence shall be re-imposed until such time as the Administrator makes a subsequent written recommendation and commencement of the Council meeting. The Cone of Silence shall also terminate in the event that the Town Administrator cancels the solicitation.

Prior to an award, violation of this the Cone of Silence shall result in the disqualification of the proposer from further consideration. Discovery of a violation after an award by a particular proposer shall render any RFP award to said proposer voidable by the town, and in the Town's sole discretion.

#### **1.12 ADDITIONAL INFORMATION/AMENDMENT(S)**

Any questions, comments (i.e., additional information or clarifications) must be made, in writing via fax, e-mail, U.S. Mail no later than Monday, November 18, 2019, to the address listed in this RFP Timetable (See Section 1.7) or fax number or e-mail address listed for the Contact Person

(See Section 1.9 above). The request must contain the proposer's name, address, phone number, facsimile number and e-mail address.

Facsimiles must have a cover sheet which includes, at a minimum, the proposer's name, address, number of pages transmitted, phone number, facsimile number and e-mail address.

Changes to this RFP, when deemed necessary by the Town, will be completed only by written Amendment(s) issued prior to the deadline for submission of proposals. Proposers should not rely on any representations, statements, or explanation other than those made by this RFP or in any Amendment to this RFP. Where there appears to be a conflict between this RFP and any Amendment issued, the last Amendment issued shall prevail.

Amendments to this RFP will be posted on Town of Southwest Ranches Purchasing Department website which can be accessed at <http://southwestranches.org/procurement/>.

It is the sole responsibility of proposers to routinely check for any Amendments that may have been issued prior to the deadline for submission of proposals. Town shall not be responsible for the completeness of any RFP package not downloaded from this website or purchased directly from the Department. A proposer may verify with the designated Contact Person (See Section 1.9) that proposer has received all Amendments to this RFP prior to the submission of its proposal.

### **1.13 DISCLAIMER**

All documents and information, whether written, oral or otherwise, provided by the Town relating to this RFP are being provided solely as an accommodation and for informational purposes only, and the Town is not making any representations or warranties of any kind as to the truth, accuracy, or completeness of such documents or information, or as to the sources thereof. The Town shall have no liability whatsoever relating to such documents and information and all parties receiving the same shall not be entitled to rely on such documents and information, but shall have a duty to independently verify the accuracy of the information contained therein. Failure on the part of any proposer to examine, inspect and be completely knowledgeable of the terms and conditions of the Lease Agreement, the Property, its future plans and operational conditions, or any other relevant documents or matters, shall not relieve the selected proposer from fully complying with this RFP.

## **SECTION 2 TERMS AND CONDITIONS**

### **2.1 ADHERENCE TO REQUIREMENTS**

Proposers guarantee their commitment, compliance, and adherence to all requirements of this RFP by submission of their proposals.

### **2.2 MODIFIED PROPOSALS**

Proposers may submit a modified proposal to replace all or any portion of a previously submitted proposal until the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7). The Town will only consider the latest proposal submitted.

### **2.3 WITHDRAWAL OF PROPOSALS**

A proposal may be withdrawn only by written notification. Letters of withdrawal received after the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7) will not be accepted unless the Lease Agreement has been awarded to another proposer or no award has been made within ninety (90) days after the deadline for submission of proposals. Unless withdrawn, as provided in this subsection, a proposal shall be irrevocable until the time that a Lease Agreement is awarded.

### **2.4 LATE PROPOSALS, LATE MODIFIED PROPOSALS**

Proposals and/or modifications to proposals received after the deadline for submission of proposals specified in the RFP Timetable (See Section 1.7) shall not be considered.

### **2.5 RFP POSTPONEMENT/CANCELLATION**

Notwithstanding any provision of this RFP to the contrary, the Town, in its sole and absolute discretion, shall have the right to reject any and all, or parts of any and all proposals; commence a new solicitation process; postpone or cancel this RFP process; and/or waive any non-material irregularities in this RFP or the proposals received as a result of this RFP. In addition, the Town of Southwest Ranches Council may reject any proposal prior to award.

### **2.6 COSTS INCURRED BY PROPOSERS**

All expenses incurred with the preparation and submission of proposals to the Town, or any work performed in connection therewith, shall be borne by the proposer.

### **2.7 PROPRIETARY/CONFIDENTIAL INFORMATION**

Proposers are hereby notified that all information submitted as part of, or in support of, proposals will be available for public inspection after the opening of proposals, in compliance with Chapters 119 and 286, Florida Statutes, popularly known as the "Public Records Law" and the "Government in the Sunshine Law" respectively.

### **2.8 NEGOTIATIONS**

The Department may recommend the award of a Lease Agreement to the Town Council on the basis of the initial proposals received without further negotiation; therefore, each submitted proposal should contain the proposer's best offer. Negotiations, if any, will be conducted by a designated representative of the Department. No negotiation team shall be established for this RFP.

### **2.9 RIGHT TO PROTEST**

For purposes of this RFP, the term “Purchasing Code” shall mean Chapter 2, Article IX, of the Town of Southwest Ranches Code. Section 2-213 of the Code is hereby incorporated into this RFP by reference (“Bid Protest”). By responding to this RFP, all proposers agree that the Bid Protest procedures set forth in the Code are applicable to this RFP and shall comply with said procedures.

Any proposer may protest any recommendations for award of the Lease Agreement in accordance with Protest Procedures by submitting a written protest to the Director of Purchasing within five (5) business days after posting the Notice of Award Recommendation. Protests must be submitted in writing, addressed to the Director of Purchasing at 13400 Griffin Road, Southwest Ranches, FL 3330 and delivered via hand delivery, or mail.

## **2.10 RULES; REGULATIONS; LICENSING REQUIREMENTS**

The proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including, but not limited to, those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered, including, but not limited to, Executive Order No. 11246 entitled “Equal Employment Opportunity” as amended by Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR, Part 60).

The Town, at its discretion, reserves the right to inspect any/all Proposer’s facilities to determine their capability of meeting the requirements for this RFP and the Contract to be awarded. Also, price, responsibility, and responsiveness of the Proposer, including the financial position, experience, staffing, equipment, materials, and references of Contractor, and past history of service by Contractor to the Town and/or with other units of State, and/or Local governments in Florida, or comparable private entities, may be taken into consideration in the award of a Contract. If the project involves services or costs based upon a unit price or ongoing services, the Town reserves the right to reduce the level of service within its sole discretion.

## **2.11 EXCEPTIONS TO THE LEASE AGREEMENT**

Proposers should generally identify any proposed exceptions to the example Lease Agreement (See Attachment “2”). It is preferred that proposers detail any proposed exception by identifying the section number(s) of the Lease Agreement, together with any proposed alternative language. Note that the Town is under no obligation whatsoever to accept any proposed exceptions to the Lease Agreement. Proposers should not propose modifications to any of the minimum requirements of this RFP.

## **2.12 SELECTION PROCESS**

### **2.12.1 Evaluation of Proposals**

- a. Determination of Responsiveness. All proposals timely received will be opened internally by the Department. A list of proposers that have submitted proposals in response to this RFP will be recorded. Each

proposal will be evaluated by the Department for responsiveness. A responsive proposal is one which has been signed, has been submitted by the specified submission time and conforms to the requirements of this RFP. Failure to provide the information required to be submitted with the proposal (as stated in Section 3) is considered sufficient cause to deem a proposal non-responsive. While poor formatting, poor documentation, and/or incomplete or unclear information may not be cause to reject a proposal without evaluation, such substandard submissions may adversely impact the evaluation of a proposal, especially information relating to establishing financial/business stability. Proposers, who fail to comply with all of the required and/or desired elements of this RFP, do so at their own risk.

- b. Selection Committee Meeting/Oral Presentations. Except as otherwise provided for herein, a Selection Committee will meet to evaluate all responsive proposals for purposes of making an award recommendation to the Department. Each proposer may be required to make an oral presentation to the Selection Committee and will be allowed a maximum of fifteen (15) minutes to make its presentation. Oral presentations shall be limited to clarifying and further detailing the content of the written proposal submitted and to providing answers to the Selection Committee's questions. The Selection Committee will not consider new or alternative proposals made during oral presentations; therefore, each written proposal submitted should contain the proposer's best offer.

Notwithstanding any provision of this RFP to the contrary, in the event only one (1) responsive, responsible proposal is received, no Selection Committee meeting shall be required, and the Department, in its sole and absolute discretion, may elect to negotiate with the sole proposer or cancel this RFP process.

- c. Raw Scoring/Individual Selection Committee Member Ranking. The Selection Committee will evaluate and score each proposal by reviewing the proposal against the selection criteria set forth in Attachment "1" to this RFP, Selection Criteria/Scoring Instructions. Selection Committee members may not assign equal total scores to proposals (i.e., each proposal must be assigned a varying number of total points). Each Selection Committee member shall rank the proposals based upon the total score assigned to each proposal by such member. The proposal with the highest total score will be ranked first (1st) by each member, the proposal with the next highest score will be ranked second (2nd) by each member and so on until all proposals have been ranked.
- d. Final Scoring and Ranking. After each Selection Committee member has ranked all of the proposals, the individual Selection Committee members' rankings for each proposal shall be totaled to establish an overall total

score for each proposal. The proposal with the lowest total score will be ranked first (1st), the proposal with the next lowest total score will be ranked second (2nd) and so on until all proposals have been ranked.

In the event of a tie, the proposal that received the most first (1st) place rankings from the individual Selection Committee members will receive the higher rank. In the event a tie remains, the proposal with the highest raw score based upon the total number of points assigned by all Selection Committee members will receive the higher rank.

- e. Final Ranking by Selection Committee. After the Selection Committee has established a final ranking for all proposals, the Selection Committee will review the rankings and make its recommendation for award to the Department for the proposer whose proposal was ranked first (1st) by the Selection Committee.

In the event more than one (1) responsive, responsible proposal is received and more than one (1) proposed use may be accommodated on the Property, Selection Committee shall make a recommended award to the Department to the proposal that was ranked first (1st) by the Selection Committee and may recommend a Lease Agreement be awarded to the second (2nd) ranked proposer if there is a sufficient amount of Property available to accommodate both uses and so on.

- f. Rights Reserved. Notwithstanding any provision of this RFP to the contrary, the Town, in its sole and absolute discretion, shall have the right to reject any and all, or parts of any and all, proposals; commence a new solicitation process; postpone or cancel this RFP process; and/or waive any non-material irregularities in this RFP or the proposals received as a result of this RFP. In addition, the Council may reject any proposal prior to award.

2.12.2 Award Recommendation. The Department will post the award recommendation(s) ("Notice of Recommended Award) at the Department Offices for a period of five (5) business days for review by interested parties. The selection proposer will be notified of the recommendation for award by mail.

To obtain a current posting of Notices of Recommended Award, please visit the Department's website: <http://southwestranches.org/procurement/>.

2.12.3 Negotiation. After the posting of the Notice of Recommended Award, the Department will enter into negotiations with the selected proposer, if applicable. If, for any reason, the Lease Agreement cannot be awarded to the selected proposer, or the Department determines that it is unable to negotiate a Lease Agreement with the selected proposer, the Department may elect to cancel the award recommendation and commence negotiations with the next highest ranked proposer, issue a new solicitation or elect to cancel the RFP process in its entirety. In the event the Department elects to commence negotiations with the next highest

ranked proposer, this process may continue until a Lease Agreement has been executed by a proposer or all proposers have been rejected. Proposers shall not have any rights against the Town, its officers, employees or agents arising from negotiations.

2.12.4 Execution of Lease Agreement. The selected proposer shall deliver a fully executed Lease Agreement, and any other documents required by the Lease Agreement, to the Department in the form negotiated by the Department and the selected proposer within ten (10) days of the Department's written request, unless this time frame is extended at the sole discretion of the Department. In the event the selected proposer fails to deliver the Lease Agreement and associated documents as required by this RFP within the prescribed timeframe, the Department may, in its sole and absolute discretion, elect to cancel the award recommendation and commence negotiations with the next highest ranked proposer, issue a new solicitation or elect to cancel the procurement process in its entirety. Should the selected proposer fail to execute and deliver the Lease Agreement to the Department in accordance with the requirements of this RFP, the Department may cancel the award recommendation and, if such failure occurs as a result of proposer's bad faith or its failing to comply with the representations in its proposal, the proposer's proposal guarantee shall be forfeited as liquidated damages and the proposal shall be deemed rejected.

## **2.13 AWARD**

It is the Department's desire to recommend approval of a Lease Agreement for the entire 24.3622 +/- acre site; however, in the event more than one (1) proposal is received, the Department may recommend more than one (1) Lease Agreement for approval by the Town Council upon completion of the solicitation process. The Department has no authority whatsoever to bind the Town to a Lease Agreement or any specific contractual terms or conditions; therefore, no Lease Agreement shall be effective until it is approved by the Council and signed by all parties thereto.

## **2.14 ASSIGNMENT**

This RFP and any Contract awarded pursuant hereto shall be binding upon and shall inure to the benefit of the Town and to any and all of its successors and assigns, whether by merger, consolidation, and transfer of substantially all assets or any similar transaction. Notwithstanding the foregoing, the Contract is personal to the Contractor, and Contractor may not, either directly or indirectly, assign its rights or delegate its obligations to Town hereunder without first obtaining the Town's consent in writing. Any such attempted assignment or delegation shall be deemed of no legal force and effect whatsoever.

## **2.15 CANCELLATION**

Failure on the part of the awarded Proposer to comply with the terms of this RFP and to execute and deliver any required Contract Documents, and insurance, will result in the cancellation or rescission of the award. In that event, the Town may proceed to award the Contract to the responsive and responsible Proposer with the next highest ranking by the selection committee, or to re-advertise the RFP, and in its sole discretion whenever deemed in the best interests of the Town.

## **2.16 RELATION TO PARTIES**

It is understood and agreed that nothing contained in this RFP or the Contract shall be deemed to create a partnership or joint venture with the Town. Contractor shall be in the relation of an independent contractor and is to have entire charge, control and supervision of the Work to be performed hereunder.

## **2.17 COMPLIANCE WITH LAW**

Contractor shall comply with all applicable laws, regulations and ordinances of any Federal, State, or Local Governmental authority having jurisdiction with respect to this RFP and any Contract awarded and shall obtain and maintain any and all material permits, licenses, approvals and consents necessary for the lawful conduct of the activities contemplated hereunder.

## **2.18 WAIVER OF LIABILITY**

The Town shall not in any way be answerable or accountable for any violations of applicable laws or for any injury, loss or damage arising from the negligence, acts or omissions of Contractor or any one of its employees, subcontractors or agents, or anyone else for whose actions Contractor may be responsible.

## **2.19 INDEMNIFICATION**

To the fullest extent permitted by Florida law, including Florida Statutes, Section 725.06, the Contractor hereby agrees to and shall indemnify, defend and hold harmless the Town, its officers and employees, from liabilities, damages, losses, costs, and expenses including, but not limited to, reasonable attorney 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 or anyone else for whose actions Contractor may be responsible, regardless of the partial fault of any party indemnified hereunder.

## **2.20 SECONDARY/OTHER VENDORS**

The Town reserves the right in the event the primary vendor cannot provide an item(s) or service(s) in a timely manner as requested, to seek other sources without violating the intent of the this RFP or any Contract awarded.

## **2.21 DEFAULT PROVISION**

In case of default by the Contractor, the Town may procure the articles or services from other sources and hold the Proposer or Contractor responsible for any excess costs occasioned or incurred thereby.



## **2.22 GOVERNING LAW**

The validity of this RFP and any Contract awarded and the interpretation and performance of all of their respective terms shall be construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws thereof. The location of any action or proceeding commenced under, pursuant, or relating to this RFP or the Contract shall be in the State Courts of Florida located in Broward County, Florida.

## **2.23 REMEDIES FOR BREACH**

Should the selected Contractor fail to perform after Contract execution, the Town shall notify Contractor in writing of such failure to perform and Contractor shall have fourteen (14) days to cure such failure or such shorter time as may be set forth in the Contract. If Contractor fails to cure, then the Town shall have the right to immediately terminate the Contract for cause. In that event, the Town shall also be free to sue Contractor for damages, in addition to any other right or remedy that it may have under the Contract, at law or in equity. Nothing herein shall be construed as precluding the Town's right to terminate the Contract for convenience, and as set forth in the Contract.

## **2.24 WRITTEN CONTRACT**

The successful Proposer shall be required to enter into a written Contract with the Town, the Contract form shall be prepared by the Town, and shall incorporate the terms of this RFP, the accepted Proposal, and include a termination for convenience clause and other terms which may be required by the Town or its Procurement Code, and acceptable to the Town Council. The Contract shall be substantially in the form attached to this RFP. No Work shall be performed or payment due unless a written Contract is fully executed and has been approved by the Town Council.

## **2.25 PUBLIC RECORDS LAW**

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 Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor acknowledges 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.

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 RFP process, Contractor shall keep

and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

Contractor agrees to keep and maintain public records required by the Town to perform the service in Contractor's possession or control in connection with Contractor's performance under this RFP and any Contract awarded, and upon the request from the Town's custodian of public records, to provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the Town.

Upon completion of the Contract, Contractor agrees, at no cost to Town, to transfer to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology system of the Town.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PHONE: (954) 434-0008; EMAIL: RMUNIZ@SOUTHWESTRANCHES.ORG; RUSSELL MUNIZ, ASSISTANT TOWN ADMINISTRATOR/TOWN CLERK, TOWN OF SOUTHWEST RANCHES, 13400 GRIFFIN ROAD, SOUTHWEST RANCHES, FLORIDA, 33330.

#### CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Contractor shall comply with the requirements of 2 CFR §200.321 as applicable to this RFP. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by Town.

## **2.26 DISPUTES**

After an award of the Contract, disputes shall be resolved as set forth in the Contract form which is attached to this RFP. Any default under this RFP shall subject Proposer to liability for any and all damages to Town caused thereby. Proposer agrees to reimburse Town for all costs and expenses, including attorney's fees and costs, incurred by the Town by reason of such default

whether or not suit is brought, and in any litigation commenced, at both the trial and appellate levels.

## **2.27 SELECTION CRITERIA**

See Attachment “1”, Selection Criteria/Scoring Instructions.

## **2.28 CONTRACT PROVISIONS (ATTACHMENT “2”)**

2.28.1 Lease Agreement. The selected proposer will be required to execute a contract in a form and substance similar to the attached Example Development Site Lease Agreement (Attachment “2”) (“Lease Agreement”), subject to negotiated exceptions.

2.28.2 Authorization to Sign. In addition to executing a Lease Agreement, the selected proposer will be required to complete a corporate resolution or notarized statement, indicating that the person having executed the Lease Agreement is authorized to legally bind the proposing entity. Additionally, if a selected proposer is a partnership, all general partners must sign the Lease Agreement and the notarized statement. If the selected proposer is a joint venture, all members of the joint venture must sign the Lease Agreement and the notarized statement.

## **2.29 INSURANCE REQUIREMENTS**

It shall be the responsibility of the selected proposer to provide evidence of the minimum amounts of insurance coverage specified in the Lease Agreement (Attachment “2”).

The selected proposer shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the term of the Lease Agreement, insurance coverages and limits (including endorsements) as described in the Lease Agreement (Attachment “2”). Failure to maintain the required insurance shall be considered a material default of the Lease Agreement. The requirements contained therein, as well as the Town's review or acceptance of insurance maintained by the selected proposer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the selected proposer under the Lease Agreement.

## **2.30 ENVIRONMENTAL POLLUTION INSURANCE**

The Contractor shall carry an Environmental Pollution Insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than \$500,000.00 Dollars per occurrence with deductible not greater than \$100,000.00. An additional Form or endorsement to the Commercial General Liability Insurance to include an Environmental Pollution Insurance coverage providing the specified coverage, is acceptable.

## **2.31 ADDITIONAL INSURANCE REQUIREMENTS**

All insurance policies shall name and endorse the following as additional named insureds:

TOWN OF SOUTHWEST RANCHES  
Attn: Andrew D. Berns, Town Administrator

13400 Griffin Road.  
Southwest Ranches, FL 33330

The additional named insured endorsement shall be reflected on the Certificate of Insurance.

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

Such notification shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.

Proposers are required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided below and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.

Failure to fully and satisfactorily comply with the Town's insurance requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Proposal award within thirty (30) days of awarding. The Proposer hereby holds the Town harmless and agrees to indemnify Town and covenants not to file a Proposal protest or sue the Town by virtue of such cancellation or rescission.

### **2.32 PERFORMANCE BOND /LETTER OF CREDIT**

The selected proposer shall be required to post a deposit with the Town equal to three (3) months' rental ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to the Town and shall also secure the performance of all obligations of the selected proposer to the Town. The Security Deposit shall be either in the form of a clean, irrevocable letter of credit or a surety bond in form and substance satisfactory to the Town.

### **2.33 COMMENCEMENT OF WORK**

The Town shall have no obligations whatsoever to any proposer by virtue of this RFP or any negotiations conducted hereunder. The Town's obligations shall not commence until a Lease Agreement is approved and executed by the Council. The Town will not be responsible for any work conducted by a proposer, even if performed in good faith, if such work occurs prior to the approval and execution of the Lease Agreement by the Town Council.

### **2.34 NON-DISCRIMINATION & EQUAL EMPLOYMENT OPPORTUNITY**

Proposer shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Contractor shall take affirmative action to ensure that applicants are employed, and that

employees are treated during their employment without regard to their race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Proposer agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor further agrees that he/she will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

Proposer understands and agrees that a material violation of this clause shall be considered a material breach of any resulting contract and may result in termination of the Lease Agreement, disqualification or debarment of Proposer from participating in Town contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. All agreements for design and construction services entered into for the construction of the Initial Leasehold Improvements shall include a commercial non-discrimination clause.

### **2.35 DISCLOSURE OF OWNERSHIP INTEREST**

The Disclosure of Ownership Interest Affidavit (“DOIA”) (Appendix “C”) must be completed on behalf of any individual or business entity that seeks to do business with the Town when applicable. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Upon request from the Department, the selected proposer shall submit a completed DOIA within a reasonable time, as requested. If the selected proposer fails to submit a completed DOIA in a timely manner, the Town, at its sole discretion, may elect to cancel the recommended award.

### **2.36 CONFLICT OF INTEREST**

The award of any Contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their Proposals, the name of any officer, director, partner, associate, agent, advisory board member or client/customer who is also an officer, former officer, or employee of the Town of Southwest Ranches or its agencies.

### **2.37 PUBLIC ENTITY CRIMES/DENIAL OR REVOCATION OF THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES**

Pursuant to the provisions of 287.133(2)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids,

proposals, or replies on leases of real property to a 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 s. 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

Proposer shall complete the attached Sworn Statement on Public entity Crimes (Appendix "E"), and submit it with its proposal.

### **SECTION 3 PROPOSAL REQUIREMENTS**

#### **3.1 PROPOSAL FORMAT AND CONTENT**

3.1.1 Format. Proposals should be typed, double spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening (e.g., stapled, binder, etc.). The electronic copy of the proposal should be submitted on a CD or flash drive in a PDF or similar format. Proposals should include only brief and concise narrative. The enclosure of elaborate or unnecessary verbiage or promotional material is discouraged.

3.1.2 Letter of Transmittal. Proposals should contain a Letter of Transmittal addressed to the contact person, and should, at a minimum, contain the following:

- a. The RFP number (i.e. RFP No. 20-003).
- b. Identification of proposer, including name address and telephone number.
- c. The name, title, address, telephone/fax number and e-mail address of proposer's contact person during the period of proposal evaluation.
- d. The printed name and title and the signature of a person authorized to bind proposer to the terms of the proposal.

3.1.3 Table of Contents. Proposals should contain a Table of Contents. The Table of Contents should outline all of the areas of the proposal in sequential order.

3.1.4 Technical Proposal. Proposals must contain all of the documents listed below, each fully completed, signed and notarized, as required. Failure of a proposer to provide the required information is considered sufficient cause to deem the proposal non-responsive.

All items should be submitted as a part of the proposal prior to the deadline for submission of proposals (See Section 1.7); however, if the item(s) marked by an asterisk ( \* ) are omitted, the proposer must submit such item(s) upon request from the Department within a time frame specified by the Department (normally within two (2) business days of request) or the proposal shall be deemed non-responsive. All other items must be submitted with the proposal or it shall be deemed non-responsive.

The Department reserves the right to request additional information to be used for evaluating responses received from any or all proposers, including, but not limited to, additional references or financial information. Further, the Department retains the right to disqualify from further consideration any proposer who fails to demonstrate sufficient ability to perform under the Lease Agreement.

Notwithstanding these submittal requirements, the Department reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. Upon request, it shall be the responsibility of the proposer to address the determined minor irregularity within a time frame specified by the Department (normally within two (2) business days of request). Failure of a proposer to provide the required information within the specified time frame is considered sufficient cause to deem the proposal non-responsive.

A set of tabs to identify each section of the proposal should be inserted to facilitate quick reference. Each section of the proposal should be clearly labeled using the paragraph headings set forth below.

### **3.2 EXPERIENCE. QUALIFICATIONS AND FINANCIAL INFORMATION**

Each proposer shall submit an Executive Summary detailing its experience, qualifications, and background in the lease and development of similar projects, which shall include, at a minimum, the following information:

3.2.1 \*Description of Business Organization. Proposer shall include a description of proposer's business organization (i.e., corporation, LLC, partnership, joint venture or sole proprietorship) along with the following information, depending on the organizational structure:

- If a corporation, attach the Articles of Incorporation.
- If an LLC, attach the Articles of Organization.
- If a partnership, attach a copy of the Partnership Agreement.
- If a joint venture, list date of organization, attach a copy of the joint venture agreement, indicate if the joint venture has done business in Florida and where. Include a description of the business organization of each of the joint venture partners, including the organizational documents for each of the joint venture partners (i.e., corporations, attach the Articles of Incorporation for each joint venture partner, etc.).

3.2.2 \*History of Company. Proposer shall include a brief history of the company. Proposer shall note any changes in company name and ownership structure and any other names under which the company has been doing business. Proposer should note whether or not the company is currently registered to do business in the State of Florida. The selected proposer shall be registered to do business in the State of Florida prior to the effective date of the Lease Agreement. Proposer should indicate whether or not it intends to enter into the Lease Agreement in the name of proposer or to create a single purpose entity for the purpose of this project. In the event proposer is a joint venture, proposer should provide a history of each entity forming a part

of the joint venture. In the event of a newly-formed entity, the requirements listed below shall be furnished for the principal entity(ies) forming such newly-formed entity.

3.2.3 Experience. Proposer shall submit a detailed statement of its experience, qualifications, and background in the lease and development of similar projects. Proposer's statement should include, at a minimum, a detailed history of proposer's pertinent experience in the lease and development of similar projects within the preceding ten (10) years.

3.2.4 References. Proposer shall be required to submit a minimum of three (3) references with knowledge of proposer's recent experience in the lease and development of similar projects. Each reference should include the name of the company, contact names, addresses, and telephone/fax numbers. The contact person must have been informed that he or she is being used as a reference and that the Town may be calling them. DO NOT list persons who will be unable to answer specific questions regarding proposer's experience.

3.2.5 \*Credit References. Proposer shall include the names, addresses, and telephone numbers of at least two (2) credit references, including at least one (1) banking reference. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

3.2.6 \*Legal/Contractual History.

- a. a. Proposer shall provide the name, location and date of any of the proposer's agreements for the lease or development of real property that have been terminated either voluntarily or involuntarily, within the past five (5) years. Proposers shall provide an explanation of the reason(s) for termination and a contact name, address and telephone number of the other contracting party. A contact person shall be someone who has personal knowledge of the contract. The contact person must have been informed that he or she is being used as a reference and that the Town may be calling them. DO NOT list persons who will be unable to answer specific questions regarding the requirement.
- b. Proposer shall provide a list of any judgments or lawsuits currently pending against the proposer or any lawsuit filed against or judgment offered against proposer within the last ten (10) years. Also list any lawsuits filed by proposer in the last ten (10) years.
- c. Proposer shall provide a written statement declaring whether proposer has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
- d. In the event proposer is a joint venture, proposer shall provide the required information for each entity forming a part of the joint venture.

3.2.7 \*Financial Information. Proposer shall submit one (1) of the following (it is recommended that proposers redact social security numbers, if applicable):



- a. Balance sheets and income statements for the current fiscal year and prior two (2) fiscal years of operation, prepared in accordance with generally accepted accounting principles and compiled by an independent certified public accountant or notarized by the chief financial officer or owner; or
- b. The company's Federal income tax returns for the previous three (3) years as completed and filed with the Federal government. Sole proprietors should provide Schedule C from Form 1040 for the previous three (3) years. The Schedule C's must be accompanied by a statement from an independent certified public accountant or a statement by the chief financial officer or owner, indicating that the Schedules are copies of the ones filed with the 1040; or
- c. A statement from an independent certified public accountant attesting to the financial stability of the organization for the current and prior two (2) fiscal years of operation; or
- d. A reference letter from the proposer's bank or financial institution indicating the bank's relationship with the proposer and providing a credit reference. At the time of issuance of the reference letter, the bank/financial institution must have a minimum peer group rating that meets or exceeds the threshold levels in at least two (2) of the five (5) approved services as listed below:
  - 1. Thomson Reuters Bank Insight Quarterly Ratings - 50
  - 2. IDC Bank Financial Quarterly Listing - 125
  - 3. Veribanc, Inc. Listing - 3 Star Green Rating
  - 4. Standard & Poor's Listing - Single A
  - 5. Moody's Listing - Single A

The Town reserves the right to request additional information considered pertinent to indicate any and all proposer's financial and operational capabilities. Further, the Town retains the right to disqualify from further consideration any proposer who fails to demonstrate sufficient financial stability to perform under the Lease Agreement.

### **3.3 PROJECT APPROACH**

3.3.1 Description of the Project. Proposer shall provide a detailed description of its approach and methodology for the development, operation, management and maintenance of the project. The project description should include the following:

- a. A detailed description of the proposed uses, the proposed total square footage of each use proposed, including any ancillary uses proposed to be developed on the Property.

- b. A conceptual development plan, which should include the general location of the area proposed to be leased, a conceptual site plan and building renderings (interior and exterior). The conceptual site plan should indicate the location of proposed tenant improvements, including vehicular parking, site lighting, utilities, ingress and egress, etc. In the case where proposer intends to virtually duplicate an existing concept that proposer has developed elsewhere, proposer may substitute pictures or photographs of an existing facilities for the renderings.
- c. A description of how proposer intends to satisfy stormwater drainage requirements associated with development of the Property.
- d. A proposed construction schedule for development. Proposer must be capable of completing development within twenty four (24) months of the effective date of the Lease Agreement.
- e. A detailed development cost estimate, including hard and soft costs.
- f. A detailed financial plan, indicating the sources of funding to be used for tenant-constructed improvements.
- g. Proposed minimum capital investment for the design and construction of the tenant improvements. The proposed minimum capital investment will become a lease obligation subject to the limitations set forth in the Lease Agreement (See Attachment "2"). Engineering and architectural costs should be limited to twelve percent (12%) of the total proposed minimum capital investment. In addition, the proposed minimum capital investment should not include internal administrative or supervisory costs, consulting costs (other than engineering and architectural), furnishings, trade fixtures or equipment or other excluded costs (See Attachment "2"). No minimum dollar amount is established for the minimum capital investment. Proposers should propose an amount that is reasonable taking into consideration the nature of the tenant improvements proposed to be constructed on the Property.
- h. Justification for the proposed lease term in the event the proposed lease term exceeds ninety nine (99) years, including all renewal terms. For example, a longer lease term may be justified in order to provide sufficient time to amortize the capital investment. If a longer lease term is require for in order to finance the construction of the Initial Leasehold Improvements, proposer should include detailed information regarding the type of financing and the lender requirements.

**Note: The acceptance of a proposal by the Town shall not constitute approval of the proposer's submitted development plans.**

3.3.2 \*Development Team. Proposer shall include detailed information regarding the key development team members' relevant experience, education and/or expertise. Key development team members would include the architectural and engineering firm(s), general contractor and project manager for the project.

3.3.3 \*Operation & Management. Proposer shall include detailed information regarding the operation and management of the project upon completion of development.

3.3.4 \*Marketing. Proposer should include information regarding the methods to be used to market the uses proposed to be located on the Property.

3.3.5 \*Financial Pro forma. Proposer shall submit a financial pro forma detailing the following for the proposed development on the Property for the first (1st) five (5) lease years of the Lease Agreement:

- a. Anticipated gross rental and other revenues (if any, by category);
- b. Expenses by category, including, but not limited to, operating and maintenance expenses, rental to the Town, and utilities;
- c. General and administrative costs; and
- d. Debt service.

Proposers shall include in this section data and information indicating the expected rent to be paid to the Town and demonstrating that the rental and fees, as proposed, can be supported by the projected revenue stream without sacrificing the quality or service of the operations. Pro formas shall be evaluated by the Town for reasonableness, demonstrated understanding of the proposed Lease Agreement, viability of the proposed operations and financial offer, and ability to fund the operation.

3.3.6 \*Economic Benefits. Proposers should indicate the number of jobs estimated to be created by the proposed project, including those related to construction of the project, and how small, minority or women-owned businesses will be utilized on the project. Proposers should include information regarding any anticipated economic impacts that may result as a result of the project in this section.

3.3.7 \*Exceptions to the Lease Agreement (Attachment "2"). Proposers should identify any proposed exceptions to the Lease Agreement (See Section 2.11 of RFP) for purposes of negotiation of lease terms with the selected proposer. The Town shall have no obligation whatsoever to accept any proposed exceptions.

### **3.4 PROPOSAL RESPONSE FORM**

3.4.1 Proposal Response Form. Proposers must submit the attached Proposal Response Form (Appendix "A") with their proposals. Proposers should take into consideration the information detailed in this Section of the RFP prior to completing the Proposal Response Form.

3.4.2 Lease Proposal. Proposers may propose to lease the Property for the development of commercial or industrial uses compatible with surrounding communities, such as warehouse or office use.

- a. **Property Size.** Proposers may propose to lease up to 24.3622 +/- acres of unimproved ground, for the lease and development of compatible commercial or industrial uses. As a minimum requirement to respond to this RFP, proposers must propose to lease no less than twenty (10) acres of unimproved ground.
- b. **Lease Term.** The proposed term of the Lease Agreement, including all renewal term(s), shall not exceed ninety nine (99) years from the Date of Beneficial Occupancy (as defined in the Lease Agreement, see Attachment “2”) to allow the successful proposer sufficient time to recapture its initial investment and obtain a reasonable financial return. Lease term proposals shall be evaluated under the Project Approach criteria. In the event the proposed lease term exceeds ninety nine (99) years, including all renewals, proposers should also include the information provided for in Section 3.3.1 (h) above in the Project Approach section.
- c. **Property Uses.** The Property may be used for the development of compatible commercial or industrial uses. Proposals for use of the Property for residential purposes, or other uses determined incompatible with the surrounding properties will not be considered for this opportunity. The proposed Property use shall be evaluated under the Project Approach criteria.

### **3.5 PROPOSAL GUARANTEE**

Proposers must submit as a part of their proposal, a Proposal Guarantee in the amount of Five Thousand Dollars (\$5,000.00). The Proposal Guarantee shall be in the form of a bond issued by a surety or sureties satisfactory to the Town, or other acceptable form of Proposal Guarantee, limited to a cashier's check drawn on any state or national bank and made payable to the “Southwest Ranches Town Council”. Failure to submit the required Proposal Guarantee shall result in disqualification of the proposal. The Proposal Guarantee will be held by the Town to secure the obligations which proposer agrees to assume under this RFP. The Proposal Guarantees of non- selected proposers will be returned immediately following execution of the Lease Agreement by the Town Council. The selected proposer's Proposal Guarantee will not be returned until after execution of the Lease Agreement and after the Security Deposit (Surety Bond or Clean Irrevocable Letter of Credit) and certificate(s) of insurance, as required pursuant to the Lease Agreement, are received by the Town.

### **3.6 DRUG FREE WORKPLACE CERTIFICATION**

Proposer shall complete the attached Drug Free Workplace Certification (Appendix “D”), and submit it with its proposal.

## **SECTION 4 TERM**

### **4.1 TERM**

The proposed term of the Lease Agreement (See Attachment “2”), including all renewal term(s), shall not exceed fifty (99) years from the Date of Beneficial Occupancy (as defined in Section 3.01 of the Lease Agreement) to allow the successful proposer sufficient time to recapture its initial investment and obtain a reasonable financial return. In the event the proposed lease term exceeds ninety nine (99) years, including all renewals, proposers should also include the information provided for in Section 3.3.1(h) above in the Project Approach section.

**APPENDIX "A" - PROPOSAL RESPONSE FORM**

**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

<b>Section 1 - Rental Proposal</b>		
<b>1. Total Available Property</b>  <i>Total Available Property : 24.3622 + Acres</i> <hr style="width: 50%; margin-left: 0;"/>	<b>2. Initial Rent Rate</b>  <hr style="width: 50%; margin-left: 0;"/>	<b>3. Proposed Initial Annual Rental</b>  <i>(1 X 2 =3)</i>  <hr style="width: 50%; margin-left: 0;"/>
<hr style="width: 50%; margin-left: 0;"/> Proposed Acres	X \$ <hr style="width: 50%; margin-left: 0;"/> Rate Per Acre	= \$ <hr style="width: 50%; margin-left: 0;"/> Proposed Initial Annual Rental
<b>Section 2 - Proposed Lease Term (in years)</b>		
<p><i>Proposer shall indicate the proposed lease term and any renewal term(s) for the Property. The proposed lease term, including all renewal term(s), shall not exceed a total fifty (50) years from the Date of Beneficial Occupancy (as defined in the Lease Agreement). Indicate proposed lease term for the Property on the blank below:</i></p> <p><i>Proposed Initial Lease Term:</i> _____ (years)</p> <p><i>Proposed Renewal Term(s):</i> _____ (years)</p> <p><i>TOTAL Proposed Lease Term, including all renewals:</i> _____ (years)</p>		

**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

**Section 3 - Uses Proposed**

*Proposer shall indicate in general terms the commercial uses that are proposed (e.g. warehouse, retail, office, etc.) in the blanks below. Detailed information should be included in the Project Approach section of your proposal.*

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By signing this Proposal Response Form, the proposer warrants and represents to the Town that the following statements are true and correct:

- a. This proposal is current, accurate and complete, and is presented to the Town for the performance of the Lease Agreement in accordance with the requirements stated in the RFP.
- b. This proposal is submitted without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same service and is, in all respects, fair and without collusion or fraud.
- c. Proposer has the financial ability to fully perform the terms and conditions as specified in the RFP and Lease Agreement.
- d. Proposer has received and reviewed all Amendments to the RFP.
- e. Proposer understands that Town that the Town has no obligation whatsoever to accept any proposed exceptions to the Lease Agreement.
- f. Proposer understands that proposer may not propose any exceptions to the minimum RFP requirements (see Section 3 of RFP) and failure to satisfy the minimum requirements will result in the proposal being deemed non-responsive.
- g. Proposer understands that failure to submit this Proposal Response Form will be cause for immediate rejection of its entire proposal.



**APPENDIX "A"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL RESPONSE FORM**

**\*\*This signature page must be completed by an Authorized Person (see Section 1.8 of RFP)\*\***

Type or print proposer's contact information below:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_ **FAX NO.:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE:** \_\_\_\_\_

**\*\*\*You must affix a corporate seal or have the signature on this Proposal Response Form notarized.\*\*\***

(Corp. Seal)

OR:

BEFORE me the undersigned authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

STATE OF \_\_\_\_\_

\_\_\_\_\_  
*(Signature of Notary)*

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
*(Notary's Printed Name)*

My Commission Expires: \_\_\_\_\_

**APPENDIX "B" - DRUG FREE WORKPLACE CERTIFICATION**

**APPENDIX "B"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**

**(RFP No. 18-003)**

**DRUG FREE WORKPLACE CERTIFICATION**

The undersigned proposer hereby certifies that it will provide a drug-free workplace program by:

- (1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the offeror's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establishing a continuing drug-free awareness program to inform its employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The offeror'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 occurring in the workplace;
- (3) Giving all employees engaged in performance of the contract a copy of the statement required by subparagraph (1);
- (4) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or of any state, for a violation occurring in the workplace NO later than five days after such conviction.
- (5) Notifying the Town of Southwest Ranches in writing within 10 calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or

**APPENDIX "B"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**

**(RFP No. 18-003)**

**DRUG FREE WORKPLACE CERTIFICATION.**

- (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
- (7) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs (1) through (6).

\_\_\_\_\_  
(Proposer Signature)

\_\_\_\_\_  
(Print Proposer Name)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

by \_\_\_\_\_ as \_\_\_\_\_  
(Name of person who's signature is being notarized) (Title)

of \_\_\_\_\_ known to me to be the person described herein, or  
(Name of Company)

who produced \_\_\_\_\_ as identification, and who did/did not take an oath.  
(Type of Identification)

NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

My commission expires: \_\_\_\_\_

**APPENDIX "C" – DISCLOSURE OF OWNERSHIP INTERESTS**

**APPENDIX "C"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Disclosure of Ownership Interests**

**TO: TOWN OF SOUTHWEST RANCHES**  
**OFFICIALLY DESIGNATED REPRESENTATIVE**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

*BEFORE ME,* the undersigned authority, this day personally appeared \_\_\_\_\_, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:  
[ ] an individual *or*  
[ ] the \_\_\_\_\_ of \_\_\_\_\_  
[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.]. The Affiant or the entity the Affiant represents herein seeks to do business with the Town of Southwest Ranches through its Town Council.

2. Affiant's address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with the Town of Southwest Ranches policy, and will be relied upon by the Town of Southwest Ranches. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

*FURTHER AFFIANT SAYETH NAUGHT.*

\_\_\_\_\_  
\_\_\_\_\_, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, [ ] who is personally known to me or [ ] who has produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
(Print Notary Name)  
State of \_\_\_\_\_ at Large  
My Commission Expires: \_\_\_\_\_



## APPENDIX "D" - PROPOSAL CHECKLIST



**APPENDIX "D"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**PROPOSAL CHECKLIST**

**Proposal Documents and Information**

- \_\_\_\_\_ **Letter of Transmittal**
- \_\_\_\_\_ **Table of Contents**
- \_\_\_\_\_ **Experience, Qualifications and Financial Information**
  - \_\_\_\_\_ Description of Business Organization
  - \_\_\_\_\_ History of Company
  - \_\_\_\_\_ Experience
  - \_\_\_\_\_ References
  - \_\_\_\_\_ Credit References
  - \_\_\_\_\_ Legal/Contractual History
  - \_\_\_\_\_ Financial Information

**Project Approach**

- \_\_\_\_\_ Description of Project – items (a) thru (j)
- \_\_\_\_\_ Development Team
- \_\_\_\_\_ Operation/Management
- \_\_\_\_\_ Marketing
- \_\_\_\_\_ Financial Pro Forma
- \_\_\_\_\_ Economic Benefits
- \_\_\_\_\_ Exceptions to Lease
- \_\_\_\_\_ SBE Participation Plan

**Required Appendices & Proposal Guarantee**

- \_\_\_\_\_ Proposal Response Form (Appendix A) - Signed by Authorized Representative
- \_\_\_\_\_ Drug Free Workplace Certification (Appendix B)
- \_\_\_\_\_ Disclosure of Ownership Interests (Appendix C)
- \_\_\_\_\_ Sworn Statement on Public Entity Crimes (Appendix E)
- \_\_\_\_\_ Non Collusion Affidavit (Appendix F)
- \_\_\_\_\_ Proposal Guarantee (\$5,000.00)
- \_\_\_\_\_ Documents Executed in Accordance with the Requirements of the RFP

\*\*\*Proposers are not required to complete or return this checklist. Proposers are advised to verify that all forms are completed correctly, including PDF document forms, and that all required forms are properly executed, where applicable. This checklist is provided solely as a reference for proposers and is not intended to be relied upon as the only information and documentation necessary to submit a responsive proposal to this RFP. This checklist does not, in any way, substitute or replace the requirements of the RFP. In the event of a conflict between this checklist and the RFP, the terms, conditions and requirements of the RFP shall control.\*\*\*

**APPENDIX "E"**  
**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES**  
**ON PUBLIC ENTITY CRIMES**

**APPENDIX "E"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a)**  
**FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to \_\_\_\_\_  
by \_\_\_\_\_  
for \_\_\_\_\_  
whose business address is \_\_\_\_\_  
\_\_\_\_\_
- and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Para. 287.133(1) (a), Florida Statutes, means:  
(i). A predecessor or successor of a person convicted of a public entity crime; or  
(ii). An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Para. 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the

legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. The statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

BIDDER: \_\_\_\_\_

**[Signatures on next page]**

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_  
(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

My Commission Expires \_\_\_\_\_

(Printed, typed, or stamped commissioned name of notary public)

BIDDER: \_\_\_\_\_

**APPENDIX "F" - NON-COLLUSION AFFIDAVIT**



By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_

(Type of Identification)

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Signature)

My Commission Expires: \_\_\_\_\_

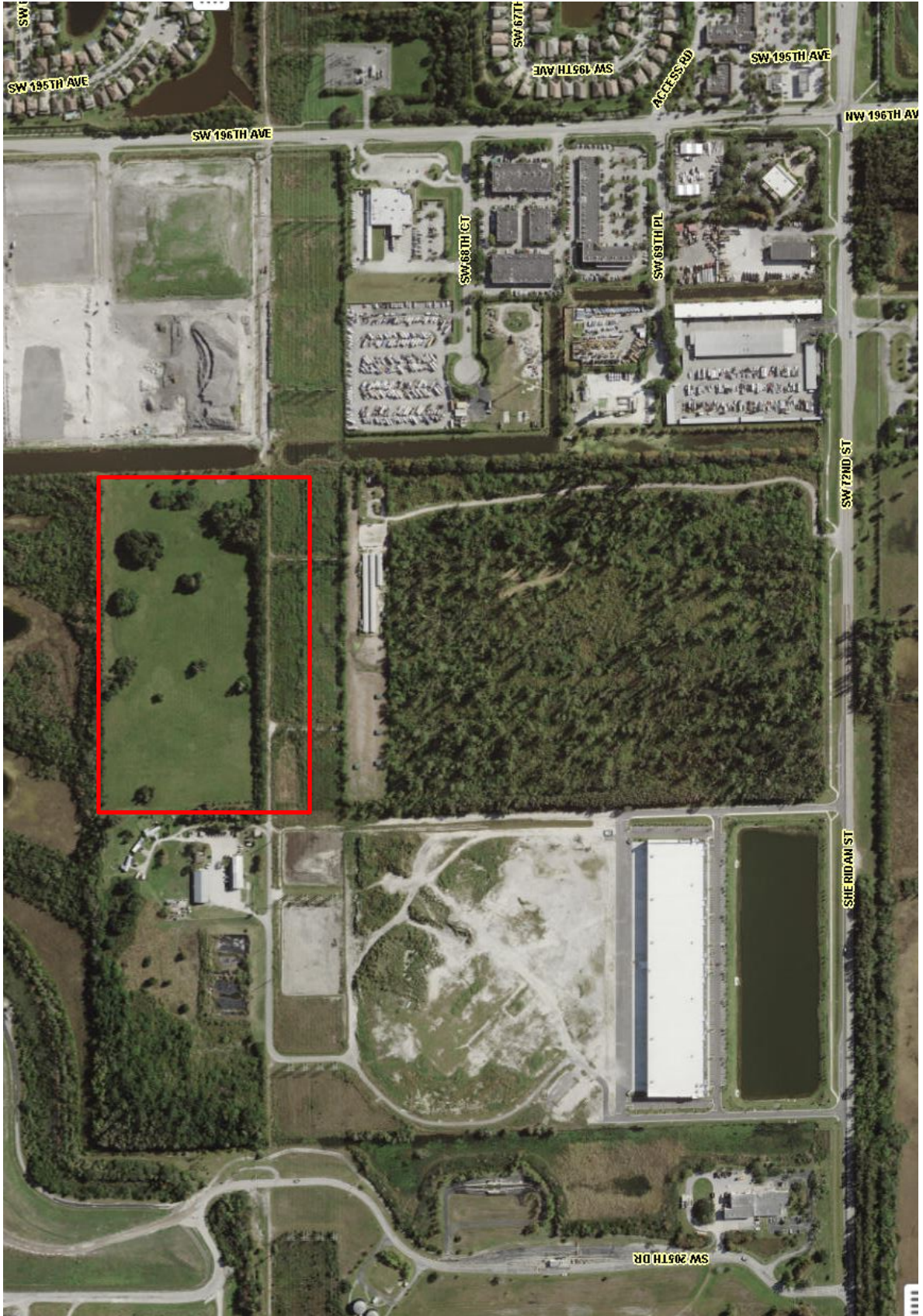
(Printed, typed, or stamped commissioned name of notary public)

BIDDER: \_\_\_\_\_



EXHIBIT 1  
LEASE AND DEVELOPMENT OF VACANT LAND  
WEST BROWARD INDUSTRIAL PARK

Location Map





**ATTACHMENT "1"**  
**LEASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Selection Criteria & Scoring Instructions**

SELECTION CRITERIA	MAXIMUM POINTS
<b>Financial Proposal</b> The Net Amount of the Rental Proposal listed in Section 1 of Proposal Response Form	40
<b>Experience, Qualifications and Financial Information</b> Section 3.2 of RFP	20
<b>Project Approach</b> Section 3.3 and Section 3.4.2(a),(c) and (d) of RFP	40
<b>Total Available Points</b>	<b>100</b>

**SCORING INSTRUCTIONS**

In accordance with Section 2.11 of the RFP, Selection Committee Members shall evaluate and score each proposal by reviewing the proposal against the Selection Criteria set forth in this Attachment, taking into consideration the Scoring Instructions set forth in this Attachment.

A. Financial Proposal. The Financial Proposal will be pre-scored by the Department and shall be determined based upon the highest net amount of the Rental Proposal listed in Section 1 of Proposal Response Form. Proposals may receive up to 40 points.

1. The proposal with the highest Financial Proposal will be awarded the full 40 points. In the event two or more proposals contain the identical amount designated as the highest Financial Proposal, all such proposals will be awarded 30 points.
2. All remaining proposals shall be scored on a basis relative to the proposal with the highest Financial Proposal (i.e., Each proposer's Financial Proposal will be divided by the highest Financial Proposal and then multiplied by 40 points to calculate the score. Stated by equation as follows:

$\text{Score} = \left( \frac{\text{Proposer's Financial Proposal}}{\text{Highest Financial Proposal}} \right) \times 40 \text{ points}$
---

3. Any calculated score with a fractional result will be rounded the nearest whole point.

**ATTACHMENT "1"**  
**EASE AND DEVELOPMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP No. 18-003)**

**Selection Criteria & Scoring Instructions**

- B. Experience, Qualifications and Financial Information. Proposals may receive up to 20 points based on the proposer's Experience, Qualifications and Financial Information. Selection Committee Members should review the information submitted in accordance with Section 3.2 of the RFP in determining the number of points to be allocated to each proposal for Experience, Qualifications and Financial Information.
- C. Project Approach. Proposals may receive up to 40 points based on the proposer's Project Approach proposal. The Project Approach criteria includes, but is not limited to: the size (acreage) of the Property proposed to be leased (Section 2.12 of the RFP states it is the Department's desire to recommend approval of a Lease Agreement for the entire 24.3622 +/- acre site); lease term (proposed initial term plus any renewal term); proposed uses, minimum capital investment and economic benefits. Selection Committee Members should review the information submitted in accordance with Sections 3.3 and 3.4(a), (c) and (d) of the RFP. Selection Committee Members should also consider the Town's purpose in issuing the RFP, as set forth in Section 1.2 of the RFP, when determining the number of points to be allocated to each proposal for Project Approach, including the desire to maximize the use of the Property.

**ATTACHMENT "2"**  
**EXAMPLE DEVELOPMENT SITE LEASE AGREEMENT OF VACANT LAND**  
**BROWARD INDUSTRIAL PARK**  
**(RFP NO. 20-003)**

**DEVELOPMENT SITE LEASE AGREEMENT**

**Department of Procurement**

**Town of Southwest Ranches**

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## **DEVELOPMENT SITE LEASE AGREEMENT**

THIS DEVELOPMENT SITE LEASE AGREEMENT (this "Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by and between the Town of Southwest Ranches, a political subdivision of the State of Florida (the "Town"), and, \_\_\_\_\_ a, \_\_\_\_\_, having its office and principal place of business at \_\_\_\_\_ ("Tenant").

### **WITNESSETH:**

WHEREAS, Town, by and through its Department of Procurement (the "Department"), owns and operates Property located within West Broward Industrial Park, Broward County, Florida (the "Industrial Park"); and

WHEREAS, Tenant submitted a proposal in response to Request for Proposals, 20-003 issued on October 1, 2019, for the lease of certain real property located in the Industrial Park, which is managed by the Department on behalf of the Town.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

### **ARTICLE 1 – RECITALS**

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

### **ARTICLE 2 – DEFINITIONS**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.1 "Additional Insured" has the meaning set forth in Section 11.08.
- 2.2 "Additional Rent" has the meaning set forth in Section 5.08.
- 2.3 "Adjustment Date" has the meaning set forth in Section 5.03(A).
- 2.4 "Industrial Park" has the meaning set forth in the Recitals.
- 2.5 "Industrial Park Rules and Regulations" means the Broward Industrial Park Rules and Regulations, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Industrial Park.

- 2.6 **Insert if applicable:** "Appraisal Adjustment Date" has the meaning set forth in Section 5.03(D).
- 2.7 "Approval Deadline" has the meaning set forth in Section 3.08(B).
- 2.8 "Assignment" has the meaning set forth in Article 16.
- 2.9 "Bond" has the meaning set forth in Section 5.05.
- 2.10 "Business Day" means any day other than a Saturday, Sunday or holiday. Use of the word "day" as opposed to Business Day means a calendar day.
- 2.11 "Capital Investment Report" shall have the meaning set forth in Section 6.01(E).
- 2.12 "Town Party" means the Town and its elected officers, employees and agents.
- 2.13 "Damages" has the meaning set forth in Article 18.
- 2.14 "Date of Beneficial Occupancy" has the meaning set forth in Section 3.01.
- 2.15 "Department" means the Town of Southwest Ranches Procurement Department.
- 2.16 "Derelict Vehicle" means a vehicle that is in a wrecked, dismantled or partially dismantled condition, or which is discarded and in an inoperable condition.
- 2.17 "Director" means the Director or Acting Director of the Department of Procurement.
- 2.18 "Effective Date" means the date that this Lease is approved by the Southwest Ranches Town Council and signed by the parties.
- 2.19 "Environmental Laws" means all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission ,discharge, seepage or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.
- 2.20 "Governmental Approvals" has the meaning set forth in Section 3.08.
- 2.21 "Hazardous Substances" shall mean any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.
- 2.22 "Improvement Cost" has the meaning set forth in Section 6.01(E).



- 2.23 "Initial Leasehold Improvements" has the meaning set forth in Section 6.01(A).
- 2.24 "Initial Rental" means the initial annual ground rental set forth in Section 5.01 [Insert if applicable: for the rental adjustments occurring prior to the Appraisal Adjustment Date: the rental established pursuant to Section 5.03(D) for rental adjustments occurring after the Appraisal Adjustment Date: and the rental established pursuant to Section 5.03(E) alter the Renewal Term.]
- 2.25 "Initial Rental Year" means 2019 during the Initial Term [Insert if applicable: for rental adjustments occurring prior to the Appraisal Adjustment Date; and calendar year for rental adjustments occurring after the Appraisal Adjustment Date; and for rental adjustments occurring during the Renewal Term.]
- 2.26 "Initial Term" has the meaning set forth in Section 3.01.
- 2.27 "Inspection Period" has the meaning set forth in Section 3.06(A).
- 2.28 "Inspections" includes, but is not limited to, the following: (a) physical inspection of the Property; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities and site planning studies.
- 2.29 "Lease" means this Lease and all exhibits attached hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.
- 2.30 "Leasehold Mortgage" has the meaning set forth in Section 17.01.
- 2.31 "Leasehold Mortgagee" has the meaning set forth in Section 17.01.
- 2.32 "Lease Year" means a twelve (12) month period beginning on the Date of Beneficial Occupancy, and each twelve (12) month period thereafter, until the expiration or earlier termination of this Lease.
- 2.33 "Letter of Credit" has the meaning set forth in Section 5.05.
- 2.34 "Minimum Capital Investment" has the meaning set forth in Section 6.01(B).
- 2.35 "West Broward Industrial Park Development Area" means the property more particularly described in Exhibit "A".
- 2.36 "Phase I EA" has the meaning set forth in Section 20.05.
- 2.37 "Plans" have the meaning set forth in Section 6.01(C).

- 2.38 "Premises" means the Property together with all buildings, facilities and other improvements now or hereafter constructed thereon, subject to easements, rights-of-way and any other encumbrances of record.
- 2.39 "Property" means approximately 1,064,488.79 square feet of unimproved real property as more particularly described on Exhibit "A", subject to easements, rights-of-way and any other encumbrances of record. The parties acknowledge the boundary of the Property may change based upon the final site plan for the Initial Leasehold Improvements. Within ninety (90) days following issuance of approval of the site plan for the Initial Leasehold Improvements by Planning, Zoning and Building Department, the parties shall enter into an amendment to this Lease to reflect the final square footage and location of the Property based upon the approved site plan and replace Exhibit "A" with an updated survey and legal description. The updated survey and legal description will be prepared by Town's surveyor at no cost to Tenant.
- 2.40 "Proposal" means the written proposal submitted by Tenant in response to the RFP.
- 2.41 "Release Documents" has the meaning set forth in Section 17.08.
- 2.42 "Renewal Term" has the meaning set forth in Section 3.02.
- 2.43 "Rental" means the initial annual ground rental established in Section 5.01, as adjusted in accordance with Section 5.03.
- 2.44 "Request for Proposals" or "RFP" means Request for Proposals No. 20-003, issued by Town on October 1, 2019, as amended and/or supplemented.
- 2.45 "Security Deposit" has the meaning set forth in Section 5.05.
- 2.46 "Tenant Improvements" means all buildings, structures, pavement, facilities, landscaping and other improvements, above and below ground, constructed by Tenant upon the Premises during the Term, including the Initial Leasehold Improvements.
- 2.47 "Tenant Party" means Tenant and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.
- 2.48 "Term" means the Initial Term plus any Renewal Term.
- 2.49 "Title Review Period" has the meaning set forth in Section 3.03.
- 2.50 "Traffic Concurrency Allocation" has the meaning set forth in Section 6.06.

### **ARTICLE 3 - EFFECTIVE DATE, TERM AND EVALUATION OF PREMISES**

3.01 Term. The term of this Lease shall commence on the earlier of: (a) substantial completion of the Initial Leasehold Improvements as defined in Section 6.01(A); (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) twenty four (24) months from the Effective Date (or such later date agreed to by Town pursuant to Section 6.01(A)) ("Date of Beneficial Occupancy") and expire 20 years thereafter, unless sooner terminated pursuant to the terms of this Lease ("Initial Term").

**[\*\*Total Lease Term, including all renewal terms may not exceed 99 years]**

3.02 Option to Renew. Provided that Tenant is not in material default of this Lease (or event has not occurred, which with the passage of time or giving of notice would constitute a material default), Tenant shall have the option to renew this Lease for an additional period of Twenty (20 years) ("Renewal Term"), by notifying Town in writing of Tenant's intent to exercise its option to renew not later than one hundred twenty (120) days prior to the expiration of the Initial Term, with time being of the essence. Such renewal shall be upon the same terms and conditions set forth herein.

**[\*\*Total Lease Term, including all renewal terms may not exceed 99 years]**

3.03 Title Insurance. Tenant shall have thirty (30) days following the Effective Date to examine Town's title to the Property (the "Title Review Period") and, at Tenant's option, obtain a title insurance commitment for the issuance of a leasehold title policy, agreeing to issue to Tenant a title insurance policy in such amount as deemed appropriate by Tenant. Tenant shall furnish a copy of the title insurance commitment and title policy, if applicable, to Town together with legible copies of all exceptions to coverage reflected thereon upon receipt. The cost of the title insurance commitment and title insurance policy and any premium shall be borne by Tenant.

3.04 Title Defects. In the event the title insurance commitment shows as an exception any matters, other than the Permitted Exceptions, which render title unmarketable or would unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, Tenant shall notify Town of Tenant's objections thereto prior to expiration of the Title Review Period. Town shall have the right, but not the obligation, within sixty (60) days from receipt of the notice, to cure such title defects or to make arrangements with the title insurer for the removal of such objections from the title insurance commitment. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the sixty (60) day period, Tenant shall have the option of: (a) accepting title to the Property as it then exists; (b) providing Town with an additional ninety (90) days to remove such defects; or (c) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the sixty (60) day period. In the event Tenant elects option (b) above and Town is unable to cure such defects within the additional ninety (90) day period, Tenant shall have the option of: (a) accepting title to the Property, as it then exists; or (b) terminating this Lease. Tenant shall provide Town with written notice of its election within ten (10) days after expiration of the ninety (90) day period. In the event Tenant terminates this Lease pursuant to this Section, the parties shall be released from all obligations under this Lease, with the exception of those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to

properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right and shall be deemed to have accepted title to the Property subject to all matters of record.

3.05 Survey. Tenant shall have the right, within the Title Review Period, to obtain a current survey of the Property. The survey shall be prepared in accordance with the minimum technical standards for surveys within the State of Florida. If the survey reveals any encroachments, overlaps, boundary disputes or other defects, other than the Permitted Exceptions, which render title unmarketable or unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, the same shall be treated as title defects as described in Section 3.04 of this Lease and Tenant shall have the same rights and remedies as set forth therein.

3.06 Inspections. Commencing on the Effective Date and expiring sixty (60) days thereafter ("Inspection Period"), Tenant may conduct any Inspections that Tenant deems appropriate with respect to the Property. All Inspections performed hereunder shall be conducted at Tenant's sole cost and expense and shall be performed by licensed persons or firms dealing in the respective areas or matters. Tenant agrees to indemnify the Town Parties from and against any and all Damages arising from or out of a Tenant Party's entry upon and inspection of the Property except if such Damages are caused by a Town Party's negligence or willful misconduct or Town's breach of its obligations under this Lease. Tenant's obligation to indemnify the Town Parties pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Tenant shall provide Town with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Tenant hereunder. If Tenant determines, in its sole discretion, that it will be unable to develop the Property for the uses permitted hereunder as the result of the Inspections, Tenant may elect to terminate this Lease upon written notice to Town within sixty (60) days after the expiration of the Inspection Period, time being of the essence. If termination notice is timely given by Tenant pursuant to this Section, this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right. In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Property to the condition in which it existed prior thereto, using materials of like kind and quality.

3.07 Governmental Approvals. This Lease is expressly conditioned on Tenant's pursuit and receipt of any and all governmental approvals, permits and entitlements necessary for Tenant to construct the Initial Leasehold Improvements on the Property. The parties acknowledge and agree that the term "Governmental Approvals" shall not include internal approval processes of Tenant or the Department's review on behalf of the Town under Article 6 of this Lease.

- (A) Town shall cooperate with Tenant in the pursuit of the Governmental Approvals by executing applications and other instruments necessary to obtain the required Governmental Approvals when the property owner is required to execute such applications or instruments, which may be signed on behalf of Town by the Director or her designee the Department's Deputy Director of Development.

Tenant acknowledges that: (a) Town shall be acting in its proprietary capacity in executing such applications or instruments and that nothing in this Section 3.08 shall be construed as obligating or requiring Town to take any specific action on such applications or instruments when acting in its governmental or regulatory capacity; and (b) any and all costs incurred in the pursuit of the Governmental Approvals shall be borne solely by Tenant.

- (B) Provided that Tenant submits its applications in a timely manner and continues to work diligently in good faith to obtain all Governmental Approvals, if Tenant has not received all required Governmental Approvals on or before the date that is twelve (12) months from the Effective Date ("Approval Deadline"), Tenant shall be entitled to terminate this Lease upon prior written notice to Town within thirty (30) days after the expiration of the Approval Deadline, if termination notice is timely given by Tenant to Town pursuant to this Section 3.08(B), this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination.

#### **ARTICLE 4 - PREMISES AND PRIVILEGES**

4.01 Description of Premises. Town hereby demises and leases to Tenant, and Tenant rents from Town, the Property, subject to the terms, conditions and covenants set forth herein.

4.02 Description of Specific Privileges, Uses and Rights. Tenant shall have the right and obligation to use the Property for the purpose of constructing, operating, and maintaining \_\_\_\_\_ on the Property.

4.03 Prohibited Uses, Products and Services. Tenant agrees the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Tenant shall not provide any products or services not specifically authorized by this Lease or the Department.

4.04 Restrictions on Privileges, Uses and Rights.

- (A) The rights granted hereunder are expressly limited to the improvement, maintenance, and operation of the Premises pursuant to the terms and conditions of this Lease.
- (B) Parking of boats, motor homes or inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers on the Premises is strictly prohibited.
- (C) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to storage incidental to Tenant's overall operation on the Premises.

4.05 Condition and Use of the Premises. Except as otherwise provided for herein, and subject to Tenant's rights to complete inspections pursuant to Sections 3.03, 3.04, 3.05, and 3.06 Tenant accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together

with all defects, latent and patent, if any. Tenant further acknowledges that Town has made no representations or warranties of any nature whatsoever regarding the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any improvements located thereon; the value of the Premises or improvements; the zoning of the Premises; title to the Premises; the suitability of the Premises or any improvements for Tenant's intended use; or Tenant's legal ability to use the Premises for Tenant's intended use.

#### **ARTICLE 5 - RENTAL, FEES, CHARGES AND SECURITY DEPOSIT**

5.01 Rental. For the use and occupancy of the Premises, Tenant shall pay to Town initial annual ground rental of (\$\_\_\_\_) per square foot, for approximately \_\_\_\_\_square feet of ground or (\$\_\_\_\_) annually.

5.02 Commencement and Time of Payment of Rental. Payment of the Rental by Tenant to Town shall commence upon the Date of Beneficial Occupancy. Rental shall be payable in equal monthly installments, in advance, on or before the first (1st) day of each and every month throughout the Term of this Lease. All payments must be delivered (together with applicable sales taxes), without demand and without any deduction, holdback or set off whatsoever, to: Procurement Department, 13400 Griffin Road, Southwest Ranches, FL 33330, or at such other address as may be directed by the Department from time to time. Payments shall be made payable to "Southwest Ranches."

5.03 Adjustment of Rental. [Based on the length of the Initial Term, the Town may require one or more appraisal-only adjustment]

- (A) On October 1, 2022, and each three (3) year anniversary thereof (each such date, an "Adjustment Date"), the then current Rental shall be adjusted in accordance with the provisions of this Section. The new Rental shall be determined by an appraisal obtained by Town, which shall set forth the fair market rental for the Premises (exclusive of the Tenant Improvements). The appraisal shall be performed, at Town's sole cost and expense, by a qualified appraiser selected by Town. Town shall notify Tenant in writing of the fair market rental of the Property as established by the appraisal, which shall become the new Rental subject to the limitations set forth in Section 5.03(B) below. Tenant shall commence paying the new Rental on the Adjustment Date. The new Rental shall not be less than the Rental for the prior period. This Lease shall automatically be considered as amended to reflect the new Rental rate, without formal amendment hereto, upon Town's written notification of the establishment of the new Rental rate applicable to the Property.
- (B) Notwithstanding the foregoing, the Rental payable hereunder shall not exceed an amount that would be obtained by multiplying the Initial Rental by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April of the Initial Rental Year.

- (C) For the purposes hereof, the "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100), not seasonally adjusted, or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the standard reference index base period, the then current standard reference index base period shall be utilized. In the event the Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.
- (D) (Insert if applicable: Notwithstanding any provision of this Lease to the contrary, on October 1, \_\_\_\_\_ and on October 1, \_\_\_\_\_ (each, an "Appraisal Adjustment Date"), the then current Rental shall be adjusted and new Rental shall be determined as set forth in this Section by appraisal and shall not be subject to the provisions of Section 5.03(B). Prior to the Appraisal Adjustment Date, Town, at its sole cost and expense, shall obtain an appraisal of the Premises (exclusive of the Tenant Improvements during the Initial Term) to determine its fair market rental value. Prior to the Appraisal Adjustment Date, Town shall provide a complete copy of the appraisal to Tenant. In the event Tenant objects to the fair market rental value set forth in the appraisal obtained by Town, Tenant shall notify Town in writing of its objection within thirty (30) days of receipt of Town's appraisal. Provided Tenant has notified Town in writing of its objection to Town's appraisal within the aforementioned thirty (30) day period, Tenant, at its sole cost and expense, may obtain a second appraisal. Tenant shall provide Town with a copy of the second appraisal within sixty (60) days of the date of Tenant's objection notice. In the event a second appraisal is not obtained, the Rental shall be adjusted on the Appraisal Adjustment Date in accordance with the rental rate set forth in the first appraisal. In the event a second appraisal is obtained, and the rental rates established in the two (2) appraisals vary by an amount less than or equal to twenty five percent (25%) of the average of the two (2) appraisals, then the Rental shall be adjusted on the Appraisal Adjustment Date based on the average of the two (2) appraisals. In the event the two (2) appraisals vary by an amount greater than twenty five percent (25%) of the average of the two (2) appraisals, then Town and Tenant shall jointly retain an appraiser, reasonably acceptable to both parties, to perform a third appraisal. Except as otherwise provided for below, the cost of the third appraisal shall be borne equally by the parties. In the event the parties are unable to agree upon the selection of the appraiser to conduct the third appraisal, Town shall have the right to select the third appraiser; provided, however, the cost of the third appraisal shall be borne solely by Town. In the event a third appraisal is obtained, the Rental shall be adjusted, effective as of the Appraisal Adjustment Date, by the average of the three (3) appraisals. The Rental established pursuant to this Section shall become the new- Initial Rental for purposes of future rental adjustments pursuant to Section 5.03(B). The parties agree that any appraisers selected pursuant to this Section shall be qualified M.A.I., appraisers with demonstrated experience in appraising commercial properties.]

- (E) [Insert if applicable: In the event Tenant exercises its option to renew, the initial Rental applicable to the Premises (inclusive of all Tenant Improvements) during the Renewal Term shall be determined by appraisal in accordance with the provisions of this Section and shall not be subject to the provisions of Section 5.03(B). Town, at its sole cost and expense, shall obtain an appraisal of the Premises to determine its fair market rental value. The appraisal shall be performed by a qualified M.A.I., appraiser selected by Town with demonstrated experience in appraising commercial properties. Town shall provide a complete copy of the appraisal to Tenant no less than ninety (90) days prior to the date Tenant is required to exercise its option to renew. The Rental established pursuant to this Section shall become the new Initial Rental for purposes of future rental adjustments.]
- (F) The amount of any rental adjusted pursuant to this Section shall not be less than the rental for the prior period. This Lease shall automatically be considered as amended to reflect the adjusted rental rate, without formal amendment hereto, upon Town's written notification of the establishment of the adjusted rental rate applicable to the Property.

5.04 Any delay or failure of Town in computing the adjustment in the Rental, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted annual Rental from the applicable Adjustment Date. Late Payments - interest. Tenant shall pay to Town interest at the rate of one and one-half percent (1.5%) per month on any late payments commencing ten (10) days after the amounts are due. The Department, in its sole and absolute discretion, may elect to waive the aforementioned late fees in appropriate circumstances as determined by the Department.

5.05 Security Deposit. Prior to the Effective Date of this Lease, Tenant shall post a security deposit with Town equal to three (3) monthly installments of Rental (the "Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to Town and shall also secure the performance of all obligations of Tenant to Town. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to Town. In the event of any failure by Tenant to pay any rentals or charges when due or upon any other failure to perform any of its obligations or other default under this Lease, then in addition to any other rights and remedies available to Town at law or in equity, Town shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Tenant shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. Tenant shall promptly increase the amount of the Security Deposit to reflect any increases in the Rental payable hereunder; provided, however, if the amount of required Security Deposit increase resulting from adjustment of the Rental is less than fifteen percent (15%) of the amount of Security Deposit currently held, no increase in the Security Deposit shall be required. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) days prior to any expiration date of a Letter of Credit or Bond, Tenant shall submit evidence in form satisfactory to Town that such security instrument



has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section shall: (a) entitle Town to draw down the full amount of such Security Deposit; and (b) constitute a default of this Lease entitling Town to all available remedies. The Security Deposit shall not be returned to Tenant until all obligations under this Lease are performed and satisfied. Prior to consent from Town to any assignment of this Lease by Tenant, Tenant's assignee shall be required to provide a Security Deposit to Town in accordance with the terms and conditions of this Section.

5.06 Triple Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to Town including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Premises.

5.07 Taxes and Fees. Tenant shall pay, on or before their respective due dates, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements thereon) or the estate hereby granted, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes, and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Tenant. Tenant hereby covenants and agrees to pay monthly to Town, as "Additional Rent," any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or Broward County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon Town as landlord/lessor, to the extent as applicable.

5.08 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease, other than the annual rental, shall be considered "Additional Rent", whether or not the same is specifically so designated and Town shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to Town with regards to annual rent.

5.09 Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Town may accept any check or payment without prejudice to Town's right to recover the balance due or to pursue any other remedy available to Town pursuant to this Lease or under the law.

## **ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS**

6.01 Tenant Construction Requirements. Except as otherwise provided for herein, Tenant shall make no additions, alterations or improvements to the Premises, or improvements constructed thereon, without the prior written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for the Department or Town to withhold consent to any improvements determined to be a potential hazard. Any such additions, alterations or

improvements shall be made in accordance with the construction requirements contained herein and as established by the Department. All improvements constructed or placed on the Premises, including drainage and landscaping, shall be of attractive construction and first-class design, shall comply with any and all applicable governmental laws, regulations, rules and orders shall follow standard construction methods, and shall be constructed in accordance with the requirements of this Article. Notwithstanding the foregoing, additions, alterations or improvements to interior improvements to the Premises that do not require a building permit, such as interior painting and replacement of flooring, and replacement of damaged exterior landscaping with the same landscaping materials, shall not require the Department's prior approval.

(A) Initial Leasehold Improvements.

- (1) Tenant shall cause the design and construction of the following improvements at Tenant's sole cost and expense: (a) a \_\_\_\_\_ on the Property; and (b) all other improvements and infrastructure, whether located on or off the Property, necessary to support the development of the Property, including, but not limited to, electrical systems, sewage, wastewater disposal, landscaping, lighting, signage, parking, roadways and driveways necessary for ingress, egress and circulation, storm water control systems, lighting and security measures, as required (the "Initial Leasehold Improvements").
- (2) Construction of the Initial Leasehold Improvements shall be completed no later than twenty four (24) months following the Effective Date, subject to force majeure, unless otherwise approved by the Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant. Substantial completion of the Initial Leasehold Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy or completion for the \_\_\_\_\_ to be built on the Property. Tenant shall promptly notify Town in writing when the applicable government authority issues a temporary or permanent certificate of occupancy or completion for such improvements.
- (3) The cost of the design and construction of the Initial Leasehold Improvements shall be at Tenant's sole cost and expense.

(B) Minimum Capital Investment. Tenant shall expend not less than \_\_\_\_\_ Dollars (\$\_\_\_\_) on the design, construction and installation of the Initial Leasehold Improvements (the "Minimum Capital Investment"). Capital expenditure costs that may be counted toward the Minimum Capital Investment shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Initial Leasehold Improvements, subject to the following terms, conditions and limitations:

- (1) The cost of design (subject to the limitations set forth herein), construction and acquisition of the Initial Leasehold Improvements; bonds; construction insurance; and building, impact and concurrency fees shall be included in the Minimum Capital Investment.
- (2) No more than twelve percent (12%) of the Minimum Capital Investment for payments made by Tenant to independent contractors for engineering and architectural design work may be included in the Minimum Capital Investment.
- (3) Only true third party costs and payments made by Tenant shall be included in the Minimum Capital Investment. Costs incurred by any sublessee, licensee or other occupant of the Premises, or any portion thereof, other than Tenant shall not be included in the Minimum Capital Investment.
- (4) Costs for consultants (other than engineering and design consultants, as provided above) shall not be included in the Minimum Capital Investment. Legal fees and accountant fees shall not be included in the Minimum Capital Investment.
- (5) Finance and interest expenses shall not be included in the Minimum Capital Investment.
- (6) Administrative, supervisory and overhead or internal costs of Tenant shall not be included in the Minimum Capital Investment.
- (7) Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment, not permanently affixed to the Premises, or any other personalty whatsoever, shall not be included in the Minimum Capital Investment.
- (8) Any costs associated with any improvements other than the Initial Leasehold Improvements shall not be included in the Minimum Capital Investment unless Tenant has obtained written approval from the Department prior to incurring such costs.

(C) Construction Requirements. Prior to constructing any improvements on the Premises or any other portion of the Industrial Park (including, but not limited to, the Initial Leasehold Improvements), Tenant, without cost to Town, shall prepare detailed preliminary construction plans and specifications for the improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Department and deliver the preliminary Plans to the Department for review, comment and adjustment. The Department shall review the preliminary Plans and provide a written response to Tenant within fifteen (15) Business Days after receipt of the preliminary Plans; Approval of the Plans, including Plans for improvements that are required by Tenant's franchisor as part of its corporate identity program,

shall not be unreasonably withheld, conditioned or delayed. In the event the Department does not approve the preliminary Plans, Tenant will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Tenant shall resubmit modified Plans to the Department within thirty (30) days of the date of the Department's written notice of disapproval and Department shall provide a written response to Tenant within fifteen (15) Business Days thereafter whether the modified Plans have been approved. Within one hundred twenty (120) days following approval of the preliminary Plans by the Department, Tenant shall prepare or cause to be prepared final working Plans in substantial conformity to the approved preliminary Plans and shall submit the final working Plans to the Department for approval. Upon approval of the final working Plans by the Department, Tenant shall obtain all permits and other government approvals required for the commencement of construction. Prior to commencement of construction, Tenant shall deliver to the Department one (1) complete set of the final working Plans as approved by the governmental agencies exercising jurisdiction thereover. Minor changes from the final working Plans shall be permitted if such changes may be reasonably inferred from the final working Plans, or if they are made to comply with requirements of any governmental agency exercising jurisdiction thereover.

- (D) Within sixty (60) days following Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Tenant, at its sole cost and expense, shall have prepared and deliver to the Department: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format and one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable to the Department.
- (E) Within sixty (60) days following the substantial completion of construction of the Initial Leasehold Improvements, Tenant shall, at its sole cost and expense, have prepared and delivered to the Department a detailed statement attested to and certified by an independent Certified Public Accountant, reasonably acceptable to Town, detailing the costs of the Initial Leasehold Improvements to evidence satisfaction of the Minimum Capital Investment and SBE participation requirements of this Agreement, ("Capital Investment Report"). The Capital Investment report shall include schedules detailing: (a) the total cost of design and construction of the Initial Leasehold Improvements; (b) the Minimum Capital Investment made by Tenant to complete the Initial Leasehold Improvements by category and amount, subject to the terms, limitations and conditions of Section 6.01(B) ("Improvement Cost"); (c) the name of each SBE firm that participated in the design and/or construction of the Initial Leasehold Improvements, the total dollar amount paid to each SBE and the overall percentage of SBE participation; and (d) the amount of the Mitigation Credit, subject to the terms, conditions and limitations of Section 6.01(A)(4). The Capital Investment Report shall be in a form and substance reasonably satisfactory to Town and shall be prepared and certified by a qualified and licensed independent Certified Public Accountant, not a regular employee of

Tenant, selected by Tenant, and shall include an opinion regarding the information contained in the schedules. The Capital Investment Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules.

- (F) All improvements constructed upon the Premises shall be completed at Tenant's sole cost and expense, and shall be completed in accordance with the approved Plans.
- (G) Approval of Town shall extend to and include architectural and aesthetic matters and Town reserves the right, in its sole and absolute discretion, to reject any design proposals submitted and to require Tenant to resubmit any such design proposals until they receive Town's approval.

6.03 Construction Bonds. Tenant shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements to the Premises, the estimated cost of which exceeds Two Hundred Thousand Dollars (\$200,000), Tenant shall cause to be made, executed and delivered to Town at Tenant's sole cost a bond that is in a form and substance reasonably satisfactory to Town that a company reasonably acceptable to Town issues, and that guarantees Tenant's compliance with its obligations arising under this Lease. Tenant may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. Town shall be named as the obligee on the bonds. In lieu of the bond required by this Section, Tenant may file with Town an alternative form of security in the form of cash, money order, certified check, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of Town and shall be in accordance with Town's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Tenant subject to approval of Town during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage, and the Department, on behalf of the Town, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Tenant shall provide Town evidence reasonably satisfactory to Town evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.

#### 6.04 Contractor Bonds/Insurance.

- (A) Tenant shall cause its contractors to furnish for the benefit of Town a payment and performance bond satisfying the requirements of Section 255.05, Florida Statutes, in

a form approved by Town. Tenant shall require its contractors to name Town as a dual obligee on the bond(s).

(B) Tenant shall also require its general contractor to provide the following insurance:

- (1) Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) per aggregate, which shall not exclude products/completed operations. Town and Tenant shall be each be endorsed an additional insured on the Commercial General Liability policy, and Town's endorsement shall comply with the requirements of Sections 11.08 and 11.09(B).
- (2) Business Auto Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (3) Environmental Liability/Pollution Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per pollution condition and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for damages including, without limitation, third- party liability, clean up, corrective action, including assessment, remediation and defense costs, subject to the terms and conditions of the respective policies.
- (4) Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes and all federal laws. The Workers' Compensation policy shall include Employer's Liability with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (5) Builder's Risk in accordance with Section 11.07.

6.05 No Liens. Tenant agrees that nothing contained in this Lease shall be construed as consent by Town to subject the estate of Town to liability under the Construction Lien Law of the State of Florida and understands that Town's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by Town, Tenant shall file a notice satisfactory to Town in the Public Records of Broward County, Florida, stating that Town's estate shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Premises or other Town property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Tenant fails to transfer or satisfy such claim within the thirty (30) day period, Town may do so and thereafter charge Tenant all costs incurred by Town in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to Town all such costs upon demand, as Additional Rent.

6.06 Traffic Concurrency Allocation. Tenant acknowledges and agrees that Tenant shall be obligated, at Tenant's sole cost and expense, to obtain traffic concurrency approval for the additional traffic demand generated by Tenant's proposed development.

[Insert if applicable: ARTICLE 7- QUALITY AND CHARACTER OF SERVICES]

[Town reserves the right to develop standards for the quality and character of services based upon the proposed use(s) of the Premises.]

7.01 Quality of Merchandise. Tenant shall offer for sale only products and merchandise, which are safe, free of adulteration, sanitary and properly labeled in accordance with applicable laws.

7.02 Hours of Operation. Tenant shall actively operate the Premises in a business-like manner and the businesses located on the Premises shall maintain such hours of operation of comparable businesses.

7.03 Right to Object. Town shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, the appearance and performance of employees providing services to the public, and to require any such conditions or practices objectionable to the Department to be remedied by Tenant.

7.04 Nondiscriminatory Services Requirement. Tenant shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Tenant may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Industrial Park employees, seniors and military personnel.

7.05 Type of Operation. Tenant shall maintain and operate the Premises in an orderly, proper, and first-class manner, which does not unreasonably annoy, disturb, or offend others at the Industrial Park considering the nature of such operations.

7.06 Replacements and Refunds. Tenant shall, without any additional charge to the purchaser, exchange any product determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.

7.07 Personnel. Tenant shall ensure the Premises is managed, maintained, and operated under the supervision and direction of qualified and experienced manager(s), as reasonably determined by Tenant. Tenant shall provide Town with contact information for one or more local representative(s) of the Tenant who will be available by telephone in case of an emergency.]

**ARTICLE 8 - OBLIGATIONS OF TENANT**

8.01 Observance of Rules and Regulations. Tenant covenants and agrees to observe and obey, and to require all Tenant Parties to observe and obey such rules and regulations of the

Department and Town (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Premises as may from time to time be promulgated. The obligation of Tenant to require such observance and obedience on the part of a Tenant Party shall pertain only while such Tenant Party is on or in occupancy of any portion of the Premises.

8.02 Noise and Vibrations. Tenant shall take all reasonable measures to:

- (A) Reduce to a minimum, vibrations tending to damage any equipment, structure, building or portion of a building that is on the Premises or is a part thereof, or is located elsewhere on the Industrial Park; and
- (B) Minimize noise impacts resulting from its operations on other tenants of the Industrial Park and surrounding communities.

8.03 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, subtenants and others doing business with Tenant on the Premises.

8.04 Garbage and Debris. Tenant shall be responsible for the provision of trash removal services for the Premises at Tenant's sole cost and expense and agrees to deposit trash, garbage and debris in appropriate containers for collection.

8.05 Nuisance, Waste or Injury. Tenant shall not commit any nuisance, waste or injury on the Premises and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Premises.

8.06 Vapors, Fumes or Emissions. Tenant shall not create, nor permit to be caused or created upon the Premises any obnoxious odor, smoke, noxious gases or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained trucks and other vehicles shall be excepted from this provision. Tenant shall ensure that emissions generated by any such trucks, and other vehicles comply with all provisions of applicable environmental emissions laws and regulations.

8.07 Utilities Systems. Tenant shall not do, or permit to be done, anything which may interfere with the functionality or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers or users of Industrial Park

8.08 Overloading of Floor or Paved Areas. Tenant shall not overload any floor or paved area on the Premises and shall repair at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

8.09 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate or conflict with any insurance policies covering the Premises or the Industrial Park; or



(B) May constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Lease.

8.10 Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

8.11 Fire Extinguishing System. From time to time and as often as reasonably required by the Department or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus, which are maintained by Tenant or any subtenant.

8.12 Derelict Vehicles/Towing Services. Tenant shall not permit the temporary or permanent storage of any Derelict Vehicles on the Premises. Tenant shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from the Department. Tenant shall be responsible for obtaining towing services for the removal of Derelict Vehicles and abandoned or unauthorized vehicles at no cost to Town.

8.13 Emergency Evacuation and Hurricane Plans. Tenant shall provide the Department with emergency evacuation and hurricane plans within thirty (30) calendar days of the Date of Beneficial Occupancy. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants, if any, in the event of an emergency evacuation or hurricane warning. Tenant shall update its emergency evacuation and hurricane plans annually, if requested by the Department.

8.14 Security of Premises. Tenant acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities. Tenant fully understands that the police security protection provided by Davie Police Department is limited to that provided to any other business situated in Southwest Ranches, Florida by the Davie Police Department, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises and improvements constructed thereon, shall be the sole responsibility of Tenant and shall involve no cost to Town

## **ARTICLE 9 - MAINTENANCE AND REPAIR**

9.01 Maintenance/Repair of Premises. Tenant shall be responsible for all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all landscaped areas, paved areas, buildings and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Maintenance and repairs shall be in quality and class comparable to the original work. Tenant shall be required to keep all landscaped areas, paved areas, curbing, buildings, equipment and other improvements in good condition and repair throughout the Term of this Lease. Without limiting the generality thereof, Tenant shall:

- (A) Repair and maintain all doors, windows, pavement, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, signage and structural support system(s).
- (B) Refurbish the Premises as often as is necessary to preserve the Premises in good condition and repair, including furnishings, fixtures and equipment used in the operation of the Premises. Routine refurbishment may include, but is not limited to, replacement of worn or damaged flooring, furnishings and/or wall coverings; interior and exterior painting; parking lot restriping; and other similar work.
- (C) Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (D) Repair any damage to landscaped areas, paving or other surface(s) of the Premises.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or otherwise improved.
- (F) Repair and maintain all utilities including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Tenant and which are used exclusively by Tenant or any of its subtenants.
- (G) Repair and maintain those portions of the storm water drainage system serving the Premises.
- (H) Maintain all furnishings, fixtures, machinery, and operating equipment used in the operation of the Premises in good condition and repair.

9-02 Cleanliness of Premises/Maintenance of Landscaping.

- (A) Tenant shall maintain the Premises in a neat, orderly, sanitary, clean and presentable condition and shall cause routine janitorial and pest control services to be provided for the Premises at Tenant's sole cost and expense. Tenant shall maintain vehicular parking, landscaped medians and all surrounding landscaped areas in a clean and neat manner, free from trash and debris.
- (B) Tenant shall be responsible for maintaining all landscaping on the Premises in good condition and free of unsightly conditions. Tenant's landscaping responsibilities shall include, without limitation, watering grass, shrubs and trees; mowing the grass on a regular basis; trimming the trees and fertilizing grass, shrubs and trees; and replacing damaged or dead landscaping.

9.03 Inspections. The Department shall have the right to enter the Premises during regular business hours upon reasonable prior notice to Tenant to inspect same for the purpose of determining whether Tenant is in compliance with the requirements of this Lease. In the event Tenant is not in compliance with this Lease, as reasonably determined by the Department, the Department shall provide Tenant with written notice of such noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, the Department may cause the same to be accomplished at Tenant's sole cost and expense. Tenant agrees that Tenant shall assume and be liable to Town for payment of all costs incurred by Town, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall constitute Additional Rent hereunder and shall be due and payable within thirty (30) calendar days of the date of the Department's written notice

## **ARTICLE 10 – UTILITIES**

10.01 Utility Costs. Tenant shall pay for all electric and all other utility charges for the Premises. Metering devices shall become the property of Town upon installation. Tenant shall be responsible for the extension of utility mains and service to the Property and such utility mains shall become the property of Town upon installation.

10.02 Interruption of Service. No failure, delay or interruption in supplying any utility services for any reason whatsoever (whether or not a separate charge is made therefore) shall be construed to be an eviction of Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by Tenant under this Lease for damages, consequential or otherwise.

10.03 Water, Industrial and Sanitary Sewage Systems. Tenant acknowledges and agrees that Tenant shall satisfy all stormwater drainage requirements applicable to Tenant's development within the boundaries of the Premises. Town shall have the right, in its sole and absolute discretion and at its sole cost and expense, to relocate or otherwise modify any stormwater drainage improvements located outside the Premises; provided that such relocation or modification does not negatively impact the Premises' drainage. Tenant shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Premises and the proper disposal thereof as required by all applicable federal, state and local laws, regulation and rules, as now or hereafter amended.

## **ARTICLE 11 - INSURANCE REQUIREMENTS**

Unless otherwise specified in this Lease, Tenant shall, at its sole expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Tenant acknowledges and agrees that the requirements contained in this Article, or Town 's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease.

11.01 Commercial General Liability. Tenant 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 (ISO), and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the Town.

11.02 Business Auto Liability. Tenant shall maintain Business Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, non-owned and hired automobiles. In the event Tenant has 110 owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability/Industrial Park Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.

11.03 Environmental Liability. Tenant shall carry an Environmental Pollution Insurance for pollution-related incidents, including the cost of cleaning up a site after a pollution incident, with limits not less than \$500,000.00 Dollars per occurrence with deductible not greater than \$100,000.00. An additional Form or endorsement to the Commercial General Liability Insurance to include an Environmental Pollution Insurance coverage providing the specified coverage, is acceptable.

11.04 Business Interruption Insurance. Tenant shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual rental payable hereunder. Rent Insurance shall be carried in the name of Tenant as named insured and shall be payable to Town to be applied to rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

11.05 Worker's Compensation & Employer's Liability. Tenant shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

11.06 Umbrella or Excess Liability. If necessary, Tenant may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability, Business or Auto Liability. Town shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

11.07 Property, Wind & Flood Insurance.

(A) Builder's Risk Insurance. Tenant shall maintain Builder's Risk insurance covering the Tenant's building(s), betterments and improvements during the course of construction at the Premises in an amount at least equal to one hundred percent (100%) of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Tenant agrees this coverage shall be provided on a primary basis.

(B) After construction is completed, Tenant shall maintain:

- (1) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (2) Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

11.08 Additional Insured Endorsement. Tenant shall endorse Town as "Additional Insured" on each of the liability policies required to be maintained by Tenant hereunder, with the exception of Workers' Compensation/Employers Liability and Business Auto Liability. The "Additional Insured" endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees", or as otherwise approved or modified by Town.

11.09 Certificate of Insurance.

- (A) Tenant shall provide the Department with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:

- (1) Commercial General Liability insurance prior to the Effective Date;
  - (2) Business Auto Liability insurance prior to allowing vehicles on to the Premises;
  - (3) [Delete if not applicable: Environmental Liability insurance on or before the Date of Beneficial Occupancy;
  - (4) Business Interruption and] Workers' Compensation insurance on or before the Date of Beneficial Occupancy.
  - (5) Builder's Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 11.07.
- (B) All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Tenant shall provide Town a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Southwest Ranches, a Political Subdivision of the State of Florida, its Officers, and Employees," 13400 Griffin Road, Southwest Ranches, FL 33330.

11.10 Waiver of Subrogation. By entering into this Lease, Tenant agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Tenant enters into such an agreement on a pre-loss basis.

11.11 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood or wind insurance policies. Tenant shall be responsible for all premiums, including, but not limited to, increases for property, flood and wind insurance policies. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant.

11.12 Deductibles, Coinsurance & Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

11.13 Right to Review or Adjust Insurance. The Town may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Town may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Town shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

11.14 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Town. Tenant agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

## **ARTICLE 12 - DAMAGE TO OR DESTRUCTION OF PREMISES**

12.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises. Tenant shall take all necessary actions to place the Premises in a neat and orderly condition to ensure the safety of persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, Town may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of any costs incurred by Town, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of written notice provided by the Department.

12.2 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, are damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of a Tenant Party, Tenant shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Tenant shall commence restoration as soon as reasonably practicable after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 6. All repairs and restoration shall be performed by Tenant at Tenant's sole cost and expense, in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, Town shall have the right to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to Town for payment of the costs of restoration, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Town within thirty (30) days from the date of the written notice provided by the Department.

12.3 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account so as to be available to pay for the cost of any required repair, replacement or rebuilding. The proceeds

shall be disbursed at the direction of Tenant during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of damaged improvements, Tenant shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

### **ARTICLE 13 – ENCUMBRANCES**

Except as otherwise provided for herein, Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises without Town's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without Town's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of a Tenant Party. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

### **ARTICLE 14 - TITLE TO IMPROVEMENTS**

14.01 Title to Improvements on the Premises. Except as otherwise provided for herein, Tenant shall be deemed to be the owner of all Tenant Improvements during the Term. Upon expiration of the Term or earlier termination of this Lease, all buildings, structures, pavements, facilities, landscaping and other improvements, above and below ground, constructed or placed upon the Premises by Tenant, title to which has not previously vested in Town hereunder shall become the absolute property of Town, and Town shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of Town, Tenant shall provide Town with a bill of sale or other evidence of the transfer of ownership of the Tenant Improvements together with evidence satisfactory to Town that the improvements are free from liens, mortgages and other encumbrances.

14.02 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

### **ARTICLE 15 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**

15.01 Expiration. This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed in accordance with Section 3.02, this Lease shall automatically terminate at the end of the Renewal Term.

15.02 Default. The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

- (A) The vacating or abandonment of the Premises by Tenant.



- (B) The failure by Tenant to make payment of rental or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) Business Days after such payment is due and payable.
- (C) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure continues for a period of thirty (30) days after written notice thereof from Town to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing contained in this paragraph shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided in this Lease.
- (D) To the extent permitted by law: (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days]; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

Notwithstanding any provision of this Lease, Tenant acknowledges and agrees the Department may require Tenant to immediately cease any activity, which could result in an Industrial Park hazard or endanger safety of any Industrial Park user, as reasonably determined by the Department.

15.03 Remedies. In the event of a material default by Tenant, Town may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which Town may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (A) Declare the entire rent for the balance of the Term or any part thereof due and payable forthwith, and bring an action for the recovery thereof.
- (B) Terminate Tenant's right to possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Town is able to recover from its good faith efforts to relet the Premises, which deficiency shall be

paid by Tenant. Upon such reletting, all rentals received by Town shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Town due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Town relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the remainder, if any, shall be paid to Tenant.

- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Town, thereby terminating any further liability under this Lease on the part of Tenant and Town. Notwithstanding the foregoing, Town shall have a cause of action to recover any rent remaining unpaid when Town retakes possession of the Premises for the account of Town.
- (D) Stand by and do nothing, holding Tenant liable for rental as it comes due.
- (E) Pursue any other remedy now or hereinafter available to Town under the laws of the State of Florida.

Notwithstanding anything in this Lease to the contrary, Town shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and Town reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

15.04 Termination by Tenant. Tenant may terminate this Lease, if Tenant is not in default of this Lease (including, but not limited to, its payments to Town hereunder), by giving Town ninety (90) days advance written notice, upon or after the happening of any one of the following events:

- (A) The default by Town in the performance of any covenant or agreement herein required to be performed by Town and the failure of Town to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if Town shall have remedied the default within such thirty (30) day period; or in the event the same cannot be cured within such thirty (30) day period and Town has commenced such cure and thereafter diligently pursues the same until completion.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Industrial Park and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

15.05 Default by Town. Town shall not be in default unless Town fails to perform obligations imposed upon Town hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Town, specifying wherein Town has failed to perform such obligations; provided, however, that if the nature of Town's default is such that more than thirty (30) days are reasonably required for its cure, then Town shall not be deemed to be in default if Town commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

5.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to Town in good condition, upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to Town for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to Town during the entire time period of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of Tenant not removed by Tenant shall, at the option of Town, become the property of Town, or alternatively, may be disposed of by Town at Tenant's expense.

#### **ARTICLE 16 - ASSIGNMENT, TRANSFER AND SUBLETTING**

Tenant shall not, in any manner, assign, transfer or otherwise convey an interest in this Lease, the Premises or any portion thereof ("Assignment"), without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed. Town shall not be deemed to have withheld its consent unreasonably unless Town has been furnished evidence establishing that the proposed assignee: (a) has the ability to make the rental payments required under this Lease; (b) has sufficient experience to operate the facilities constructed or to be constructed on the Premises in the manner required hereunder; (c) has the ability to otherwise perform all of the terms, conditions and covenants of this Lease; and (d) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. Any attempted Assignment without Town approval shall be null and void. In the event Town consents in writing to an Assignment, Tenant shall have the right to assign this Lease to the extent permitted by Town's consent to such Assignment, provided that the use of the Premises shall be limited to the same uses as are permitted under this Lease. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein. Tenant shall have the right to sublease the Premises subject to the prior written consent of Town, which consent shall not be unreasonably withheld. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Notwithstanding any provision of this Lease to the contrary, the consent of Town shall not be required for an Assignment of this Lease in its entirety where all or substantially all of the assets of Tenant are acquired by another entity by reason of a merger, acquisition, or other business reorganization, provided that Tenant provides written notice to Town ten (10) days prior to the change in ownership. Town may freely assign this Lease at any time without the consent of Tenant, and upon assumption by such assignee of Town's obligations hereunder, Town shall be released from all liability and obligation arising hereunder upon such assignment.

## **ARTICLE 17 - RIGHTS OF LEASEHOLD MORTGAGEES**

17.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Premises and further provided that Town shall not be obligated to, nor deemed to have subjected or subordinated Town's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated Town's interest in this Lease to such Leasehold Mortgage. Town's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage.

17.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Town, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Town, Town, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Town. Town agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of Town's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of Town to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. Town's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

17.03 Opportunity to Cure. Town will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to Town that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances any then-existing defaults by Tenant, and performs Tenant's obligations under this Lease. Town agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided

above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by Town. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, Town shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

17.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

17.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

17.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge, [in the event Tenant or Leasehold Mortgagee shall require a certificate beyond the aforementioned statements (a) thru (e). additional time will be required to obtain Council approval of a certificate; alternatively, a specific estoppel certificate form may be submitted with the agenda item and approved by the Council in advance]

17.07 Subordination of Landlord's Lien. Town does hereby subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of Town's lien shall be self operative.

17.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, but not limited to, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to Town, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as Town may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint Town as attorney in fact for the limited purpose of execution of such Release Documents.

17.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and, against any and all Damages arising from to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

17.10 Personal Property. Notwithstanding any other provision of this Lease to the contrary, Tenant may, without Town's or Department's consent, from time to time, secure financing or general credit lines and grant the lenders thereof, as security therefor: (a) a security interest in Tenant's personal property located at the Premises, and/or (b) the right to enter the Premises to realize upon any personal property so pledged. Upon Tenant providing notice of such financing to Town, Town agrees to evidence its consent in writing to such security interest. All of Tenant's personal property shall be and remain the personal property of Tenant. Town expressly waives its statutory and common law landlord's liens as same may be enacted or may exist from time to time and any and all rights granted under any present or future laws to levy or distraint for rent, whether in arrears or in advance, against the aforesaid personal property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver (upon Tenant's request).

## **ARTICLE 18 – INDEMNIFICATION**

Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character (collectively referred to herein as "Damages") against, or in which Town is named or joined, arising out of this Lease or use or occupancy of the Premises by any Tenant Party, including, but not limited to those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with a Tenant Party's acts,

omissions or operations hereunder, or the performance, non-performance or purported performance of a Tenant Party or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to a Town Party for Damages that are solely attributable to the negligence or willful misconduct of such Town Party. Tenant further agrees to hold harmless and indemnify the Town Parties for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to a Tenant Party's activities or operations or use of the Premises whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

#### **ARTICLE 19 - EXTERIOR SIGNAGE**

Tenant may install and operate upon the Premises, at Tenant's sole cost and expense, signs representing the businesses operating on the Premises. Tenant covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signage on the Premises, Tenant shall submit to Town the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises for Town's prior written approval. No signs of any type shall be installed on or within the Premises without the prior written approval of Town as to the size, height, design, content, and location. Handwritten, hand lettered and hand held exterior signs are prohibited. Town shall have the right to require Tenant to remove any unapproved signage. In the event Tenant fails, refuses or neglects to remove any unapproved signage within fifteen (15) days of Town's written notice to do so, Town may also elect, at its sole option, to cause such signage to be removed on behalf of and for the account of Tenant. Tenant shall reimburse Town the actual cost of such removal services, plus a twenty-five percent (25%) administrative overhead within thirty (30) days of the date of the invoice therefor. Town's failure to require removal of any sign placed on or about the Premises without written permission shall not be deemed a waiver of Town's authority to require removal of any unapproved sign.

#### **ARTICLE 20 - LAWS, REGULATIONS AND PERMITS**

20.01 General. Tenant agrees that throughout the Term and any extension thereof, Tenant shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature but not limited to, as now or hereafter amended, including, but not limited to, TSA directives, FAA Advisory Circulars and Industrial Park Rules and Regulations.

20.02 Permits and Licenses Generally. Tenant agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations,

however designated, as may be required at any time throughout the Term of this Lease or any extension thereof by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by Tenant, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, Tenant's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of Town, Tenant shall provide to Town certified copies of any and all permits and licenses which Town may request.

0.03 Air and Safety Regulation. Tenant agrees that it shall conduct its operations and activities under this Lease in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all Tenant Parties transacting business with or for Tenant, resulting from, or in any way related to, the conduct of a Tenant's business on the Premises. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by Town and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Industrial Park, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

20.04 Environmental and Natural Resource Laws, Regulations and Permits.

- (A) Notwithstanding any other provision of this Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to Town, upon which Town expressly relies, that Tenant is knowledgeable of, and shall fully comply with, any and all Environmental Laws applicable to Tenant and its operations hereunder.
- (B) Tenant acknowledges that, if its operations involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, such operations may be subject to regulation under applicable Environmental Laws. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such Hazardous Substances, in a manner which is both safe and in full compliance with any and all applicable Environmental Laws.
- (C) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Tenant's operations conducted on the Premises, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any



and all governmental agencies having jurisdiction over parties or the subject matter thereof. Tenant further represents, warrants, guarantees and covenants to Town, upon which Town hereby expressly relies, that Tenant and any Tenant Party required to be so trained working for, or on behalf of, Tenant have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- (D) Tenant shall provide to Town satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Town.
- (E) If Tenant is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Tenant shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Laws;
  - (2) Tenant shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Premises by Town;
  - (3) Tenant shall notify the Broward County Solid Waste Authority, Broward County Environmental Resources Management Department, and such other appropriate agencies as Town may from time to time designate, of all Tenant's hazardous waste activities, if any; and
  - (4) Tenant shall provide to the Department and to all appropriate governmental entities having jurisdiction thereover, contact information for its emergency coordinator in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Violation of any part of the foregoing provisions or disposal by Tenant of any Hazardous Substances in violation of the provisions of this Article shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of receipt of notice from Town or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by a Tenant Party on or from the Premises, regardless of whether or not a default notice has been issued and notwithstanding any other

obligations imposed upon Tenant pursuant to the terms of this Lease. All such remedies of Town with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

- (G) Tenant agrees to protect, defend, reimburse, indemnify and hold the Town Parties harmless from and against any and all Damages arising from, resulting out of or in any way caused by or connected to a Tenant Party's failure to comply with applicable Environmental Laws. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 18. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that Town would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Town in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

20.05 Environmental Assessment. At least one hundred twenty (120) days, but no more than one hundred eighty (180) days, prior to the expiration or earlier termination of this Lease, Tenant shall cause a Phase I Environmental Assessment (the "Phase I EA") of the Premises to be prepared and delivered to Town. If requested by Town or, if the Phase I EA indicates that there is a potential that environmental conditions may exist on the Premises or the adjacent property based on activities of a Tenant Party occurring on or after the Effective Date of this Lease, Tenant shall promptly cause a Phase II Environmental Assessment of the Premises to be prepared and delivered to Town. The EAs shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Town, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Property. The EAs shall state that Town is entitled to rely on the information set forth in the EAs. The EAs shall be prepared and delivered to Town at Tenant's sole cost and expense. The Phase II EA must address any potential environmental conditions or areas of contamination identified in the Phase I portion of the assessment. Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises and/or adjacent property into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of this Lease relating to the condition of the Premises and shall survive the termination or expiration of this Lease. Nothing in this Section shall be construed as obligating Tenant to remediate any condition identified in the Environmental Assessments or caused by the activities of a Town Party.

## **ARTICLE 21 - AMERICANS WITH DISABILITIES ACT**

Tenant shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the

Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with Town to ensure Tenant remains in compliance with such requirements throughout the Term of this Lease.

## **ARTICLE 22 - DISCLAIMER OF LIABILITY**

TOWN HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES THE TOWN PARTIES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY ANY TENANT PARTY DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF A TENANT PARTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A TOWN PARTY'S SOLE NEGLIGENCE OR IS CAUSED BY TOWN'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES PURSUANT TO THIS LEASE.

## **ARTICLE 23 - GOVERNMENTAL RESTRICTIONS**

23.01 County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Town, as a political subdivision of the State of Florida, or any of the public officials of Town, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

23.02 Release. Tenant acknowledges that noise and vibration are inherent to the operation of Industrial Park and hereby releases Town from any and all liability relating to the same.

23.03 Exclusive Rights. Except as otherwise provided for in this Section, Tenant understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that Town may grant similar privileges to another lessee or other lessees on other parts of the Industrial Park.

## **ARTICLE 24 - NON-DISCRIMINATION**

### 24.01 Non-Discrimination in Town Contracts.

- A. Town is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of this Agreement.
- B. As a condition of entering into this Lease, Tenant represents and warrants that it will comply with Town's Commercial Nondiscrimination Policy. As part of such compliance, Tenant shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of contractors, vendors, suppliers, or commercial customers in the design and construction of the Initial Leasehold Improvements, nor shall the Tenant retaliate against any person for reporting instances of such discrimination. Tenant shall provide equal opportunity for contractors, vendors and suppliers to participate in all of its public sector and private sector contracting and supply opportunities in connection with the design and construction of the Initial Leasehold Improvements, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in Town's relevant marketplace. Tenant understands and agrees that a material violation of this clause shall be considered a material breach of this Lease and may result in termination of this Lease, disqualification or debarment of Tenant from participating in Town contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Tenant shall include this language in its contracts for the design and construction of the Initial Leasehold Improvements.

24.02 Federal Non-Discrimination Covenants. Tenant represents and warrants to Town that Tenant shall comply with all applicable Federal Nondiscrimination Requirements set forth in Exhibit "B" attached hereto.

## **ARTICLE 25 - TOWN NOT LIABLE**

Town shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water,

windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Town. All personal property placed on or moved on to the Premises shall be at the sole risk of Tenant. Town shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

### **ARTICLE 26 - AUTHORIZED USES ONLY**

Notwithstanding anything to the contrary herein, Tenant shall not use or permit the use of the Premises or the Industrial Park for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Industrial Park for Town or Tenant.

### **ARTICLE 27 – MISCELLANEOUS**

27.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

#### 27.02 Subordination.

- (A) Subordination to Bond Resolution. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Town in the Bond Resolution, and Town and Tenant agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all rights of Town hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and Town with the terms and provisions of this Lease and Bond Resolution.
- (B) Subordination to State/Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Town acquired the land, of which the Premises are a part, or improvements thereon, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Town and the United States of America or State of Florida, or any of their agencies, relative to the operation or maintenance of the Industrial Park, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Industrial Park.

27.03 Easements. Nothing in this Lease shall impair any existing utility easements, nor impair the right of access to any existing utility lines. Town reserves the right to grant easements, licenses and rights-of way to others over, under, through, across or on the Premises reasonably

necessary for the development, operation or provision of utility services to adjacent properties; provided that such grant is not materially detrimental to the proper conduct of Tenant's operations. The Town agrees to cooperate in good faith with Tenant to determine the appropriate location of such easements, licenses and rights-of-way in an effort to avoid unnecessarily impacting Tenant's operations. Tenant agrees to consent and join to such easements, licenses and rights-of-way upon the written request of Town.

27.04 Independent Contractor. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Town shall in no way be responsible therefor.

27.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit Town's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. Town's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statues and laws, nor to alter or impair Town's governmental functions, including, but not limited to, Town's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of Town's governmental authority.

27.06 Rights Reserved to Town. All rights not specifically granted Tenant by this Lease are reserved to Town.

27.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

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

27.09 Venue. Venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Broward County, Florida.

27.10 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a Business Day and on the next Business Day if transmitted after 5PM or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which

notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Town:

Attn: Procurement and Budget Officer  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

With a copy to:

Attn: Town Attorney  
13400 Griffin Road, Southwest Ranches, FL 33330  
Phone: (954) 434-0008  
Fax: (954) 434-1490

Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other party.

27.11 Inspector General. County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed Town contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Tenant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Broward County Code, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

27.12 Paragraph Headings. The heading of the various articles and sections of this Lease are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

27.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Broward County, Florida, without the prior written consent of the Department. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease, Tenant shall promptly execute, in recordable form, and deliver to Town a termination of the memorandum of this Lease. In the event Tenant fails to provide the foregoing termination document within thirty (30) Business Days after Town's written request therefor, Town shall be entitled to execute the same for and on behalf of Tenant and Tenant hereby appoints Town attorney-in-fact for the limited purpose of execution of such termination document

27.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

27.15 Performance. The parties expressly agree that time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

27.16 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

27.17 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless Town from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees plus cost at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. The obligations set forth in this paragraph shall survive the termination of this Lease.

27.18 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287.133(3)(a), Florida Statutes.



27.19 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

27.20 Annual Appropriation. Nothing in this Lease shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Town's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Town Council.

27.21 Consent or Action. Wherever this Lease requires Town or Department's consent or approval or permits Town or Department to act, such consent, approval or action may be given or performed by the Director.

27.22 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

27.23 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

27.24 Incorporation by References. All terms, conditions and specifications of the RFP; the Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Lease, the order-of-precedence shall be: (a) this Lease; (b) the RFP; and (c) the Proposal.

27.25 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of Town and/or Tenant.

27.26 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, accident, weather, order or regulation of or by any governmental authority or failure

to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

27.27 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

27.28 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

(Remainder of page left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

**ATTEST:**

**SOUTHWEST RANCHES,  
A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA, BY ITS  
TOWN COUNCIL**

**CLERK AND COMPTROLLER**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Town Attorney

By: \_\_\_\_\_  
Director

**Signed, sealed and delivered in the  
presence of two witnesses for TENANT:**

**TENANT:**  
\_\_\_\_\_

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

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Exhibit "A"  
Property

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Exhibit "B"  
Federal Non-Discrimination Covenants

## **FEDERAL NONDISCRIMINATION REQUIREMENTS**

### A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Tenant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of Tenant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, Town will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to Tenant under this Agreement until Tenant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.



6. Incorporation of Provisions: Tenant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Tenant will take action with respect to any subcontract or procurement as the sponsor may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Tenant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Tenant may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Industrial Park and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing

entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Tenant for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant will use the Tenant Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter or re-enter and repossess the Tenant Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Tenant for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and

Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Industrial Park Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of Town that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Tenant agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant. This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant. This provision is in addition to that required by Title VI of the Civil Rights.

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# Lease Agreement

## Exhibit "E"

SWR \_ Finalized Amo\_2.18.16.xlsx

### Estimated Amortization Table (Town of Southwest Ranches, FL )

**Initial Data** (Term : 20 yr)

**BOND DATA**

Bond Amount	\$7,750,000.00			
Annual Interest Rate	3.25%			
Terms in years	20			
Payments per year	2			
First payment due	11/1/2016			

**PERIODIC PAYMENT**

**Table**

**Estimated Annual Payment on Loan:**

No.	Payment Date	Beginning Balance	Interest	Prin cipal	Ending Balance	Semi-Annual Payment
1	11/1/2016	7,750,000.00	146,927.08		7,750,000.00	146,927.08
2	5/1/2017	7,750,000.00	125,937.50		7,750,000.00	125,937.50
3	11/1/2017	7,750,000.00	125,937.50		7,750,000.00	125,937.50
4	5/1/2018	7,750,000.00	125,937.50		7,750,000.00	125,937.50
5	11/1/2018	7,750,000.00	125,937.50		7,750,000.00	125,937.50
6	5/1/2019	7,750,000.00	125,937.50		7,750,000.00	125,937.50
7	11/1/2019	7,750,000.00	125,937.50		7,750,000.00	125,937.50
8	5/1/2020	7,750,000.00	125,937.50		7,750,000.00	125,937.50
9	11/1/2020	7,750,000.00	125,937.50		7,750,000.00	125,937.50
10	5/1/2021	7,750,000.00	125,937.50		7,750,000.00	125,937.50
11	11/1/2021	7,750,000.00	125,937.50	258,333	7,491,666.67	384,270.83
12	5/1/2022	7,491,666.67	121,739.58	258,333	7,233,333.33	380,072.92
13	11/1/2022	7,233,333.33	117,541.67	258,333	6,975,000.00	375,875.00
14	5/1/2023	6,975,000.00	113,343.75	258,333	6,716,666.67	371,677.08
15	11/1/2023	6,716,666.67	109,145.83	258,333	6,458,333.33	367,479.17
16	5/1/2024	6,458,333.33	104,947.92	258,333	6,200,000.00	363,281.25
17	11/1/2024	6,200,000.00	100,750.00	258,333	5,941,666.67	359,083.33
18	5/1/2025	5,941,666.67	96,552.08	258,333	5,683,333.33	354,885.42
19	11/1/2025	5,683,333.33	92,354.17	258,333	5,425,000.00	350,687.50
20	5/1/2026	5,425,000.00	88,156.25	258,333	5,166,666.67	346,489.58
21	11/1/2026	5,166,666.67	83,958.33	258,333	4,908,333.33	342,291.67
22	5/1/2027	4,908,333.33	79,760.42	258,333	4,650,000.00	338,093.75
23	11/1/2027	4,650,000.00	75,562.50	258,333	4,391,666.67	333,895.83
24	5/1/2028	4,391,666.67	71,364.58	258,333	4,133,333.33	329,697.92
25	11/1/2028	4,133,333.33	67,166.67	258,333	3,875,000.00	325,500.00
26	5/1/2029	3,875,000.00	62,968.75	258,333	3,616,666.67	321,302.08
27	11/1/2029	3,616,666.67	58,770.83	258,333	3,358,333.33	317,104.17
28	5/1/2030	3,358,333.33	54,572.92	258,333	3,100,000.00	312,906.25
29	11/1/2030	3,100,000.00	50,375.00	258,333	2,841,666.67	308,708.33
<b>30</b>	<b>5/1/2031</b>	<b>2,841,666.67</b>	<b>46,177.08</b>	<b>258,333</b>	<b>2,583,333.33</b>	<b>304,510.42</b>
31	11/1/2031	2,583,333.33	41,979.17	258,333	2,325,000.00	300,312.50
32	5/1/2032	2,325,000.00	37,781.25	258,333	2,066,666.67	296,114.58
33	11/1/2032	2,066,666.67	33,583.33	258,333	1,808,333.33	291,916.67
34	5/1/2033	1,808,333.33	29,385.42	258,333	1,550,000.00	287,718.75
35	11/1/2033	1,550,000.00	25,187.50	258,333	1,291,666.67	283,520.83
36	5/1/2034	1,291,666.67	20,989.58	258,333	1,033,333.33	279,322.92
37	11/1/2034	1,033,333.33	16,791.67	258,333	775,000.00	275,125.00
38	5/1/2035	775,000.00	12,593.75	258,333	516,666.67	270,927.08
39	11/1/2035	516,666.67	8,395.83	258,333	258,333.33	266,729.17
40	3/31/2036	258,333.33	4,197.92	258,333	0.00	262,531.25

**Bank  
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Option  
Date**

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# Lease Agreement

## Exhibit "F"

### Design Drawing





# Lease Agreement

## Exhibit "G"

### Exhibit "G"

#### Federal Non-Discrimination Covenants

##### A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest, agrees as follows:

1. Compliance with Regulations: Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: Tenant, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of Tenant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the sponsor and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this Agreement, Town will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
6. Withholding payments to Tenant under this Agreement until Tenant complies; and/or

7. Cancelling, terminating, or suspending a contract, in whole or in part.
  8. Incorporation of Provisions: Tenant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Tenant will take action with respect to any subcontract or procurement as the sponsor may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Tenant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Tenant may request the United States to enter into the litigation to protect the interests of the United States.
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1. Title VI of the Civil Rights Act of 1964 (42 (JSC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
  6. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  7. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

8. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
9. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
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C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Tenant for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant will use the Tenant Premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter or re-enter and repossess the Tenant Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Tenant for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event of breach of any of the above nondiscrimination covenants, Town will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. General Civil Rights Provision.

Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant. This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Town. This provision is in addition to that required by Title VI of the Civil Rights.



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

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

Town Council  
Doug McKay, *Mayor*  
Denise Schroeder, *Vice Mayor*  
Delsa Amundson, *Council Member*  
Bob Hartmann, *Council Member*  
Gary Jablonski, *Council Member*

Andrew D. Berns, *Town Administrator*  
Keith M. Poliakoff, *JD, Town Attorney*  
Russell Muniz, *Assistant Town Administrator/Town Clerk*  
Martin D. Sherwood, *CPA, CGMA, CGFO, Town Financial Administrator*

### COUNCIL MEMORANDUM

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Russell Muñoz, Assistant Town Administrator/Town Clerk  
**DATE:** 10/8/2020  
**SUBJECT:** CARES ACT FUNDING ILA WITH BROWARD COUNTY

---

#### Recommendation

Town Council consideration for a motion to approve the resolution.

#### Unanimous Vote of the Town Council Required?

No

#### Strategic Priorities

- A. Sound Governance
- B. Enhanced Resource Management

#### Background

Congress has appropriated a \$1.5 billion funding package entitled the Coronavirus Aid, Relief, and Economic Security (CARES) Act to help communities respond to the surging COVID-19 pandemic; and

Broward County has received \$341 million dollars of funding which they will share 30% or \$102 million dollars with its 31 cities for expenses in the following four categories: Public Health Expenses, Payroll Expenses, Facilitate Compliance Expenses, and Economic Support Expenses; and

The Town has expended a considerable amount of money in the Payroll Expenses and Facilitate Compliance Categories and will continue to have such expenses until the pandemic

has been neutralized. The Town wishes to avail itself of any funding opportunity that will offset these unanticipated expenses.

WHEREAS, the Parties are desirous of entering into an Interlocal Agreement (ILA) providing for a reimbursement of expenditures in response to the COVID-19 pandemic.

**Fiscal Impact/Analysis**

The Town will be reimbursed for various expenses and planned projects intended to protect residents and Town employees while maintaining levels of service. These include purchases of personal protective equipment (PPE), cleaning and disinfection of Town facilities, teleworking technology initiatives, as well as physical environment improvements intended to keep personnel safe once Town facilities are open to the public. The full scope of expenses has yet to be determined as some of the projects have not been completed.

**Staff Contact:**

Russell Muñiz, Assistant Town Administrator/Town Clerk

**ATTACHMENTS:**

Description	Upload Date	Type
CARES ACT FUNDING ILA - TA APPROVED	7/24/2020	Resolution
Broward County Municipality Cares Act Funding Agreement-SWR	9/30/2020	Agreement

**RESOLUTION NO. 2020 - XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY PROVIDING FOR THE PROVISION OF CARES ACT FUNDING TO OFFSET UNANTICIPATED EXPENDITURES ASSOCIATED WITH THE TOWN'S EFFORTS IN RESPONDING TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE THE INTERLOCAL AGREEMENT AND ANY AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Congress has appropriated a \$1.5 billion funding package entitled the Coronavirus Aid, Relief, and Economic Security (CARES) Act to help communities respond to the surging COVID-19 pandemic; and

**WHEREAS**, Broward County has received \$341 million dollars of funding which they will share 30% or \$102 million dollars with its 31 cities for expenses in the following four categories: Public Health Expenses, Payroll Expenses, Facilitate Compliance Expenses, and Economic Support Expenses; and

**WHEREAS**, the Town has expended a considerable amount of money in the Payroll Expenses and Facilitate Compliance Categories and wishes to avail itself of any funding opportunity that will offset these unanticipated expenses; and

**WHEREAS**, the Parties are desirous of entering into an Interlocal Agreement (ILA) providing for a reimbursement of expenditures in response to the COVID-19 pandemic.

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

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

**Section 2:** The Town Council hereby approves the Interlocal Agreement with Broward County, substantially in the form of the Agreement attached as Exhibit "1," providing for distribution of CARES Act funding to reimburse expenses incurred by the Town in its response to the COVID-19 pandemic.

**Section 3:** Authorization. The Mayor, Town Administrator, and Town Attorney are hereby authorized to enter into the Interlocal Agreement with Broward County, substantially in the form of the Agreement attached as Exhibit

"1," providing for distribution of CARES Act funding to reimburse expenses incurred by the Town in its response to the COVID-19 pandemic and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 4:** Effective Date. This Resolution shall become effective immediately upon its adoption.

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

Ranches, Florida, this 30<sup>th</sup> day of July 2020 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

ATTEST:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith M. Poliakoff, J.D., Town Attorney  
37244969.1





**SUBAWARD AGREEMENT BETWEEN BROWARD COUNTY  
AND THE TOWN OF SOUTHWEST RANCHES FOR CARES ACT FUNDING**

This Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and the Town of Southwest Ranches, a municipality of the State of Florida (“Municipality”) (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

A. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was signed into law, providing over \$2 trillion in economic relief to assist with the impact of the COVID-19 pandemic, \$8.3 billion of which was allocated to the State of Florida.

B. Based on its population, County qualified for a direct payment allocation and received \$340,744,702 in funding from the Department of the Treasury under the Coronavirus Relief Funds program, Catalog of Federal Domestic Assistance (“CFDA”) No. 21.019.

C. County’s municipalities have proposed that the County allocate a portion of the funds it received pursuant to the CARES Act to the County’s municipalities and County has agreed to make available a portion of the funds it received from the CARES Act to the County’s municipalities based on the CARES for One Broward Funding Plan attached hereto as Exhibit G.

D. County wishes to subaward a portion of the funds it received from the CARES Act to Municipality as provided in this Agreement.

E. Municipality is a sub-recipient as defined under 2 CFR § 200.93; and has been identified as an eligible local government that has incurred costs due to the COVID-19 public health emergency that are eligible for reimbursement under the Coronavirus Relief Fund Program, CFDA No. 21.019.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **CARES Act** means Section 601 of the Social Security Act (42 U.S.C. et seq.), as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-138), and all rules and regulations relating thereto, as amended.
- 1.3. **CARES Funds** means the funding provided to County pursuant to the CARES Act and which is subject to the restrictions and requirements of the CARES Act.

1.4. **Contract Administrator** means the County Administrator or such other person designated by the County Administrator in writing.

1.5. **Eligible Expenditures** means expenditures that are eligible for reimbursement using CARES Funds, in accordance with the CARES Act as set forth in Exhibit F to this Agreement.

1.6. **Project** means each project, activity, service, procurement, or other expenditure that will be implemented by Municipality as described in Exhibit A to this Agreement.

## ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and fully incorporated herein:

<b>Exhibit A</b>	<b>Schedule of Projects</b>
<b>Exhibit B</b>	<b>Budget</b>
<b>Exhibit C</b>	<b>Project Timelines</b>
<b>Exhibit D</b>	<b>Request for Payment Documentation Requirements</b>
<b>Exhibit E</b>	<b>Federal Provisions</b>
<b>Exhibit F</b>	<b>Eligible Expenditures</b>
<b>Exhibit G</b>	<b>CARES for One Broward Funding Plan</b>

## ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1. **Term.** The term of this Agreement shall begin on the date it is fully executed by the Parties (“Effective Date”) and shall end on December 30, 2020 (“Initial Term”), unless earlier terminated pursuant to the terms of this Agreement.

3.2. **Fiscal Year.** The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of CARES Funds in accordance with Chapter 129, Florida Statutes.

3.3. **Time of the Essence.** Unless expressly waived by the Contract Administrator in writing, time is of the essence in Municipality’s performance of its duties, obligations, and responsibilities under this Agreement.

## ARTICLE 4. PROJECT

4.1. **CARES Funds.** Municipality shall implement the Projects stated in Exhibit A attached hereto, as may be amended from time to time. Unless otherwise stated in Exhibit A, a Project shall not be eligible for any funding under this Agreement unless all of the Project’s elements are Eligible Expenditures. Municipality certifies that each expenditure for the Project that is funded with CARES Funds is an Eligible Expenditure, and covenants that each such expenditure will at all times be an Eligible Expenditure.

4.2. **Amendments to Projects.** At any time prior to November 1, 2020, Municipality may request modifications to the Schedule of Projects (Exhibit A) and corresponding changes to the

Budget (Exhibit B) and the Project Timelines (Exhibit C), including to add, remove, or modify Project(s) and/or modify the scope, budget, or timeline of Project(s). Municipality shall request any modification to the Schedule of Projects by submitting for County's review a written request to County that includes proposed amended exhibits incorporating the modification requests. Municipality shall provide any supporting documentation reasonably requested by County to facilitate a determination of whether the Projects, as modified, consist of Eligible Expenditures. If County determines that the Projects, as modified, consist of Eligible Expenditures, and the associated modifications to the Budget and the Project Timelines are approved in writing by the County Administrator, the Contract Administrator may approve such amended exhibits by written notice to Municipality and, upon such written notice, such amended exhibits shall be automatically incorporated herein and shall replace the corresponding exhibits. In addition, the Parties may amend this Agreement to incorporate the approved modifications, and the County Administrator is authorized to execute any such amendment on behalf of County.

4.3. Project Timeline. Municipality must comply with the Project Timelines set forth in Exhibit C for each Project, which Project Timelines shall not extend past the deadline for expenditures stated in Section 5.5. If Municipality fails to meet any of the deadlines for a Project set forth in Exhibit C by thirty (30) days or more, upon written notice by the Contract Administrator and effective as of the date of such written notice, the Project will become ineligible for CARES Funds under this Agreement, the Project shall be deemed to be automatically removed from this Agreement without the need for a formal amendment, and County shall have no further obligation to fund the Project. The County Administrator is authorized to reallocate the CARES Funds to other Projects or to other purposes including to other County projects or to projects by other municipalities, as determined in the sole discretion of the County Administrator. The County Administrator's authority to remove and reallocate CARES Funds pursuant to this Section 4.3 shall be in addition to County's right to reallocate CARES Funds pursuant to Section 5.5.

4.4. Monitoring and Reporting. County will carry out periodic subrecipient monitoring and evaluation activities as determined necessary in County's sole discretion or as required by Uniform Grant Guidance, 2 CFR §§ 200.330 through 332. County has the right to conduct a full review of any or all Projects at any time. County's evaluation of a Project may include, but not be limited to, compliance with the terms of this Agreement and comparisons of planned versus actual progress relating to the Project's scheduled expenditures. Upon County's request, Municipality shall promptly furnish to County such records and information requested by County related to a Project. Municipality shall meet with County at reasonable times and with reasonable notice to discuss the Projects.

4.5. Unaudited and Final Financial Reports. On or before January 1, 2021, Municipality must submit a financial report identifying all CARES Funds received under this Agreement ("Unaudited Financial Report"). The Unaudited Financial Report shall contain sufficient information for County to determine if the expenditures conform to this Agreement and are eligible for funding under the CARES Act. The Unaudited Financial Report must include appropriate footnote disclosures in support of the financial information items presented, including disclosure of any

issue of noncompliance with this Agreement or applicable law. Unless Municipality is required to complete an audit under 2 C.F.R. Part 200, on or before July 1, 2021, Municipality must submit an audited financial report identifying all CARES Funds received under this Agreement (“Final Report”). The Final Report must be audited and certified by an independent CPA, at Municipality’s expense, and include an opinion as to whether the financial information in the report is presented in accordance with Generally Accepted Accounting Principles. The audit shall contain sufficient information for County to determine if the expenditures conform to this Agreement and are eligible for funding under the CARES Act. The Final Report must include appropriate footnote disclosures in support of the financial information items presented, including disclosure of any issue of noncompliance with this Agreement or applicable law.

## **ARTICLE 5. FUNDING AND METHOD OF PAYMENT; PROVISIONS RELATING TO THE USE OF CARES ACT FUNDS**

5.1. Maximum Funds Payable. The maximum amount payable to Municipality under this Agreement is the Total CARES Funds amount stated in the Budget (Exhibit B). All financial obligations of County under this Agreement are subject to the availability of CARES Funds, as more specifically described herein. No County funds other than CARES Funds shall be due or payable to Municipality under this Agreement. Municipality may designate in Exhibit B a portion of its Total CARES Funds to be retained by County (“Retained Funds”) for the purposes of administering the County’s residential assistance or small business and nonprofit support programs for the benefit of residents, businesses, or nonprofits located in Municipality. Any Retained Funds shall be used by County for the County program designated by City in Exhibit B and shall not be available to be paid to Municipality under this Agreement.

5.2. Invoicing.

5.2.1. Monthly Expenditures. No later than ten (10) calendar days after the end of each month during the Term (except the month of December), Municipality shall request payment from County for all Eligible Expenditures in accordance with Exhibit B that were incurred by Municipality during the prior month by furnishing to County a request for payment in the form approved by the Contract Administrator and supporting documentation as provided in Exhibit D (collectively, “Request for Payment”), including a certification by the chief administrative officer and the chief financial officer of Municipality, or such other persons designated by Municipality with authority to act in similar capacities, that all funds received and utilized to date under this Agreement were utilized only for Eligible Expenditures. Following receipt of a Request for Payment, County shall review the Request for Payment to determine whether the Request for Payment complies with the terms of this Agreement. If a Request for Payment includes subcontractor expenses, whether paid by Municipality on a “lump sum” or other basis, such expenses must be included in the Request for Payment with no markup and stated in the actual amount paid by Municipality. County may, in its discretion, deny a Request

for Payment to Municipality if Municipality fails to comply with this section or provide any of the documentation set forth in Exhibit D.

5.2.2. Expenditures Prior to the Effective Date. For Eligible Expenditures incurred prior to the Effective Date, Municipality shall submit a Request for Payment no later than twenty (20) calendar days after the Effective Date.

5.2.3. Expenditures During the Month of December. For any Eligible Expenditures incurred during the month of December 2020, Municipality shall submit a Request for Payment no later than December 10, 2020.

5.3. Payment; Deadline to Request Payment. If Municipality is in compliance with the terms of this Agreement, including the procedures for Requests for Payment set forth in this article, County shall, within thirty (30) days of receipt of a Request for Payment, reimburse Municipality (subject to all terms and conditions of this Agreement) in accordance with Exhibit B for Project expenses that are determined by County to be Eligible Expenditures, unless a suspension of payment as provided for in Section 5.6 has occurred. Municipality shall not be entitled to reimbursement for any Requests for Payment received by County after December 10, 2020.

5.4. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to ensure utilization of CARES Funds in accordance with this Agreement, applicable law, and the CARES Act. The amount withheld shall not be subject to payment of interest by County. Upon written notice by County, payment may be withheld by County for the duration of any failure of Municipality to comply with a term, condition, or requirement of this Agreement; County shall promptly pay the amount withheld to Municipality when Municipality's noncompliance is cured to the reasonable satisfaction of Contract Administrator, provided that at such time Municipality is in full compliance with all other material terms and conditions of the Agreement.

5.5. Deadline for Expenditures. Municipality shall not submit Requests for Payment, and shall not be reimbursed, for any expenditures incurred after December 10, 2020. If after December 10, 2020, any CARES Funds allocated to Municipality under this Agreement have not been previously requested by Municipality pursuant to a Request for Payment ("Remaining Funds"), County shall be relieved of any further financial obligation to Municipality for the Remaining Funds and the County Administrator may reallocate the Remaining Funds to another municipality or Eligible Expenditure (including eligible expenditures by County).

5.6. Suspension of Payment. County may suspend payment, in whole or in part, to Municipality under this Agreement upon the occurrence of any of the following events: (a) ineligible use by Municipality of CARES Funds under this Agreement or the CARES Act; (b) Municipality's failure to comply with terms of this Agreement; (c) failure to submit reports as required by this Agreement; (d) submission of incorrect or incomplete reports or Requests for Payment in any material respect; or (e) Municipality's failure to comply with the indemnification obligations under this Agreement. If County elects to suspend payment to Municipality pursuant to this section, County shall provide written notice to Municipality specifying the actions that

must be taken by Municipality as a condition precedent to resumption of payments and specifying a reasonable date by which Municipality must take such actions. If County determines that the specified actions were taken by Municipality by the date set forth in the notice, County shall resume payments under this Agreement.

5.7. Recoupment. Municipality shall be required to repay to County any CARES Funds determined by County, in County's reasonable discretion, to be ineligible for reimbursement under the CARES Act, or determined by the U.S. Department of Treasury to be ineligible use(s) of CARES Funds. Municipality shall also be required to repay to County (a) any CARES Funds overpaid to Municipality by County; (b) any CARES Funds expended by Municipality, or any of its subcontractors, in violation of this Agreement; or (c) any CARES Funds County is required to refund that were paid to Municipality under this Agreement or proceeds from or interest on such amounts, including proceeds from sales or disposals of assets purchased by Municipality using CARES Funds and interest received by Municipality on CARES Funds held in interest-bearing accounts, if applicable. Municipality shall repay any amounts required to be repaid to County under this Agreement from nonfederal sources within thirty (30) days after written notice is provided by County. If such amounts are not timely repaid, County may, in its sole discretion, withhold payment on any pending or subsequent Requests for Payment by Municipality, or offset Municipality's obligation to repay County under this Agreement by applying it as a credit against any other funds (except ad valorem tax revenues derived from the Municipality's voter-approved debt service millage) owed by County to Municipality under this or any other agreement or any other payment obligation. Municipality agrees that the repayment obligations under this section shall apply regardless of whether CARES Funds were believed or determined by County to be eligible for reimbursement to Municipality prior to the occurrence of the event triggering the repayment obligation hereunder. Municipality waives any present or future defense, counterclaim, or setoff, regardless of the basis, known or unknown, that Municipality may have to any action by County in enforcing the repayment obligation set forth in this section.

5.8. Security. In addition to County's rights under this Agreement, and notwithstanding any distribution requirement otherwise provided in Florida law, the Florida Administrative Code, the Florida Department of Revenue's rules and procedures, or any other law, rule, regulation or procedure, if Municipality fails to repay County as required in Section 5.7, Municipality authorizes County to withhold from any revenues, including taxes (except ad valorem tax revenues derived from the Municipality's voter-approved debt service millage) and fees, that County collects on behalf of Municipality an amount equal to the amount owed by Municipality, which shall be held in a separate account as security until Municipality repays to County all sums owed pursuant to this Agreement.

## **ARTICLE 6. MUNICIPALITY COVENANTS**

6.1. CARES Funds Eligibility Criteria. Municipality acknowledges and agrees that the CARES Act provides that CARES Funds may only be utilized to cover expenses that (a) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (b) were not accounted for in Municipality's budget most recently

approved as of March 27, 2020; and (c) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. Municipality further acknowledges and agrees that CARES Funds may not be used to fill shortfalls in government revenue or to cover expenditures that would not otherwise qualify as eligible expenses under the CARES Act. Municipality warrants and represents that Municipality will only request, receive, or accept CARES Funds under this Agreement for Eligible Expenditures that comply with all of these requirements and limitations and all requirements and limitations of the CARES Act, including as such may be amended.

6.2. Use of CARES Funds. Municipality represents and agrees that the funding provided by County to Municipality under this Agreement will be utilized by Municipality only for the Projects, each of which is an Eligible Expenditure as permitted under the CARES Act, as specified in Exhibit A and in accordance with the Project budget set forth in Exhibit B and the Project Timelines set forth in Exhibit C.

6.3. Proceeds. Municipality shall not sell or otherwise dispose of any assets acquired using CARES Funds in exchange for compensation (monetary or in-kind). If Municipality sells or otherwise disposes of any assets acquired using CARES Funds in exchange for compensation of any kind prior to December 30, 2020, Municipality shall transfer the proceeds from any such sale or disposal, if any, to County, or pay County the cash equivalent of the in-kind value, promptly, but no later than fifteen (15) business days after receipt by Municipality of such proceeds.

6.4. Grants or Loans. Any refund or repayment of a grant or loan, in whole or in part, made by Municipality to any recipient or borrower using CARES Funds must be transferred to County promptly, but no later than fifteen (15) business days after receipt by Municipality of the repayment from the recipient or borrower of the grant or loan.

6.5. Interest. If any CARES Funds are prepaid directly to Municipality, any interest earned or other investment proceeds received by Municipality on such CARES Funds, including by deposit in an interest bearing account, shall be used only for Eligible Expenditures for the Projects, and if unspent on December 30, 2020, must be transferred by Municipality to County promptly, but no later than fifteen (15) business days after receipt by Municipality of the interest or proceeds.

6.6. No Independent Funding Obligation. Municipality acknowledges and agrees that County is not obligated by the CARES Act or any other law, rule, or regulation to provide any CARES Funds to Municipality, that County voluntarily has elected to distribute a portion of CARES Funds to Municipality, and that County's obligation to provide CARES Funds to Municipality shall be limited to the CARES Funds as set forth in Exhibit B and subject to the terms and conditions of this Agreement.

## **ARTICLE 7. INDEMNIFICATION**

To the extent authorized by Section 768.28, Florida Statutes, Municipality shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys'

fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Municipality, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Municipality shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Municipality under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## **ARTICLE 8. AUDITING**

8.1. Audit Rights. In addition to the federal audit requirements of Section 8.4, County shall have the right to audit the books, records, and accounts of Municipality and any subcontractors (collectively, "Audited Entities") providing goods or services for which funding or reimbursement is sought under this Agreement (the "Contract Records"). Audits, reviews, monitoring, inspections, and investigations conducted pursuant to this Agreement may include, but are not limited to, on-site visits by County staff, interviews of staff of any of the Audited Entities, review of performance and financial reports, determining and monitoring appropriate corrective action, and issuing management letters on deficiencies or weaknesses identified. Audited Entities shall fully comply and cooperate with any auditing and monitoring activities deemed appropriate by County.

8.2. Retention of Records. Audited Entities shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request by the Contract Administrator to do so, Audited Entities shall make same available in written form at no cost to County.

Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance relating to the Projects. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance relating to the Projects of any of the Audited Entities.



Audited Entities shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to the Projects or this Agreement for at least five (5) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). The Projects and all expenditures relating to the Projects shall be subject to County's review, critique, and analysis for the duration of the Project.

8.3. Audit Results. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment made or based upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Municipality in addition to any required adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made by Municipality to County within thirty (30) days after presentation of County's findings to Municipality.

8.4. Audit Requirements. Municipality shall comply with the requirements, standards, and the applicable provisions set forth in the Single Audit Act (31 U.S.C. Sections 7501-7507) and the related provisions of 2 C.F.R. Part 200 (Uniform Guidance), including 2 C.F.R. Part 200.303, 2 C.F.R. Part 200.330 through 332, and Subpart F, Audit Requirements. Municipality shall comply with the audit requirements set forth in 2 C.F.R. Part 200, Subpart F, Audit Requirements, Section 215.97, Florida Statutes, applicable Rules of the Department of Financial Services, and Chapters 10.550 (local government entities) or Chapter 10.650 (nonprofit and for profit organizations), Rules of the Auditor General, State of Florida, as applicable. Copies of the reporting package required under 2 C.F.R. Part 200 must be filed with County the earlier of thirty (30) calendar days after receipt of the Auditor's Report(s), or nine (9) months after the end of the audit period. All CARES Funds provided by County must be shown via explicit disclosure in Municipality's annual financial statements or the accompanying notes to the financial statements.

8.5. Municipality shall comply with all requirements of the U.S. Department of Treasury Office of Inspector General, including the requirement to register with SAM.gov.

## **ARTICLE 9. TERMINATION**

9.1. County's obligations under this Agreement are subject to the availability of CARES Funds. If CARES Funds become unavailable, County may terminate this Agreement upon written notice to Municipality no less than three (3) days prior to the effective termination date stated in the notice. This Agreement may also be terminated by the Board upon fifteen (15) days' prior written notice to Municipality if the Board determines that the emergency circumstances of the COVID-19 crisis require that the CARES Funds be otherwise allocated. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

9.2. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach.

9.3. This Agreement may be terminated for cause by County for reasons including, but not limited to any of the following:

9.3.1. Repeated submission by Municipality (whether negligent or intentional) for payment of false or incorrect Requests for Payment;

9.3.2. Fraud, misrepresentation, or material misstatement in the performance of this Agreement by Municipality or its subcontractor(s);

9.3.3. Municipality's failure to comply with applicable federal, state, or local law or regulations; or

9.3.4. Municipality's utilization of the CARES Funds provided under this Agreement in a manner that violates applicable law, the CARES Act, or for uses or purposes other than the Projects.

9.4. This Agreement may be terminated for convenience by either Party, which termination date shall be not less than thirty (30) days after the date of such written notice.

9.5. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.6. If this Agreement is terminated for any reason, County may, in County's reasonable discretion, reimburse Municipality upon receipt of a Request for Payment in accordance with the terms of this Agreement for documented and committed Eligible Expenditures related to a Project incurred by Municipality prior to the date of Municipality's receipt of the written notice of termination. For purposes of this Agreement, documented and committed Eligible Expenditures related to a Project means any verifiable expense that has already been incurred by Municipality and cannot be recovered, including, but not limited to a purchase order for payment of materials and supplies, executed by Municipality or subcontractor on Municipality's behalf, for a Project under this Agreement. Notwithstanding the above, Municipality shall not expend, or commit to expend, any funds for Eligible Expenditures related to a Project after written notice of termination is provided by Municipality to County or received by Municipality from County. Any payment by County pursuant to this section is subject to all applicable provisions of this Agreement, including the sections surviving termination of this Agreement as set forth in Section 11.22. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity, all such remedies being cumulative.

## ARTICLE 10. INSURANCE

10.1. Municipality is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

10.2. Upon request by County, Municipality must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If Municipality holds any excess liability coverage, Municipality must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

10.3. If Municipality maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and noncontributory basis. County's insurance requirements shall apply to Municipality's self-insurance.

10.4. If Municipality contracts with a subcontractor to provide any of the services for a Project, Municipality shall require that each subcontractor procure and maintain insurance coverage that adequately covers each subcontractor's exposure based on the services provided by that subcontractor. Municipality must ensure that all such subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. Municipality shall not permit any subcontractor to provide services for a Project until the insurance requirements of the subcontractor under this section are met. If requested by County, Municipality shall furnish evidence of insurance of all such subcontractors.

10.5. County reserves the right, but not the responsibility, to periodically review any and all insurance policies.

## ARTICLE 11. MISCELLANEOUS

11.1. Nondiscrimination. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Municipality shall include the foregoing or similar language in its contracts with subcontractors for goods or services that constitute Eligible Expenditures.

11.2. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Municipality to manage and supervise the performance of this Agreement. Any determination by the Contract Administrator that this Agreement authorizes the Contract Administrator to make shall be binding on the Parties. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority in connection with the day-to-day management of this Agreement.

11.3. Public Records. The Parties agree and stipulate that both Parties are subject to Florida public records laws and shall fully comply with same. At the request of County, Municipality shall, in accordance with applicable law, respond to any request for public records received by County relating to the Project. Any other public records request shall be responded to by the receiving party. Each Party shall cooperate upon request by the other Party and provide any requested records to enable the Party to respond to a public records request.

Any material submitted to County that Municipality contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Municipality must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Municipality as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Municipality. Municipality shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a public records request by a third party.

11.4. Independent Contractor. Nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties or between County and any Subcontractor. Neither Party nor its agents shall act as officers, employees, or agents of the other Party. Neither Party shall have the right to bind the other Party to any obligation not expressly undertaken by that Party under this Agreement.

11.5. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County or Municipality, nor shall anything included herein be construed as consent by County or Municipality to be sued by third parties in any matter arising out of this Agreement. County and Municipality are subdivisions of the State of Florida, as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their respective employees pursuant to Section 768.28, Florida Statutes.

11.6. Third-Party Beneficiaries. Neither Municipality nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.7. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for

notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County  
Attn: County Administrator  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email address: [bhenry@broward.org](mailto:bhenry@broward.org)

With a copy to:

Broward County  
Attn: County Attorney  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Email address: [ameyers@broward.org](mailto:ameyers@broward.org) and [aashton@broward.org](mailto:aashton@broward.org)

FOR MUNICIPALITY:

Town of Southwest Ranches  
Andrew Berns  
Town Administrator  
13400 Griffin Rd  
Southwest Ranches, Florida 33330  
Email address: [aberns@southwestranches.org](mailto:aberns@southwestranches.org)

11.8. Assignment. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Municipality without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section (unless County subsequently consents thereto in writing) shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity, all such remedies being cumulative.

11.9. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's or Municipality'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 of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.10. Compliance with Laws. Municipality must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations. Municipality hereby accepts and shall comply with the additional terms for federally funded contracts set forth in Exhibit E, to the extent applicable, and shall include such applicable federal provisions in any contracts with Subcontractors.

11.11. Representation of Authority. The Parties represent and warrant that this Agreement constitutes the legal, valid, binding, and enforceable obligation of each Party, that execution of this Agreement is within each Party's legal powers, and that each individual executing this Agreement is duly authorized by all necessary and appropriate action to do so on behalf of that Party and does so with full legal authority.

11.12. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.13. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11.14. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. To be effective, any approval under this Agreement made by or on behalf of County must be in writing.

11.15. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect unless otherwise expressly stated herein.

11.16. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or

United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH OF MUNICIPALITY AND COUNTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.17. Amendments. Except as expressly authorized herein, no modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Municipality.

11.18. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

11.19. Payable Interest

11.19.1. Payment of Interest. County shall not be liable to pay any interest to Municipality for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Municipality waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.19.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.20. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.21. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.22. Survivability. Notwithstanding any expiration or termination of this Agreement, the following provisions shall survive expiration and termination: Section 4.5 (Final Financial Report); Section 5.5 (Deadline for Expenditures); Section 5.7 (Recoupment); Section 5.8 (Security); Article 6 (Municipality Covenants); Article 7 (Indemnification); Article 8 (Auditing); Section 11.3 (Public Records); Section 11.5 (Sovereign Immunity); Section 11.6 (Third-Party Beneficiaries); Section

11.16 (Law, Jurisdiction, Venue, Waiver of Jury Trial); and Section 11.19 (Payable Interest); and this Section 11.22 (Survivability).

(The remainder of this page is intentionally blank.)



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the 25th day of August, 2020 (Item #87), and Municipality, signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

WITNESS:

BROWARD COUNTY, by and through its County Administrator

\_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
County Administrator

\_\_\_\_\_  
(Print Name of Witness)

\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
(Signature)

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

\_\_\_\_\_  
(Print Name of Witness)

By \_\_\_\_\_  
Alicia C. Lobeiras (Date)  
Assistant County Attorney

By \_\_\_\_\_  
Annika E. Ashton (Date)  
Deputy County Attorney

Draft Municipal CARES ILA  
09/28/2020  
#524671v21  
RDH/AEA/ACL

**SUBAWARD AGREEMENT BETWEEN BROWARD COUNTY  
AND THE TOWN OF SOUTHWEST RANCHES FOR CARES ACT FUNDING**

**MUNICIPALITY**

ATTEST:

**TOWN OF SOUTHWEST RANCHES**

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I HEREBY CERTIFY that I have approved  
this Agreement as to form and legal  
sufficiency subject to execution by the parties:

\_\_\_\_\_  
Town Attorney

**EXHIBIT A  
SCHEDULE OF PROJECTS**

**EXHIBIT B  
BUDGET**

**Total CARES Funds:**

**(if applicable) BSO PPE Allocation:**

**(if applicable) Funds:**

**EXHIBIT C  
PROJECT TIMELINES**

**EXHIBIT D**  
**REQUEST FOR PAYMENT DOCUMENTATION REQUIREMENTS**

**Required Documentation**

Municipality shall submit the documentation itemized below (“Required Documentation”) with each invoice for CARES Funds.

Required Documentation includes:

1. Completed Request for Payment in the form approved by the Contract Administrator;
2. A certification in accordance with Section 5.2 that all funds received and utilized to date under this Agreement were utilized only for Eligible Expenditures;
3. A certification from Municipality’s administrator or the administrator’s authorized representative that the work, services, or activities, or materials being invoiced have been received or completed;
4. Documentation of costs associated with any Municipality personnel providing any services for the Project, if applicable;
5. An executed copy of each subcontractor contract authorizing work, services, or activities to be performed for the Project, if applicable and not previously submitted to County;
6. A certified copy of the purchase order or other Municipality document authorizing the work, services, activities, or materials for which Municipality is invoicing;
7. A copy of all subcontractor invoices for the Project indicating the work, services, or activities rendered or materials purchased and the dates for same, certified by Municipality’s administrator or manager of the Project, as applicable;
8. Any additional documentation required by any additional provision of Federal Law; and
9. Any additional documentation that may be reasonably requested by Contract Administrator.
10. Approved budget for the expense prior to March 27 and the budget subsequent to approval of the CARES Act, with explanation of the budget was adjusted, or how the requested reimbursements represent substantially different use toward COVID-19 expenses from that anticipated when the budget was adopted.

**EXHIBIT E**  
**FEDERAL PROVISIONS**

1. Municipality shall comply with the following Federal provisions, if applicable, and shall include such applicable Federal provisions in Municipality's contracts with Subcontractors, including all applicable provisions set forth in 2 C.F.R. Appendix II to Part 200:

a. Municipality agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

b. Municipality shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

c. Municipality agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C until the termination or expiration of this Agreement. Municipality further agrees to include a provision requiring such compliance in its lower tier covered transactions relating to this Agreement. Municipality affirms and verifies that neither Municipality, nor any of its principals (defined at 2 C.F.R. § 180.995) or affiliates (defined at 2 C.F.R. § 180.905), are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

d. The foregoing subsections are material representations of fact relied upon by County. If it is later determined that Municipality did not comply with 2 C.F.R. Part 180, subpart C or 2 C.F.R. Part 3000, subpart C, in addition to remedies available to County, the federal government may pursue available remedies, including, but not limited to suspension and/or debarment.

e. Municipality shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Among other things, Municipality shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recover materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2. By execution of this Agreement, Municipality certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a

member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. Municipality shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Municipality certifies or affirms the truthfulness and accuracy of each statement of the foregoing certification and disclosure, if any. In addition, Municipality understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.



**EXHIBIT F**  
**SCHEDULE OF ELIGIBLE EXPENDITURES**

A. CATEGORIES OF ELIGIBLE EXPENDITURES:

1. MEDICAL EXPENSES SUCH AS:

- A) COVID-19-RELATED EXPENSES OF PUBLIC HOSPITALS, CLINICS, AND SIMILAR FACILITIES.
- B) EXPENSES OF ESTABLISHING TEMPORARY PUBLIC MEDICAL FACILITIES AND OTHER MEASURES TO INCREASE COVID-19 TREATMENT CAPACITY, INCLUDING RELATED CONSTRUCTION COSTS.
- C) COSTS OF PROVIDING COVID-19 TESTING, INCLUDING SEROLOGICAL TESTING.
- D) EMERGENCY MEDICAL RESPONSE EXPENSES, INCLUDING EMERGENCY MEDICAL TRANSPORTATION, RELATED TO COVID-19.
- E) EXPENSES FOR ESTABLISHING AND OPERATING PUBLIC TELEMEDICINE CAPABILITIES FOR COVID-19- RELATED TREATMENT.

2. PUBLIC HEALTH EXPENSES SUCH AS:

- A) EXPENSES FOR COMMUNICATION AND ENFORCEMENT BY STATE, TERRITORIAL, LOCAL, AND TRIBAL GOVERNMENTS OF PUBLIC HEALTH ORDERS RELATED TO COVID-19.
- B) EXPENSES FOR ACQUISITION AND DISTRIBUTION OF MEDICAL AND PROTECTIVE SUPPLIES, INCLUDING SANITIZING PRODUCTS AND PERSONAL PROTECTIVE EQUIPMENT, FOR MEDICAL PERSONNEL, POLICE OFFICERS, SOCIAL WORKERS, CHILD PROTECTION SERVICES, AND CHILD WELFARE OFFICERS, DIRECT SERVICE PROVIDERS FOR OLDER ADULTS AND INDIVIDUALS WITH DISABILITIES IN COMMUNITY SETTINGS, AND OTHER PUBLIC HEALTH OR SAFETY WORKERS IN CONNECTION WITH THE COVID-19 PUBLIC HEALTH EMERGENCY.
- C) EXPENSES FOR DISINFECTION OF PUBLIC AREAS AND OTHER FACILITIES, E.G., NURSING HOMES, IN RESPONSE TO THE COVID-19 PUBLIC HEALTH EMERGENCY.
- D) EXPENSES FOR TECHNICAL ASSISTANCE TO LOCAL AUTHORITIES OR OTHER ENTITIES ON MITIGATION OF COVID-19-RELATED THREATS TO PUBLIC HEALTH AND SAFETY.
- E) EXPENSES FOR PUBLIC SAFETY MEASURES UNDERTAKEN IN RESPONSE TO COVID-19.

- F) EXPENSES FOR QUARANTINING INDIVIDUALS.
3. PAYROLL EXPENSES FOR PUBLIC SAFETY, PUBLIC HEALTH, HEALTH CARE, HUMAN SERVICES, AND SIMILAR EMPLOYEES WHOSE SERVICES ARE SUBSTANTIALLY DEDICATED TO MITIGATING OR RESPONDING TO THE COVID-19 PUBLIC HEALTH EMERGENCY.
  4. EXPENSES OF ACTIONS TO FACILITATE COMPLIANCE WITH COVID-19-RELATED PUBLIC HEALTH MEASURES, SUCH AS:
    - A) EXPENSES FOR FOOD DELIVERY TO RESIDENTS, INCLUDING, FOR EXAMPLE, SENIOR CITIZENS AND OTHER VULNERABLE POPULATIONS, TO ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS.
    - B) EXPENSES TO FACILITATE DISTANCE LEARNING, INCLUDING TECHNOLOGICAL IMPROVEMENTS, IN CONNECTION WITH SCHOOL CLOSINGS TO ENABLE COMPLIANCE WITH COVID-19 PRECAUTIONS.
    - C) EXPENSES TO IMPROVE TELEWORK CAPABILITIES FOR PUBLIC EMPLOYEES TO ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS.
    - D) EXPENSES OF PROVIDING PAID SICK AND PAID FAMILY AND MEDICAL LEAVE TO PUBLIC EMPLOYEES TO ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS.
    - E) COVID-19-RELATED EXPENSES OF MAINTAINING STATE PRISONS AND COUNTY JAILS, INCLUDING AS RELATES TO SANITATION AND IMPROVEMENT OF SOCIAL DISTANCING MEASURES, TO ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS.
    - F) EXPENSES FOR CARE FOR HOMELESS POPULATIONS PROVIDED TO MITIGATE COVID-19 EFFECTS AND ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS.
  5. EXPENSES ASSOCIATED WITH THE PROVISION OF ECONOMIC SUPPORT IN CONNECTION WITH THE COVID-19 PUBLIC HEALTH EMERGENCY, SUCH AS:
    - A) EXPENDITURES RELATED TO THE PROVISION OF GRANTS TO SMALL BUSINESSES TO REIMBURSE THE COSTS OF BUSINESS INTERRUPTION CAUSED BY REQUIRED CLOSURES.
    - B) EXPENDITURES RELATED TO A STATE, TERRITORIAL, LOCAL, OR TRIBAL GOVERNMENT PAYROLL SUPPORT PROGRAM.
    - C) UNEMPLOYMENT INSURANCE COSTS RELATED TO THE COVID-19 PUBLIC HEALTH EMERGENCY IF SUCH COSTS WILL NOT BE REIMBURSED BY THE FEDERAL GOVERNMENT PURSUANT TO THE CARES ACT OR OTHERWISE.

6. ANY OTHER COVID-19-RELATED EXPENSES REASONABLY NECESSARY TO THE FUNCTION OF GOVERNMENT THAT SATISFY THE CARES ACT ELIGIBILITY CRITERIA.

# EXHIBIT G CARES FOR ONE BROWARD FUNDING PLAN

MUNICIPAL ALLOCATION DISTRIBUTION FORMULA

ELIGIBLE EXPENSES

CATEGORY/RECOMMENDATION

CATEGORY/RECOMMENDATION	MUNICIPAL ALLOCATION	DISTRIBUTION FORMULA	ELIGIBLE EXPENSES
<b>Public Health Expenses</b>			
Monitoring Nursing Homes, Assisted Living, and Adult Day Care Facilities (staff time for associated payroll expense)	\$ 5,000,000	Limited allocation for each municipality based on # of qualifying facilities in each municipality	Payroll expenses documented for time spent within AHCA recognized facilities
• PPE expenses for municipal staff through June 30, 2020	\$ 3,000,000	Reimbursed based on actual documented expenditures	Items must be excluded from FY20 Budget
• PPE expenses for municipal staff through December 31, 2020 (ordering may occur in collective fashion as to encourage volume pricing - See Exhibit C. Ordering must be completed by October 1, 2020). Costs can include systems utilized for health screening of employees and customers. Allocation to this line item may be adjusted based on total PPE expenses made through June 30, 2020.	\$ 7,000,000	Limited allocation for each municipality based on # of municipal FITs as of July 1, 2020. BSO-contracted cities shall include assigned FITs into their municipal FIT counts. Other contracted employees physically located in City facilities shall be included.	Safety glasses/goggles, face shields, face masks, partitions/physical barriers, gloves, hand sanitizer, coveralls, gowns, head and hair covers, shoe covers, thermometers/temperature scanners, employee health screenings (i.e. COVID testing)
• Sanitation, disinfection, and cleaning of all municipal buildings and facilities (expenses through June 30, 2020). Costs can include systems utilized for health screening of employees and customers.	\$ 3,000,000	Reimbursed based on actual documented expenditures	Items must be excluded from FY20 Budget
• Sanitation, disinfection, and cleaning of all municipal buildings and facilities (expenses through December 31, 2020) (ordering may occur by County to encourage volume pricing by October 1, 2020 - See Exhibit C). Allocation to this line item may be adjusted based on total sanitation/disinfection expenses made through June 30, 2020.	\$ 7,000,000	Limited allocation for each municipality based on total square footage of indoor municipal facilities	All purpose cleaners, disinfectants, paper/hand towels, wipes, contracted cleaning services, electrostatic cleaning services/products, necessary signage
• Public information/awareness campaign (developed by collaboration of County and municipal PIOs and EMA)	\$ 5,000,000	Limited allocation for each municipality based on number of residential parcels as determined by BOFA	Eligible expenses will be based on forthcoming City/County Communication Plan (future Exhibit E)
<b>Payroll Expenses</b>			
• Public safety payroll expenses	\$ 30,000,000	Limited allocation for each municipality based on total FITs of certified firefighters/paramedics/EMTs and sworn Police Officers. Municipalities will be allocated a maximum amount which they can choose to apply to Police-only, Fire-only, or Police and fire expenses as long as they follow the guidelines for eligible expenses.	Public: Payroll costs for Covid-related activities (up to and including food events, checkpoints, entertainment district patrols, business checks, E.O. enforcement, beach patrols/closures, testing sites, park monitoring). Fire: Payroll costs for dispatch code 36 (and/or calls involving Covid patients). Payroll expenses will be reimbursed to municipalities on a per certified firefighter/paramedic/EMT basis based on the percentage of code 36 calls run during that pay period.
<b>Facilitate Compliance Expenses</b>			
• Municipal network and distancing programs (uniform approach to be developed by City/County Information Technology leaders). Eligible items must be excluded from the FY 2020 approved budget. Costs can also include off-site lodging for quarantined first responders.	\$ 5,000,000	Reimbursed based on actual documented expenditures up to a limited allocation for each municipality based on # of municipal FITs as of July 1, 2020. Contracted employees may qualify as long as they are utilizing City equipment.	Items must be excluded from FY20 budget and facilitate teleworking efforts: laptops, additional servers, additional network, VPN licenses, associated hardware, new firewalls, additional licenses for firewalls, cybersecurity costs, additional cloud captioning for virtual Commission meetings, virtual meeting software, remote user support, headsets, cameras for computer, computer cords, and other associated accessories. Funds may also be utilized to reimburse municipalities for documented paid sick and paid family and medical leave to employees.
<b>Economic Support Expenses</b>			
• Non-entitlement cities share of CARES CD80 program costs	\$ 5,000,000	Limited allocation for each non-entitlement municipality based on CD80 prescribed formula	Economic Response Program includes both County program(s) and separate municipal-established program(s). County will furnish to municipalities County Program details, intent is for municipal-established programs to complement County programs. Municipalities must present their specific programs to County officials prior to launch. Please see Exhibit B for eligible expenses for Municipal Program(s)
• Economic Response Program designed to provide two program opportunities: -Residential assistance for rent/mortgage and homeless assistance (needs based program to complement County program)	\$ 32,000,000	Approx. \$15 million allocated for residential assistance based on number of residential parcels	
• Small business and non-profit assistance (needs based program to complement County program)	\$ 102,300,000	Approx. \$2.3 million for reimbursing actual expenses (i.e. non-public safety payroll and supplies) for community events such as feeding and PPE giveaways.	

Any funds not expended from the public health, payroll, or facilitate compliance categories may be reallocated by each municipality to cover eligible expenditures within other categories.

\* Conversations are ongoing between BCCMA/BLOC and BSO as to the data collection for BSO-contract cities. To be defined in forthcoming Exhibit D



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

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

**Town Council**  
**Doug McKay, Mayor**  
**Denise Schroeder, Vice Mayor**  
**Delsa Amundson, Council Member**  
**Bob Hartmann, Council Member**  
**Gary Jablonski, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

### **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 10/8/2020  
**SUBJECT:** Censure of Council Member Hartmann

---

#### **Recommendation**

Town Council consideration for a motion to approve this resolution.

#### **Unanimous Vote of the Town Council Required?**

No

#### **Strategic Priorities**

A. Sound Governance

#### **Background**

On September 14, 2020, Council Member Hartmann verbally attacked three sitting Council Members in an effort to publicly endorse candidates for office. Although the Town Attorney and special counsel confirmed that Council Member Hartmann's conduct did not violate any laws or regulations of the Town, the Town Council finds that such conduct was inappropriate and unprofessional. As a result, the Town Council desires to censure Council Member Hartmann for conduct unbecoming of a Town of Southwest Ranches Council Member;

#### **Fiscal Impact/Analysis**

None.

#### **Staff Contact:**

Keith Poliakoff, Town Attorney

**ATTACHMENTS:**

Description	Upload Date	Type
Hartmann Censure-TA Approved	10/1/2020	Resolution

## **RESOLUTION 2020-XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, CENSURING COUNCIL MEMBER BOB HARTMANN FOR HIS CONDUCT AT THE SEPTEMBER 14, 2020, COUNCIL MEETING; FINDING THAT COUNCIL MEMBER BOB HARTMANN'S CONDUCT WAS UNPROFESSIONAL AND INAPPROPRIATE; DIRECTING THE TOWN CLERK TO PUBLISH THIS RESOLUTION ON A FULL PAGE IN THE TOWN'S NEXT MONTHLY NEWSLETTER, AND IN THE NOTICE SECTION OF THE SUN SENTINEL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 14, 2020, Council Member Bob Hartmann verbally criticized three sitting Council Members in an effort to publicly endorse candidates for office; and

**WHEREAS**, although the Town Attorney and special counsel confirmed that Council Member Hartmann's conduct did not violate any laws or regulations of the Town, the Town Council finds that such conduct was inappropriate and unprofessional; and

**WHEREAS**, as a result, the Town Council desires to censure Council Member Robert Hartmann for conduct unbecoming of a Town of Southwest Ranches Council Member;

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

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

**Section 2.** The Town Council hereby publicly censures Council Member Bob Hartmann for his conduct at the September 14, 2020 Council Meeting.

**Section 3.** The Town Council hereby finds that Council Member Bob Hartmann's conduct was unprofessional and inappropriate for a member of the Town Council.

**Section 4.** The Town Clerk is hereby directed to publish a copy of this censure on a full page in the Town's next monthly newsletter, and in the notice section of the Sun Sentinel.

**Section 5.** This Resolution shall become effective immediately upon adoption.

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

Ranches, Florida, this \_\_\_\_ day of \_\_\_\_\_ 2020 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney  
37530692.1





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

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

**Town Council**  
**Doug McKay, Mayor**  
**Denise Schroeder, Vice Mayor**  
**Delsa Amundson, Council Member**  
**Bob Hartmann, Council Member**  
**Gary Jablonski, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 10/8/2020  
**SUBJECT:** Amending Civility and Decorum Policy

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### **Recommendation**

Town Council consideration of a motion to approve the resolution.

### **Unanimous Vote of the Town Council Required?**

No

### **Strategic Priorities**

A. Sound Governance

### **Background**

On September 12, 2019, pursuant to Resolution No. 2019-061, the Town Council adopted the Town Council Meeting Decorum Policy. The Town Council wishes to amend its policy and to add additional regulations in order to efficiently and effectively complete Town business during the meetings. The Town Council believes that establishing reasonable rules and policies for civility and decorum during Town Council and Town Board meetings is in the best interest of the health, safety, and welfare of its residents.

### **Fiscal Impact/Analysis**

None.

### **Staff Contact:**

Keith Poliakoff, Town Attorney

**ATTACHMENTS:**

Description	Upload Date	Type
Town Civility Resolution Final- TA Approved	9/30/2020	Resolution

## **RESOLUTION 2021-XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING RESOLUTION NO. 2019-061, AND ESTABLISHING ADDITIONAL RULES AND POLICIES FOR CIVILITY AND DECORUM DURING TOWN COUNCIL MEETINGS, TOWN BOARD MEETINGS, AND DURING PUBLIC COMMENT AT TOWN COUNCIL AND BOARD MEETINGS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 12, 2019, pursuant to Resolution No. 2019-061, the Town Council adopted the Town Council Meeting Decorum Policy; and

**WHEREAS**, the Town Council wishes to amend its policy and to add additional regulations in order to efficiently and effectively complete Town business during the meetings; and

**WHEREAS**, the Town Council believes that establishing reasonable rules and policies for civility and decorum during Town Council and Town Board meetings is in the best interest of the health, safety, and welfare of its residents.

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

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

**Section 2.** The Town Council hereby amends Resolution No. 2019-061, to add additional rules and policies for civility and decorum during Town Council Meetings, Town Board Meetings, and during public comment, as further set forth herein.

**Section 3.** The Town Council hereby amends Resolution 2019-061 as follows:

**A. Balance of Rights and Decorum.** The Town is afforded the means to insure that the individual's right to participate in a public meeting is balanced with maintaining decorum during that meeting. The Town will always err on the side of allowing the individual to express his or her thoughts.

## **B. Addressing the Town Council.**

All remarks shall be addressed to the Town Council as a body and not to any individual member thereof. No personal attacks shall be tolerated.

Each person is limited to speak once during public comment and once on each agenda item in accordance with the Town's public participation regulations.

The Mayor/Chair may grant additional time of no more than two minutes, unless agreed upon by a majority of the Council.

There shall be no response to public comments until public participation is formally closed.

## **C. Decorum – Town Council.**

While the Town Council is in session, the members thereof shall preserve order and decorum and shall not, by conversation or otherwise, delay or interrupt the proceedings nor the peace of the Council and shall obey all orders of the Council or its Mayor/Chair, except as otherwise provided.

Every Councilmember desiring to speak shall address the Mayor/Chair and, upon recognition by the Mayor/Chair, shall confine themselves to the question under debate and shall avoid all personal attacks and inappropriate language.

Generally, a Councilmember having an administrative inquiry shall address his/her question to the Town Administrator, who may answer or designate a member of the Town Staff to answer.

A Councilmember once recognized, shall not be interrupted while speaking unless called to order by the Mayor/Chair, and unless a point of order is raised by another member or unless the speaker chooses to yield to questions from another member. All members of the Council shall demonstrate the utmost courtesy to each other, to Town employees, and to public members appearing before the Town Council and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments, and statements as to motives and personalities. Councilmembers shall confine their remarks to the issues before the Town Council.

## **D. Decorum – Public.**

The Mayor/Chair shall preserve decorum and order and decide all questions of order, in accordance with Robert's Rules of Order, subject to a Councilmember's appeal to the Town Attorney who shall confirm if questions of order are being properly followed.

The public shall be respectful of others' opinions, and refrain from making personal attacks. Any person who becomes disorderly or who fails to confine remarks to the identified subject or business at hand shall be cautioned by the Mayor/Chair and given

the opportunity to conclude remarks on the subject in a decorous manner and with the designated time limit. Any person failing to comply as cautioned may be barred from making any additional comments during the meeting by the Mayor/Chair. If the Mayor/Chair refuses to caution such conduct, such caution and prohibition from making any additional comments during the meeting can be made by a majority of the Council.

If the Mayor/Chair or the Town Council declares an individual out of order, he or she may be requested to relinquish the podium. If the person does not do so, he or she may be subject to removal from the Town Council Chambers or other meeting room.

Clapping, applauding, heckling or verbal outburst in support or opposition to a speaker or his or her remarks shall be discouraged.

Persons exiting the Council Chambers shall do so quietly.

## **F. Town Council Code of Conduct.**

### **1. Inappropriate Behavior.**

Councilmembers shall refrain from insulting or making personal attacks, including attacks on family members, on fellow Councilmembers, and shall refrain from belittling or attacking staff members.

### **2. Campaign Free Zones.**

A Councilmember shall not use a Town meeting to further or deter the candidacy of any candidate for Town office. Councilmembers shall refrain from making comments about candidates for Town office at Town meetings, workshops and/or forums. While at Town meetings, Councilmembers shall refrain from engaging in campaign speech or conduct, including wearing clothing or items in support or opposition of any candidate running for Town office. While at Town meetings, Councilmembers shall refrain from publicly endorsing anyone running for Town office, except for simple announcement as to who they may be supporting in an upcoming election. Notwithstanding the aforementioned, at a Town meeting a Councilmember may publicly announce that they are running for public office, and they may wear clothing in support of their own candidacy.

### **3. Removal from Council Meetings in the Town, Town Council Public Meetings, Meetings of Boards or Committees, collectively "Meetings."**

All persons, including members of the Council, after warning, are subject to removal pursuant to the provisions of Decorum if an egregious infraction continues to occur.

**Section 4.** The rules and policies adopted herein shall be effective until modified, or repealed by the Town Council.

**Section 5.** This Resolution shall become effective immediately upon adoption.

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

Ranches, Florida, this \_\_\_\_ day of \_\_\_\_ 2020 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Schroeder \_\_\_\_\_  
Amundson \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney  
37504567.1